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**INTERNATIONAL INSTRUMENTS AND NATIONAL STANDARDS
RELATING TO THE STATUS OF WOMEN**

Study of provisions in existing conventions that
relate to the status of women

Report of the Secretary-General

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION	1 - 2	6
I. GENERAL OBSERVATIONS	3 - 14	7
1. The Charter of the United Nations	3 - 6	7
(a) The prohibition to discriminate on the ground of sex	3 - 4	7
(b) The question of the legal obligations in regard to non-discrimination undertaken by Parties to the Charter	5 - 6	7
2. The international treaties considered in relation to the Declaration on the Elimination of Discrimination against Women	7 - 14	8
II. SUBSTANTIVE PROVISIONS OF THE DECLARATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	15 - 172	11
ARTICLE 1	16 - 21	11
(a) The definition of "discrimination against women"	16	11
(b) The definition of discrimination	17 - 21	11

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
ARTICLE 2	22 - 35	13
(a) The establishment of adequate legal protection for equal rights of men and women and the abolition of discriminatory laws, customs, regulations and practices	23 - 32	13
(b) Embodiment of the principle of equality in constitutions and in laws	33	15
(c) Ratification of, accession to and implementation of instruments of the United Nations system of organizations	34 - 35	15
ARTICLE 3	36 - 38	15
Educational measures	36 - 38	15
ARTICLE 4	39 - 42	16
Political rights	39 - 42	16
ARTICLE 5	43 - 50	17
Nationality	43 - 50	17
ARTICLE 6	51 - 79	18
1. Equal rights of men and women in the field of civil law (article 6, paragraph 1)	52 - 65	18
(a) General reservation concerning the unity and harmony of the family	52 - 53	18
(b) Property rights	54 - 56	19
(c) Legal capacity	57 - 60	19
(d) Movement of persons	61 - 65	20
2. Equal rights of men and women relating to marriage (article 6, paragraph 2)	66 - 79	21
(a) Free choice of a spouse and free and full consent to marriage	67 - 70	21
(b) Equality of status of husband and wife	71 - 72	23
(c) The rights and duties of parents	73 - 75	23
(d) The interest of the children	76 - 77	23
(e) Child marriage and the betrothal of young girls	78 - 79	24

/...

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
ARTICLE 7	80 - 83	24
(a) Discriminatory provisions of penal codes . .	80	24
(b) The criminal liability of women	81 - 82	25
(c) The protection of women by criminal law . .	83	25
ARTICLE 8	84 - 89	25
Traffic in women	84 - 89	25
ARTICLE 9	90 - 116	26
(a) Access to educational institutions	93 - 101	27
(b) Curricula, examinations, teaching staff, school premises and equipment	102 - 107	28
(c) Scholarships and study grants	108 - 110	29
(d) Continuing education	111 - 113	29
(e) Access to educational information to help in ensuring the health and well-being of families	114 - 116	30
ARTICLE 10	117 - 169	30
1. Equal rights of men and women in economic and social life (article 10, paragraph 1) . .	119 - 153	31
(a) Rights pertaining to work	119 - 130	31
(b) The right to vocational training	131	33
(c) The right to equal remuneration for work of equal value	132 - 135	34
(d) The right to equality as regards leave with pay, retirement privileges, security in respect of unemployment, sickness, old age or other incapacity to work, and the receipt of family allowances	136 - 153	35
2. Prevention of discrimination against women on account of marriage or maternity (article 10, paragraph 2)	154 - 160	38
3. Measures to protect women in certain types of work (article 10, paragraph 3)	161 - 169	40
ARTICLE 11	170 - 172	42

/...

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
III. MEASURES OF IMPLEMENTATION	173 - 228	44
A. Measures of implementation provided for under the conventions studied	176 - 207	44
1. Conventions adopted by or under the auspices of the United Nations	176 - 197	44
(a) International Covenant on Economic, Social and Cultural Rights	178 - 179	45
(b) International Covenant on Civil and Political Rights	180 - 184	45
(c) Optional Protocol to the International Covenant on Civil and Political Rights	185	47
(d) Convention on the Political Rights of Women, 1952	186 - 187	47
(e) Convention on the Nationality of Married Women, 1957	188 - 189	47
(f) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962	190 - 192	47
(g) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956	193 - 194	48
(h) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950	195 - 197	48
2. Conventions adopted by the International Labour Conference	198 - 204	49
3. Conventions adopted by UNESCO	205 - 207	51
B. Other relevant measures of implementation based on the Charter or on arrangements made pursuant to resolutions of the United Nations organs	208 - 228	52
1. Reporting arrangements	208 - 219	52
2. Procedures governing the handling of communications concerning human rights	220 - 228	56

/...

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
IV. CONCLUDING OBSERVATIONS AND SUGGESTIONS	229 - 239	58
A. Observations of a general character	232	59
B. Observations concerning the substantive provisions	233 - 234	60
C. Observations concerning measures of implementation	235 - 239	60

ANNEX - Status of ratification and accessions to the conventions
analysed in the present report

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INTRODUCTION

1. In paragraph 3 of resolution 4 (XXIII) on the "Unified long term United Nations programme for the advancement of women" the Commission on the Status of Women requested the Secretary-General "to undertake a study showing to what extent existing international conventions already contained provisions relating to rights covered by the Declaration on the Elimination of Discrimination against Women, the measures or implementation provided under such conventions and the status of ratifications and accessions to them". The Commission also requested the Secretary-General to present the study to the Commission, if possible at its twenty-fourth session.

2. The present study, which has been prepared in response to this request, contains in chapter I some general observations on international conventions relevant to the Declaration on the Elimination of Discrimination against Women (referred to as "the Declaration" hereinafter). Chapter II examines article by article the substantive provisions of the Declaration and the extent to which these provisions are covered in existing international conventions. Chapter III deals with the international measures of implementation applicable in respect of the various instruments examined. Chapter IV contains certain concluding observations. The ratifications or, or accessions to the relevant conventions are set forth in the annex to the present report.

I. GENERAL OBSERVATIONS

1. The Charter of the United Nations

(a) The prohibition to discriminate on the ground of sex

3. Among the existing international conventions which contain provisions relating to the rights covered by the Declaration, the Charter may be mentioned in the first place. Under Article 1 (paragraph 3), it is one of the purposes of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Under Article 13 the General Assembly is called upon to initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 55 provides that the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. In Article 56 all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. Article 62 (paragraph 2) is to the effect that the Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. Article 68 provides that the Economic and Social Council shall set up commissions for the promotion of human rights. (The Commission on the Status of Women is one of the two commissions established under this provision of the Charter.) Article 76 sets forth the basic objectives of the trusteeship system, one of which, in accordance with the purposes of the United Nations laid down in Article 1, shall be "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article 76 (c)). In the Preamble to the Charter it is stated that the United Nations was established to reaffirm faith in fundamental human rights, in the dignity and worth of the human persons and in equal rights of men and women.

4. In addition to the general provisions mentioned above, the Charter also contains, in Article 8, a specific provision prohibiting discrimination on the ground of sex in one respect, namely, the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs. (See also paragraph 118 below.)

(b) The question of the legal obligations in regard to non-discrimination undertaken by Parties to the Charter

5. Since the drafting of the Charter in 1945 the question has often been debated whether its human rights provisions impose legal obligations on the States Parties (i.e. the States Members of the United Nations). Some scholars, particularly in the first years of the existence of the United Nations, referred with some emphasis to the fact that the Charter does not define the human rights and fundamental freedoms which are covered by the pledge of the Member States

contained in article 56. However, the proposition that one aspect of the human rights question is sufficiently defined in the Charter, namely, the prohibition of distinctions made in the enjoyment of human rights and fundamental freedoms on the grounds of race, sex, language or religion has never been contested.

6. It may be noted that the viewpoint that the Charter imposes legal obligations on Member States in the human rights field was reinforced by the Advisory Opinion rendered by the International Court of Justice on 21 June 1971, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970). 1/ In that Advisory Opinion, Opinion, 2/ the Court stated the following:

131. Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a Territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.

Since under the provisions summarized in paragraph 3 above, discrimination not only on the ground of race, but also on the grounds of sex, language or religion, it follows from the Court's Advisory Opinion that to establish and to enforce distinctions, exclusions, restrictions and limitations based on any of these grounds, (including sex) which constitute a denial of fundamental human rights would be a flagrant violation of the purposes and principles of the Charter.

2. The international treaties considered in relation to the Declaration on the Elimination of Discrimination against Women

7. In resolution 4 (XXIII) the Commission requests information in regard to "existing international conventions". The present study addressed itself, generally speaking, only to international conventions relevant to the Declaration adopted by organizations in the United Nations system and does not deal with international instruments which do not have the status of international conventions or treaties in which States have expressed their consent to be bound by their provisions.

8. Although not covered by the present study, reference may be made here to the Universal Declaration of Human Rights which, while not originally drafted as an international treaty, has acquired a status which distinguishes it from other non-binding pronouncements and recommendations. One of several authoritative statements to that effect is the statement contained in the Proclamation of Tehran

1/ I.C.J. Reports 1971, p. 16.

2/ The relevant conclusion was adopted by 13 votes to 2.

of 1968, in which the International Conference on Human Rights confirmed that: "the Universal Declaration on Human Rights states a common understanding of the peoples of the world concerning the inalienable and unviolable rights of all members of the human family and constitutes an obligation for the members of the international community". 3/

9. The Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights (article 1); and that everyone is entitled to all the rights and freedoms set forth without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2). The use, throughout the Universal Declaration of Human Rights of such terms as "everyone", "no one", "all men and women" indicate that its provisions are intended to apply to both men and women.

10. It may also be recalled that the substantive provisions of the Universal Declaration of Human Rights have inspired much of the work of the Commission on the Status of Women and provided the basis for a number of the studies and recommendations it has made, including the three Conventions elaborated by the Commission (see para. 12 below).

11. Among the instruments surveyed in the present report, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights occupy a central place. The International Covenant on Economic, Social and Cultural Rights provides for the guarantee that the rights enunciated in it will be exercised without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (2)). In the International Covenant on Civil and Political Rights (article 2 (1)) each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in that Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Moreover, both Covenants contain a provision by which the States Parties undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights and of all civil and political rights respectively (article 3 of the International Covenant on Economic, Social and Cultural Rights and in article 3 of the International Covenant on Civil and Political Rights).

12. The other conventions surveyed for the purpose of the present report (see annex) relate to specific rights, or aspects of specific rights set forth in some articles of the declaration. The relevant United Nations conventions relate to civil and political rights of women, set forth in articles 4, 5, 6 and 8 of the Declaration. Three of these conventions originated in the Commission on the Status of Women and were adopted by the General Assembly on the Commission's recommendation, endorsed by the Economic and Social Council (Convention on Political

3/ Final Act of the International Conference on Human Rights (United Nations publication, Sales No.: E.68.XIV.2), Proclamation of Teheran, para. 2, p. 4.

Rights of Women of 1952, Convention on Nationality of Married Women of 1957, and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1952). Other United Nations Conventions considered in this report were adopted by the General Assembly (Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949), or by conferences of plenipotentiaries convened for that purpose by the General Assembly (Convention on the Reduction of Statelessness of 1961), and by the Economic and Social Council (Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956).

13. Instruments adopted by the specialized agencies relate in particular to economic, social and cultural rights of women set forth in articles 9 and 10 of the Declaration. Relevant to article 9 is the UNESCO Convention against Discrimination in Education of 1960, and as regards article 10 a number of ILO Conventions are pertinent. The ILO has observed that almost all the 136 conventions (and the 144 recommendations) that make up the ILO's International Labour Code are of concern to both men and women workers, and set standards in such subject areas as social security, occupational safety and health, hours of work, vocational guidance and training, employment policy and freedom of association. The ILO has, further, noted that relatively few conventions (and recommendations) apply exclusively to women and describes them as being of two main types: "promotional" and "protective". The promotional instruments are aimed primarily at overcoming economic and social discrimination against women in the world of work, while the protective standards are concerned with providing women with the special protection they require because of social or physiological factors and in particular because of their biologic function of maternity and motherhood. ^{4/}

14. The main ILO conventions of special concern to women which establish the principle of non-discrimination on the ground of sex are the Equal Remuneration Convention (No. 100), 1951 and the Discrimination (Employment and Occupation) Convention (No. 111), 1958; other important instruments, including the Employment Policy Convention (No. 122), 1964, also lay down the principle of non-discrimination on the ground of sex. ILO conventions which protect women workers in connexion with their function of maternity and motherhood and their safety and health include the Maternity Protection Conventions (Nos. 3 and 103), 1919 and 1952, the Night Work (Women) Conventions (Nos. 4, 4¹ and 89), 1919, 1934 and 1948, the Social Security (Minimum Standards) Convention (No. 102), 1952, the White Lead (Painting) Convention (No. 13), 1921, the Plantations Convention (No. 110), Part VII, 1958, the Underground Work (Women) Convention (No. 45), 1935, the Maximum Permissible Weight Convention (No. 127), 1967 and the Benzene Convention (No. 136), 1971. Since the subject of the present study is "existing international conventions" the many ILO recommendations have not been examined in the present report. Some of these are independent instruments (e.g. Recommendation on the Employment of Women with Family Responsibilities, No. 123 of 1965), while others are related to conventions (e.g. discrimination, equal remuneration, employment policy and maternity).

^{4/} ILO document D.28.1970, Summary of ILO standards relating to women's employment, Geneva, September 1970.

II. SUBSTANTIVE PROVISIONS OF THE DECLARATION ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN

15. In the present chapter the articles of the Declaration are taken up one by one and the provisions of existing international conventions relevant to each article are examined.

Article 1

(a) The definition of "discrimination against women"

16. Article 1 of the Declaration contains an element of definition, but not a complete definition, of the term "discrimination against women" by stating that discrimination denies or limits the equality of the rights of women with those of men. "Discrimination against women" as such has never been fully defined in a United Nations instrument.

(b) The definition of discrimination

17. For the definition of "discrimination" reference may be made to the Charter (see paragraph 3 above), and to three international conventions which were prepared by organizations of the United Nations system in recent years.

18. The Discrimination (Employment and Occupation) Convention adopted in 1958 by the International Labour Conference 1/ defines the term "discrimination" to include:

(a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

19. The Convention against Discrimination in Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization in 1960 2/ provides that:

1/ See Human Rights. A Compilation of International Instruments of the United Nations (United Nations publication, Sales No.: E.68.XIV.6), item 9.

2/ Ibid., item 10.

For the purposes of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) Of depriving any person or group of persons of access to education of any type or at any level;

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

The substance of both these conventions is limited to specific but very important subjects, namely employment and education, although in each case distinctions on various grounds, including sex, are expressly prohibited.

20. The International Convention on the Elimination of All Forms of Racial Discrimination adopted and opened for signature and ratification by the General Assembly in 1965 ^{3/} defines the term "racial discrimination" to mean "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The grounds of discrimination prohibited by that Convention do not, of course, include discrimination on the ground of sex. The formulation of the concept of discrimination, however, which is similar to the definition given in the two Conventions cited above, would be of importance to any definition of the general concept of discrimination, including discrimination on grounds of sex.

21. Reference may also be made in this connexion to the definition of discrimination set forth in the Advisory Opinion of the International Court of Justice of 21 June 1971, referred to in paragraph 6 above. This definition is by and large similar to that set forth in the International Convention on the Elimination of All Forms of Racial Discrimination. As the Advisory Opinion may be considered as constituting an authoritative interpretation of the human rights and non-discrimination provisions of the Charter, it can afford guidance for the interpretation of obligations of States Members of the United Nations, even if they are not Parties to any of the three conventions mentioned in paragraphs 18, 19 and 20 above.

^{3/} Ibid., item 8.

Article 2

22. Article 2 of the Declaration contains two interrelated elements. It calls first for the abolition of existing laws, customs and regulations and practices which are discriminatory against women. It also provides for the establishment of adequate legal protection for equal rights of men and women. To achieve these ends, article 2 recommends, in particular, that the principle of equality be embodied in the constitution or otherwise guaranteed by law, and that the international instruments of the United Nations system relating to the elimination of discrimination against women be ratified or acceded to and fully implemented as soon as practicable.

(a) The establishment of adequate legal protection for equal rights of men and women and the abolition of discriminatory laws, customs, regulations and practices

23. In the various conventions surveyed below in relation to the above provision of the Declaration it may be noted that some of them contain provisions dealing explicitly with both the enactment of legislation to establish legal protection and the abolition of discriminatory laws and practices. Other conventions mention only the establishment of adequate legal protection. Still others deal with the abolition of certain specified customs and practices.

(i) The Charter

24. The pledge of States Members of the United Nations (Article 56 of the Charter) to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms to all without discrimination as to race, sex, language or religion, constitutes in itself an obligation of Member States to abolish discriminatory laws and practices.

(ii) International Covenants on Human Rights

25. Reference has already been made in paragraph 11 above to the non-discrimination provisions of article 2 of the International Covenant on Economic and Social Rights, and of article 2 of the International Covenant on Civil and Political Rights, both of which prohibit distinction based on sex.

26. Both covenants also make provision for legislative measures to give effect to the rights set forth. Under article 2, paragraph 1, of the Covenant on Economic, Social and Cultural Rights, States Parties undertake to take steps "with a view to achieving progressively the full realization of the rights recognized... by all appropriate means, including particularly the adoption of legislative measures". Article 2, paragraph 2, of the International Covenant on Civil and Political Rights provides expressly for the adoption of such legislative or other measures as may be necessary, to give effect to the rights recognized in that Covenant where the existing legislative or other measures are not sufficient for this purpose.

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27. The undertaking provided in article 3 of each Covenant (see paragraph 11 above) also implies the general obligation to establish adequate legal protection for equal rights of men and women.

28. Another pertinent provision is article 26 of the International Covenant on Civil and Political Rights which provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The article further provides that in this respect the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as sex. The article prescribes a general obligation, which also has relevance to certain specific rights set forth in the Declaration (see paragraphs 56, 60, 81 and 83 below).

(iii) ILO Discrimination (Employment and Occupation) Convention of 1958

29. The above ILO Convention contains relevant provisions as regards employment and occupation. Thus, by article 3 (b) and (c) of that Convention each Party undertakes, by methods appropriate to national conditions and practice, to enact such legislation as may be calculated to secure the acceptance and observance of the policy of eliminating discrimination, and to repeal any statutory provisions and modify any administrative instructions and practices which are inconsistent with the policy.

(iv) UNESCO Convention against Discrimination in Education of 1960

30. Similarly, in the field of education, States Parties to the above UNESCO Convention undertake, in article 3, in order to eliminate and prevent discrimination in education, to abrogate any statutory provisions and administrative instructions and to discontinue any administrative practices which involve such discrimination. States Parties also undertake to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions.

(v) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956

31. An example of an express undertaking to abolish certain specified customs and practices discriminatory against women can be found in article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, by which each State Party undertakes to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of certain institutions or practices relating to consent to marriage (see under article 6, paragraph 70 below).

(vi) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962

32. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962, recalls that the General Assembly of the United Nations declared by resolution 843 (IX) of 1954, that certain customs, ancient laws

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and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights. In order to abolish such customs and practices States Parties agree that no marriage shall be legally entered into without the full and free consent of those parties, that a minimum age for marriage shall be specified and that all marriages shall be registered in an official register by the competent authority (see under article 6, paragraph 69 below).

(b) Embodying of the principle of equality in constitutions and in laws

33. In stating that the principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law, article 2 of the Declaration sets forth, in specific terms applicable to discrimination against women, a general principle which is implicit in article 2, paragraph 2, and article 3 of the International Covenant on Economic, Social and Cultural Rights and articles 2, 3 and 26 of the International Covenant on Civil and Political Rights (see paragraphs 25-28 above).

(c) Ratification of, accession to and implementation of instruments of the United Nations system of organizations

34. It may also be noted that the principle set forth in article 2 of the Declaration concerning ratification, accession and full implementation of relevant international instruments relating to the elimination of discrimination against women is upheld in Article 56 of the Charter containing the pledge of Member States to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

35. The statement in article 2 that the relevant instruments shall be fully implemented as soon as practicable also finds support in the rule of international law pacta sunt servanda, namely that every treaty in force is binding upon the parties to it and must be performed by them in good faith. This rule of customary international law is expressly set forth in article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969. 4/

Article 3

Educational measures

36. Article 3 of the Declaration deals with measures for the eradication of prejudice particularly by way of educating public opinion. Supplementing article 2, it aims at the abolition of customary and other practices "which are based on the idea of the inferiority of women".

37. It may be noted that the International Covenant on Civil and Political Rights provides in article 20 that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be

4/ A/CONF.39/27.

prohibited by law. It does not contain any provision to the effect that incitement to discrimination on the ground of sex should be prohibited.

38. The ILO Discrimination (Employment and Occupation) Convention, in article 3 (b), requires each ratifying member to undertake, by methods appropriate to national conditions and practice, "to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy of non-discrimination".

Article 4

Political rights

39. Article 4 of the Declaration sets forth the principle of equality of men and women in the field of political rights, stressing their equal right to vote, to be eligible for election, and to hold public office and exercise public functions.

(i) International Covenant on Civil and Political Rights

40. The International Covenant on Civil and Political Rights provides in article 25 that every citizen shall have the right and the opportunity without any of the distinctions mentioned in article 2 of the Covenant (those include distinctions on the grounds of sex) to take part in the conduct of public affairs and to vote and to be elected by universal and equal suffrage. Under the same article every citizen shall have access, on general terms of equality, to public service in his country.

(ii) Convention on the Political Rights of Women

41. The Contracting Parties to the Convention on the Political Rights of Women of 1952 desiring to implement the principle of equality of rights for men and women contained in the Charter and desiring to equalize the status of men and women in the enjoyment and exercise of political rights in accordance with the provisions of the Charter and of the Universal Declaration of Human Rights, have agreed that women shall be entitled to vote on equal terms with men without any discrimination; that women shall be eligible for election to all publicly elected bodies, established by national law, and shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men and without any discrimination (articles I, II, III of the Convention).

42. There are two substantive differences between article 4 of the Declaration and the Convention on the Political Rights of Women:

(a) The Declaration provides in article 4 (b) expressly for the right to vote in all public referenda. The Convention on the Political Rights of Women does not mention referenda. It may be held, however, that the term "all elections" as used in article I of the Convention on the Political Rights of Women includes referenda.

/...

(b) Article 4 of the Declaration, as distinct from articles II and III of the Convention on the Political Rights of Women, does not restrict equality in regard to the right to be elected to bodies "established by national law". Nor does it limit equality in regard to the right to hold public office and to exercise all public functions to those established by national law. In this regard article 4 of the Declaration would appear to be more comprehensive than the Convention on the Political Rights of Women.

Article 5

Nationality

43. Article 5 of the Declaration contains two main elements. It proclaims first that women shall have the same rights as men with regard to the acquisition, change and retention of nationality. The second part of article 5 deals with the effect of marriage on the nationality of the wife.

(i) Convention on the Nationality of Married Women

44. The above Convention relates directly to the second part of article 5 of the Declaration. It cites article 15 of the Universal Declaration of Human Rights providing that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality".

45. Under article 1 each Contracting State agrees that neither the celebration nor the dissolution of the marriage between one of its nationals and an alien shall automatically affect the nationality of the wife. The article also provides that any change of nationality by the husband during marriage shall not automatically affect the nationality of the wife. Further, in article 2 a State Party agrees that neither the voluntary acquisition of the nationality of another State by one of its nationals nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

46. Articles 1 and 2 of the Convention go beyond article 5 of the Declaration in that the Declaration refers only to the effects of marriage, while the Convention contemplates both the celebration and the dissolution of marriage, as well as any change of nationality during marriage.

47. Further, while the Declaration is aimed at preventing the wife from becoming stateless, or being forced to acquire the nationality of her husband, the above-mentioned articles of the Convention are broader in scope. Their purpose is to prevent the imposition of a change of nationality on the wife without an expression of desire on her part for such change. Consequently, under the Convention, the married women in order to retain her own nationality need not make a declaration to that effect; in order to follow her husband's nationality she must state her desire to do so.

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48. Article 3 of the Convention provides that the alien wife of one of its nationals, may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures. The grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy. The article also contains a clause to the effect that the Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of the nationals of a State Party may, at her request, acquire her husband's nationality as a matter of right. Consequently, article 3 of the Convention accords the alien wife who has married a national the possibility of acquiring her husband's nationality through specially privileged procedures. It also protects her against an interpretation of the provisions of the Convention which would deprive her of a right she may already possess to acquire her husband's nationality at her request. Thus, it may be said that the Convention, in its article 3, accords the alien wife who has married a national a privileged position compared to the husband in a similar situation.

(ii) Convention on the Reduction of Statelessness

49. The Convention on the Reduction of Statelessness of 1961 has a certain bearing on the equality of rights of men and women in regard to nationality in that its article 1 paragraph 3 concerns the mother's right under certain circumstances to transmit her nationality to her children. This is an aspect of the question of nationality which is not covered by article 5 of the Declaration.

50. Article 5 of the Convention on the Reduction of Statelessness provides that if the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person, such as marriage or termination of marriage, such loss shall be conditional upon possession or acquisition of another nationality. This is a rule which provides for the contingency that the law of a State Party to the Convention on the Reduction of Statelessness is not in agreement with the provisions of the Convention on the Nationality of Married Women and with article 5 of the Declaration on the Elimination of Discrimination against Women.

Article 6

51. Article 6 of the Declaration deals in paragraph 1 with a number of questions relating to equal rights of women, married or unmarried, in the field of civil law and mentions, in particular, property rights, and legal capacity, as well as the movement of persons. Paragraph 2 addresses itself to the status of women in the family and stresses the principle of equality of status of husband and wife. Paragraph 3 of the article seeks to prohibit child marriage and the betrothal of young girls before puberty.

1. Equal rights of men and women in the field of civil law
(article 6, paragraph 1)

(a) General reservation concerning the unity and harmony of the family

52. In article 6 paragraph 1 of the Declaration, the equal rights of men and women in the field of civil law are set forth "without prejudice to the safeguarding of

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the unity and the harmony of the family, which remains the basic unit of any society". 5/

53. Both International Covenants on Human Rights reflect the concern of the international community to safeguard the family, recognizing that it is entitled to protection by society. They do not, however, stress the factor of "unity and harmony" of the family as stated in article 6 of the Declaration. States Parties to the International Covenant on Economic, Social and Cultural Rights recognize "that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment, and while it is responsible for the care and education of dependent children" (article 10, paragraph 1), while the International Covenant on Civil and Political Rights provides that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (article 23).

(b) Property rights

54. Paragraph 1 (a) of article 6 of the Declaration provides for equality of men and women in regard to the right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage.

55. The International Covenants on Human Rights do not contain provisions on the right of property and this provision is not therefore directly covered by either Covenant.

56. Mention may be made, however, of the general provisions of article 26 of the Covenant on Civil and Political Rights, which proclaims the right of all persons to equality before the law and to equal protection of the law (see paragraph 28 above). Article 23, paragraph 4, of the same Covenant may also be mentioned. This paragraph provides that States Parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution, and aims, in general terms, at doing away with the inequalities which exist in the status of husband and wife. In that sense it may be said that this provision of the Covenant has a bearing on article 6 (1)(a) of the Declaration insofar as the property rights of women are concerned.

(c) Legal capacity

57. Article 6, subparagraph 1 (b) of the Declaration calls for "the right to equality in legal capacity and the exercise thereof".

58. In an attempt to establish to what extent this principle is embodied in existing international conventions, "equality in legal capacity" and "the exercise

5/ It may be recalled that this clause was not in the draft of the Declaration as adopted by the Commission on the Status of Women in 1967, but was added by the General Assembly.

thereof" must be distinguished. As far as the former (i.e. 'equality in legal capacity') is concerned, reference may be made to the provisions of article 16 of the International Covenant on Civil and Political Rights, under which everyone shall have the right to recognition everywhere as a person before the law. To quote the report of the Third Committee of the General Assembly on article 16 of the Covenant: "There was general agreement that article 16 was intended to ensure that every person would be a subject and not an object, of the law; but that it was not intended to deal with the question of a person's legal capacity to act, which might be restricted for such reasons as minority or insanity". ^{6/} It would seem clear, therefore, that article 16 guarantees to women the right to be recognized as persons before the law, and therefore equality in regard to their capacity to be subjects of rights and obligations.

59. However, a distinction has to be made between the capacity to be a subject of rights and obligations (e.g. to be the owner of property, to become and to be a party in a contractual relationship and, in general, to be the bearer of rights and obligations) and the faculty to acquire and dispose of them by one's own acts. An infant has the capacity to be the subject of rights (e.g. the right of property). He cannot, however, by his act alone, become an owner or sell or donate his property. To be "a person before the law" does not therefore necessarily mean that that person can, without the co-operation of another person or authority, perform legally binding acts. In other words, in every legal system there are individuals who, while they are persons before the law, do not alone have power to exercise the capacity inherent in being a person before the law. The International Covenant on Civil and Political Rights does not deal expressly with the exercise of legal capacity. Such aspects of the exercise of legal capacity as the ability to contract and to perform legal acts relating to contracts (such as their termination), the making of last wills and similar acts purporting to bring about legal consequences, the right to enter independently into various professions and occupations, to apply for and to be granted licences by public authorities independently of the approval or concurrence of another person, are not therefore dealt with expressly in either Covenant.

60. The general provisions of the Covenant on Civil and Political Rights concerning equality before the courts and tribunals (article 14) and equality before the law (article 26) may, however, go a certain way towards covering the right to equality of women in regard to the exercise of legal capacity set forth in article 6 (1(b)) of the Declaration.

(d) Movement of persons

61. Article 6, subparagraph 1 (c) of the Declaration provides that women shall have the same rights as men with regard to the law on the movement of persons. It was intended, in particular, to cover the right of married women to leave the country without requiring the prior authorization of the husband or a competent authority.

^{6/} Official Records of the General Assembly, Fifteenth Session, Annexes, agenda item 34, document A/4625, para. 25.

62. Article 12 of the International Covenant on Civil and Political Rights, which deals with the law on the movement of persons, provides in paragraph 1 that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence; and in paragraph 2 that everyone shall be free to leave any country, including his own. Restrictions on these rights are permitted under paragraph 3 only if such restrictions are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedom of others, and are consistent with the other rights recognized in the Covenant.

It would appear that restrictions on the right of women (including married women) to liberty of movement and choice of residence, and to leave the country would not fall within the above provision of article 12 of the Covenant, and would not therefore be permitted under that provision. However, some of the terms used in article 12, paragraph 3 of the Covenant appear to be imprecise and an interpretation cannot be excluded under which the exercise of these rights especially by married women (e.g. the right to elect domicile and residence) might be restricted on some of the grounds mentioned.

64. It may be recalled that earlier drafts of the Declaration contained a clause expressly covering the right of women to elect their domicile and residence on the same terms as men. The clause gave rise to a number of difficulties, including that of different interpretations under different legal systems, and there is no such express provision in the Declaration as adopted. ^{7/} In the light of this, and of what has been said above about the restrictions permitted under article 12, paragraph 3 of the Covenant, it appears to be an open question whether article 6, paragraph 1 (c) of the Declaration or article 12 of the Covenant covers the equal rights of men and women with respect to domicile and residence.

65. It seems clear, however, that under both instruments unmarried women have the same rights as men with regard to the law on the movement of persons, including the selection of their residence and domicile.

2. Equal rights of men and women relating to marriage
(article 6, paragraph 2)

66. The right to marry as such, while implied in article 6, paragraph 2, of the Declaration, is not expressly mentioned. Reference may be made in this respect to the International Covenant on Civil and Political Rights, which states that "the right of men and women of marriageable age to marry and to found a family shall be recognized" (article 23 (2)).

(a) Free choice of a spouse and free and full consent to marriage

67. Article 6, paragraph 2 (a) of the Declaration provides that women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent.

^{7/} It was deleted from the draft of the Declaration adopted by the Commission on the Status of Women in 1967.

68. The principle of free consent to marriage is expressly mentioned in three conventions. None of these however states specifically, as does the Declaration, that women shall have the same right as men "to free choice of a spouse" although it is implied in the principle of free consent.

69. The three conventions deal as follows with the principle of consent to marriage:

- (i) The International Covenant on Economic, Social and Cultural Rights provides that States Parties recognize that marriage must be entered into with the free consent of the intending spouses (article 10, paragraph 1). The requirement of "full" consent to marriage is not specifically mentioned here.
- (ii) The International Covenant on Civil and Political Rights however, stipulates that no marriage shall be entered into without the free and full consent of the intending spouses (article 23, paragraph 3).
- (iii) The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (see paragraph 32 above) also provides that no marriage shall be legally entered into without the free and full consent of both parties. The Convention is the most far-reaching of all the instruments under consideration, (including the Declaration) in that it provides that the consent of both parties must be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and witnesses as prescribed by law. An exception to the presence of both parties is permitted when the competent authority is satisfied that the circumstances are exceptional and that the party has "before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent" (article 1, paragraphs 1 and 2).

70. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (see paragraph 31 above) also contains provisions relevant to free choice of a spouse and consent to marriage. One of the purposes of this Convention is to abolish certain institutions and practices whereby women are deprived of their right to free choice of a spouse. The States Parties undertake to take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible, the complete abolition or abandonment of, among others, any institution or practice whereby

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person.

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(b) Equality of status of husband and wife

71. Article 6, paragraph 2 (b) of the Declaration provides in its first sentence that women shall have equal rights with men during marriage and at its dissolution. Relevant provisions relating to these rights may be found in article 23, paragraph 4, of the Covenant on Civil and Political Rights under which States Parties commit themselves "to take appropriate steps" to ensure equality of rights and responsibilities as to marriage, during marriage and at its dissolution. The Covenant specifically mentions "responsibilities" as well as "rights", which the Declaration does not, except in respect of parental rights and duties (see paragraphs 73-75 below).

72. It may be noted that this provision of the Covenant does not define the rights and responsibilities to be enjoyed equally by husband and wife, but establishes rather an undertaking which States Parties commit themselves to ensure progressively by taking appropriate steps. Furthermore, while in general the Covenant on Civil and Political Rights, as distinct from the Covenant on Economic, Social and Cultural Rights, provides for the immediate applicability of its substantive provisions, article 23 paragraph 4 constitutes an exception to this general rule.

(c) The rights and duties of parents

73. Article 6, paragraph 2 (c) provides, in its first sentence, that parents shall have equal rights and duties in matters relating to their children.

74. Neither of the two International Covenants on Human Rights contains a provision expressly setting forth that parents have equal rights and duties in matters relating to their children.

75. The only provision which might have a bearing on this paragraph of the Declaration would be the general undertaking assumed by States Parties under article 23, paragraph 4 of the Covenant on Civil and Political Rights, mentioned above, to take appropriate steps to ensure equality of rights and responsibilities "during marriage" and "at its dissolution" (i.e. to promote this equality).

(d) The interest of the children

76. Article 6, paragraphs 2 (b) and (c) both contain a clause providing that "in all cases the interest of the children shall be paramount". The safeguard of the interest of the children therefore applies both to the provision concerning equal rights of men and women "during marriage" and "at its dissolution" (subparagraph (b)); and to that proclaiming the equal rights and duties of parents with respect to their children (subparagraph (c)). This safeguard may be considered as a general reservation governing the exercise of rights and responsibilities by the husband and wife as spouses and as parents, whether or not their status is equal.

77. The International Covenant on Civil and Political Rights also recognizes the need to protect the interest of the child in its article 23 (4) already mentioned.

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In this article however the interest of the child is safeguarded only in case of dissolution of marriage, when it is stipulated that "provision shall be made for the necessary protection of any children". Article 24 provides further that every child shall have, without any distinction as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

(e) Child marriage and the betrothal of young girls

78. Article 6, paragraph 3 of the Declaration provides that child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

79. With respect to this paragraph the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages would again be pertinent. In that Convention it is recalled that the General Assembly declared by resolution 843 (IX) of 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration on Human Rights. The States Parties to that Convention reaffirmed that all States, including those which have or assume responsibility for the administration of Non-Self Governing and Trust Territories until their achievement of independence, should take appropriate measures with a view to abolishing such customs, ancient laws and practices, by ensuring complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil and other register in which all marriages will be recorded. In order to abolish the objectionable customs and practices referred to, the States Parties agreed that no marriage should be legally entered into without the full and free consent of both parties, that a minimum age for marriage should be specified and that all marriages should be registered in an official register by the competent authority. As regards the minimum age for marriage it is left to the States Parties to specify what should be the minimum age below which entry into marriage shall be prohibited.

Article 7

(a) Discriminatory provisions of penal codes

80. Article 7 stipulates that all provisions of penal codes which constitute discrimination against women shall be repealed. It therefore covers two aspects of penal law: the liability of women in criminal law and their protection under that law. It calls for the repeal of those provisions of the criminal law which provide for acts which constitute an offense or a crime if the author is a woman or for more severe penalties for women than for men for similar offenses, or for crimes which when committed by a man may be excused on grounds that are not available to women. It also applies to a situation where a woman is the victim of a crime.

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(b) The criminal liability of women

81. As far as the liability of women in criminal law is concerned, the general provisions of article 14 of the Covenant on Civil and Political Rights, under which all persons shall be equal before the courts and tribunals, are pertinent as well as those of article 26 of the Covenant, according to which all persons are equal before the law and which contains a special provision whereby the law shall prohibit any discrimination on any ground (including sex). Further, article 10 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. It would appear that these provisions, which are worded in general terms, do not permit different penal sanctions for the same or a comparable act when committed by a woman and by a man, although this prohibition is not expressly stated.

82. It may be noted that article 6 (5) of the Covenant provides that sentence of death shall not be carried out on pregnant women. The purpose of this provision is to protect the unborn child rather than the pregnant woman. Consequently it does not imply a preference in favour of women.

(c) The protection of women by criminal law

83. As far as the above aspect of article 7 of the Declaration is concerned, reference may again be made to article 26 of the Covenant on Civil and Political Rights, whereby all persons are entitled without any discrimination to the equal protection of the law. The Covenant also mentions some specific rights that shall be protected by law (i.e. criminal law) such as the inherent right to life of every human being (article 6 (i)) and the right of everyone to be free from arbitrary or unlawful interference with his privacy, family, home or correspondence, and from unlawful attacks on his honour and reputation (article 17).

Article 8

Traffic in women

84. Article 8 of the Declaration provides that all appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

85. The international law on this question was codified and developed under the auspices of the United Nations by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950.

86. The preamble to the above Convention recalls that a series of other instruments on the subject are in force, namely:

(i) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948;

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(ii) The International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol;

(iii) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947;

(iv) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol.

87. The States Parties to the 1950 Convention agree to punish any person who, to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, another person or exploits the prostitution of another person, even with the consent of that person. The Parties further agree to punish any person who keeps or manages, or knowingly finances or takes part in financing a brothel, or knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

88. Attempt of, and participation in, such acts are also punishable. The protection of the law is afforded to aliens on the same terms as nationals.

89. Laws, regulations or administrative provisions by which persons engaged in prostitution are subject to special registration as to the possession of special documents or to exceptional requirements for supervision or notification shall be abolished. The main offences referred to in the Convention shall be regarded as extraditable offences.

Article 9

90. Article 9 of the Declaration recognizes the principle that girls and women, married or unmarried, shall be ensured equal rights with men in education at all levels. Subparagraphs (a) to (d) deal with various aspects of this equality as regards: (a) access to educational institutions; (b) curricula, examinations, teaching staff, school premises and equipment; (c) scholarships and study grants; and (d) continuing education. Subparagraph (e) is concerned with a separate issue, namely, access to educational information to help in ensuring the health and well-being of families.

91. The conventions relevant to this article (the International Covenant on Economic, Social and Cultural Rights and the UNESCO Convention against Discrimination in Education) contain a number of provisions relating to some, though not all, aspects of the rights set forth. Both also contain general provisions concerning education which are not dealt with in the Declaration, which emphasizes equality between men and women. These include: the aims of education, the rights of parents with respect to their children's education, private educational institutions, and rights of national minorities in respect of education.

92. Only those provisions in these two Conventions which are relevant to article 9 of the Declaration are examined below under each paragraph of that article.

(a) Access to educational institutions

93. Paragraph (a) of article 9 proclaims the right of women to equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools.

(i) International Covenant on Economic, Social and Cultural Rights

94. Article 13, paragraphs 1 and 2 (a), (b) and (c), and article 14 of the above Covenant are directly relevant to the provisions of the above clause of article 9 of the Declaration.

95. In article 13, paragraph 1, States Parties recognize the right of everyone to education and agree on the aims to education. These include ensuring to all persons the right to participate effectively in a free society. The latter principle is not stated in article 9 of the Declaration.

96. Article 13, paragraph 2 of the Covenant contains detailed provisions dealing with the realization of the right of education. Subparagraphs (a), (b) and (c) cover access to education at the primary, secondary and higher levels, stressing that education shall be free and compulsory at the primary level and made progressively free at the secondary (including technical and vocational education), and higher levels. Further, under article 14 of the Covenant, States Parties which have not secured free and compulsory primary education in territories under their jurisdiction undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years to be fixed in the plan, of the principle of compulsory education free of charge for all.

97. If read in conjunction with articles 2 and 3 of the Covenant, which stress the general principle of non-discrimination on grounds of sex among others, and of equal rights of men and women to the enjoyment of all the rights set forth in the Covenant (see paragraph 11 above), the above provisions adequately cover the principle of equal access of men and women to educational institutions of all types as stated in article 9 (a) of the Declaration. In so far as they give further details as regards education at the primary, secondary and higher levels, and a specific undertaking as regards free and compulsory primary education, the provisions of the Covenant are broader in scope than the Declaration, which emphasizes only the need for "equal conditions of access" for men and women.

(ii) Convention against Discrimination in Education

98. The UNESCO Convention also appears to safeguard fully the right of women to access to education of all types and levels without discrimination.

99. Reference may first be made to the definition of "discrimination" for the purpose of this Convention contained in its article 1 (see paragraph 19) above.

Discrimination includes any distinction, based on sex, which has the purpose or effect of nullifying or impairing equality of treatment in education, and in particular: of depriving any person or group of persons of access to education of any type or any level; of limiting any person or group of persons to education of an inferior standard; of establishing or maintaining separate educational systems or institutions; or of inflicting on any person or group of persons conditions which are incompatible with the dignity of man. "Education" for the purposes of the Convention refers to all types and levels of education, and includes access to education, and the conditions under which it is given.

100. Article 2 qualifies the above definition by excluding the establishment or maintenance of separate education systems or institutions for pupils of two sexes, provided certain conditions are met (see paragraph 106 below).

101. Under article 3 States Parties undertake a number of obligations, including legislative measures to eliminate and prevent discrimination within the meaning of the Convention (see also paragraph 110 below). Further, in article 4, the States Parties undertake to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education. These include making primary education free and compulsory; making secondary education in its different forms generally available and accessible to all; making higher education equally accessible to all on the basis of individual capacity; and assuring compliance by all with the obligation to attend school prescribed by law.

(b) Curricula, examinations, teaching staff, school premises and equipment.

102. Article 9 (b) of the Declaration provides that men and women shall have the same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality whether the institutions are co-educational or not.

(i) International Covenant on Economic, Social and Cultural Rights

103. The provisions enunciated in article 9 (b) of the Declaration are not expressly referred to in the Covenant.

104. Article 13, paragraph 2 (e) provides in this respect that the development of a system of schools at all levels shall be actively pursued, and that the material conditions of the teaching staff shall be continuously improved.

(ii) Convention against Discrimination in Education

105. Article 2 (a) and article 4 (b) and (d) of the above Convention are directly relevant to paragraph 9 (b) of the Declaration.

106. Under article 2 (c) the establishment or maintenance of separate educational systems or institutions for pupils of the two sexes is exempted from constituting discrimination provided these systems or institutions offer equivalent access to

education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study. This provision does not specifically mention "the same choice of curricula" and "the same examinations" as does the Declaration, but speaks of the "same or equivalent courses of study" and is therefore less precise in this respect than the Declaration.

107. Article 4 contains two related undertakings of States Parties aimed at the promotion of equality of opportunity and of treatment in the matter of education, namely to ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent (article 4 (b)); and to provide training for the teaching profession without discrimination (article 4 (d)).

(c) Scholarships and study grants

108. Paragraph (c) of article 9 of the Declaration recognizes the equal right of men and women to benefit from scholarship and other study grants.

(i) International Covenant on Economic, Social and Cultural Rights

109. Article 13 specifically provides in paragraph 2 (e) that "an adequate fellowship system shall be established".

(ii) Convention against Discrimination in Education

110. The States Parties to the Convention against Discrimination in Education undertake not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries (article 3 (b) and (c)).

(d) Continuing education

111. Article 9 (d) of the Declaration calls for equal opportunities of men and women for access to programmes of continuing education, including adult literacy programmes.

(i) International Covenant on Economic, Social and Cultural Rights

112. Article 13, paragraph 2 (d) of the Covenant provides that the States Parties recognize that fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

(ii) Convention against Discrimination in Education

113. By article 4 of the Convention against Discrimination in Education, the States Parties undertake to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education, and in particular to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity (paragraph (c)).

(e) Access to educational information to help in ensuring the health and well-being of families

114. Paragraph (e) of article 9 of the Declaration proclaims the equal right of men and women, married or unmarried, to have access to educational information to help in ensuring the health and well-being of families.

115. None of the existing international treaties examined deals expressly and directly with the right set forth in article 9 (e) of the Declaration.

116. Article 12 of the International Covenant on Economic, Social and Cultural Rights has some relevance in so far as it recognizes the right of everyone "to the enjoyment of the highest standard of physical and mental health" (paragraph 1), and includes, among the steps to be taken by the States Parties to achieve the full realization of this right, those necessary for the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child (paragraph 2 (a)). Further, the Covenant sets forth the right of everyone to enjoy the benefits of scientific progress and its application (paragraph 1 (b)).

Article 10

117. Article 10 of the Declaration deals in three main paragraphs with three different aspects of the status of women in economic and social life. Paragraph 1 is mainly related to the right of women to work without discrimination on any grounds, and with their rights as workers which are elaborated in subparagraphs (a) to (d). Paragraph 2 is aimed specifically at preventing discrimination against women on account of marriage or maternity. Paragraph 3 exempts from being regarded as discriminatory, measures taken to protect women in certain types of work, "for reasons inherent in their physical nature". 8/

8/ This paragraph of article 10 was not in the revised draft of the Declaration as adopted by the Commission on the Status of Women in 1967, but was added by the General Assembly.

118. In addition to the International Covenant on Economic, Social and Cultural Rights, which contains provisions relevant to certain rights recognized in article 10 of the Declaration, the ILO has adopted a total of 136 conventions (and 144 recommendations) which have a direct bearing on a number of the rights set forth. As noted in paragraph 13 above, the ILO conventions (like the International Covenants on Human Rights) are intended to apply to both men and women. A relatively small number of ILO conventions apply to women alone. Those which are of special concern to women fall into two main categories: (i) conventions which are aimed primarily at overcoming discrimination against women in employment; and (ii) conventions which seek to provide women with special protection because of their biological function of maternity and motherhood. The latter group includes conventions (and recommendations) directed especially at the protection of maternity as such, and also at the protection of women against types and conditions of employment considered unhealthy for them. These various conventions are analysed below, together with the relevant provisions of the Covenant on Economic, Social and Cultural Rights under each paragraph of article 10 of the Declaration.

1. Equal rights of men and women in economic and social life
(article 10, paragraph 1)

(a) Rights pertaining to work

119. In paragraph 1 (a) of article 10, the Declaration proclaims the principle of women's right, without discrimination on grounds of marital status or other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement.

(i) The Charter

120. The prohibition of discrimination on grounds of sex in one specific field of employment is expressly provided for in Article 8 of the Charter (see paragraph 4 above) which is to the effect that the United Nations shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs. The principal organs, which are listed in Article 7 of the Charter include the United Nations Secretariat.

(ii) International Covenant on Economic, Social and Cultural Rights

121. Under article 6 of the above Covenant, the States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living

by work which he freely chooses or accepts, and state that they will take appropriate steps to safeguard this right. These steps include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development, and full and productive employment under conditions safeguarding fundamental, political and economic freedoms to the individual.

122. Further, under article 7 (c) of the same instrument, the States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence.

(iii) The Declaration of Philadelphia

123. The Declaration concerning the Aims and Purposes of the International Labour Organisation adopted in Philadelphia on 10 May 1944, the text of which by virtue of article 1 of the Constitution of the International Labour Organisation, is annexed to that Constitution, provides in its section II that all human beings irrespective of race, creed, or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

(iv) Discrimination (Employment and Occupation) Convention, 1958

124. The Discrimination (Employment and Occupation) Convention of 1958 defines the expressions "employment" and "occupation", for the purpose of the Convention to include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment (article 1).

125. Under article 2, each Member for which the Convention is in force, undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity in respect of employment and occupation with a view to eliminating any discrimination in respect thereof.

126. Further, under article 3, each Member undertakes to seek co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of this policy; to pursue the policy in respect of employment under the direct control of a national authority; and to ensure observance of the policy designed to eliminate any discrimination with respect to employment and occupation in the activities of vocational guidance, vocational training and placement services under the direction of a national authority (article 3, subparagraphs (a), (d) and (e)).

(v) Convention concerning Conditions of Employment of Plantation Workers of 1958

127 In article 2 of Convention No. 110 concerning conditions of employment of plantation workers^{9/} it is provided that each Member which ratifies the Convention undertakes to apply its provisions equally to all plantation workers without distinction as to sex.

(vi) Convention concerning Basic Aims and Standards of Social Policy, 1962

128. The Social Policy (Basic Aims and Standards) Convention of 1962^{10/} provides, in its article 14, that it shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of labour legislation, admission to public or private employment, conditions of engagement and promotion, opportunities for vocational training, conditions of work and health, safety and welfare measures.

129. Article 15 provides that adequate provision shall be made to the maximum extent possible under local conditions, for the progressive development of broad systems of education, vocational training and apprenticeship, with a view to the effective preparation of children and young persons of both sexes for a useful occupation. Article 16 of the same Convention is to the effect that in order to secure higher productivity through the development of skilled labour, training and new techniques of production shall be provided in suitable cases.

(vii) Convention concerning Employment Policy, 1964

130. The Convention No. 122 concerning Employment Policy adopted by the General Conference of the International Labour Organisation in 1964 also emphasizes the principle of non-discrimination in employment. Under article 1 of that Convention each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. The said policy shall aim at ensuring that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in a job for which he is well suited, irrespective of sex.

(b) The right of vocational training

131. Article 3 (e) of the Discrimination (Employment and Occupation) Convention requires each ratifying Member to undertake "to ensure observance of the policy

^{9/} Convention No. 110 concerning Conditions of Employment of Plantation Workers, adopted at the forty-second session of the International Labour Conference in 1958, reprinted in ILO Conventions and Recommendations (Geneva International Labour Office, 1966).

^{10/} Convention No. 117 adopted by the forty-sixth session of the International Labour Conference on 22 June 1962, in ILO Conventions and Recommendations (Geneva International Labour Office, 1966).

/of non-discrimination/ in the activities of vocational guidance, vocational training and placement services. Article 1 provides for the inclusion of access to vocational training as a specific field to which the Convention applies and this field is therefore covered by article 2 which calls for a national policy designed to promote equality of opportunity and treatment (see paragraphs 124-126 above).

(c) The right to equal remuneration for work of equal value

132. In paragraph 1 (b) of article 10, the Declaration sets forth the right of women to equal remuneration with men and to equality of treatment in respect of work of equal value.

(i) International Covenant on Economic, Social and Cultural Rights

133. Article 7 (a) of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to fair wages and remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

(ii) Equal Remuneration Convention, 1951

134. Under the Equal Remuneration Convention adopted by the International Labour Conference in 1951, 11/ each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. Article 3, paragraph 1 of the Equal Remuneration Convention specifies that where such actions will assist in giving effect to the provisions of the Convention, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed. Differential rates between workers, which correspond, without regard to sex, to differences as determined by such objective appraisal in the work to be performed, shall pursuant to article 3, paragraph 3 of the Convention not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

(iii) Social Policy (Basic Aims and Standards) Convention, 1962

135. The principle of equal remuneration for work of equal value without discrimination on grounds including sex is also set forth in article 14 of the Social Policy (Basic Aims and Standards) Convention 1962, according to which it is one of the aims of policy to abolish discrimination in respect of wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking.

11/ Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

(d) The right to equality as regards leave with pay, retirement privileges, security in respect of unemployment, sickness, old age or other incapacity to work, and the receipt of family allowances

136. In paragraphs 1 (c) and (d) of article 10 the Declaration sets forth, in specific terms, the principle of equality of men and women, married or unmarried, in regard to the above-mentioned rights.

(i) International Covenant on Economic, Social and Cultural Rights

137. Some, though not all, of these rights are stated in the Covenant on Economic, Social and Cultural Rights. Article 7 deals with the question of leave with pay, recognizing the right of everyone to "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays". The same article also contains a provision to the effect that conditions of work shall ensure remuneration which provides all workers with a decent living for themselves and their families.

138. Under article 9, States Parties recognize the right of everyone to social security, including social insurance. While this general provision has relevance to the question of retirement privileges, there is no United Nations instrument other than the Declaration on the Elimination of Discrimination against Women which makes specific provision for retirement privileges.

(ii) International Labour Conventions

139. The principles set forth in paragraphs (c) and (d) of paragraph 1 of article 10 of the Declaration, are the subject matter of a very comprehensive body of international labour legislation, which cannot be presented or even summarized in the content of the present study. It is, therefore, proposed to list here the main headings of international labour legislation coming within the purview of this article and to name the most important international conventions in this very wide field.

Leave with pay

140. As regards the right to leave with pay, the International Labour Conference has adopted a series of Conventions, which are, in chronological order: (i) the Convention concerning Annual Holidays with Pay (No. 52) of 1936; (ii) the Convention concerning Holidays with Pay in Agriculture (No. 101) of 1952; (iii) the Convention concerning Conditions of Employment of Plantation Workers (No. 110) of 1958; (iv) the Convention concerning Annual Holidays with Pay (Revised), 1970 (No. 132). 12/

12/ The instruments (i) to (iii) are reprinted in International Labour Organisation, Conventions and Recommendations, (Geneva, International Labour Office, 1966); the instrument (iv) appears in the Record of Proceedings of the International Labour Conference, fifty-fourth session, 1970, p. 702.

141. The Convention concerning Annual Holidays with Pay, No. 52 of 1936, applies to all persons employed in any of the many undertakings or establishments, whether public or private, listed in article 1 (1) (a) to (k) of the Convention.

142. Conventions No. 101 on Holidays with Pay in Agriculture and No. 110 on Conditions of Employment of Plantation Workers apply to workers employed in agricultural undertakings and related occupations as defined therein. The scope is defined in greater detail in article 1 of the Convention No. 110 of 1958.

143. Convention No. 132 concerning Annual Holidays with Pay (Revised), 1970, applies to all employed persons with the exception of seafarers. The Convention of 1970 therefore replaces for the Parties to it both the Convention of 1936 and the Holidays with Pay (Agriculture) Convention of 1952.

144. To sum up, Conventions Nos. 52 and 132 are, as far as the employing enterprises and institutions are concerned, of general application, while Conventions Nos. 101 and 110 apply to agriculture only.

145. If these instruments are read in the light of the Constitution of the International Labour Organisation /Declaration of Philadelphia/ (see paragraph 123 above) and with the other ILO instruments surveyed, particularly the Discrimination (Employment and Occupation) Convention of 1958, it is clear that their provisions are intended to apply to both men and women workers. The text of these Conventions also consistently refer to "all employed persons", "every person", "all persons", "a person whose length of service, etc." (articles 2, 3 and 4 of Convention No. 172, article 2 of Convention No. 91, article 1 of Convention No. 52).

146. Convention No. 110 expressly provides, in its article 2, that each Member which ratifies it undertakes to apply its provisions equally to all plantation workers without distinction as to sex among other grounds.

Medical care

147. The following instruments deal with medical care and cash sickness benefits: the Sickness Insurance (Industry) Convention, 1927 (No. 24) and the Sickness Insurance (Agriculture) Convention, 1927 (No. 25). These provide for a system of compulsor sickness insurance giving entitlement to medical treatment by a qualified practitioner and the supply of medicine and appliances. Both conventions permit the exception of certain categories of workers such as temporary or casual employees. The Social Security (Minimum Standard) Convention, 1962 (No. 102) provides for a wider range of medical care than the earlier social insurance conventions. The Convention concerning Medical Care and Sickness Benefits of 1969 has further widened the coverage. 13/

13/ Convention No. 130, adopted by the fifty-third session of the International Labour Conference, Record of Proceedings of that Conference, appendix XVI.

Cash sickness benefits

148. The Social Security (Minimum Standards) Convention of 1952 makes provision for a minimum level of cash sickness benefits. The Convention does not require, however, that this protection be available to all the population. The Convention concerning Medical Care and Sickness Benefits of 1969 (No. 130) referred to in the preceding paragraph codifies the provisions concerning sickness benefits in its articles 18 to 27. It defines the contingencies which are covered by sickness cash benefits as "incapacity for work resulting from sickness and involving suspension of earnings, as defined by national legislation" (article 7 (b)). The following persons are protected in respect of this contingency:

- (a) All employees, including apprentices; or
- (b) Prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or
- (c) All residents whose means during the contingency do not exceed certain limits (article 19).

In guaranteeing cash sickness benefits to the "protected persons" the convention does not appear to distinguish in principle between men and women.

Invalidity benefits

149. Conventions on invalidity insurance in industrial or commercial undertakings and in agriculture were adopted in 1933 (Nos. 37 and 38). The Social Security (Minimum Standard) Convention, 1962 also contains a part dealing with invalidity benefit. These international labour standards have all been revised by the Invalidity, Old Age and Survivors' Benefit Convention, 1967 (No. 128) which makes provision for insurance benefits of a prescribed level, subject to qualifying conditions. It also provides for rehabilitation services and for measures to further the placement of disabled persons in suitable employment. This protection is to be secured to all employees (subject to certain exceptions) or to 75 per cent of the economically active population or to all residents whose means do not exceed a prescribed level.

Old age benefits

150. The standards for old age benefits which were set in Conventions No. 35 and No. 36 of 1933 and the relevant provisions of the Social Security (Minimum Standards) Convention, 1952 have also been revised by the Invalidity, Old Age and Survivors' Benefit Convention, 1967. This Convention provides for old age benefits of a prescribed level, subject to specified qualifying conditions. The persons to be protected are those entitled to invalidity benefit as summarized in paragraph 149 above.

Employment injury benefit

151. The earlier conventions relating to workmen's compensation, No. 12 of 1921, Nos. 17 and 18 of 1925 and No. 34 of 1934 and the relevant provisions of the Social Security (Minimum Standards) Convention of 1952 have been revised by the Employment Injury Benefits Convention, 1964 (No. 121). This Convention makes provision for medical care and allied benefits as well as cash benefits of a prescribed level in cases of morbidity, incapacity for work, loss of earning capacity or loss of support due to an employment injury. This protection should be secured to all employees, subject to certain exceptions.

Unemployment benefit

152. The Unemployment Provision Convention, 1934 (No. 44) provides for the maintenance of a scheme ensuring, to those persons within its scope who are involuntarily unemployed, benefits relating to contributions paid in respect of previous employment; it also provides for allowances whose payment may be conditional on proof of need. The Social Security (Minimum Standard) Convention, 1952 makes provision for payment of unemployment benefits of a prescribed level subject to completion of such qualifying period as may be considered necessary to prevent abuse. This protection should extend to at least 50 per cent of all employees or to all residents whose means do not exceed a prescribed level.

Family benefits

153. The Social Security (Minimum Standards) Convention, 1952, provides for benefits in respect of responsibility for the maintenance of children. This protection should be provided to not less than 50 per cent of all employees or to classes of economically active persons constituting not less than 20 per cent of all residents, or to all residents whose means do not exceed a prescribed amount.

2. Prevention of discrimination against women on account of marriage or maternity (article 10, paragraph 2)

154. Paragraph 2 of article 10 of the Declaration deals with the adverse effects which marriage or maternity may have on women's effective right to work, stressing, in particular, the following principles: a woman shall not be dismissed in the event of marriage or maternity; a woman shall have the right to paid maternity leave, with the guarantee of returning to her former employment; and the necessary social services, including child-care facilities, shall be provided.

(i) International Covenant on Economic, Social and Cultural Rights

155. The International Covenant on Economic, Social and Cultural Rights provides, in article 10, paragraph 2, that special protection should be accorded to mothers during a reasonable period before and after the child's birth. During such period working mothers should be accorded paid leave, or leave with adequate social security benefits. The Covenant does not deal specifically with the prevention of

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dismissal in the event of marriage or maternity, nor with the guarantee of returning to former employment after maternity leave. Further, the Covenant does not expressly set forth the obligation to provide working women with the necessary social services, including child-care facilities, to make it possible for them to fulfil their obligations both as employees and as mothers. The only relevant provision would be the general recognition in article 9 of the right of everyone to social security, including social insurance.

156. As noted under article 6 above (paragraphs 52 and 53) the Covenant does recognize that the family is entitled to the widest possible protection and assistance, and also that special measures of protection and assistance should be taken on behalf of all children and young persons (article 10, paragraphs 1 and 3), but here the focus is on the protection of the family as a unit and on the children, not on the working mother.

(ii) ILO Conventions concerning maternity protection^{14/}

157. The protection of working women in connexion with their function of maternity is dealt with in the Convention concerning the Employment of Women before and after Childbirth of 1919 (No. 3) and the Convention concerning Maternity Protection (Revised 1952) (No. 103). These conventions, which apply to all women employed in the undertakings or occupations listed in article 1 of each Convention, provide for maternity leave.

158. In the case of Convention No. 103 the period of maternity leave shall be at least 12 weeks including a compulsory leave after confinement prescribed by national laws and regulations, but in no case less than six weeks (article 3). While absent from work on maternity leave the working woman is entitled to receive cash and medical benefits. The rates of cash benefits shall be sufficient for the full and healthy maintenance of herself and her child. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds. They shall be provided as a matter of right. Any contributions due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid both by the employer and the employees or by the employer, shall be paid in respect of the total number of men and women employed by the undertaking concerned, without distinction of sex (article 4). If a woman is nursing her child, she is entitled to interrupt her work for this purpose at a time or times to be prescribed by national laws or regulations. Interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly (article 5). Further, while a woman is absent from work on maternity leave it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such time that the notice would expire during such absence (article 6).

^{14/} As the present study is restricted to conventions, the ILO Recommendation on the Employment of Women with Family Responsibilities of 1965 has not been included. It contains a number of relevant provisions.

159. The Convention concerning Conditions of Employment of Plantation Workers, 1958 (No. 110) reproduces in its part on maternity (part VII, articles 46 to 50) essentially the main provisions of the maternity protection conventions referred to in the preceding paragraphs. It also provides that no pregnant woman shall be required to undertake any type of work harmful to her in the period prior to her maternity leave and, in addition to the absolute prohibition of dismissal during maternity leave, it prohibits the dismissal of a woman solely because she is pregnant, or a nursing mother.

160. The Convention concerning Minimum Standards of Social Security of 1952 (No. 102) deals in its part VIII with "maternity benefit". The contingencies which the Convention covers include pregnancy and confinement and their consequences and suspension of earnings. The Convention provides for medical care (pre-natal confinement and post-natal care either by medical practitioners or by qualified midwives) and hospitalization where necessary (article 49). In respect of suspension of earnings resulting from pregnancy, confinement and their consequences, the benefit shall be periodical payment.

3. Measures to protect women in certain types of work
(article 10, paragraph 3)

161. Paragraph 3 of article 10 states that "measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory".

162. There are a number of International Labour Conventions that are relevant to this provision of article 10, and which protect women in respect of certain types or forms of work, such as night work, underground work in mines, painting work using white lead, and carrying maximum weights. 15/

(i) Discrimination (Employment and Occupation) Convention

163. The Discrimination (Employment and Occupation) Convention provides in article 5 that special measures of protection or assistance provided in other conventions (or recommendations) adopted by the International Labour Conference shall not be deemed to be discrimination. Any member may, after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, are generally recognized to require protection or assistance, shall not be deemed to be discrimination.

15/ The Commission may recall that in its resolution 12 (XXII) of 1960, it expressed the hope that the ILO would continue to review the standards for the protection of women workers with a view to placing them on an equal footing with men with respect to hiring, advancement and remuneration and that the ILO in its research and standard-setting work, would take the needs of adult workers of both sexes into consideration and would disassociate those activities from its work for certain categories, such as children or handicapped persons who require special consideration.

(ii) Prohibition of night work for women

164. The prohibition of night work for women was the first protective measure for the benefit of women to be made the subject of an International Convention, namely, the International Convention Respecting the Prohibition of Night Work for Women in Industrial Employment, signed at Berne on 26 September 1906. ^{16/} The Convention prohibited night work in industrial employment for all women without distinction of age subject to certain exemptions. It did not, for example, apply to undertakings in which only the members of a family were employed. The Convention permits the suspension of the prohibition of night work in cases of force majeure when in any undertaking there occurs an interruption of work which it was impossible to foresee and which is not of a periodic character. Another reason justifying suspension was that the work has to do with raw materials or materials in the course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the materials from certain loss.

165. The provisions of the 1906 Convention were revised and strengthened by a series of Conventions adopted by the General Conference of the International Labour Organisation. One of the first instruments to be adopted by the International Labour Conference was the Convention concerning Employment of Women during the Night (Convention No. 4) adopted at the first International Labour Conference in 1919. ^{17/} Convention No. 4 of 1919 was revised in 1934 by Convention No. 41 ^{18/} and in 1948 by Convention No. 99. ^{19/}

166. The three ILO Conventions on the employment of women during the night, like their predecessor of 1906, are applicable to employment in industrial undertakings, as defined in each Convention. There are differences in the various Conventions concerning the definition of "industrial undertaking". It is left to the competent authority in each country to define the line of definition which separates industry from agriculture, commerce and other non-industrial occupations. There are also slight differences between the Conventions as far as the definition of the term "night" is concerned. All the Conventions make provision for exceptions and the possibility of suspension.

^{16/} Berne Convention of 1906 reproduced in the International Labour Code, 1951, vol. II, pp. 1178 and 1179.

^{17/} Convention No. 4 of 1919 reprinted in ILO Conventions and Recommendations (Geneva, International Labour Office, 1966).

^{18/} Convention Concerning Employment of Women During the Night (Revised 1934), reprinted in ILO Conventions and Recommendations (Geneva, International Labour Office, 1966).

^{19/} Convention concerning Night Work of Women Employed in Industry (Revised 1948), reprinted in ILO Conventions and Recommendations (Geneva, International Labour Office, 1966).

(iii) Employment of women on underground work in mines

167. The Underground Work (Women) Convention, 1935 20/ provides in its article 2 that no female, whatever her age, shall be employed in underground work in any mine. The Convention permits the exemption from this prohibition by national laws or regulations of females holding positions of management who do not perform manual work; females employed in health and welfare services; females who, in the course of their studies, spend a period of training in the underground parts of a mine; and any other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.

(iv) Prohibition of the employment of women in any painting work using white lead

168. The White Lead (Painting) Convention, 1921 21/ prohibits the employment of males under 18 years of age and of all females in any painting work of an industrial character involving the use of white lead or sulphate of lead or other products containing these pigments.

(v) Provisions on the maximum permissible weight to be carried by workers

169. The Maximum Weight Convention, 1967 22/ applies to regular manual transports of loads and provides that no worker shall be required or permitted to engage in the manual transport of a load which by reason of its weight is likely to jeopardize his health or safety (articles 2 and 3). The Convention further provides (article 7) that the assignment of women and young workers to manual transport of loads other than light loads shall be limited. Where women and young workers are engaged in the manual transport of loads the maximum weight of such loads shall be substantially less than that permitted for adult male workers.

Article 11

170. Article 11 of the Declaration provides that the principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in the Declaration.

20/ The Convention concerning the Employment of Women in Underground Work in Mines of all Kinds (No. 45) of 1935.

21/ Convention concerning the Use of White Lead in Painting (No. 13) of 1921.

22/ Convention concerning the Maximum Permissible Weight to be carried by One Worker (No. 127) of 1967.

171. To the extent that the substantive principles set forth in the Declaration are embodied in international conventions, the obligation of States to implement these provisions follows from the rule of international law that every treaty in force is binding upon the Parties to it and must be performed in good faith (see paragraph 35 above). In this sense therefore it can be said that all the conventions summarized in the present study which set forth the principle of equality of rights of men and women, cover the substance of this principle, and also the obligation of States Parties to implement it in accordance with the provisions of the convention concerned.

172. The appeal to non-governmental organizations and individuals contained in the second part of article 11 has, however, no counterpart in the international conventions studied except for the ILO Discrimination (Employment and Occupation) Convention (No. 111), which provides in article 3 (a) that Governments must "seek the co-operation of employers, and workers' organizations and other appropriate bodies in promoting the acceptance and observance of the policy of non-discrimination".

III. MEASURES OF IMPLEMENTATION

173. The effectiveness of international conventions lies principally in States Parties taking action on the national level as provided by the provisions of the conventions themselves. When available international machinery is helpful in assisting in the application of the conventions and in observing and sometimes supervising the manner in which they are applied. All the conventions studies in the present report expressly state, or imply, that States Parties shall, on the national level, give effect to their provisions and this aspect of the implementation of the conventions under consideration has not, therefore, been elaborated further in the present study.

174. In United Nations practice the expression "measures of implementation" has acquired a technical meaning in the sense that it denotes, in addition to measures taken under the municipal law of Member States, measures for the international review or supervision of the observance of commitments accepted by them.

175. The present chapter examines first the international measures of implementation applicable under the relevant conventions of the United Nations and the specialized agencies (ILO and UNESCO), that is, the measures that States Parties to the conventions concerned undertake to assume as legal obligations. The second part of the chapter describes other relevant international measures of implementation based on the Charter or analogous arrangements made pursuant to resolutions of United Nations organs. These include in particular reporting arrangements and institutional arrangements for the examination of communications concerning human rights.

A. Measures of implementation provided for under the conventions studies

1. Conventions adopted by or under the auspices of the United Nations

176. Few of the United Nations conventions studied for the purpose of the present report contain comprehensive international measures of implementation among their provisions, except for questions relating to the settlement of disputes.

177. Important exceptions in this respect are the two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights, although none of these instruments is yet in force. Two of the other conventions studies contain articles which provide for limited measures of implementation at the international level: the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery. It may be noted that none of the three Conventions which the Commission on the Status of Women recommended for adoption ^{1/} contains among its provisions any international machinery or procedure

^{1/} Convention on Political Rights of Women, 1952; Convention on the Nationality of Married Women, 1957 and Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962.

of implementation except for the settlement of disputes. In respect of rights recognized in two of these, however, and in some of the other conventions studied, voluntary reporting systems have been initiated under resolutions of the General Assembly and of the Economic and Social Council. These arrangements are applicable not only to States Parties to the Conventions concerned, but to all States Members of the United Nations (see paragraphs 211 and 212 below).

(a) International Covenant on Economic, Social and Cultural Rights

178. The States Parties to the Covenant on Economic, Social and Cultural Rights undertake to submit reports on measures which they have adopted and the progress made in achieving the observance of the rights recognized in that Covenant (article 16, paragraph 1). These reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the Covenant (article 17, paragraph 2). The reports shall be furnished in stages, in accordance with a programme to be established by the Council after consultation with the States Parties and the specialized agencies concerned (article 17, paragraph 1). The principal addressee of these reports is the Economic and Social Council. The Council may transmit the reports to the Commission on Human Rights for study and general recommendation or, as appropriate, for information (article 19). The Council, on its part, may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information on the measures taken and the progress made in achieving general observance of the rights recognized in the Covenant (article 21).

179. The Covenant does not provide for a transmission of reports to the Commission on the Status of Women. Article 22 of the Covenant provides that the Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance, any matters arising out of the reports which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the Covenant.

(b) International Covenant on Civil and Political Rights

180. The International Covenant on Civil and Political Rights provides for the following arrangements which constitute international measures of implementation: (i) the establishment of a Human Rights Committee; (ii) a reporting procedure; (iii) interstate communications; (iv) establishment of ad hoc conciliation commissions.

(i) The Human Rights Committee

181. Under the Covenant a Human Rights Committee shall be established, composed of nationals of the States Parties elected by the States Parties and serving in their personal capacity (article 28).

(ii) The reporting procedure

182. The States Parties undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. These reports are to be studied by the Human Rights Committee which shall submit, to the States Parties, reports on them and such general comments as it may consider appropriate. The Committee may also transmit its comments to the Economic and Social Council along with copies of the report which it has received from States Parties (article 40).

(iii) Interstate communications

183. The obligation to submit reports as indicated in the preceding paragraph is the only procedure to which States Parties subject themselves ipso jure by becoming Parties to the Covenant. Among States Parties which have declared that they recognize the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant, the additional measure of the receipt and consideration of such communications will apply (article 41, paragraph 1). This optional interstate or State-to-State procedure of fact finding and conciliation will come into force when 10 States Parties have made the declaration accepting it (article 41, paragraph 2). The Human Rights Committee shall deal with a matter brought before it only after it has ascertained that all available domestic remedies have been invoked and exhausted. Subject to these conditions the Committee shall make available its good offices to the States Parties concerned with a view to the friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant. If a solution is reached the Commission will confine its report to a brief statement of the facts and of the solution reached. If a solution is not reached, the Committee shall confine its report to a brief statement of the facts. In every matter, the report shall be communicated to the States Parties concerned (article 41).

(iv) Appointment of an Ad Hoc Conciliation Commission

184. If a matter referred to the Human Rights Committee is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an Ad Hoc Conciliation Commission. The task of this Commission is to make available to the States Parties concerned its good offices with a view to an amicable solution of the matter on the basis of respect for the Covenant. If such a solution is not reached, the Ad Hoc Conciliation Commission shall embody in its report its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. The States Parties concerned shall within three months of the receipt of the report, notify the Chairman of the Human Rights Committee whether or not they accept the contents of the report of the Ad Hoc Conciliation Commission.

(c) Optional Protocol to the International Covenant on Civil and Political Rights

185. In regard to Parties to the International Covenant on Civil and Political Rights which will also become Parties to the Optional Protocol to that Covenant, the Human Rights Committee will also have the competence to receive and consider communications from individuals subject to the jurisdiction of a State Party who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. Here, again, the rule of the exhaustion of domestic remedies applies. The Committee shall bring any communications submitted to it under the Protocol to the attention of the State Party alleged to be violating any provision of the Covenant. As a result of its consideration of communications the Human Rights Committee shall forward its views to the State Party concerned and to the individual.

(d) Convention on the Political Rights of Women, 1952

(i) Settlement of disputes clause

186. Article IX of the Convention on the Political Rights of Women provides that any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

(ii) Reporting arrangements

187. No reporting arrangement or other procedures for international review on supervision are provided in the Convention itself. Recommendations of the Economic and Social Council initiating a voluntary reporting system on the implementation of the Convention are described in paragraph 210 below.

(e) Convention on the Nationality of Married Women, 1957

188. The Convention on the Nationality of Married Women contains in its article 10 a provision for settlement of disputes which is identical with that of the Convention on the Political Rights of Women reproduced in paragraph 186 above.

189. No other implementation provision or arrangement requesting reports from Member States exist with respect to this Convention.

(f) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962

(i) Settlement of disputes

190. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages provides in article 8 that any dispute which may arise between any two or more Contracting States concerning the interpretation or

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application of the Convention which is not settled by negotiation shall, at the request of all the parties to the dispute, be referred to the International Court of Justice for decision, unless the parties agree to another mode of settlement.

191. It will be noted that this clause differs from those referred to above in that the consent of all the parties to the dispute is required for the reference of the dispute to the International Court of Justice.

(ii) Reporting arrangements

192. The Convention contains no other provision concerning international implementation measures. However, it may be recalled that the General Assembly in 1965 adopted a recommendation on the same subject in which a reporting procedure was recommended to Member States (see paragraph 212 below).

(g) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956

(i) Communication of information by States Parties

193. In article 8 of the Supplementary Convention it is provided that the States Parties to it undertake to co-operate with each other and with the United Nations to give effect to the substantive provisions of the Convention. The Parties undertake to communicate to the Secretary-General of the United Nations copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of the Convention. The Secretary-General shall communicate the information received to the other Parties and to the Economic and Social Council as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of the Convention.

(ii) Settlement of disputes

194. In article 10 the Supplementary Convention contains a dispute settlement clause similar to that of the Convention on the Political Rights of Women.

(h) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950

(i) Communication of information by States Parties

195. Article 21 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others provides that the Parties to the Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the Convention, as well as all measures taken by them concerning

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the application of the Convention. The information received shall be published periodically by the Secretary-General and sent to all Members of the United Nations and to non-member States which have been invited to become parties to the Convention.

(ii) Settlement of disputes

196. Article 22 of the Convention is a disputes-settlement clause similar to that contained in the Convention on the Political Rights of Women.

(iii) Additional measures of implementation

197. The above provisions are the only measure of implementation written into the Convention itself. However, additional measures, including a reporting system were established by resolution of the Economic and Social Council (see paragraph 215 below).

2. Conventions adopted by the International Labour Conference

198. The provisions of the constitution of the International Labour Organisation apply to the international labour conventions which have been referred to in chapter II of this study. The measures of implementation provided for in that constitution consist of reporting, representations, complaints, commissions of enquiry, and reference to the International Court of Justice.

(i) Reporting

199. Article 19, subparagraph 5 (b) of the constitution of the International Labour Organisation provides that when a convention has been adopted by the International Labour Conference, each member undertakes that it will bring the convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. Under subparagraph 5 (c) of the article, members shall inform the Director-General of the International Labour Office of the measures taken to bring the convention before the competent authority or authorities. If the member obtains the consent of the authority or authorities, it will communicate the formal ratification of the convention to the Director-General and will take such action as may be necessary to make effective the provisions of the convention concerned (subparagraph (d)). If the member does not obtain the consent of the competent authorities no further obligation shall rest upon it except that it shall report to the Director-General, at appropriate intervals as requested by the Governing Body of the International Labour Office, the position of its law and practice in regard to the matters dealt with in the convention, showing the extent to which effect has been given or is proposed to be given, to any of the provisions of the convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such convention (subparagraph (e)).

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200. Article 22 of the Constitution of the International Labour Organisation provides that each of the members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. Summaries of the information and reports communicated to the Director-General under the provisions just quoted shall be laid before the next meeting of the International Labour Conference. Before being considered by the Conference the reports are examined by the Committee of Experts on the Application of Conventions and Recommendations; the members of this committee are appointed in their personal capacity and are independent both of Governments and of employers' and workers' interests. At the Conference itself, the reports are referred to a tripartite Conference Committee on the Application of Conventions and Recommendations for examination and reporting to the plenary session of the Conference. Each member is also under the obligation to communicate to recognized representative organizations of employers and work people copies of the information and reports.

(ii) Representations

201. Under article 24 of the constitution of the International Labour Organisation industrial associations of employers or of workers have the right to make representations that any of the members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party. The Governing Body may communicate this representation to the Government against which it is made, and may invite that Government to make such statement on the subject as it may think fit. If no statement is received within a reasonable time or if the statement when received is not deemed to be satisfactory by the Governing Body, the Governing Body has the right to publish the representation and the statement, if any, made in reply to it (article 25).

(iii) Complaints

202. Any of the members of the International Labour Organisation has, under article 26 of the Constitution, the right to file a complaint with the International Labour Office if it is not satisfied that any other member is securing the effective observance of any convention which both have ratified. The Governing Body may also act on its own motion or on receipt of a complaint from a delegate to the Conference. It should be noted in this connexion that the delegations of members to the International Labour Conference are composed not only of government delegates but also of delegates representing respectively the employers and work people of each of the members (article 3).

(iv) Commissions of enquiry

203. In the case of the receipt of a complaint from a member or from a delegate to the Conference, the Governing Body may appoint a commission of enquiry to consider the complaint and to report thereon. The Governing Body may adopt the same procedure also of its own motion, i.e., without having received a complaint by a

member or from a delegate to the Conference (article 26, paragraph 4). When the commission of enquiry has fully considered the complaint it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken (article 28). The Director-General shall communicate the report of the Commission of Enquiry to the Governing Body and to each of the Governments concerned in the complaint and shall cause it to be published. Each of these Governments shall within three months inform the Director-General whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

(v) Reference to the International Court of Justice

204. The International Court of Justice may affirm, vary or revise any of the findings or recommendations of the Commission of Enquiry, if any (article 32). The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it, shall be final (article 31). In the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the commission of enquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith (article 33). The defaulting Government may at any time inform the Governing Body that it has taken the necessary steps of compliance with the recommendations of the Commission or the Court and may request it to set up a special commission of inquiry to verify its contention, in which case the procedures set out in paragraph 203 above apply (article 34). The constitution also provides that any question or dispute relating to the interpretation of the constitution or of any subsequent International Labour Convention shall be referred for decision to the International Court of Justice (article 37 (1)).

3. Conventions adopted by UNESCO

205. The Convention against Discrimination in Education, adopted by the General Conference of UNESCO in 1960, partakes of the general measures of implementation set forth in the constitution of UNESCO and in addition, contains measures of implementation of its own. Further measures of implementation relating to the Convention of 1960 were enacted in the Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which might arise between States Parties to the Convention against Discrimination in Education, adopted by the General Conference of UNESCO in 1962.

(a) Measures of implementation contained in the Constitution of UNESCO

206. Article 8 of the constitution of UNESCO provides that each Member State shall report periodically to the Organization on the action taken upon conventions adopted by the General Conference (article 8 and article 4, paragraph 4 of the

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constitution of UNESCO). The constitution also provides that each of the member States shall submit conventions adopted by the General Conference to its competent authorities. Article 4, paragraph 6 of the constitution is to the effect that the General Conference shall receive and consider the reports submitted periodically by the member States.

(b) Measures of implementation contained in the Convention

207. Article 7 of the Convention against Discrimination in Education provides that the States Parties to the Convention shall, in their periodic reports submitted to the General Conference, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of the Convention, including that taken for the formulation and the development of the national policy defined in article 4 of the Convention as well as the results achieved and the obstacles encountered in the application of that policy. By article 4 of the Convention the States Parties undertake to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education.

B. Other relevant measures of implementation based on the Charter or on arrangements made pursuant to resolutions of United Nations organs

1. Reporting arrangements

208. Article 64 of the Charter provides that the Economic and Social Council may make arrangements with the Members of the United Nations to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly. It may communicate its observations on these reports to the General Assembly.

209. A number of reporting arrangements have been initiated in the field of human rights. Some relate specifically to rights of women and have a direct bearing on the conventions referred to in the preceding section of this chapter of the report. Others are applicable to the general field of human rights.

(a) Reporting arrangements concerning the political rights of women

210. As indicated in paragraph 187 above, no reporting arrangements or other procedures for international supervision are provided in the Convention on Political Rights of Women. However, in its resolution 504 E (XVI) of 1953, the Economic and Social Council requested States Parties to the Convention to report to the Council every two years on the measures taken by them to implement the provisions of the Convention. By resolution 961 B (XXXVI) of 1963, the Council extended this reporting system to all States Members of the United Nations, whether or not they

were Parties to the Convention, and invited such States to supply the Secretary-General, every two years, with information they considered appropriate with regard to implementation of the principles stated in the Convention, including particularly whether any women had been elected to the national parliament or appointed to high governmental, judicial or diplomatic posts, such as minister or head of department, ambassador or member of delegation to sessions of the United Nations General Assembly, or corresponding organs of the United Nations. In 1969, the Commission on the Status of Women, by its resolution 1 (XXII) invited Member States to include in their future reports on the implementation of the Convention, fuller information, including statistical data and the percentage of women elected to the national parliament and appointed to high governmental, judicial or diplomatic posts. 2/

(b) Reporting arrangements concerning consent to marriage, minimum age for marriage and registration of marriages

211. Similarly as regards the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962, no provisions for implementation measures at the international level are written into the instrument other than the settlement of disputes clause (see paragraph 192 above).

212. However, in 1965 the General Assembly adopted by resolution 2018 (XX) the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. In this resolution the General Assembly recalled that Article 13, subparagraph 1 (b) of the Charter provided that the General Assembly should make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The General Assembly also recalled Article 64 of the Charter on reporting arrangements (see paragraph 208 above). The substantive provisions are set forth in a series of principles which roughly correspond to those of the Convention, although there are certain differences between the two instruments. In addition, the General Assembly recommended that each Member State should bring the recommendation before the authorities competent to enact legislation or to take other action at the earliest practicable moment, and to inform the Secretary-General, as soon as possible after the action referred to, of the measures taken to bring it before the competent authority or authorities. The General Assembly recommended further that Member States should report to the Secretary-General at the end of three years, and thereafter at intervals of five years, on their law and practice with regard to the matters dealt with in the recommendation, showing the extent to which effect had been given or was proposed to be given to the provisions of the recommendation and such modifications as had been found or might be found necessary in adapting or applying it. The General Assembly invited the Commission on the Status of Women to examine the reports received from Member States pursuant

2/ Reports prepared in compliance with these resolutions are before the Commission at its twenty-fourth session (A/8132 and Add.1; and A/8481).

to that recommendation, and to report thereon to the Economic and Social Council with such recommendations as it might deem fit. 3/

(c) Reporting arrangements relating to the suppression of traffic in persons and the exploitation of the prostitution of others

213. The international measures of implementation provided for in articles 21 and 22 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950 were summarized in paragraphs 195 and 196 above.

214. In 1951 the Social Commission approved a questionnaire relating to the suppression of the traffic in persons and of the exploitation of the prostitution of others. Governments were requested to send reports, based on the questionnaire, every two years. 4/ By resolution 390 A (XIII) of 1951 the Economic and Social Council took note of the report of the seventh session of the Social Commission and thereby approved the decisions taken by that Commission regarding the questionnaire and the request to Governments to report every two years.

215. In its resolution 731 E (XXVIII) the Economic and Social Council invited the attention of Governments of States Members of the United Nations and of States to which an invitation to become a Party to the Convention of 1949 had been addressed, to a report on the suppression of traffic in persons and of the exploitation of the prostitution of others, 5/ prepared by the Secretariat in accordance with a decision of the Social Commission. The Council invited the attention of Governments in particular to a programme of action set out in chapter IX of the Secretariat report and recommended that they give consideration to the adoption of the measures proposed therein as part of the development of effective policies directed to the suppression of the traffic in persons and of the exploitation of the prostitution of others. The Council further recommended that Governments inform the Secretary-General of the progress made in regard to the adoption of such measures by including information thereon in their reports submitted biennially to the Secretariat on the basis of the questionnaire referred to in paragraph 214 above. The Council also recommended that Governments shall bring the programme of action to the attention of the governmental agencies concerned and, so far as necessary or appropriate, to non-governmental organizations interested in this field. It also authorized the Secretary-General to make arrangements for the publication, as appropriate, of the information received and to ask for supplementary information if necessary. 6/

3/ A report prepared in compliance with these various requests was presented to the Commission at its twenty-second session (1969) (E/CN.6/510; and Add.1 and Corr.1; Add.2 and Amend.1-2) which was the basis for a recommendation adopted by the Economic and Social Council as resolution 1395 (XLVI).

4/ See Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 12, paras. 68-79 and annex II.

5/ E/CN.5/338.

6/ Reports under this resolution have not been received for a number of years.

216. In its resolution 4 (XXI) the Commission on the Status of Women decided to examine relevant information relating to the status of women that may be communicated to the Secretary-General under Economic and Social Council resolution 731 E (XXVIII) concerning the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others with a view to making further recommendations for the eradication of slavery in all its manifestations. 7/

(d) Reporting arrangements relating to the rights set forth in the Declaration on the Elimination of Discrimination against Women

217. The Commission will recall that, acting on its recommendation in 1968, the Economic and Social Council in resolution 1325 (XLIV) on the implementation of the Declaration, initiated a reporting system and invited Member States, the specialized agencies and non-governmental organizations to inform the Secretary-General of the publicity given to the Declaration and of action taken by them in compliance with the principles of the Declaration. The Secretary-General was requested to submit a report on the information received for the consideration of the Commission at its twenty-second and subsequent sessions. 8/

(e) Reporting arrangements relating to the general field of human rights

218. General arrangements concerning periodic reports on human rights were first made by resolution of the Economic and Social Council 624 B (XXII) of 1 August 1956. By this resolution the Economic and Social Council requested States Members of the United Nations and of the specialized agencies to transmit to the Secretary-General, every three years, a report describing developments and the progress achieved during the preceding three years in the field of human rights, and measures taken to safeguard human liberty in the metropolitan area and Non-Self-Governing and Trust Territories; the reports to deal with the rights enumerated in the Universal Declaration of Human Rights and with the rights of peoples to self-determination. These arrangements were subsequently modified by Council resolutions 888 B (XXXIV) of 1962; 1074 C (XXXIX) of 1965; 1230 (XLII) of 1967; and 1597 (L) of 21 May 1971. Under the provisions now in force, Governments are requested to submit periodic reports once every two years in a continuing cycle: the first, on civil and political rights, to be submitted in 1972; the second, on economic, social and cultural rights, in 1974; the third, on freedom of information, in 1976. The first and second cycles are of interest from the point of view of the rights of women and of the elimination of discrimination against women.

219. It may be recalled that, at its twenty-third session (1970), the Commission on the Status of Women in resolution 1 (XXIII) requested the Secretary-General to prepare for the information of the Commission at each session a summary of those parts of the periodic reports which relate to the status of women. The Commission further decided to consider at future sessions any relevant information contained in the Secretary-General's summary in connexion with the implementation of

7/ This decision has not been implemented to date.

8/ Reports prepared in accordance with this resolution may be found in documents E/CN.6/531 and Add.1; and E/CN.6/548.

international instruments relating to the status of women, including the Declaration on the Elimination of Discrimination against Women.

2. Procedures governing the handling of communications concerning human rights

220. At its first session in 1947 the Commission on Human Rights stated "that it recognizes that it has no power to take any action in regard to any complaints concerning human rights". This statement was approved by the Economic and Social Council in resolution 75 (V) of 1947. The Commission on the Status of Women did not, at its first session in 1947, adopt a statement analogous to that made by the Commission on Human Rights. However, the Economic and Social Council in its resolution 76 (V) of 1947 recognized "that, as in the case of the Commission on Human Rights, the Commission on the Status of Women has no power to take any action in regard to any complaints concerning the status of women". The provision contained in resolution 75 (V) was repeated by the Council in its resolution 728 F (XXVIII) of 1959.

221. Certain modifications of the statement that the Commission on Human Rights has no power to take any action in regard to any complaint concerning human rights have been adopted since 1966. The General Assembly, in its resolution 2124 (XXI) of 1966, invited the Economic and Social Council and the Commission on Human Rights to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they may occur. The Economic and Social Council, in resolution 1235 (XLII) of 1967, authorized the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine information relevant to gross violations of human rights and fundamental freedoms as exemplified by the policy of apartheid as practised in South Africa and in Namibia and to racial discrimination as practised notably in Southern Rhodesia, contained in the communications listed by the Secretary-General pursuant to Council resolution 728 F (XXVIII). In resolution 1235 (XLII) the Economic and Social Council further decided that the Commission on Human Rights might, in appropriate cases, and after careful consideration of the information thus made available to it, make a thorough study of situations which revealed a consistent pattern of violations of human rights as exemplified by the policy of apartheid etc. and report with recommendations thereon to the Economic and Social Council.

222. The procedure giving effect to the decision made in Council resolution 1235 (XLII) was eventually regulated in greater detail in Council resolution 1503 (XLVIII) of 1970. That resolution authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group to meet once a year in private meetings for a period not exceeding 10 days immediately before the sessions of the Sub-Commission to consider all communications received under resolution 728 F (XXVIII) with a view to bringing to the attention of the Sub-Commission those communications together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission.

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223. The Council further requested the Sub-Commission to consider in private meetings the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies from Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission.

224. The Commission on Human Rights is requested to determine whether any situation thus referred to it requires a thorough study by the Commission and recommendations thereon to the Council, and whether it may be the subject of an investigation by an ad hoc committee. Such an investigation by an ad hoc committee shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it.

225. If the Commission appoints an ad hoc committee to carry on an investigation the members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned. The committee shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned. The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way. The committee shall strive for friendly solutions before, during and even after the investigation. The committee shall report to the Commission on Human Rights with such observations and suggestions as it may deem appropriate. All actions envisaged shall remain confidential until such time as the Commission on Human Rights shall decide to make recommendations to the Economic and Social Council.

226. Pursuant to a request addressed to it by resolution 1503 (XLVIII), the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted provisional procedures for dealing with the question of admissibility of communications by its resolution 1 (XXIV) of 14 August 1971.

227. It will be noted that the arrangements made by these two Council resolutions vest the responsibility for the implementation in the Council itself, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the working group of the latter and the ad hoc committee contemplated in resolution 1503 (XLVIII). The Commission on the Status of Women is not involved in these procedures under the present arrangements.

228. As far as substance is concerned, gross violations consisting of discrimination on the ground of sex are not outside the terms of reference of the organs which are charged with the implementation of these procedures. All violations of human rights, including discrimination on the ground of sex, would be within their competence, always provided, of course, that a consistent pattern of gross and reliably attested violations is revealed.

IV. CONCLUDING OBSERVATIONS AND SUGGESTIONS

229. One of the recommendations of the Teheran Conference of Human Rights of 1968, which the Economic and Social Council referred to the Commission on the Status of Women on 19 December 1968, 1/ was that the Commission should "consider drafting conventions on the status of women in family law and in other fields of private law, and in all other fields where discrimination exists and where conventions are still missing". 2/ Members of the Commission, at previous sessions, have been divided on whether they wished to proceed with the elaboration of a general convention on the elimination of discrimination against women. Some have been more in favour of drawing up conventions in specific fields, especially that of private law.

230. It may be recalled that the suggestion has been made in the Commission, on more than one occasion, that a comprehensive convention following the Declaration on the Elimination of Discrimination against Women should be prepared, and the precedent of the United Nations Declaration and Convention on the Elimination of All Forms of Racial Discrimination of 1963 and 1965 respectively have been cited in support of the elaboration of a comprehensive convention relating to discrimination against women. 3/ It may also be noted that the regional seminar for participants from African countries, meeting in Gabon in August 1971, recommended "that an international convention on the elimination of discrimination against women be prepared as a follow-up to the Declaration". 4/

231. The view has also been expressed in the Commission that "the International Covenants on Human Rights which embodied in broader terms the principles of the Declaration, were the instruments through which Governments could be made to abide by the principles of the Declaration". 5/

1/ Decision of the Economic and Social Council of 19 December 1968. Official Records of the Economic and Social Council, Resumed Forty-fifth Session, Supplement No. 1A, p. 3.

2/ Final Act of the International Conference on Human Rights (United Nations publication, Sales No.: E.68.XIV.2), resolution IX, para. 8 (d), p. 11.

3/ See Official Records of the Economic and Social Council, Forty-sixth Session, (E/4619) para. 88; and ibid., Forty-eighth Session, Supplement No. 6, para. 16.

4/ ST/TAO/HR/43, para. 171 (a).

5/ Official Records of the Economic and Social Council, Forty-eighth Session, Supplement No. 6, para. 16.

A. Observations of a general character

232. In attempting to draw conclusions from the material presented and analysed in the preceding chapters of the present report the Commission may wish to bear in mind the following general considerations:

(a) Some of the conventions analysed (especially the two International Covenants on Human Rights of 1966), are not yet in force or are in force only among a limited number of States. While this is clearly an important consideration, regard should also be given to the fact that any new international conventions aimed at the elimination of discrimination against women would also require a considerable time before adoption and entry into force;

(b) Most of the conventions examined are designed to eliminate discrimination on a number of grounds, including sex. ^{6/}

(c) In some cases (for example the ILO Social Security (Minimum Standards) Convention, 1952) States Parties are not required to accept all the parts of the Convention. They have to comply with certain parts while they are entitled to specify in their ratifications in respect of which of the other parts they accept the obligations of the Convention.

(d) Reservations are permitted under several, though not all of the conventions studied. ^{7/}

(e) Some of the conventions analysed do not impose upon States Parties immediately applicable obligations, but belong to the category of so-called "promotional conventions" by which States Parties undertake to accept a certain policy aiming at a certain goal, and only undertake to achieve progressively the realization of the rights recognized in the instruments concerned. The prototype of such a convention is the International Covenant on Economic, Social and Cultural Rights. The International Covenant on Civil and Political Rights also contains "promotional" elements, including the provision of its article 23. This is of particular relevance in the present context, because it deals with the rights and responsibilities of spouses as to marriage, during marriage and

^{6/} For example, race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

^{7/} Reservations are not permitted to the ILO conventions or to the UNESCO Convention against Discrimination in Education. Some of the conventions adopted by or under the auspices of the United Nations also prohibit reservations to the whole or part of the Convention concerned. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery does not permit reservations. The Convention on the Nationality of Married Women prohibits reservations in respect of its articles 1 and 2. The Convention on the Reduction of Statelessness does not admit reservations except to its articles 11, 14 or 15, which deal with procedural aspects. The other United Nations conventions examined in this report either regulate the question of reservations expressly or, by being silent on the question, may admit reservations which are not incompatible with the object and purpose of the convention.

69,

at its dissolution (see paragraphs 71, 73 and 75 above). Many of the International Labour Conventions referred to in the preceding chapters also have a promotional character, either fully or in part.

B. Observations concerning the substantive provisions

233. Chapter II above examined the substantive provisions set forth in each article of the Declaration, and the extent to which these provisions are covered in existing international conventions of the United Nations system. It was found that some of the principles contained in the Declaration are directly covered by existing conventions; in others certain principles of the Declaration are implied, but not expressly stated; and other principles contained in the Declaration are not the subject matter of existing conventions.

234. Examples of the latter may be found in the information analysed in respect of the following articles of the Declaration: article 3 dealing with educational measures (see paragraph 37 above); article 4 dealing with political rights (see paragraph 42 above); article 6 dealing with rights pertaining to marriage and the family, in particular property rights (see paragraphs 55 and 56 above), legal capacity (see paragraphs 59 and 60), movement of persons (see paragraphs 62-64), and equal rights and responsibilities of spouses (see paragraphs 72-77 above); article 7 dealing with discriminatory provisions of penal law (see paragraphs 80 and 81 above); article 9 relating to education (see paragraphs 104, 105, 115 and 116); and article 10 concerning certain aspects of economic rights, for example retirement privileges (see paragraph 139 above); and the prevention of discrimination against women on account of marriage or maternity (see paragraphs 155 and 156 above, but see also paragraphs 157-160 above).

C. Observations concerning measures of implementation

235. The question of the international measures of implementation that might be written into or made applicable to a convention or conventions dealing with the elimination of discrimination against women is a complex one.

236. At the twenty-third session of the Commission on the Status of Women the view was expressed that there was a need for an international convention "containing measures of implementation similar to those in the international Convention on the Elimination of All Forms of Racial Discrimination". ^{8/} These measures, set forth in articles 8 to 16 of that Convention, provide for a system of reporting, a procedure for interstate complaints, and, on an optional basis,

^{8/} Official Records of the Economic and Social Council, Forty-eighth Session, Supplement No. 6, para. 16.

for the competence of the Committee established under the Convention to receive and consider communications from individuals or groups of individuals. 9/

237. Chapter III above dealt, in particular, with the measures of implementation included in the various conventions of the United Nations, the ILO and UNESCO, studied for the purpose of the present report. It was pointed out that some of the conventions which are of particular interest from the point of view of the elimination of discrimination against women, such as the Conventions on the Political Rights of Women, Nationality of Married Women and Consent to Marriage, Minimum Age for Marriage and Registration of Marriages do not provide for international measures of implementation, except in the event of disputes between Parties as to the application of the Convention.

238. Chapter III also described certain procedures that exist under separate resolutions of the General Assembly or the Economic and Social Council concerning the implementation of rights set forth in the Declaration. These procedures include voluntary reporting systems, and the procedure established by Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII) for dealing with gross violations of human rights (see paragraph 208 above).

239. In considering the question of measures of implementation which might apply to a general convention or to specific conventions dealing with the elimination of discrimination against women, the Commission may wish to consider first the nature of the supervisory procedures or machinery that might be envisaged, and whether

9/ The Convention on the Elimination of All Forms of Racial Discrimination provides for the establishment of a Committee on the Elimination of Racial Discrimination and of an ad hoc Conciliation Commission. The Committee's tasks are to consider reports on the legislative, judicial, administrative or other measures States Parties have adopted and which give effect to the provisions of the Convention; to make suggestions and general recommendations based on the examination of the reports and information received from the States Parties; to perform functions with a view to settling disputes among States Parties concerning the application of the Convention; to receive and consider communications from individuals or groups of individuals within the jurisdiction of States Parties which have recognized the competence of the Committee to this effect, and to forward suggestions and recommendations in regard to such communications.

The functions of the ad hoc Conciliation Commission are to make available its good offices to States Parties in disputes concerning the application of the Convention with a view to an amicable solution on the basis of respect for the Convention. The ad hoc Conciliation Commission is called upon to present a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

The Committee on the Elimination of Racial Discrimination is called upon to report annually to the General Assembly. The reports of the ad hoc Conciliation Commission are communicated to the States Parties to the dispute and, eventually, to the other States Parties to the Convention.

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this should form an integral part of the convention or conventions. The Commission may also wish to bear in mind questions, such as the following:

(a) Should the proposed convention or conventions include all the measures which have been written into the Convention on the Elimination of All Forms of Racial Discrimination (i.e. a reporting system, a complaints procedure by States and by individuals)?

(b) What might be the relationship between measures of implementation envisaged for a convention or conventions dealing with the elimination of discrimination against women and the implementation measures already included in the two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights?

(c) What arrangements might be made in the convention or conventions to avoid the creation of competing international procedures and to facilitate the co-operation of the various interested organizations of the United Nations system in its implementation?

ANNEX

STATUS OF RATIFICATIONS OF AND ACCESSIONS TO THE
 CONVENTIONS ANALYSED IN THE PRESENT REPORT AS OF
 31 DECEMBER 1971

	<u>Date</u>	<u>Date of entry into force</u>	<u>Number of States Parties required to enter into force</u>	<u>Number of States Parties as at 31 Dec. 1971</u>
1. <u>United Nations conventions</u>				
International Covenant on Civil and Political Rights	1966		35	13
International Covenant on Economic, Social and Cultural Rights	1966		35	13
Optional Protocol to the International Covenant on Civil and Political Rights	1966		10	6
Convention on the Political Rights of Women	1952	7 July 1964	35	69
Convention on the Nationality of Married Women	1957	11 Apr. 1958	6	44
Convention on the Reduction of Statelessness	1961		6	3
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	1962	9 Dec. 1964	8	26
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	1956	30 Apr. 1957	2	77
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	1950	25 July 1951	2	39

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	<u>Date</u>	<u>Date of entry into force</u>	<u>Number of States Parties required to enter into force</u>	<u>Number of States Parties as at 31 Dec. 1971</u>
2. <u>ILO conventions</u>				
No. 3 Maternity Protection	1919	13 June 1921		28
No. 4 Night Work (Women)	1919	13 July 1921		56
No. 13 White Lead (Painting)	1921	31 Aug. 1923		49
No. 41 Night Work (Women) (Revised)	1934	22 Nov. 1936		36
No. 45 Underground Work (Women)	1935	30 May 1937		74
No. 52 Holidays with Pay	1936	22 Sept. 1939		48
No. 81 Labour Inspection	1947	7 Apr. 1950		75
No. 89 Night Work (Women) (Revised)	1948	27 Feb. 1951		51
No. 100 Equal Remuneration	1951	23 May 1953		74
No. 101 Holidays with Pay (Agriculture)	1952	24 July 1954		38
No. 102 Social Security (Minimum Standards)	1952	27 Apr. 1955		20
No. 103 Maternity Protection (Revised)	1952	7 Sept. 1955		14
No. 110 Plantations (Part VII, Maternity Protection)	1958	22 Jan. 1960		9
No. 111 Discrimination (Employment and Occupation)	1958	15 June 1960		77
No. 117 Social Policy (Basic Aims and Standards)	1962	23 Apr. 1964		23

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	<u>Date</u>	<u>Date of entry into force</u>	<u>Number of States Parties required to enter into force</u>	<u>Number of States Parties as at 31 Dec. 1971</u>
No. 118 Equality of Treatment (Social Security) (Arts. 2 and 4, Maternity Benefit)	1962	25 Apr. 1964	(16 accessions Maternity Benefit)	25
No. 122 Employment Policy	1964	15 July 1966		45
No. 127 Maximum Weight	1967	10 Mar. 1970	2	10
No. 129 Labour Inspection (Agriculture)	1969		2	5
No. 130 Medical Care and Sickness Benefits	1969		2	2
No. 132 Holidays with Pay (Revised)	1970		2	0
3. <u>UNESCO conventions</u>				
Convention against Discrimination in Education	1960	22 May 1962	3	63
Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education	1962	24 Oct. 1968	15	19
