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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Thematic study of the Office of the United Nations High Commissioner for Human Rights on discrimination against women, in law and practice, and how the issue is addressed throughout the United Nations human rights system*

Summary

The present report provides a thematic study on discrimination against women, in law and practice, and how the issue is addressed throughout the United Nations human rights system. This has been undertaken in consultation with States, relevant United Nations bodies, mechanism and agencies, including the Committee on the Elimination of Discrimination against Women, the agencies within the new United Nations composite entity on gender, and other stakeholders, as requested by Human Rights Council resolution 12/17.

* Late submission.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	3
II. International standards, obligations and commitments	4–23	4
A. Equality between women and men - elimination of discrimination against women	4–7	4
B. Obligations and commitment of States to eliminate discriminatory laws.....	8–23	4
III. Addressing discrimination against women throughout the United Nations human rights system.....	24–51	8
A. Special procedures	29–36	9
B. Human rights treaty bodies	37–51	11
IV. Options for action: conclusions and recommendations.....	52–63	14
A. Human Rights Council	53–55	14
B. UN Women.....	56	15
C. Establishment of a new thematic procedure	57–63	15

I. Introduction

1. In its resolution 12/17 of 2 October 2009, the Human Rights Council requested the United Nations High Commissioner for Human Rights “to prepare a thematic study on discrimination against women, in law and practice, and on how the issue is addressed throughout the United Nations human rights system”. The Council requested consultation with States, relevant United Nations bodies, mechanism and agencies, including the Committee on the Elimination of Discrimination against Women, the agencies within the new United Nations composite entity on gender, and other stakeholders. It requested the High Commissioner to take into account efforts made to address discrimination against women in law and practice, particularly by the Commission on the Status of Women. The Council decided that it would address the thematic study at its fifteenth session, “in order to consider taking further possible action on discrimination against women at that session.”

2. In a note verbale of 29 March 2010 the High Commissioner solicited information on the issues to be addressed in the study from member and observer States, United Nations agencies and programmes, non-governmental organizations (NGOs) and other stakeholders. As at 15 July 2010, 74 replies had been received in total, from 49 States,¹ 5 United Nations agencies and programmes,² 6 national human rights institutions³ and 14 NGOs and other organizations.⁴ These replies are reflected in an addendum to the present document (A/HRC/15/40/Add.1). The Office of the High Commissioner (OHCHR) also had the benefit of the plenary panel discussion on “equality before the law” held at the eleventh session of the Human Rights Council (4 June 2009); the on-line discussion on “women and human rights” (1-28 February 2010) moderated by OHCHR and contributing to the fifteen-year review of the implementation of the Beijing Declaration and Platform for Action; the international conference on equality of women and men in national legislation, Ljubljana, 12 May 2010; the extraordinary informal meeting of the Committee on the Elimination of Discrimination against Women in Paris, 20-21 May 2010; and other events, including the cross-regional side event to the fourteenth session of the Human Rights Council on equality of women and men in national legislation held on 15 June 2010.

3. A number of the relevant issues have been previously considered by the Commission on the Status of Women in relation to discussions on the advisability of the appointment of a special rapporteur on laws that discriminate against women. At its fiftieth

¹ Albania, Algeria, Australia, Azerbaijan, Bahrain, Bosnia and Herzegovina, Burkina Faso, Colombia, Croatia, Cuba, Cyprus, Egypt, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Greece, Guatemala, Guyana, Hungary, Iran (Islamic Republic of), Kyrgyzstan, Latvia, Lebanon, Lithuania, Madagascar, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Norway, Poland, Portugal, Qatar, Romania, Republic of Moldova, Samoa, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine, United States of America, Venezuela (Bolivarian Republic of).

² Division for the Advancement of Women/Department of Economic and Social Affairs, (DAW/DESA), the International Organization for Migration (IOM), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO).

³ Kenyan Human Rights Commission, National Centre for Human Rights – Jordan, National Human Rights Commission – India, National Human Rights Committee Doha-Qatar, Northern Ireland Human Rights Commission, Procuraduría para la Defensa de los Derechos Humanos – Nicaragua.

⁴ Bangladesh Nari Progati Sangha, Center for Reproductive Rights, Centro de Derechos de Mujeres, Cooperativa Lotta contro l'emarginazione, Equality Now, Euro-Mediterranean Human Rights Network, Family & Life, Federation of Women Lawyers, Foro de la familia – Spain, International Council for Human Rights Policy, International Women's Rights Watch – Asia Pacific, Musawah, Soroptimist International, and Swedish CEDAW-Network.

and fifty-first sessions the Commission considered two reports on the subject prepared by the Secretary-General (E/CN.6/2006/8 and E/CN.6/2007/8), but did not establish a mechanism to address discriminatory laws.

II. International standards, obligations and commitments

A. Equality between women and men - elimination of discrimination against women

4. The attainment of equality between women and men, and the elimination of all forms of discrimination against women are fundamental United Nations values. Under articles 56 of the Charter of the United Nations, all Member States “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”, which includes promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Article 2 of the Universal Declaration of Human Rights states that “Everyone is entitled to all the rights and freedoms set forth in [this] Declaration, without distinction of any kind, such as race, colour, sex, language, religion...”. These commitments are reflected in instruments that address discrimination against women, including the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Discrimination against Women, and the Declaration on the Elimination of Violence against Women.

5. The principle of equality and non-discrimination on the grounds of sex is included in the principal United Nations human rights treaties, all of which guarantee to women the enjoyment of the rights contained in them, without discrimination and on the basis of equality. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both guarantee the enjoyment of the rights they elaborate without discrimination or distinction based on sex, and “the equal right of men and women” to the enjoyment of those rights (article 3). Similar obligations are found in the Convention on the Rights of the Child (article 2), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (articles 1 and 7), and the Convention on the Rights of Persons with Disabilities (article 6).

6. Treaties adopted under the auspices of specialized agencies of the United Nations, in particular by the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), and regional human rights treaties, provide further evidence of the extent to which the principle of equality between women and men is accepted by the international community.

7. Achieving equality of women and men and the elimination of discrimination against women have been central goals of major United Nations conferences. The World Conference on Human Rights (Vienna, 1993) recognized the importance of the human rights of women, as did the Fourth World Conference on Women (Beijing, 1995), as well as the subsequent reviews of progress in the implementation of the Beijing Platform for Action.

B. Obligations and commitment of States to eliminate discriminatory laws

8. In addition to their Charter obligations, most Member States of the United Nations are bound by specific treaty obligations to eliminate discrimination against women. As at 31 July 2010 there were 186 States parties to the Convention on the Elimination of All Forms of Discrimination against Women, in which they “condemn discrimination against

women in all its forms” and “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women” (article 2). The Convention defines discrimination against women (article 1), sets out the measures that a State party must take to eliminate discrimination and ensure equality, and addresses in a non-exhaustive manner areas in which measures need to be taken.

9. The Convention defines “discrimination against women” as:

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

10. The concept of discrimination includes differential treatment explicitly based on sex (direct discrimination) and laws, practices and policies that appear neutral but have a disproportionate and unjustifiable impact on women’s enjoyment of human rights (indirect discrimination).⁵ It also covers discrimination on the basis of gender stereotypes,⁶ and multiple discrimination that specific groups of women face because of their sex and other characteristics.⁷ The Committee on the Elimination of Discrimination against Women has emphasized that the obligation to eliminate discrimination involves ensuring formal equality (the identical treatment of women and men), and also substantive equality, which reflects the differences in the social circumstances of women and men, and, in appropriate cases, biological differences. While formal legal (de jure) equality is important, the Committee has consistently stressed the importance of de facto equality, namely ensuring that women actually enjoy the rights guaranteed. It has also stressed the importance of systemic and structural transformation of institutions and attitudes that reflect and entrench discrimination against women, noting the importance of article 5(a) of the Convention.

11. In its general comment No. 25 (2004) on article 4, paragraph 1, of the Convention (on temporary special measures), the Committee on the Elimination of Discrimination against Women specified that States parties have obligations to ensure that there is no direct or indirect discrimination in law and that women are protected against discrimination, both in the public and private spheres; to develop effective policy measures to improve women’s de facto position; and to address gender relations and stereotypes affecting women. Thus, the scope of these three central obligations accepted by States parties to the Convention goes beyond a purely formal legal obligation of equal treatment.⁸

12. The Convention assigns an important place to law and legal reform, requiring States parties to enact or strengthen laws that protect against discrimination or promote the enjoyment of equality in other ways. It also requires States parties to ensure that discriminatory laws are repealed. Article 2 of the Convention is of particular importance here.

13. Other treaty bodies have embraced a similar understanding of the concept of discrimination and the nature of the obligations States accept to eliminate discrimination against women and ensure equality. The Committee on Economic, Social and Cultural

⁵ See Committee on the Elimination of Discrimination against Women general recommendation No. 25 (2004) on article 4, paragraph 1, of the Convention (temporary special measures), para 7, footnote 1.

⁶ See also Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 20.

⁷ *Ibid.*, para 17, and Human Rights Committee general comment No. 28 (2000) on article 3 (The equality of rights between men and women), para 30.

⁸ Para 7.

Rights has provided a similar overview of the nature of discrimination on the ground of sex under article 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights.⁹ The Human Rights Committee has also analysed discrimination on the basis of sex and the obligations of States parties to the International Covenant on Civil and Political Rights to eliminate discrimination and ensure equality between women and men consistently with the approaches of the other two committees mentioned above.¹⁰

14. In addition to the legal obligations to eliminate discrimination against women in law and practice which have been assumed under these and other treaties, Member States undertook to pursue related goals at the Fourth World Conference on Women. The Beijing Platform for Action expressed concern about the lack of both de jure and de facto equality for women:¹¹

“Women’s full enjoyment of equal rights is undermined by the discrepancies between some national legislation and international law and international instruments on human rights. ... De facto inequality is also perpetuated by the lack of enforcement of... laws or codes, or administrative rules and regulations intended to ensure women’s full enjoyment of human rights and fundamental freedoms.”

15. The Platform included as a strategic objective “ensur[ing] equality and non-discrimination under the law and in practice”. Governments were called on take a number of actions, many corresponding to the obligations in article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.¹²

16. The Special Session of the General Assembly to review implementation of the Beijing Platform for Action in 2000 noted that, while significant progress had been made in many areas, “discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist” particularly in family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations. The review referred explicitly to legislative and regulatory gaps, lack of implementation of existing legislation and regulations and the introduction of new discriminatory laws, perpetuating both de jure and de facto inequality and discrimination.¹³

17. The 2005 and 2010 reviews of the Platform concluded that women everywhere are still subject to significant disadvantage as the result of discriminatory laws and practices and that de jure and de facto equality has not been achieved in any country in the world.¹⁴

18. The 2010 review also noted that discriminatory provisions continue, in particular in family, divorce and personal laws, penal codes, nationality laws and laws relating to inheritance and ownership of land and property, and noted the impact of multiple legal systems, with discriminatory customary and religious laws and practice. It also recognized that even where legal reforms have taken place, they are often ineffectively implemented.¹⁵

19. The review equally emphasized that “lack of legal provisions guaranteeing the economic rights of women, coupled with customary laws that discriminate against women

⁹ General comment No. 20, paras 8-13.

¹⁰ General comment No. 28.

¹¹ *Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II, para. 219.

¹² *Ibid.*, strategic objective I.2, para 232.

¹³ General Assembly resolution S-23/3 on further actions and initiatives to implement the Beijing Declaration and Platform for Action, annex, para 27.

¹⁴ E/2010/4-E/CN.6/2010/2, para. 307.

¹⁵ *Ibid.*, paras. 309 and 310.

with regard to inheritance, land, property and credit, hinder women's economic empowerment and their ability to move out of poverty".¹⁶ In relation to violence against women, the review noted that discriminatory provisions continue to exist, such as reductions in sentences for perpetrators who marry victims, mitigation for sentences in the case of so-called "honour" crimes, excessively narrow definitions of rape, ineffective enforcement of new laws, and resolution of cases of violence against women outside formal justice systems.¹⁷

20. While there has been progress towards achieving the Millennium Development Goals, overall the review notes that "Progress for women and girls in many areas covered by the Millennium Development Goals lags behind overall gains. This outcome is indicative of the insufficient attention given to the gender equality dimensions in national development policies and strategies related to the achievement of the Millennium Development Goals."¹⁸

21. The reports of the Working Group on Communications of the Commission on the Status of Women also confirm that there is a continuing problem with laws and practices that discriminate against women. Under the Commission communications procedure, this Working Group annually reviews communications submitted to the United Nations and brings to the attention of the Commission those which appear to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. In 2005 the Working Group expressed concern that a pattern was to be seen in "the continued existence of legislation or practices in many areas either intended to or with the effect of discriminating against women, despite the international obligations and commitments of States and their constitutional provisions to outlaw such discrimination."¹⁹

22. This language has been reiterated in subsequent years, reflecting a consistent pattern.²⁰ The report of the Working Group to the fifty-fourth session of the Commission, identified among the categories of cases most frequently submitted to the Commission communications involving legislation and practices that discriminate against women in civil and political rights; personal status, including marriage and divorce; the right to own and inherit property; and employment, including equal pay and other forms of discrimination in the workplace.²¹

23. Thus it is clear that, notwithstanding the significant progress that has been made in the removal of laws and practices that discriminate against women, such laws and practices persist in all parts of the world, and have an impact on the enjoyment by women of their human rights and the process of development, including on the achievement of the Millennium Development Goals. The Human Rights Council has noted that despite the pledges made by governments "to modify or abolish remaining laws that discriminate against women and girls, many of those laws are still in force and continue to be applied, thereby preventing women and girls from enjoying the full realization of their human rights" and recognized that "women's inequality before the law has resulted in the lack of equal opportunities for women in education, access to health, economic participation, access to labour and disparities in salaries and compensation, public and political

¹⁶ Ibid., para 19.

¹⁷ Ibid., para 149.

¹⁸ Ibid., para 427. See also United Nations Department of Economic and Social Affairs, *The Millennium Development Goals Report 2010*.

¹⁹ E/2005/27-E/CN.6/2005/11, chapter III, para. 7 (d).

²⁰ See E/2006/27-E/CN.6/2006/15, chapter III, para. 8 (d); E/2007/27-E/CN.6/2007/9, chapter III, para 8(d); E/2008/27-E/CN.6/2008/11, chapter III, para. 7 (d) of the report of the Working Group on Communications concerning the Status of Women; and E/CN.6/2006/8, paras 35-38.

²¹ E/2010/27- E/CN.6/2010/11, chap III, para 7 (i).

participation, access to decision-making processes, inheritance, ownership of land, financial services, including loans, and nationality and legal capacity”, among other areas.²²

III. Addressing discrimination against women throughout the United Nations human rights system

24. The United Nations human rights system has made significant progress in giving the human rights of women greater prominence. Calls to give the human rights of women and the gender dimension of human rights increased attention preceded the Vienna World Conference on Human Rights and the Beijing Fourth World Conference on Women, but those conferences gave major impetus to efforts to include issues of gender on the so-called “mainstream” human rights agenda.

25. This enhanced attention resulted in the adoption of gender-specific normative instruments addressing discrimination against women and encouraged the strengthening of procedures to monitor national efforts to ensure the equality of women and consider claims of alleged violations of the human rights of women. Of particular importance was the establishment in 1994 by the Commission on Human Rights of the Special Rapporteur on violence against women, its causes and consequences, and the adoption by the General Assembly of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 1999.

26. The Commission on the Status of Women has continued its multifaceted analysis of the situation of women in the world and identified policy responses that will promote their advancement. The Beijing Platform for Action, and the documents resulting from its reviews, have provided the framework for much of its work in the last 15 years. While the human rights of women - including the right to equality before and under the law - form an important part of that framework, and while the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on Violence against Women are frequently points of reference for its work, a human rights approach forms only part of the Commission perspective on addressing women’s disadvantage. The original proposal in 1991 for a special rapporteur on discrimination against women, which led ultimately to the establishment by the Commission on Human Rights of the Special Rapporteur on violence against women, was that the Commission itself establish the special rapporteur.²³

27. While the Commission has reviewed its communications procedure on several occasions in the last 20 years, there has been no fundamental change to its nature; the procedure is primarily a means of providing general information to the Commission to enable it to identify trends and formulate policy recommendations for itself and the Economic and Social Council. It is not a mechanism intended to provide a remedy for individuals who allege that their rights have been violated, or respond directly to allegations of systematic denials of the rights of women.

28. In 2007, OHCHR commissioned an analytical study on laws that discriminate against women and the usefulness of creating a new mechanism to address this issue. The study entitled “Project on a mechanism to address laws that discriminate against women”, prepared by Fareda Banda, addresses the compatibility of a new mandate with existing mechanisms and identifies how the existing mechanisms have addressed de jure

²² Human Rights Council resolution 12/17, paras 4 and 6.

²³ See E/CN.6/1991/10, paras 149-154.

discrimination against women and the resulting protection gaps.²⁴ It was launched at an event on 4 April 2008 to which all Member States were invited.

A. Special procedures

29. The Commission on Human Rights and the Human Rights Council have taken up discrimination against women within a focused and explicit human rights framework and sought to give sex equality a higher priority by the establishment of mechanisms that focus on sex-specific or gendered violations of human rights, as well as by calling for integration of sex-specific violations and gendered dimensions of rights in all procedures and mechanisms. The first major example of this was the establishment of a dedicated Special Rapporteur on violence against women, but the Commission on Human Rights was concerned to strive for integration of violations of women's rights throughout its work. In 1994, the Commission called upon "all special rapporteurs, experts, working groups, treaty bodies, and other mechanisms of the Commission and the Sub-Commission, in the discharge of their mandates, regularly and systematically to include in their reports available information on human rights violations against women".²⁵ The Commission subsequently repeated this injunction²⁶ and included in the mandates of individual mechanisms a request that the position of women in relation to violations that fall within that mandate be taken into account. The Council, in renewing or establishing special procedures mandates, has included a standard request that the mandate holders integrate a gender perspective or give appropriate attention to the position of women and girls.²⁷

30. It is relevant to assess the extent to which special procedures have identified laws and practices that discriminate against women within the scope of their mandates, whether they have been able to undertake sustained examination of these instances, and whether that has led to action to address those problems. The following non-exhaustive examination exemplifies instances in which special rapporteurs have examined laws and practices that discriminate against women and the extent to which they have been able to follow through on these issues.

31. The Special Rapporteur on violence against women has drawn attention on a regular basis to the role that discriminatory laws play in perpetuating violence against women or standing in the way of some form of redress for women affected by violence, and the need for sound laws that are effectively enforced. She has also drawn attention to the impact of laws outside the areas of criminal law or domestic violence laws, that place women in situations in which they may be more exposed to violence, and has made a number of recommendations as to the content of legislation that States should enact in order to prevent and punish violence against women.

32. A number of other special procedures have also addressed the position of women and girls. In his 2007 report to the Council the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examined the application of the prohibition against torture as it related to women, as part of an effort "to ensure that the torture protection framework is applied in a gender-inclusive manner with a view to strengthening the protection of women from torture".²⁸ Included in that examination was consideration of intimate partner violence and the role of law in perpetuating and

²⁴ Available at: <http://www2.ohchr.org/english/issues/women/documentation.htm>.

²⁵ Commission on Human Rights resolution 1994/45, para 18.

²⁶ See, for example, Commission on Human Rights resolution 2002/50, para 17.

²⁷ See, for example, resolutions 7/22, para 2(d) and 6/30.

²⁸ A/HRC/7/3, para 26

addressing that phenomenon. The Special Rapporteur argued that “States should be held accountable for complicity in violence against women, whenever they create and implement discriminatory laws”, and noted that States could be held liable “if domestic laws fail to provide adequate protection against any form of torture and ill-treatment in the home”.²⁹

33. At the outset of the mandate on the right to education, the Special Rapporteur paid some attention to the role that discriminatory laws might play in denying or restricting girls’ enjoyment of the right to education.³⁰ The Special Rapporteur has since undertaken a detailed study of girls’ right to education, but his sociocultural and economic analysis did not address the role that discriminatory laws may play in impeding girls’ full enjoyment of the right to education in any detail.³¹

34. The Special Rapporteur on the promotion and protection of human rights while countering terrorism submitted a report to the sixty-fourth session of the General Assembly which, building on material in his earlier reports, addressed, *inter alia*, the impact on women of counter-terrorism measures, and the impact of both laws and practices, many of which appear to be gender-neutral but which may have a disproportionately negative impact on women.³²

35. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has made consistent references to women’s equality before the law, thus contributing to the recent inclusion by the Human Rights Council of the human rights dimensions of maternal mortality and morbidity in its agenda. Extensive examination of laws and practices that discriminate against women was undertaken by the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, in a series of reports in the period 2003 to 2006 analysing laws which have an impact on women’s enjoyment of the right to adequate housing.³³ His analysis shows the interdependence of various rights, and demonstrates that women’s right to adequate housing is affected not only by laws relating to “housing” in a narrow sense but by “land ownership laws, acquisition laws, title registration laws, slum clearance laws, matrimonial and inheritance laws, laws relating to domestic violence, customary and religious laws, environmental laws and urban regulations”.³⁴ Importantly, the Special Rapporteur also noted that it was not just laws that explicitly discriminated against women that affected their ability to enjoy the right to adequate housing, but also gender-neutral laws applied to the disadvantage of women.³⁵

36. Thus, since the mid-1990s the human rights special procedures have paid significantly increased attention to violations of women’s human rights and the relevance of gender. All have made some effort to incorporate gender perspectives, although in some cases this has been limited in scope, often to interlinkages with violence, or not sustained. In many cases in relation to specific countries or more generally, mandate holders have found that laws and practices that discriminate against women have impeded their enjoyment of the right which is the subject of the mandate. However, with the exception of the Special Rapporteurs on violence against women, the right to health, and adequate

²⁹ *Ibid.*, para. 46.

³⁰ See, for example, E/CN.4/2000/6, para 60 and E/CN.4/2004/45.

³¹ E/CN.4/2006/45 and see para. 9.

³² A/64/211.

³³ E/CN.4/2003/55, E/CN.4/2005/48 and E/CN.4/2006/118.

³⁴ E/CN.4/2003/55, para 39.

³⁵ *Ibid.*, para 35.

housing, those mechanisms that have undertaken a detailed study of the gender dimensions of their mandate have not followed up in a sustained and focused manner on issues of gender. This is in part due to the fact that gender may be only one dimension of a mandate, albeit important one. The effect of calling on special procedures to incorporate gender perspectives in their work may have been that they have further highlighted the extent of discriminatory laws and practices and their impact on the enjoyment of human rights, but also shown that the existing mandates have been able to respond to them only partially.

B. Human rights treaty bodies

37. The United Nations human rights treaty bodies have significantly increased the degree of attention paid to the position of women and the gender dimensions of human rights, with varying degrees of engagement, reflecting the scope of the treaty in question, the priority assigned by committee members to these issues, and the information received by the committees from various sources. Attention to these issues can be seen particularly in the concluding observations of the committees on the reports of States parties, in general comments, cases decided under individual communications procedures, and reports under inquiry procedures.

38. The 2006 report by the Secretary-General to the Commission on the Status of Women surveyed the extent to which laws and practices that discriminate against women are addressed by human rights treaty bodies.³⁶ The 2006 assessment is still accurate. The survey emphasized that the treaty body which has devoted the most sustained attention to the issue of laws and practices that discriminate against women has been the Committee on the Elimination of Discrimination against Women. The Committee has clarified the obligation of States parties to ensure there is no discrimination in their laws, and frequently addressed issues pertaining to gender-neutral provisions which may perpetuate discrimination against women, discriminatory practices and legislative provisions in family and/or personal status codes, labour legislation, criminal law and customary law, as well as in regard to nationality and citizenship, and property and inheritance rights.³⁷

39. In addition to its recommendations to individual reporting States, in its general recommendations the Committee has analysed the role of law in perpetuating or eliminating discrimination and the obligations of the State, in particular in regard to violence against women, equality in marriage and family relations, and temporary special measures which analyse the scope of State obligations under the Convention.³⁸

40. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child consistently raise issues regarding the position of women and girls and their enjoyment of the rights guaranteed under the respective treaties. These include questions and recommendations relating to the limitations of existing laws and the desirability of new or improved laws to eliminate discrimination and promote equality.³⁹

41. For example, during its ninety-sixth to ninety-eighth sessions, recommendations by the Human Rights Committee to States parties in concluding observations included recommendations regarding protection against indirect discrimination in anti-discrimination

³⁶ E/CN.6/2006/8, paras. 13-22.

³⁷ *Ibid.*, paras. 16 and 17.

³⁸ General recommendations No. 19 (1992) on violence against women, No. 21 (1994) on equality in marriage and family relations, and No. 25 (2004) on article 4, paragraph 1, of the Convention (temporary special measures).

³⁹ See E/CN.6/2006/8, paras. 18-20.

laws; employment targets set by equal opportunities legislation; criminalization of sexual harassment in the workplace; discriminatory provisions in civil codes, such as prohibitions on women remarrying in the six months following divorce and provisions providing that the husband is the head of the conjugal union; restrictive definitions of rape in the criminal code and the need to ensure that incest and sexual abuse other than actual sexual intercourse are considered serious criminal offences; eliminating the requirement for women to prove resistance against an assault in order to establish rape; and the need to prosecute rape and other crimes of sexual violence *ex officio*.⁴⁰

42. The Committee on Economic, Social and Cultural Rights, in its forty-second and forty-third sessions held in 2009, recommended that States parties remedy the absence of framework legislation embodying the principle of equal rights of men and women; ensure equal remuneration for women and men and include in legislation specific provision on equal pay for work of equal value; regulate employment conditions of domestic workers to ensure that they enjoy the same legal protection as other workers; remove discrimination in laws relating to the transmission of nationality by women to their children; eliminate discrimination against women in legislation relating to inheritance of immovable property; enact or amend abortion laws to protect women from the effects of clandestine and unsafe abortions; and address the refusal of physicians to perform legal abortions.⁴¹

43. The Committee has also addressed these issues in its general comments, in particular in general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, which notes the importance of addressing both direct and indirect discrimination in laws, policies and practices; the role of legal rules in perpetuating systemic discrimination, and multiple discrimination. It further underlined the importance of adopting specific legislation prohibiting discrimination in the field of economic, social and cultural rights and regularly reviewing laws “in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively” in relation to the International Covenant on Economic, Cultural and Social Rights.⁴²

44. The Committee on the Rights of the Child consistently addresses the situation of girls and frequently draws attention to the role that legislation plays in perpetuating discrimination against them. It has expressed concern about the low minimum legal age for marriage and its implications for the well-being of girls; the discriminatory nature of customary law; and the fact that, particularly in the context of property rights, this may reinforce discrimination against girls.⁴³

45. The Committee against Torture has increased its attention to the gendered dimensions of torture and cruel, inhuman or degrading treatment or punishment, regularly requesting information to be broken down by gender, and has focused particularly on the treatment of women in detention or other forms of custody.⁴⁴

46. The Committee against Torture has also gone beyond situations of detention addressed in its general comment No. 2 (2007) on the implementation of article 2 by States parties, and brought domestic violence and the absence or lack of enforcement of relevant laws into its dialogue with States parties, and addressed violations of women’s reproductive rights.⁴⁵ The Committee has also drawn attention to legislation that “severely restricts access to voluntary abortion, even in cases of rape, leading to grave consequences,

⁴⁰ See, for example, A/64/40 (vol. I), paras. 85 (13), 86 (10), 85 (10), 88 (9) and 85 (14).

⁴¹ See, for example, E/2010/22-E/C.12/2009/3, paras. 415, 200, 166, 374, 377, 252 and 428.

⁴² Paras. 10, 12, 17 and 37.

⁴³ See, for example, CRC/C/TJK/CO/2, paras. 24-25 and CRC/C/15/Add.172, paras. 25-26.

⁴⁴ See, for example, CAT/C/UZB/CO/3, para. 28 and CAT/C/USA/CO/2, para. 33.

⁴⁵ See, for example, CAT/C/BEN/CO/2, para. 24.

including the unnecessary deaths of women.”⁴⁶ It has expressed concern about allegations of “continued involuntary sterilization of Roma women” and called for the effective enforcement of health legislation.⁴⁷

47. The Committee on the Elimination of Racial Discrimination has devoted less attention to gender issues, although it regularly raises the issue of the treatment of migrant women, indigenous women and women belonging to minority groups in its concluding observations. In 2000 it adopted general recommendation No. 25 on the gender-related dimensions of racial discrimination, in which it recognized that racial discrimination may affect women and men in different ways and that “some forms of racial discrimination have a unique and specific impact on women”.⁴⁸

48. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families has addressed the impact of both discriminatory and neutral laws on women who are migrant workers, or who belong to a family in which there is a migrant worker. It has expressed concern that reforms to laws which permit women to obtain passports without the permission of a third party are not being given effect to by the authorities, and has urged States parties to undertake efforts “to protect migrant women domestic workers, including access to regular migration status and greater and more systematic involvement of the labour authorities in monitoring their working conditions”.⁴⁹

49. Thus, considerable attention is given to the situation of women and girls under the major human rights treaties, including the role that laws and their implementation play in perpetuating discrimination. The reports of States parties to treaty bodies also provide many examples of steps taken to eliminate discriminatory laws and to ensure that gender-neutral laws and laws intended to promote equality for women are appropriately implemented. Consideration of these issues in the reporting procedure appears to have added momentum for reform.

50. However, in most cases, the major contribution of the human rights system has been to identify and highlight problems and engage governments and civil society in discussion of these examples of discrimination, and the steps that should be undertaken to address them. The nature of the reporting process – with periodic reporting and years between reports, limited resources for follow-up, and the overall burden of work – limits the extent to which treaty bodies, alone or in combination, can follow up in a sustained and focused manner on the many examples of laws and practices that are discriminatory.

51. The findings of the United Nations human rights bodies outlined above are part of a much larger corpus of material to be found within the United Nations system,⁵⁰ including its specialized agencies,⁵¹ and in the work of other international and regional organizations,⁵² national institutions (including by national human rights institutions or law

⁴⁶ CAT/C/PER/CO/4, para. 23.

⁴⁷ CAT/C/SVK/CO/2, para. 14.

⁴⁸ Para. 3.

⁴⁹ See, for example, CMW/C/EGY/CO/1, paras. 26-27 and CMW/C/MEX/CO/1, para. 34.

⁵⁰ See, for example, United Nations Development Programme/United Nations Development Fund for Women (UNIFEM), *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (Suva, 2007), and UNIFEM, *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries* (Bangkok, 2009).

⁵¹ See, for example, International Labour Office, *Equality at work: Tackling the challenges* (Geneva, 2007), paras 467-476, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/-webdev/documents/publication/wcms_082607.pdf.

⁵² See, for example, Inter-American Commission on Human Rights, *Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia*, (Washington, 2007), chapter V,

reform bodies⁵³), academic commentators,⁵⁴ and women's groups and other non-governmental organizations. The scale of the problem and its persistence is clear. Despite significant reforms, the international community has fallen short of its goal of eliminating discriminatory laws and practices by 2005. In 2010, in all regions of the world there are still many instances of laws that clearly discriminate against women in their terms and assumptions, and in all countries there are laws which indirectly discriminate against women or which are implemented in a discriminatory manner.

IV. Options for action: conclusions and recommendations

52. **The issue is thus what additional steps the United Nations human rights system might take to stimulate further reform of discriminatory laws and enhance domestic monitoring processes to identify new laws that discriminate explicitly or that are discriminatory in impact or implementation. The contribution by the United Nations system through existing mechanisms and practices, and any new steps that might be adopted, can only be part of any solution. United Nations bodies can contribute to the identification of laws that discriminate (including by providing tools for analysis); facilitate the sharing of model laws and best practices in legislation and implementation; provide technical assistance; and support the work of national governments, parliaments, national human rights institutions and others. However, the main impetus for reform must come from the national level.**

A. Human Rights Council

53. **The steps taken by the Human Rights Council to ensure that women's rights issues and gender integration are addressed have created a space for discussion on topical matters affected by the lack of equality of women and men before the law: one example is the attention that was given to maternal mortality and morbidity at its fourteenth session. This should be continued, refined and strengthened by ensuring follow-up. The identification of "gender focal points", in the form of a group of self-identified States, has been suggested in plenary panels and merits further consideration.**

54. **The Human Rights Council may wish to consider requesting regular updates on the extent and nature of laws that discriminate against women and good practices in eliminating these, drawing upon the findings of the United Nations human rights machinery and the broader United Nations system.**

55. **An earlier report of the High Commissioner for Human Rights made a number of suggestions as to how gender perspectives could be better integrated into the universal periodic review (UPR) process.⁵⁵ An evaluation of how the State under review has met its obligations to eliminate laws discriminating against women could**

available at <http://www.cidh.org/pdf%20files/bolivia.07.eng.pdf>. The Commission also publishes special reports on women's rights in particular countries and thematic reports on women's human rights.

⁵³ For access to a searchable database of the reports of Commonwealth law reform bodies, see the Law Reform Project database of the World Legal Information Institute at <http://www.worldlii.org/int/special/lawreform/>.

⁵⁴ See, for example, Fareda Banda, "Project on a mechanism to address laws that discriminate against women" (2008), available at <http://www2.ohchr.org/english/issues/women/documentation.htm>.

⁵⁵ A/HRC/12/46, paras. 55-59.

be a standing item on the list of issues that are included in each State report. A standardized set of questions could be produced, as well as contextualized questions for each country under review, to give greater prominence to discriminatory laws and the steps that States are willing to undertake to address them as part of the UPR procedure.

B. UN Women

56. The Division for the Advancement of Women and OHCHR have had an annual joint workplan, requiring reporting to the Human Rights Council and the Commission on the Status of Women. Following the establishment of UN Women, this could be replaced by a joint workplan between OHCHR and UN Women. An initial focus of the new workplan could be equality before the law. This would build on previous work by the constituent entities of UN Women in relation to the identification, analysis, and development of appropriate legislative and policy responses to discriminatory laws. The judicial colloquia on the human rights of women organized by the Division; the work related to the Committee on the Elimination of Discrimination against Women, carried out by the United Nations Development Fund for Women; and publications such as the handbooks on the Convention on the Elimination of All Forms of Discrimination against Women for parliamentarians and on legislation relating to violence against women,⁵⁶ might be built on.

C. Establishment of a new thematic procedure

57. A further possibility is the establishment of a new special procedure of the Council that would focus on laws and practices that discriminate against women. During the plenary panel discussion on “equality before the law” held at the eleventh session of the Council, a number of States and other entities considered such a mechanism an effective means of advancing efforts to address this problem.⁵⁷ However, the question has also been raised as to whether this would contribute effectively to the elimination of discriminatory laws, without unnecessarily duplicating the work of existing bodies whose mandates cover some aspects of the topic.⁵⁸

58. The issue here is not whether there is formally some substantive overlap of coverage, but whether a new mechanism would complement the work of the existing human rights machinery. While concerns about duplication have been raised in relation to other thematic mandates, such overlap between a proposed thematic mechanism and the mandate of a treaty body has not been a bar to its establishment. In relation to rights monitored by the Human Rights Committee, there is overlap with

⁵⁶ Inter-Parliamentary Union, *The Convention on the Elimination of All Forms of Discrimination against Women: Handbook for Parliamentarians* (Geneva, 2003); *Handbook for legislation on violence against women* (United Nations publication, Sales No. E.10.IV.2).

⁵⁷ Cross-regional statement of 16 June 2009 by Chile on behalf of Bosnia-Herzegovina, Brazil, Burkina Faso, Colombia, Congo, Côte d’Ivoire, France, Hungary, Mexico, Norway, Slovenia, Switzerland, United States of America and Uruguay.

⁵⁸ Statements made during the plenary panel discussion on “equality before the law” during the eleventh session of the Human Rights Council are available on the extranet of the Council, at <http://www2.ohchr.org/english/bodies/hrcouncil/>. Summaries of replies to the note verbale of 29 March 2010 soliciting information from stakeholders in relation to the issues to be addressed in the present report, are available in an addendum to the present report (A/HRC/15/40/Add.1).

at least seven thematic mechanisms of the Council (summary, arbitrary and extrajudicial executions; arbitrary detention; disappearances; freedom of expression; independence of the judiciary; religious intolerance; terrorism). Similarly in relation to the role of the Committee on Economic, Social and Cultural Rights, there are at least seven thematic mechanisms that address rights contained in the International Covenant on Economic, Social and Cultural Rights (education, health, housing, extreme poverty, water, cultural rights, toxic waste). In the case of the Committee on the Elimination of Discrimination against Women there is overlap with the Special Rapporteur on violence against women, and some overlap with the Special Rapporteur on trafficking in persons, especially in women and children. The work of the Special Rapporteur on the question of torture has effectively complemented that of the Committee against Torture. It seems likely that a similar complementarity would develop in relation to the work of the Committee on the Elimination of Discrimination against Women (and other treaty bodies) if a mechanism on discriminatory laws were established.

59. The added value of special thematic procedures that monitor rights contained in the human rights covenants and conventions underlines the fact that the treaty bodies have many priorities and are not well-placed to provide sustained follow-up to each of the specific rights that fall within their mandates. The establishment of a thematic procedure can add to the effectiveness of the work of a treaty body by building on and following up its findings and recommendations. In addition, some thematic special procedures cover issues that may be covered by a number of treaty bodies and a mechanism on discriminatory laws could perform a similar function.

60. Any new mechanism should be flexible and able to perform a range of functions. Its guiding principle should be to catalyse efforts, especially at national level, to ensure that discriminatory laws are identified and modified or repealed. In order for such a mechanism to function effectively, it would need to be able to gather, request, receive and exchange information from all relevant sources, including governments, intergovernmental and non-governmental organizations, national human rights institutions and others; identify and make concrete recommendations on amending or repealing laws that discriminate against women; facilitate the provision of technical assistance; and identify, disseminate and promote best practices or models for eliminating discriminatory law and practices.

61. Any new mechanism should work in close cooperation with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies and regional human rights mechanisms. Such a mechanism would also have a consolidating function, drawing and building upon findings by the Committee on the Elimination of Discrimination against Women and other treaty bodies in reviewing State reports, recommendations or undertakings made under the UPR, or other reliable information about discriminatory legislation. It should meet regularly with the Committee, other relevant treaty bodies, and international or regional bodies dealing with issues of discriminatory laws and practices, as well as report on its work both to the Human Rights Council, and to the Commission on the Status of Women.

62. Given the nature of the theme, such a mechanism would also have to build on existing cooperation between the United Nations and the Inter-Parliamentary Union, in order to encourage the adoption or strengthening of procedures for preventing the enactment of laws that are discriminatory; for repealing existing discriminatory laws; and for monitoring the implementation of laws to assess their impact on women. Similarly, such a mechanism would need to work in close interaction with law reform bodies, in particular through international associations of such bodies, to explore ways

to support their work in terms of promoting the enactment of non-discriminatory laws.

63. The discussion above shows that, notwithstanding the work of the Committee on the Elimination of Discrimination against Women, other human rights treaty bodies, the special procedures and other United Nations bodies, further measures are required to eliminate discriminatory laws and close the persistent gap between de facto and de jure equality. The Human Rights Council has considerable potential to advance further the efforts of the international community to eliminate discrimination against women in law and practice by adopting the measures outlined above.
