

Lesbian Action Group
Applicant

Australian Human Rights Commission
Respondent

Lesbian Action Group Inc
Other Party

REPLY WITNESS STATEMENT OF CAROLE ANN

I, **Carole Ann**, of 125 Elm Street, Northcote, Victoria, community organiser, state in reply:

1. I am deeply saddened by the new position the AHRC has taken in its documents filed in the Tribunal, and the evidence it has chosen to lead. I am at a loss to understand why the AHRC has adopted new arguments and has decided not to defend the reasoning process of its President that were given to us last year.
2. The AHRC's witness statements make it clear that my government is now prepared to condone the hatred and violence that is directed towards us.
3. I said in my witness statement, and I repeat:
 - (a) LAG has no intention of creating any harm to anyone.
 - (b) The trans community has its own needs and interests which should be respected and catered for - the AHRC's evidence makes it very clear that the trans community has many resources made available to it, and many opportunities to associate and gather with one another, within the LGBTIQ+ grouping, and within society as a whole.
 - (c) The Lesbian Action Group just wants to have its own ability to associate for its own purposes. It just wants to have the same opportunity.

Filed on behalf of	Lesbian Action Group Inc
Prepared by	Feminist Legal Clinic
Tel	0402 467 476
Email	anna@feministlegal.org
Address for service	Feminist Legal Clinic, PO Box 273, Summer Hill NSW 2130

Lesbian Feminism

4. I find it offensive that the AHRC has led evidence that writings of lesbian feminism are “reams of unsubstantiated bigotry” – see the Bumpy Favel declaration at page 3.
5. The body of writings of lesbian feminist philosophers shouldn’t be debased with this language.
6. Our philosophy shouldn’t be degraded in this way by the Australian government.
7. Dr Elena Jeffreys has not understood what we mean by lesbian feminism and the philosophy. There is no such thing as “Option A”, “Option B” and “Option C” lesbian feminism, this is not a typology known to anyone. That Dr Elena Jeffrey’s is not even prepared to create an option for us (apparently we are a subcategory of Option A) tells you where her biases lie – Dr Jeffrey’s wants our movement erased, just like the AHRC.
8. In my witness statement I mentioned a book that gave a summary of lesbian feminist philosophy - ‘Unpacking Queer Politics’ (Polity, 2003). A copy of pages 18-31 of that book is attached and marked “**CA-9**”. This extract is a short explanation of the core tenets of lesbian feminism.

Let Women Speak Rally

9. I am glad that the AHRC witnesses raise the example of the Let Women Speak Rally in March 2023. It is a good example of why the Lesbian Action Group needs an exemption.
10. Let Women Speak is its own organisation and is international – see www.letwomenspeak.org. Dr Jeffrey’s is wrong to say that lesbian feminists led the rally (see paragraph 43 of her report) – we did not. This was organised by Let Women Speak, who do not have any connection to the Lesbian Action Group. Let Women Speak is a movement open to any person (heterosexual or homosexual, female or male) that want to stand up for sex based rights of women.
11. It was traumatising that the event was taken over by extremist groups. I saw a young lesbian physically harmed and hospitalised. Our beliefs – and our fight for sex based rights for lesbians – shouldn’t be the subject of the fringe, and the subject of protests and violence inflicted by the trans community anytime we say things in public.
12. The Lesbian Action Group wants a say in the mainstream and wants the mainstream to consider our arguments. The hatred and violence directed towards us needs to stop.

General Recommendation No 28 of the CEDAW Committee

13. At paragraph 17 of General Recommendation 28, the CEDAW Committee says:


States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate. States parties should ensure that all Government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programmes are set up and carried out in this respect.

14. A copy of General Recommendation No 28 is attached and marked **CA-10**.

15. The documents the AHRC has filed in the court, and the evidence it has chosen to lead, makes it clear to me that they want the hatred and violence directed at lesbian feminists to continue.

16. We ask the Tribunal protect us from the AHRC, consistent with what the CEDAW Committee has said.

Dated: 28 August 2024

Signed by:

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CAROLE ANN

But the gay men who were into drag considered that masculinity was the sex role in need of challenge, and that by their imitations of traditional women's clothing they were helping to destroy masculinity. They were doing what might now be called 'gender as performance' (Butler 1990) in a very direct and politically motivated way. What was absent from gay liberation was any 'performance' of masculinity by men or women as a good thing. Masculinity was generally understood to be problematic. This was to change in the late 1970s and early 1980s when gay masculinity in the form of sadomasochism and other manifestations, such as the group Village People, became fashionable once again.

The US lesbian Del Martin, when bidding farewell to gay liberation in favour of women's liberation, described herself as 'pregnant with rage' as she bitterly decried a 'brotherhood' whose preoccupation with bars, camp, pornography, drag and role playing had resulted in homosexuals becoming the 'laughing stock' of the public' (quoted in Heller 1997: 7). Two male stalwarts of UK GLF wrote a pamphlet in support of the women's walk-out and addressing a male gay liberation. They accused gay liberation of having degenerated into simply a gay activism in which 'gay males seek their full share of male privilege' by striving for social equality with heterosexual males whilst male supremacy remains in place. They seem to have a very good understanding of the women's concerns.

In their eyes a gay male is simply a man who likes sex with men, and where they're at in their heads is very visible from a look at their literature, full of bulging cocks, motorbikes and muscles, exactly the symbols of male supremacy and the oppression of women, supporting the gender-role system that is the basis of their own oppression. (David Fernbach and Aubrey Walters, quoted in Power 1995: 24)

Considering the cult of masculinity that was to burgeon within male gay culture through leather clubs and sadomasochism over the next thirty years, their argument seems prescient.

Lesbian feminism

The Women's Liberation Movement which got underway in the UK and the USA in the late Sixties was full of lesbians (see Abbott and

Love 1972). But these lesbians were not immediately able to place their concerns on the movement agenda. Betty Friedan famously referred to lesbian politics in the National Organization of Women in the USA as the 'lavender herring' (Abbott and Love 1972). Lesbian feminism emerged as a result of two developments: lesbians within the WLM began to create a new, distinctively feminist lesbian politics, and lesbians in the GLF left to join up with their sisters. Since the 1950s in the UK and the USA there had been lesbian organizations which were determinedly separate from organizations of men, which identified their own goals separately from the domination of male interests and criticized the sexism of male gay groups (see D'Emilio 1998). Some of these earlier organizers, such as Phyllis Martin and Del Lyon of Daughters of Bilitis in the USA, became influential activists and theorists within the new movement.

Lesbian feminism starts from the understanding that the interests of lesbians and gay men are in many respects very different, because lesbians are members of the political class of women. Lesbian liberation thus requires the destruction of men's power over women. It is not possible here to describe the politics and practice of lesbian feminism in any detail. I cannot do justice to all the groups, activities and ideas. It is important, however, to describe those principles which inspired lesbian feminism from the beginning, and which distinguish it from subsequent forms of politics that lesbians have adopted, particularly in queer politics. The principles of lesbian feminism, which distinguish it quite clearly from the queer politics of today, are woman-loving; separatist organization, community and ideas; the idea that lesbianism is about choice and resistance; the idea that the personal is political; a rejection of hierarchy in the form of role-playing and sadomasochism; a critique of the sexuality of male supremacy which eroticizes inequality.

Woman-loving

The basis of lesbian feminism, as of the radical feminism of this period, was woman-loving. Lesbian feminists understood woman-loving to be fundamental to feminism. As Charlotte Bunch expressed it in 1972: 'We say that a lesbian is a woman whose sense of self and energies, including sexual energies, center around women - she is

woman-identified. The woman-identified woman commits herself to other women for political, emotional, physical, and economic support. Women are important to her. She is important to herself' (Bunch 2000: 332). As feminist philosophers have pointed out, male supremacist philosophy and culture are hostile to women's love and friendship towards other women. Janice Raymond explains, 'In a woman-hating society, female friendship has been tabooed to the extent that there are women who hate their original Selves' (Raymond 1986: 6). The creation of woman-loving was a task necessary for the very survival of feminism. If women did not love themselves and each other, then they had no basis on which to identify and reject atrocities against women. For a feminist movement solidarity of the oppressed was a necessary basis for organizing. But woman-loving was always seen as constituting more than a woman's version of comradeship.

Raymond invented the term 'Gyn/affection' to describe the woman-loving that is the foundation of feminism. Gyn/affection 'connotes the passion that women feel for women, that is, the experience of profound attraction for the original vital Self and the movement toward other vital women' (p. 7). Feminist politics needed to be 'based on friendship . . . Thus, the basic meaning of Gyn/affection is that women affect, move, stir, and arouse each other to full power' (p. 9). For many feminists the obvious conclusion of woman-loving was lesbianism (Radicalesbians 1999). Raymond explains that though her concept of Gyn/affection is not limited to lesbianism, she does not understand why any woman-loving women would stop short of lesbianism.

If Gyn/affection embraces the totality of a woman's existence with and for her Self and other women, if Gyn/affection means putting one's vital Self and other women first, and if Gyn/affection is movement toward other women, then many women would expect that women who are Gyn/affectionate and Gyn/affective would be Lesbians. . . . I do not understand why Gyn/affection does not translate into Lesbian love for many women. (Raymond 1986: 14).

The bonding of women that is woman-loving, or Gyn/affection, is very different from male bonding. Male bonding has been the glue of male dominance. It has been based upon recognition of the difference men see between themselves and women, and is a form of the behaviour, masculinity, that creates and maintains male power.

Mary Daly characterized bonding between woman-loving women as 'biophilic (lifeloving) bonding', to distinguish it from other forms of bonding in the male dominant 'sadosociety'. She emphasized the difference: 'bonding, as it applies to Hags/Harpies/Furies/Crones is as thoroughly Other from "male bonding" as Hags are the Other in relation to patriarchy. Male comradeship/bonding depends upon energy drained from women' (Daly 1979: 319). Marilyn Frye, the US lesbian philosopher, in her essay on the differences between gay male and lesbian politics sees male homosexuality as the apogee of the masculine bonding that forms the cement of male supremacy. The bonding of lesbian feminists, however, is heretical: 'If man-loving is the rule of phallographic culture, as I think it is, and if, therefore, male homoeroticism is compulsory, then gay men should be numbered among the faithful, or the loyal and law-abiding citizens, and lesbian feminists are sinners and criminals, or, if perceived politically, insurgents and traitors.' (Frye 1983: 135-6).

Woman-loving does not survive well in male-dominated queer politics. In a mixed movement the resources, influence and just sheer numbers of men give them the power to create cultural norms. As a result, some lesbians became so disenchanted with their lesbianism, and even their femaleness, that there are presently hundreds, if not thousands, of lesbians in the UK and the USA who have 'transitioned' - i.e. adopted the identity not just of males but of gay males with the help of testosterone and mutilating operations (Devor 1999).

Lesbianism as choice and resistance

The lesbian of lesbian feminism is a different creature from the female homosexual or female invert of sexology or earlier assimilationist movements. She is very different, too, from the gay man of gay liberation. Whilst gay liberation recognized that sexual orientation was socially constructed, there was no suggestion that gayness might be subject to voluntary choice, and might be chosen as a form of resistance to the oppressive political system. The lesbian feminist sees her lesbianism as something that can be chosen, and as political resistance in action (Clarke 1999). Whereas gay liberation men may say 'I am proud', lesbian feminists have gone so far as to say 'I choose'. Raymond expresses it thus: 'women are not born Lesbians. Women

become Lesbians out of choice' (Raymond 1986: 14). This does not mean that all those who chose to identify as lesbian feminists consciously chose their lesbianism. Many had been lesbians before lesbian feminism was first thought of. But they still adopted an understanding of their lesbianism as what Cheryl Clarke, in *This Bridge Called my Back*, the historic anthology by US 'women of colour', has called 'An Act of Resistance'. Clarke explains, 'No matter how a woman lives out her lesbianism... she has rebelled against becoming the slave master's concubine, viz. the male-dependent female, the female heterosexual. This rebellion is dangerous business in patriarchy' (Clarke 1999: 565).

Genital connection was not always seen as the foundation of a lesbian identity. Lillian Faderman, the US lesbian historian, explains that lesbian feminists of the 1970s resembled the 'romantic friends' of the nineteenth century whom she writes about, who emphasized love and companionship, and would not necessarily include genital connection in their relationships (Faderman 1984). Lesbian feminist identity regularly included such ingredients as putting women foremost in one's life and affections, and not being sexually involved with men. Though genital connection might not, for some, have formed the basis of their identity, an enthusiasm for passionate sexual relationships certainly marked the lesbian feminism of the period. Sex was not absent, but it did not have the significance that it has for 'queer' lesbians who excoriate lesbian feminists for being 'anti-sex'. Mary Daly, the US lesbian feminist philosopher whose writings provided an inspiration for the movement of the 1970s and 1980s and continue to do so, expresses the role of sex in relationships thus: 'For female-identified erotic love is not dichotomized from radical female friendship, but rather is one important expression/manifestation of friendship' (Daly 1979: 373).

Separatism

Lesbian feminism is distinguished from other varieties of lesbian politics by its emphasis on the need for some degree of separation from the politics, institutions and culture of men. Such separation is necessary because lesbian feminism, like its foremother, radical feminism, is based on the understanding that women live, as Mary Daly describes it, in the 'state of atrocity' (Daly 1979). The state of

atrocity is the condition in which women have, for centuries, in different parts of the world, survived terrible violence and torture. These eras include witch-burning, for instance, the epidemic of domestic violence that is now destroying women's lives in both the rich and the poor worlds, and the sex industry and its current variant of a massive, vicious international industry of sex trafficking. As Daly puts it:

Patriarchy is itself the prevailing religion of the entire planet, and its essential message is necrophilia. All of the so-called religions legitimating patriarchy are mere sects subsumed under its vast umbrella/canopy. All – from buddhism and hinduism to islam, judaism, christianity, to secular derivatives such as freudianism, jungianism, marxism, and maoism – are infrastructures of the edifice of patriarchy. (Daly 1979: 39).

This condition in which women live is created out of, and defended by, a system of ideas represented by the world's religions, by psychoanalysis, by pornography, by sexology, by science and medicine and the social sciences. All these systems of thought are founded upon what Monique Wittig calls 'the straight mind' – i.e. framed by heterosexuality and its dynamics of dominance and submission (Wittig 1992). This 'straight mind' in the eyes of radical lesbian feminists is all-pervasive in the systems of thought of male supremacy.

The lesbian feminist critique of this whole system of male supremacist thought is far reaching in its vision and originality, its courage and creativity. When I speak of radical feminism and lesbian feminism in the same breath, that is because most often the leading thinkers of radical feminism have also been lesbians (Millett 1977; Daly 1979; Dworkin 1981), and lesbian feminism grew from a radical feminist foundation. The visionary thinking required to create the new world-view of lesbian feminism could not easily be developed from within a mixed gay liberation movement. In the mixed movement it was the traditional masculine ideas of Freudianism, for instance, that dominated discussion. The critical analysis and swingeing rejection of Freudianism as an anti-woman philosophy *par excellence*, formed a crucial building block in the creation of feminist theory. Freudianism was taken apart as early as 1946, by Viola Klein in *The Feminine Character*, and then, when feminism resurfaced in the late Sixties, was once again subjected to swingeing critiques in Kate

Millett's *Sexual Politics* and Eva Figes's *Patriarchal Attitudes* (Klein 1971; Millett 1977; Figes 1970).

The ideas of Foucault, also based upon the traditions of male supremacy, and thus on the erasure or degradation of women, became central to the gay men's movement in the late 1970s. Raymond shows how Foucault revered the Marquis de Sade, saying, 'A dead God and sodomy are the thresholds of the new metaphysical ellipse... Sade and Bataille' (quoted in Raymond 1986: 45). Sade's claim to fame, it has been pointed out by many feminist commentators (Dworkin 1981), was the brutalization of women in newly extreme ways.

The setting up of space to create the new world-view was one crucial reason for lesbian separatism. Lesbian separatism is the separation of lesbians from mixed gay organizing, and in some cases, in the USA in particular, from the women's liberation movement. Lesbians separated to form their own groups, bookstores, cafes and publishing companies. Most often the separate spaces that lesbians set up were for women in general, rather than specifically for lesbian women. It was the energy of lesbians that underpinned most separate women's spaces, including refuges from domestic violence.

There are two rather different ways in which lesbians separate. Some separate to create a lesbian culture, space and community in which they can live as separately as possible from the malestream world. That is the goal. This form of separatism can hold dangers for the feminism that such lesbians espouse. It can become a dissociation from the world, such that the context in which certain practices and ideas originated in male supremacy is forgotten, and anything done or thought by a lesbian can be supported. Janice Raymond explains:

Even radical and voluntary dissociation from the world, originally undertaken as a necessary and daring feminist political stance, can produce a worm's-eye view of the world that exposes women to attack. A major consequence of dissociation is that women can become ignorant of conditions in the "real" world, conditions that may militate against their very survival. (Raymond 1986: 153)

Thus sadomasochism created by lesbians, or butch/femme role-playing, can seem to be practices invented by lesbians instead of having emerged from male dominance. Raymond explains that 'Although

lesbian sadomasochism may arise in a context where women are dissociated politically from the wider world, at the same time it assimilates women very forcefully into a leftist and gay male world of sexuality' (p. 167).

Raymond recommends a different kind of separatism, in which the 'inside outsider' manages to live in the world men have made, whilst working to change it from a separate base in women's friendship and culture. 'The dissociation that I criticize is not that of women coming together separately to then affect the "real" world. Rather it is a dissociation that proclaims a withdrawal from that world' (p. 154). In this form of separatism, which revolutionary feminists in the UK in the 1970s called 'tactical separatism' rather than separatism as an end in itself, lesbian feminists are able to develop ideas and practices against a background of the reality of the lives of most women. They are aware of the state of emergency and work to end it; thus sadomasochism, for instance, must be evaluated as to its origins in male supremacist culture, what it means for the lives of women, and whether it is well suited to the collective survival of women. The basis of lesbian feminism has always been a separate lesbian feminist culture and institutions.

The personal is political

Lesbian feminists took from radical feminism the understanding that 'the personal is political' (Hanisch 1970). This phrase sums up the important revelation of the feminism of the late 1960s and the 1970s that equality in the public sphere with men was an insufficient, if not a nonsensical, aim. Some feminists simply said that women who wanted to be equal with men lacked ambition. Others analysed the limitations of the strategy in more detail, pointing out that it was the dynamics of personal heterosexual life which imprisoned women and limited their engagement in public life, and that the very notion of public life itself, including its forms and content, derived precisely from men's possession of a servicing 'angel in the house'. Bat-Ami Bar On explains that this principle of radical feminism emerged from the deprivatizing and politicizing of personal life that was begun by the New Left in the 1960s (Bar On 1994). Hierarchy had to be eliminated from personal life if the face of public

life was to change, and if the barriers between public and private were to be broken down.

Thus lesbian feminists, like many gay liberationists before them, rejected role-playing and any manifestation of inequality in lesbian relationships. They saw lesbians who engaged in role-playing as imitating the noxious patterns of heterosexuality and standing as obstacles in the path of lesbian liberation (Abbott and Love 1972). The lesbian feminist vision of the future did not consist of a public world of official equal opportunity based upon a private world in which inequality could be eroticized and milked for excitement. The public and private were to be all of a piece, and to be shaped to represent a new ethic.

Lesbian feminist theorists extended the understanding that the personal is political into a critique, not just of some oppressive aspects of heterosexuality, but of heterosexuality itself. They argued that heterosexuality is a political institution rather than the result of biology or individual preference. Adrienne Rich, for instance, says that heterosexuality needs to be analysed as a political system which is as influential as capitalism and the caste system (Rich 1993). In the caste system of heterosexuality women are constrained to the role of servicing men sexually and in other forms of labour. The labour is extracted through women's subordinate position in the 'family' and justified by romantic love or cultural expectations. The system is enforced by what Rich calls the 'erasure of lesbian existence', male violence, family pressures, economic constraints, the desire to 'fit in' and to avoid ostracism and discrimination. Lesbian feminist analysis of heterosexuality requires new language. Janice Raymond has supplied some words for analysing the way in which heterosexuality as a political institution works, such as 'heteroreality' and 'heterorelations' (Raymond 1986). I have suggested that the term 'heterosexual' be used to denote sexual practice which originates in male power and female subordination and eroticizes power differentials, and that the word 'homosexual' is more suited to desire which eroticizes sameness of power or equality (Jeffreys 1990b). Such language gives a new value to the term 'homosexual' as opposed to the favoured sexuality of male dominance which is 'heterosexual'. In the 1990s UK lesbian feminists edited volumes which took the discussion forward by encouraging both lesbian and heterosexual feminists to analyse heterosexuality and their rejection or embrace of the institution and practice (Wilkinson and Kitzinger 1993; Richardson 1996). Gay

male theorists have not engaged much with this issue. A deracinated version of the lesbian feminist critique has been carried into queer politics. But the queer version analyses heterosexuality as a problem for those who see themselves as 'queer' rather than an institution which oppresses women.

It was the lesbian feminist and radical feminist critique of sexuality and relationships, the idea that the personal is political and needs to change, that came to be challenged in the 1980s in what have since been called the 'feminist sexuality debates', or 'sex wars'. A new breed of lesbian pornographers and sadomasochists derided lesbian feminist understandings of 'the personal is political' and the importance of equality in sex and love as anti-sex (see my book *The Lesbian Heresy*, Jeffreys 1993).

Eroticizing equality

The creation of a sexuality of equality in opposition to the sexuality of male supremacy, which eroticizes men's dominance and women's subordination, is a vital principle of lesbian feminism. Radical feminists and radical lesbian feminists in the 1970s and 1980s argued that sexuality is both constructed through, and plays a fundamental role in maintaining, the oppression of women (Millett 1977; MacKinnon 1989). Sexuality is socially constructed for men out of their position of dominance, and for women out of their position of subordination. Thus it is the eroticized inequality of women which forms the excitement of sex under male supremacy (Jeffreys 1990a). As a result, radical feminist critics argue, the sexuality of men commonly takes the form of aggression, objectification, the cutting off of sex from emotion, and the centring of sex entirely around penile entry into the body of a woman. For women sexuality takes the form of pleasure in their subordinate position and the eroticizing of men's dominance. This system does not work efficiently. Thus, throughout the twentieth century, a whole army of sexologists and sex advice writers sought to encourage, train and blackmail women into having orgasms, or at least sexual enthusiasm, in penis-in-vagina sexual intercourse with men, preferably in the missionary position so that the man could remain 'on top'. The sexological enforcers have identified women's failure to obtain such pleasure as political resistance, or even a 'threat to civilisation' (Jeffreys 1997b).

The construction of sexuality around the eroticized subordination of women and dominance of men is problematic for other reasons too. This sexuality underpins male sexual violence in all its forms, and creates men's sexual prerogative of using women, who dissociate to survive, in the prostitution and pornography industries. Thus radical feminists and lesbian feminists have understood that sexuality must change. A sexuality of inequality, which makes women's oppression exciting, stands as a direct obstacle to any movement of women towards equality. It is hard to work for equality when realization of that goal would destroy the 'pleasure' of sex. Thus it is important to make equality exciting. Only a sexuality of equality is a goal consonant with women's freedom. In the 'sex wars' of the 1980s this feminist understanding of sex, as being shaped by male dominance and in need of reconstruction, became the object of fierce assault.

The lesbian 'sex wars' developed simultaneously with the feminist 'sex wars', which started as a backlash against the successes of the feminist campaign against pornography of the late 1970s and early 1980s. Some feminists and lesbians (Duggan and Hunter 1995; Vance 1984), mainly those from socialist feminist rather than radical feminist roots or those involved in mixed gender politics, campaigned in opposition to the anti-pornography politics developed by radical and lesbian feminists. At that time it looked as if radical feminist critiques of pornography and sexual violence were gaining some recognition in malestream society. It seemed that feminist understandings of pornography as violence against women, for instance, might lead to the introduction of legislation in some states in the USA in the form of the anti-pornography ordinance drawn up by Andrea Dworkin and Catharine MacKinnon (see Jeffreys 1990a; MacKinnon and Dworkin 1997). The UK group Women Against Violence Against Women was having some success in the early 1980s in getting the then Greater London Council to remove sexually violent advertisements from underground trains. There was a moment around 1980–1982 when it really did seem that feminist anti-pornography campaigns had some chance of being successful. In reaction, some women in the USA (Feminist Anti-Censorship Task Force, or FACT) and in the UK (Feminists Against Censorship, or FAC) began campaigning and writing in defence of pornography, either on a free speech basis or because they positively approved of pornography and wanted it to be more available to women.

The furore of the arguments that took place around the very important question of whether it was necessary to challenge pornography have been called by those who took the position of defending the rights of pornography makers and consumers 'the sexuality debates' or 'sex wars'. The wars or debates constituted a politically crucial watershed in the history of this wave of feminism. The 'debates' halted real progress towards creating a sexuality of equality, and set in train a backward march in which the sexual and gender practices that feminist theorists and activists had challenged as hostile to women's interests came to be promoted as 'freedom', or even 'transgressive', and politically revolutionary in themselves. The power difference between men and women was eroticized in sadomasochism, for instance, rather than dismantled.

The 'lesbian sex wars' focused on the issue of 'lesbian' pornography and 'lesbian' sadomasochism (SM). Kimberley O'Sullivan, who was on the pro-porn and pro-SM side, says that the 'sex wars' were entirely restricted to the lesbian community in Australia, and did not percolate out into mainstream feminism (O'Sullivan 1997). Lesbian feminists argued that when lesbians engaged in the practices of porn and SM, they imported the dominance/submission values of male supremacist sexuality into lesbian culture (Linden et al. 1982; Saxe 1994). These practices replicated the woman-hating of malestream culture even when the perpetrators and pornographers were lesbians. Lesbians, it was pointed out, are raised in male supremacist culture. Some are trained to be sexual in child sexual abuse and in prostitution/pornography. Whereas lesbian feminists choose explicitly to reject this training, some lesbians embrace and celebrate it. The sex wars were fuelled by what I have called a 'lesbian sexual revolution' (Jeffreys 1993). A sex industry was created by and for lesbians, selling lesbian pornography, sex toys and dildos, in the early 1980s. The sexual values of this industry came from prostitution and men's pornography, and so did many of its personnel. The lesbian who started the main porn magazine for lesbians in the USA, *On Our Backs*, for instance, was a stripper (O'Sullivan 1997). It was fuelled also by the fact that some lesbians who took pleasure in pornography and sadomasochism were determined to protect this pleasure from lesbian feminist criticism. Lesbians who criticized the sexuality of dominance and submission did not conceal the fact that their sexual responses, too, were affected by the culture of the sado-society, but they sought to change this (Jeffreys 1990b). Those who defended the

sexuality of inequality did not want to change. Protecting this sexuality required the reprivatization of sexuality. In order to make sexual response and practice off limits for political analysis, they had to be separated out from the political, and made private once again.

Gayle Rubin, the US lesbian sadomasochist, provided an important theoretical foundation for the reprivatization of sex. She engaged in a bold and remarkably successful ploy to insulate sexual practice from feminist discussion. In a 1984 piece entitled 'Thinking sex' she argues that sexuality and gender need to be separated theoretically (Rubin 1984). Thus 'gender' is that which may properly be analysed through a feminist lens, whilst 'sexuality' is not suited to feminist analysis and should be seen as a separate form of oppression, to be analysed by sexual libertarians and sadomasochists like herself. Her ploy conveniently removes sadomasochism and other practices of hierarchical sex such as child sexual abuse from feminist critique, and has made her essay extremely celebrated within the new queer studies. It is constantly reproduced, even in feminist anthologies, despite the fact that it can be seen as an attempt to limit feminist analysis and shut out troublesome women from looking at mainly male gay practices.

Her tactical strike has been seen as problematic by the doyenne of queer theory herself, Judith Butler, who points out that Rubin's 'liberation' of sexuality from feminism 'dovetails with mainstream conservatism and with male dominance in its many and various forms' (Butler 1994: 20). Lesbian feminists have noted the centrality of her work to the reprivatizing of sex. The feminist philosopher Bat-Ami Bar On describes Rubin as having engaged in a 'flight from feminism', and says that she 'contributes to the construction of a feminism for which the personal is not political' (Bar On 1994: 60). Rubin's work provided the theoretical foundation for the considerable opposition that developed to lesbian feminist understandings of the need to analyse politically and transform sexuality that developed in the 1980s, the 'lesbian sex wars'. The sex industry provided the commercial motive.

All the principles of lesbian feminism came under attack in the 1980s and 1990s. Separate lesbian organizing, culture and existence were attacked as some lesbians in the 1990s developed a newly close relationship with gay men in queer politics. Woman-loving was regarded with suspicion as masculinity became the highest value in a mixed queer culture. Sexuality was the crucial point of difference in the lesbian sex wars. It is also, I will argue in this volume, the most

important point of difference between lesbian feminism and queer politics. Though much could be written about the queer agenda in other respects, it is the queer agenda for sexuality that will be examined here in detail. Those lesbians who sought to depoliticize sexuality, to oppose feminist criticism of eroticized dominance and submission in sadomasochism, in the dynamics of pornography and prostitution, identified with the new queer politics. For them, attacking lesbian feminism as boring and unsexy was something of a rite of passage into the new politics (Walters 1996).



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
16 December 2010

Original: English

Committee on the Elimination of Discrimination against Women

General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women

I. Introduction

1. Through this general recommendation, the Committee on the Elimination of Discrimination against Women (“the Committee”) aims to clarify the scope and meaning of article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), which provides ways for States parties to implement domestically the substantive provisions of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to all branches of Government, civil society, including the media, academia and human rights and women’s organizations and institutions.² The Convention is a dynamic instrument that accommodates the development of international law. Since its first session in 1982, the Committee on the Elimination of Discrimination against Women and other actors at the national and international levels have contributed to the clarification and understanding of the substantive content of the Convention’s articles, the specific nature of discrimination against women and the various instruments required for combating such discrimination.

3. The Convention is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender. The Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities contain explicit provisions guaranteeing women equality with men in the enjoyment of the rights they enshrine, while other international human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, are implicitly grounded in the concept of non-discrimination on the basis of sex and gender. The International Labour Organization (ILO) Conventions No. 100 (1951) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation and No. 156 (1981) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, the Convention against Discrimination in Education, the Declaration on

the Elimination of Discrimination against Women, the Vienna Declaration and Programme of Action, the Cairo Programme of Action and the Beijing Declaration and Platform for Action also contribute to an international legal regime of equality for women with men and non-discrimination. Likewise, the obligations of States entered into under regional human rights systems are complementary to the universal human rights framework.

4. The objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex. It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men.

5. Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community. The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1. This definition points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination, even where discrimination was not intended. This would mean that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face. The views of the Committee on this matter are evidenced by its consideration of reports, its general recommendations, decisions, suggestions and statements, its consideration of individual communications and its conduct of inquiries under the Optional Protocol.

6. Article 2 is crucial to the full implementation of the Convention, since it identifies the nature of the general legal obligations of States parties. The obligations enshrined in article 2 are inextricably linked with all other substantive provisions of the Convention, as States parties have the obligation to ensure that all the rights enshrined in the Convention are fully respected at the national level.

7. Article 2 of the Convention should be read in conjunction with articles 3, 4, 5 and 24 and in the light of the definition of discrimination contained in article 1. In addition, the scope of the general obligations contained in article 2 should also be construed in the light of the general recommendations, concluding observations, views and other statements issued by the Committee, including the reports on the inquiry procedures and the decisions of individual cases. The spirit of the Convention covers other rights that are not explicitly mentioned in the Convention, but that have an impact on the achievement of equality of women with men, which impact represents a form of discrimination against women.

II. Nature and scope of obligations of States parties

8. Article 2 calls on States parties to condemn discrimination against women in “all its forms”, while article 3 refers to appropriate measures that States parties are expected to take in “all fields” to ensure the full development and advancement of women. Through these

provisions, the Convention anticipates the emergence of new forms of discrimination that had not been identified at the time of its drafting.

9. Under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality. The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures. This entails obligations of means or conduct and obligations of results. States parties should consider that they have to fulfil their legal obligations to all women through designing public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women leading to the full development of their potential on an equal basis with men.

10. States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors. Discrimination can occur through the failure of States to take necessary legislative measures to ensure the full realization of women's rights, the failure to adopt national policies aimed at achieving equality between women and men and the failure to enforce relevant laws. Likewise, States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.

11. The obligations of States parties do not cease in periods of armed conflict or in states of emergency resulting from political events or natural disasters. Such situations have a deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights. States parties should adopt strategies and take measures addressed to the particular needs of women in times of armed conflict and states of emergency.

12. Although subject to international law, States primarily exercise territorial jurisdiction. The obligations of States parties apply, however, without discrimination both to citizens and non-citizens, including refugees, asylum-seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory. States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory.

13. Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work

standards, and other areas in which private actors provide services or facilities, such as banking and housing.

III. General obligations contained in article 2

A. Introductory sentence of article 2

14. The introductory sentence of article 2 reads: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”.

15. The first obligation of States parties referred to in the chapeau of article 2 is the obligation to “condemn discrimination against women in all its forms”. States parties have an immediate and continuous obligation to condemn discrimination. They are obliged to proclaim to their population and the international community their total opposition to all forms of discrimination against women to all levels and branches of Government and their determination to bring about the elimination of discrimination against women. The term “discrimination in all its forms” clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging.

16. States parties are under an obligation to respect, protect and fulfil the right to non-discrimination of women and to ensure the development and advancement of women in order that they improve their position and implement their right of de jure and de facto or substantive equality with men. States parties shall ensure that there is neither direct nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.

17. States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate. States parties should ensure that all Government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programmes are set up and carried out in this respect.

18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.

19. Discrimination against women on the basis of sex and gender comprises, as stated in general recommendation No. 19 on violence against women, gender-based violence, namely, violence that is directed against a woman because she is a woman or violence that affects women disproportionately. It is a form of discrimination that seriously inhibits women's ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.

20. The obligation to fulfil encompasses the obligation of States parties to facilitate access to and provide for the full realization of women's rights. The human rights of women shall be fulfilled by the promotion of de facto or substantive equality through all appropriate means, including through concrete and effective policies and programmes aimed at improving the position of women and achieving such equality, including where appropriate, through the adoption of temporary special measures in accordance with article 4, paragraph 1, and general recommendation No. 25.

21. States parties in particular are obliged to promote the equal rights of girls since girls are part of the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence. All these situations of discrimination are aggravated when the victims are adolescents. Therefore, States shall pay attention to the specific needs of (adolescent) girls by providing education on sexual and reproductive health and carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.

22. Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention. The latter concept is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities.

23. States parties also agree to "pursue by all appropriate means" a policy of eliminating discrimination against women. This obligation to use means or a certain way of conduct gives a State party a great deal of flexibility for devising a policy that will be appropriate for its particular legal, political, economic, administrative and institutional framework and that can respond to the particular obstacles and resistance to the elimination of discrimination against women existing in that State party. Each State party must be able to justify the appropriateness of the particular means it has chosen and demonstrate whether it will achieve the intended effect and result. Ultimately, it is for the Committee to determine whether a State party has indeed adopted all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the Convention.

24. The main element of the introductory phrase of article 2 is the obligation of States parties to pursue a policy of eliminating discrimination against women. This requirement is an essential and critical component of a State party's general legal obligation to implement the Convention. This means that the State party must immediately assess the de jure and de facto situation of women and take concrete steps to formulate and implement a policy that

is targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women's substantive equality with men. The emphasis is on movement forward: from the evaluation of the situation to the formulation and initial adoption of a comprehensive range of measures, to building on those measures continuously in the light of their effectiveness and new or emerging issues, in order to achieve the Convention's goals. Such a policy must comprise constitutional and legislative guarantees, including an alignment with legal provisions at the domestic level and an amendment of conflicting legal provisions. It must also include other appropriate measures, such as comprehensive action plans and mechanisms for monitoring and implementing them, which provide a framework for the practical realization of the principle of formal and substantive equality of women and men.

25. The policy must be comprehensive in that it should apply to all fields of life, including those which are not explicitly mentioned in the text of the Convention. It must apply to both public and private economic spheres, as well as to the domestic sphere, and ensure that all branches of Government (executive, legislative and judicial branches) and all levels of Government assume their respective responsibilities for implementation. It should incorporate the entire range of measures that are appropriate and necessary in the particular circumstances of the State party.

26. The policy must identify women within the jurisdiction of the State party (including non-citizen, migrant, refugee, asylum-seeking and stateless women) as the rights-bearers, with particular emphasis on the groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination.

27. The policy must ensure that women, as individuals and groups, have access to information about their rights under the Convention and are able to effectively promote and claim those rights. The State party should also ensure that women are able to participate actively in the development, implementation and monitoring of the policy. To this end, resources must be devoted to ensuring that human rights and women's non-governmental organizations are well-informed, adequately consulted and generally able to play an active role in the initial and subsequent development of the policy.

28. The policy must be action- and results-oriented in the sense that it should establish indicators, benchmarks and timelines, ensure adequate resourcing for all relevant actors and otherwise enable those actors to play their part in achieving the agreed benchmarks and goals. To this end, the policy must be linked to mainstream governmental budgetary processes in order to ensure that all aspects of the policy are adequately funded. It should provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate. Furthermore, the policy must ensure that there are strong and focused bodies (national women's machinery) within the executive branch of the Government that will take initiatives, coordinate and oversee the preparation and implementation of legislation, policies and programmes necessary to fulfil the obligations of the State party under the Convention. These institutions should be empowered to provide advice and analysis directly to the highest levels of Government. The policy should also ensure that independent monitoring institutions, such as national human rights institutes or independent women's commissions, are established or that existing national institutes receive a mandate to promote and protect the rights guaranteed under the Convention. The policy must engage the private sector, including business enterprises, the media, organizations, community groups and individuals, and enlist their involvement in adopting measures that will fulfil the goals of the Convention in the private economic sphere.

29. The words "without delay" make it clear that the obligation of States parties to pursue their policy, by all appropriate means, is of an immediate nature. This language is

unqualified, and does not allow for any delayed or purposely chosen incremental implementation of the obligations that States assume upon ratification of or accession to the Convention. It follows that a delay cannot be justified on any grounds, including political, social, cultural, religious, economic, resource or other considerations or constraints within the State. Where a State party is facing resource constraints or needs technical or other expertise to facilitate the implementation of its obligations under the Convention, it may be incumbent upon it to seek international cooperation in order to overcome these difficulties.

B. Subparagraphs (a)–(g)

30. Article 2 expresses the obligation of States parties to implement the Convention in a general way. Its substantive requirements provide the framework for the implementation of the specific obligations identified in article 2, subparagraphs (a)–(g), and all other substantive articles of the Convention.

31. Subparagraphs (a), (f) and (g) establish the obligation of States parties to provide legal protection and to abolish or amend discriminatory laws and regulations as part of the policy of eliminating discrimination against women. States parties must ensure that, through constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status. They must also enact legislation that prohibits discrimination in all fields of women's lives under the Convention and throughout their lifespan. States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Certain groups of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices. By ratifying the Convention or acceding to it, States parties undertake to incorporate the Convention into their domestic legal systems or to give it otherwise appropriate legal effect within their domestic legal orders in order to secure the enforceability of its provisions at the national level. The question of direct applicability of the provisions of the Convention at the national level is a question of constitutional law and depends on the status of treaties within the domestic legal order. The Committee takes the view, however, that the rights to non-discrimination and equality in all fields of women's lives throughout their lifespan, as enshrined in the Convention, may receive enhanced protection in those States where the Convention is automatically or through specific incorporation part of the domestic legal order. The Committee urges those States parties in which the Convention does not form part of the domestic legal order to consider incorporation of the Convention to render it part of domestic law, for example through a general law on equality, in order to facilitate the full realization of Convention rights as required by article 2.

32. Subparagraph (b) contains the obligation of States parties to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention. This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.

33. According to subparagraph (c), States parties must ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention. However, where it is not possible to do so, courts should draw any inconsistency between national law, including national religious and customary laws, and the State party's obligations under the Convention to the attention of the appropriate authorities, since domestic laws may never be used as justification for failures by States parties to carry out their international obligations.

34. States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate. Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions. States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination.

35. Subparagraph (d) establishes an obligation of States parties to abstain from engaging in any act or practice of direct or indirect discrimination against women. States parties must ensure that State institutions, agents, laws and policies do not directly or explicitly discriminate against women. They must also ensure that any laws, policies or actions that have the effect or result of generating discrimination are abolished.

36. Subparagraph (e) establishes an obligation of States parties to eliminate discrimination by any public or private actor. The types of measures that might be considered appropriate in this respect are not limited to constitutional or legislative measures. States parties should also adopt measures that ensure the practical realization of the elimination of discrimination against women and women's equality with men. This includes measures that: ensure that women are able to make complaints about violations of their rights under the Convention and have access to effective remedies; enable women to be actively involved in the formulation and implementation of measures; ensure Government accountability domestically; promote education and support for the goals of the Convention throughout the education system and in the community; encourage the work of human rights and women's non-governmental organizations; establish the necessary national human rights institutions or other machineries; and provide adequate administrative and financial support to ensure that the measures adopted make a real difference in women's lives in practice. The obligations incumbent upon States parties that require them to establish legal protection of the rights of women on an equal basis with men, ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination and take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise also extend to acts of national corporations operating extraterritorially.

IV. Recommendations to States parties

A. Implementation

37. In order to satisfy the requirement of “appropriateness”, the means adopted by States parties must address all aspects of their general obligations under the Convention to respect, protect, promote and fulfil women’s right to non-discrimination and to the enjoyment of equality with men. Thus the terms “appropriate means” and “appropriate measures” used in article 2 and other articles of the Convention comprise measures ensuring that a State party:

- (a) Abstains from performing, sponsoring or condoning any practice, policy or measure that violates the Convention (respect);
- (b) Takes steps to prevent, prohibit and punish violations of the Convention by third parties, including in the home and in the community, and to provide reparation to the victims of such violations (protect);
- (c) Fosters wide knowledge about and support for its obligations under the Convention (promote);
- (d) Adopts temporary special measures that achieve sex non-discrimination and gender equality in practice (fulfil).

38. States parties should also adopt other appropriate measures of implementation such as:

- (a) Promoting equality of women through the formulation and implementation of national plans of action and other relevant policies and programmes in line with the Beijing Declaration and Platform for Action, and allocating adequate human and financial resources;
- (b) Establishing codes of conduct for public officials to ensure respect for the principles of equality and non-discrimination;
- (c) Ensuring that reports of court decisions applying the provisions of the Convention on the equality and non-discrimination principles are widely distributed;
- (d) Undertaking specific education and training programmes about the principles and provisions of the Convention directed to all Government agencies, public officials and, in particular, the legal profession and the judiciary;
- (e) Enlisting all media in public education programmes about the equality of women and men, and ensuring in particular that women are aware of their right to equality without discrimination, of the measures taken by the State party to implement the Convention, and of the concluding observations by the Committee on the reports of the State party;
- (f) Developing and establishing valid indicators of the status of and progress in the realization of human rights of women, and establishing and maintaining databases disaggregated by sex and related to the specific provisions of the Convention.

B. Accountability

39. The accountability of the States parties to implement their obligations under article 2 is engaged through the acts or omissions of acts of all branches of Government. The decentralization of power, through devolution and delegation of Government powers in both unitary and federal States, does not in any way negate or reduce the direct

responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities have the necessary financial, human and other resources to effectively and fully implement the obligations of the State party under the Convention. The Governments of States parties must retain powers to require such full compliance with the Convention and must establish permanent coordination and monitoring mechanisms to ensure that the Convention is respected and applied to all women within their jurisdiction without discrimination. Furthermore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination with regard to the enjoyment of rights by women in different regions.

40. Effective implementation of the Convention requires that a State party be accountable to its citizens and other members of its community at both the national and international levels. In order for this accountability function to work effectively, appropriate mechanisms and institutions must be put in place.

C. Reservations

41. The Committee considers article 2 to be the very essence of the obligations of States parties under the Convention. The Committee therefore considers reservations to article 2 or to subparagraphs of article 2 to be, in principle, incompatible with the object and purpose of the Convention and thus impermissible under article 28, paragraph 2. States parties that have entered reservations to article 2 or to subparagraphs of article 2 should explain the practical effect of those reservations on the implementation of the Convention and should indicate the steps taken to keep the reservations under review, with the goal of withdrawing them as soon as possible.

42. The fact that a State party has entered a reservation to article 2 or to subparagraphs of article 2 does not remove the need for that State party to comply with its other obligations under international law, including its obligations under other human rights treaties that the State party has ratified or to which it has acceded and under customary international human rights law relating to the elimination of discrimination against women. Where there is a discrepancy between reservations to provisions of the Convention and similar obligations under other international human rights treaties ratified by a State party or to which it has acceded, it should review its reservations to the Convention with a view to withdrawing them.
