

Rural Women's Access to Land and Property in Selected Countries
Analysis based on initial and periodic reports to the Committee on the
Elimination of Discrimination against Women (1997-2003)
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Summary

The Convention on the Elimination of All Forms of Discrimination against Women, ratified by 170 countries, is the only human rights treaty body that deals specifically with rural women. For the current study, a number of countries classified as low-income food-deficit (LIFDC) and others not classified as such have been selected, based on their recent presentation (1997-2003) of a report to the Committee on the Elimination of Discrimination against Women and, where appropriate, the land or agricultural reforms they have undertaken or launched:

The report analyzes how women's rights have been respected or not in those reforms and how their access to land and property, inheritance rights and legal capacity have been ensured. Statistics disaggregated by sex on rural population, rural labour force, and information on gender units or focal points in technical ministries have also been extracted.

The report provides a historic background to the Convention and its Optional Protocol and informs about efforts to implement the convention through enforcement and litigation. It also describes the working methods of the Committee on the Elimination of Discrimination against Women, in particular the reporting procedure and the concluding observations, as well as the contribution of United Nation organizations and non-governmental organizations.

A number of recommendations are made to encourage more efficient use of CEDAW reports by the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD) and the International Land Coalition in their respective activities for rural women.

Content

1. Introduction
2. The Convention on the Elimination of all Forms of Discrimination against Women
 - a. Historic background
 - b. Reservations
 - c. Optional Protocol to the Convention
 - d. Bringing the Convention home
5. Working methods of the Committee on the Elimination of Discrimination against Women
 - a. Reporting procedures under the Convention
 - b. The role of specialized agencies and bodies of the United Nations

- c. Involvement of non-governmental organizations
- d. Concluding observations of the Committee
- e. Challenges ahead
- 6. Analysis of CEDAW reports
 - a. Legislation on access to land, ownership and inheritance rights
 - b. Statistics on rural women
 - c. Institutional mechanisms for gender equality in rural areas
- 4. Recommendations
- Bibliography
- Annex

Table 1: List of selected States parties to the Convention on the Elimination of All Forms of Discrimination against Women

Table 2: Reference to rural women in concluding observations by the Committee on the Elimination of Discrimination Against Women

Table 3: Legislation pertaining to access to land, property, inheritance and legal capacity

Table 4: Statistics on rural population, agricultural labour force, women farmers and access to land

Table 5: Gender units, focal points in technical ministries and action plans

1. Introduction

Bringing human rights and development together has been a major concern of the United Nations over the past 50 years. The rights based approach to development has gained particular importance in the last years, although in reality the human rights and the development community often work in parallel but use different strategies. The need to address human rights and development is most obvious in gender mainstreaming, where the full enjoyment by women of their human rights and the removal of all forms of discrimination is the core issue and sine qua non. The gap between de jure and de facto equality is nowhere as blatant as with regard to women. The promotion of gender equality implies a social transformation in society for which human rights instruments are a formidable tool since they address and ideally eliminate the underlying inequalities and discrimination.

This study makes the link between development and women's rights by analysing the information provided in reports presented by countries that have ratified the Convention on the Elimination of All Forms of Discrimination against Women thus fulfilling their obligation to report on national compliance with the various articles of the Convention. Such information could be used efficiently by the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), as well as by the International Land Coalition in their respective activities for rural women. Vice-versa, these organizations could use the various processes involved in CEDAW for mutual benefit and for advancing the status of rural women and their full enjoyment of their human rights.

The selection of countries for this study was initially based on two criteria:

classification as low-income food-deficit (LIFDC)¹, and ratification of the Convention on the Elimination of All Forms of Discrimination against Women and presentation of an initial or periodic report to the Committee on the Elimination of Discrimination against Women (CEDAW) in the last six years (1997-2003). A number of countries not classified as LIFDC have been added to the study, based on their presentation (1997-2003) of a report to the Committee on the Elimination of Discrimination against Women and recent land or agricultural reforms undertaken or launched². The reason for applying these two criteria being that States parties to the Convention classified as LIFDCs and countries undertaking land or agricultural reforms would report on the status of rural women (Article 14) as well as women's access to land, property and inheritance rights (Article 15 and 16) and thus on issues of critical importance to alleviating poverty and food deficiency among women. Reports submitted before 1997 could not be included because of a concern for timeliness of information, although initial reports presented before this deadline might include basic information that has not changed in the meantime.

Although the Convention has been ratified by a record number of 170 member states of the United Nations as of June 2002, many have not fulfilled their reporting requirements and did not yet present their initial report. For this reason many countries classified as LIFDCs could not be included in the selection³. Several countries have presented their initial report to the Committee before 1996 and failed to submit the required periodic up-dates⁴. One country has introduced its combined second and third report in 1995 but has not yet presented it for consideration by the Committee⁵. Several other countries have signed but not yet ratified the Convention, and therefore have no reporting obligations⁶. One country presented an oral report on an exceptional basis in 1994⁷. The remaining countries have not signed or ratified the Convention⁸. (Annex, see Table 1)

For the purpose of this comparative analysis, the following issues have been evaluated:

- * Legislation: Equal access to, or ownership of land and other property, inheritance and legal capacity (Articles 14, 15 and 16)
- * Statistics disaggregated by sex on rural population, indigenous population, agricultural and rural labour force, land distribution and ownership, women farmers (Article 10, 12, 14)
- * Information on gender units or focal points in technical ministries, gender mainstreaming and focus on rural women in national action plans for the advancement of women or development plans (Articles 2, 3, and 4).

2. The Convention and the Optional Protocol

a. Historic background

The international bill of rights for women, the Convention on the Elimination of All Forms of Discrimination against Women, was adopted in 1979 by the UN General Assembly. The Convention brings together several other Conventions and treaties that protected and promoted the rights of women in particularly vulnerable areas⁹.

In 1967, the Declaration on the Elimination of Discrimination against Women combined in a single instrument the international standards articulating equal rights of men and women, but it was felt that only a binding treaty would give normative force to its provisions. Coinciding with the preparation for the First Women's Conference in Mexico (1975), a single, comprehensive and internationally binding instrument to eliminate discrimination against women was elaborated. The Convention entered into force on 3 September 1981 once twenty Member States had ratified it, faster than any previous human rights convention before¹⁰.

It defines discrimination against women as follows:

"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)

Thus the Convention addresses discrimination against women, not discrimination on the basis of sex. It is an instrument that is not dealing with equality per se, but with the removal of any direct or indirect discrimination women are confronted with. The distinction between direct and indirect discrimination is essential as it helps to reveal the hidden or supposedly neutral practices and policies that in reality discriminate against women and prevent them from enjoying fully their rights. The Convention not only addresses de jure enjoyment of equality, which today is guaranteed by many countries in the Constitution or in basic rights, but also de facto situations which reflect the extent to which women are enjoying these rights in their daily lives¹¹.

The Convention covers comprehensively civil and political, as well as economic, social and cultural rights. Similar provisions and rights to non-discrimination are also contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESCR). Another specific feature of the Convention is its imposing of explicit obligations on states parties in respect of discrimination by private parties, not just by state or public officials¹². This is all the more important as a lot of discrimination against women is occurring in private life.

Today, 170 countries - almost ninety percent of the members of the United Nations - are party to the Convention on the Elimination of All Forms of Discrimination against Women and an additional three have signed the treaty. The Fourth World Conference on Women created a momentum for many States to ratify the Convention. Ratifications increased by 34 per cent when 39 countries became a States party between January 1993 and 1996. It increased by another 10 per cent since then, following the call for universal ratification of the Convention by the year 2000 of the Beijing Platform for Action. Thus the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are the two treaties which count for the majority of the notable 26 per cent increase in ratifications for all treaty bodies since 1993¹³. This underscores the

importance given to the human rights machinery worldwide.

By ratifying the Convention, States make a commitment to end discrimination against women in all forms, including to incorporate the principle of equality of women and men in their legal system, to abolish all discriminatory laws and adopt laws that prohibit discrimination against women, to establish tribunals and other public institutions to ensure the effective protection of women against discrimination and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.

b. Reservations

Many countries have ratified the Convention with a reservation, which is possible "provided that the reservations are not incompatible with the object and purpose of the Convention"¹⁴. Reservations to individual provisions have often been removed once the inconsistent law or practice has been changed. A number of States have entered reservations to particular articles on the ground that national law, tradition, religion or culture are not congruent with Convention principles, and purport to justify the reservation on that basis. These reservations appear to limit the state's obligations in particular if the reservations address family relations including frequently women's legal capacity, property and inheritance rights. It should be noted that states have not entered reservations to the equality guarantees of other treaty bodies such as the ICCPR, ICESCR and the Convention on the Rights of the Child¹⁵.

The countries under review have made substantive reservations to paragraphs in Article 2, 9, 15 and 16 of the Convention on the grounds that they conflict with certain provisions of either the Islamic Shari'ah (Bangladesh, Egypt, Iraq, Maldives, Mauritania, Morocco), the Act on personal status (Jordan), the Family Code (Algeria) or the Personal Status Code (Tunisia). Reservations to Article 16 on marriage and family life have also been introduced on the grounds that the provisions of this article are contrary to existing customs and practices (Niger) or would only be applied in conformity with a policy of non-interference in the personal affairs of any community without consent (India). No reservation has been made to Article 14 on rural women.

The permissibility of reservations that undermine the commitment to the core human rights obligations towards women has been repeatedly addressed, but there is no procedure to determine incompatibility with the Convention. Only a few States parties have addressed this issue and expressed their objections to reservations entered. In 2001-2002, for instance, objections to reservations have been made by a small number of countries, some of which have done so repeatedly: Austria, Denmark, Finland, France, Germany, Norway and Spain¹⁶.

c. Optional Protocol to the Convention

For many years, women's non-governmental organizations (NGOs), activist and human rights lawyers have urged the establishment of a complaints procedure that would assist women in fighting discrimination at international level. In follow-up to

the Fourth World Conference on Women in 1995, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women was elaborated and adopted by the General Assembly 6 October 1999. It entered into force on 22 December 2000, following the ratification of the tenth States party to the Convention. By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or groups within its jurisdiction. As of January 2003, there were 75 signatories and 49 ratifications of the Optional Protocol¹⁷. The Optional Protocol contains a communications procedure allowing individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the Committee once all domestic remedies have been exhausted. The Protocol also creates an inquiry procedure that will enable the Committee to initiate inquiries into situations of grave or systematic violations of women's rights in any States party to the Convention and the Protocol¹⁸.

d. Bringing the Convention home

Legal action to bring the Convention home is one way to change national legislation and remove discrimination. In a number of cases, the Convention has been successfully invoked to persuade domestic courts to refer to international standards, in particular the Convention, when applying existing law¹⁹.

Tanzania: In *Ephrohim v Pastory*, a woman brought a court challenge to the Haya customary law that prevented her from selling clan land. Holaria Pastory had inherited land from her father, through his will, but when she tried to sell it her nephew applied to have the sale voided. Tanzania's Declaration of Customary Law prohibited her sale of the land in section 20 of its rules of inheritance, which states that "women can inherit, except for clan land, which they may receive in usufruct but may not sell." Pastory argued that this constraint on women's property rights violated the constitution's Bill of Rights. The court relied on the fact that the Government had ratified the Convention, as well as on the ICCPR and the African Charter on Human and Peoples' Rights, to find that women were constitutionally protected from discrimination and thus overruled customary law rules. The court stated that "the principles enunciated in the above named documents are a standard below which any civilised nation will be ashamed to fall."

Nepal: In *Dhungana v Nepal*, the Forum for Women, Law and Development asked the Supreme Court to overturn a law that gave sons a share of ancestral property at birth but denied daughters a share of their parents' property until they reached the age of 35 without having married, and required that it be returned to the family if a daughter subsequently married. Because the Convention has the status of national law in Nepal, the case was argued both as a violation of the Convention and as a violation of the constitution's equality guarantee. The Supreme Court found that the law did discriminate against women and directed the Nepalese Government to "introduce an appropriate Bill to parliament within one year."

India: In *Madhu Kishwar and Others v. State of Bihar and Other*, the customary law excluding tribal women from inheritance of land or property was challenged. The court recommended that the Central Government should withdraw the exemptions given under the Hindu Succession Act and the Indian Succession Act.

Although judges may not be willing to base their decisions on international treaties such as the Convention, they have the authority to do so, if their country has ratified the Convention. Some of the most interesting and significant decisions have been produced when a court decided to combine a vague or inadequate constitutional guarantee of women's equality with the principles of gender equality articulated in the Convention. Litigation has made history, when the Convention has been successfully relied on in a number of court cases to interpret constitutional guarantees of equality, including on access to land and inheritance rights²⁰.

To advance a case before a domestic court is a complex undertaking. Success depends on the popular support that has to be part of any litigation strategy and the approach adopted by the judiciary, their knowledge of and intention to draw on international jurisprudence. If not enough work has been done to inform and educate the Government and the general public, a court's decision might not be enforced or overturned by new legislation²¹.

3. Working methods of the Committee on the Elimination of Discrimination against Women

a. Reporting procedures under the Convention

To fulfill their reporting obligations within Article 18 of the Convention, States parties to the Convention have to submit to the UN Secretary-General an initial report on the legislative, judicial, administrative or other measures that they have adopted to implement the Convention within a year after its entry into force and a periodic up-date at least every four years thereafter, or whenever the Committee on the Elimination of Discrimination against Women (CEDAW) so requests. These reports are forwarded to the Committee, composed of 23 independent experts, for consideration. The reporting procedure is the most important activity of CEDAW and provides for international scrutiny of compliance with the Convention and implementation of its articles at national level. It also offers a valuable opportunity to policy makers, judiciary, parliamentarians and the NGO community at the national level to hold the Government accountable for its achievements and failures under the Convention.

Reports are to be prepared according to guidelines established by the Committee²². The initial report should be a detailed and comprehensive description of the position of women at the time of submission since it is meant to provide a benchmark against which subsequent progress can be measured. Second and subsequent national reports are intended to update the previous report, detailing significant developments that have occurred over the last four years, noting key trends, and identifying obstacles to the full achievement of the Convention. If the report of a States party does not contain sufficient information, the Committee may request the State concerned to furnish such additional information as required²³. A central feature of the report is the description of de jure and de facto equality, in line with the premises of the Convention. The inclusion of statistics disaggregated by sex and information on difficulties and remaining obstacles is required to provide a true

picture of de facto equality or indirect discrimination.

Many countries have fallen behind in their reporting. With the number of ratifications increasing, the number of overdue reports has increased accordingly. As of 31 August 2002, there were 263 overdue reports to CEDAW, of which 45 were initial reports, 61 were second periodic reports, 59 were third periodic reports, 48 were fourth periodic reports and 50 were fifth periodic reports. Reports submitted by 17 States parties had yet to be considered by the Committee²⁴. Lengthy delays in the preparation, submission and consideration of reports by CEDAW may significantly reduce the impact of international scrutiny of the compliance of States parties with the Convention. Equatorial Guinea, for instance, had introduced its combined second and third periodic report in 1995, but for internal reasons could not yet present it to the Committee. The Republic of Guinea ratified the Convention in 1982, but could submit a detailed, comprehensive initial report only 19 years later. It explained that it had been unable to submit a report earlier because of political change and the impact on the technical departments of frequent changes to ministerial portfolios. While on one side the number of overdue reports increases, the capacity of the Committee to consider reports is also stretched with the high number of 170 ratifications and periodic reports to be prepared by all States parties. At its 23rd session, the Committee decided, on an exceptional basis and as a temporary measure in order to address the backlog of reports awaiting consideration, to invite States parties with overdue reports to combine these outstanding reports in a single document²⁵. An exceptional session of CEDAW took place in 2002 to reduce backlog²⁶.

To improve reporting under the Convention, the UN Division for the Advancement of Women (DAW) has provided advice and assistance to States parties to the Convention on the substantive requirements of the Convention, as well as reporting obligations on request. In July 1999, DAW organized a subregional meeting which was attended, inter alia, by participants from countries who had not yet prepared their initial CEDAW report (Chad, the Central African Republic, Togo and Cote d'Ivoire). Another Subregional meeting for the Asia Pacific was held in December 2000 in Fuji, in collaboration with UNDP, UNIFEM, ESCAP and the Government of New Zealand. It was attended by countries from Oceania who had ratified the Convention in the 1990s and did not yet present their initial report (Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu). Training seminars have been offered also by the ILO Training Centre in Turin.

Since the judiciary plays a crucial role in the application of human rights norms, DAW convened a judicial colloquium on the application of international human rights law at the domestic level. Participants at this meeting called for all judges to engage in an on-going process of comprehensive, in depth and credible judicial education to integrate international human rights instruments into domestic law and decision-making.

States parties that fulfil their reporting requirements show an increased compliance

with reporting obligations under the Convention. More and more reports are prepared in line with the guidelines established by the Committee and include statistical data. Zambia, in preparation of its combined third and fourth periodic report, used not only instruction provided by the United Nations, but also reporting guidelines developed by an NGO, the International Women's Rights Action Watch (IWRAP). Governments have become more self-critical in their reports. Nicaragua, in the introduction to its 5th periodic report, "acknowledges the difficulties and limitations that have prevented the country from achieving more rapid fulfilment of the commitments it made as a States party to the Convention".

In recent years, reports have increased in volume and provide more information. The average size of a report is now 80 pages, a long way from the two-page report submitted by Mali in 1987. Opinions may differ as to the utility of States parties reports, in particular with regard to interpretations of articles of the Convention²⁸. Accuracy and timeliness of information provided may also be questionable, in particular if there is a long delay between preparation, submission and consideration of a report.

More than anything else, the preparation of a report provides a unique momentum in a country to galvanize efforts on women's human rights. Due to the comprehensiveness of the Convention, many ministries and state departments need to be involved in preparing such a report. The Ministry of Agriculture or rural development would need to contribute on the implementation of Article 14 on rural women. In Georgia, for instance, the report was prepared by a group of experts who based their draft on materials provided by State legislative and executive bodies and on information from non-governmental organizations and mass media publications. In Suriname, the first draft of the report was prepared by a non-governmental organization and not by the national machinery or the relevant ministry. In India, widespread consultations took place from 1993 to 1996 throughout the country to prepare the CEDAW report. Meetings were held with a number of women's organizations, NGOs and individual women and detailed discussions took place between various Ministries/Departments of the Government on different articles of the Convention who also provided written input. The report of the Philippines is the product of a consultative process between the government organizations and non governmental organizations, a process to which the National Commission on the Role of Filipino Women (NCRFW) adhered in the spirit of partnership and collaboration with non governmental organizations. In many countries, NGOs have also used the reporting procedure to draw attention to the implementation of the Convention and prepared "shadow reports"²⁹.

In the countries selected, the preparation of the CEDAW report was a lengthy process which in most cases involved various ministerial departments in Government and civil society. Several countries circulated the draft report widely among NGOs, as well as Government and private institutions and invited them to submit comments. They held workshop or conferences before the finalization of the report in an effort to give various Government representatives and NGOs an opportunity to come together and discuss (Jordan, Kazakhstan, Namibia, Tunisia,

Viet Nam, and Zimbabwe).

Whereas efforts to involve civil society in preparing the CEDAW report have clearly increased all over the world, the involvement of large segments of Government and civil society does not always produce the expected outcome. Namibia, for instance, noted that the level of interest shown both inside and outside government was low, pointing to the need for a more formalized monitoring process.

In some countries, the preparation of the report was supported by donors. The report of Jordan was finalized at a national workshop organized in conjunction with the United Nations Development Fund for Women (UNIFEM). In Zimbabwe, the United Nations Children's Fund (UNICEF) supported the initial stage of data collection, compilation and editing of the report, whereas the Danish Agency for Development Assistance (DANIDA) funded the final editing and production of copies for dissemination. The Commonwealth Secretariat provided technical assistance to South Africa for the preparation of the report, as well as for establishing a Gender Management System and developing gender policies at national and departmental level. The Canadian Caribbean Gender Equity Fund and UNIFEM granted financial and technical assistance to Suriname.

Some countries used the preparation of the report to plan for the future. In Jordan, workshops on the draft report agreed also on measures to be taken by public institutions, non-governmental organizations and the National Committee for Women in the coming years to ensure the effective implementation of the Convention in Jordan.

b. The role of specialized agencies and bodies of the United Nations

The Rules of procedure of the Committee on the Elimination of Discrimination against Women foresee the participation of specialized agencies and bodies of the United Nations and of intergovernmental and non-governmental organizations³⁰. The Committee may invite specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

In the 1990s, the Committee tried to re-activate and reinforce collaboration with the specialized agencies of the United Nations, in particular the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF) and the United Nations Fund for Population Activities (UNFPA), the International Labour Organization (ILO), the United Nations Development Fund for Women (UNIFEM), the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO)³¹. The Committee continued to request the specialized agencies to present reports that focus on the implementation of the Convention in areas falling within the scope of their activities. The Committee also welcomed the assistance and cooperation of specialized agencies in implementing its mandate under the Convention and the Beijing Platform for Action, and in the translation and wide dissemination of the Convention.

In follow-up to the Fourth World Conference on Women, the Committee identified the areas of concern that were compatible with the articles of the Convention, and decided on priorities to better coordinate and avoid overlap with the activities of United Nations specialized agencies, organs and programmes. Thus, poverty and structural adjustment programmes were to be dealt by the United Nations Development Programme (UNDP), UNIFEM, the World Bank, the International Fund for Agricultural Development (IFAD) and the International Monetary Fund (IMF), whereas rural women were to be coordinated with the Food and Agriculture Organization (FAO) and IFAD. The Committee also decided to designate one of its members to serve as focal point for particular United Nations entities. Efforts were to be made to explore cooperation in relation to field-level activities and to develop further ways of integrating the Convention into the work of the United Nations system³². Subsequently, the Committee agreed that representatives of the specialized agencies and bodies of the United Nations should be invited to address the Committee as a whole in a closed meeting on those States parties whose initial reports were before the Committee³³.

Reports by FAO, UNICEF, WHO and ILO are issued as pre-sessional CEDAW documents. FAO, in its written information, refers to activities, programmes and policy decisions undertaken to promote the implementation of Article 14 and related articles of the Convention. In some cases, information provided by the specialized agency may be more detailed than the information provided by the States party. In the case of Kenya, little statistical data was given in the report of the States party and FAO provided supplementary statistical information from its own sources on population and the labour force³⁴. It also informed about FAO emergency operations and food aid during the severe drought that began in 1999 and the decline in agricultural production (maize, coffee, tea and horticulture). None of these topics had been mentioned in the report submitted two years earlier by the Government of Kenya (February 2000). However, FAO did not present comments on all reports to be considered at the CEDAW session and its comments were limited to specific topics.

c. Involvement of non-governmental organizations

Over the years, the Committee has given greater attention to NGOs, who play no formal role in the reviewing of reports, but can provide additional information on national reports and act as agents for promoting the Convention. Since the World Conference on Human Rights (Vienna 1993) and the increased attention on violence against women as a human rights issue, more and more activists have focussed on human rights and received training in international law. Thus the non-governmental women's rights community has grown considerably in the 1990s. These NGOs know how to refer to women's rights and use international human rights instruments as a tool in their activities. In their "shadow reports", NGOs put pressure on States parties, and provide alternative information to CEDAW experts³⁵.

After the Fourth World Conference on Women, collaboration between the

Committee and NGOs intensified. The role of non-governmental organizations in publicizing the Convention and the work of the Committee was noted, in particular the contribution of International Women's Rights Action Watch, with its regular "IWRAP to CEDAW report", and the International Human Rights Law Group³⁶. In 1999, the Committee on the Elimination of Discrimination against Women decided that representatives of national and international non-governmental organizations should be invited to provide country-specific information in an informal meeting on States parties whose reports are before the Committee³⁷.

Many NGO networks are using the Convention for giving additional leverage to their activities and urging for legal reform. In particular, NGOs working on violence against women have always applied a rights-based approach. New alliances of NGOs are emerging in other fields. For example, a consortium of NGOs in the Southern African Development Community (SADC) has established a regional platform on women's land and water rights, using legal instruments³⁸.

d. Concluding observations of the Committee

Following the presentation of each States party report, the CEDAW Committee engages the country representatives in a constructive dialogue and later on formulates concluding comments or observations which outline factors and difficulties affecting the implementation of the Convention for the States party, positive aspects, principal subjects of concern and suggestions and recommendations to enhance implementation of the Convention³⁹. The Committee also makes suggestions which it addresses to bodies other than States parties. The concluding observations should assist the States party in implementing its obligations under the Convention and include guidance for the preparation of the next periodic report of the States party⁴⁰.

The practice of drafting concluding comments or observations is recent in CEDAW. Over the years, the concluding observations have undergone major changes and became more detailed and specific⁴¹. Whereas the summary of discussion had more prominence in the past, the concluding comments now address each article of the Convention and detail the specific action to be taken. CEDAW requests the wide dissemination of the concluding comments in order to make government administrators and policy-makers aware of steps taken to ensure de jure and de facto equality for women and future action required. It also requests the Government to disseminate widely the Convention and its Optional Protocol, in particular to women's and human rights organizations. In many countries, CEDAW concluding comments are commented on in the local press and disseminated by NGOs. The more controversy develops around the concluding comments, the better the coverage. Recently, States parties have used the concluding comments as a tool to plan ahead and strategize. Armenia, for instance, organized a two-day planning conference where it presented the concluding comments to gender experts, NGOs and the media.

At the outset of each concluding comment, the Committee addresses the essence of the Convention, and whether the principle of direct and indirect discrimination has not been understood and addressed. Specific reference is made to customary and

statutory law in rural areas (see Annex, Table 2). In the case of Kyrgyzstan, for instance, the Committee was concerned about the lack of understanding of discrimination against women as a multi-faceted phenomenon that entails indirect and unintentional as well as direct and intentional discrimination. As for Tanzania, the Committee noted that the prevailing customary laws and religious laws which sometimes supersede the constitution are discriminatory towards women. Practised and accepted more widely in rural areas, they often prevent women from inheriting and owning land and property. The Committee urged Zambia to strengthen law enforcement and to provide effective remedies through the courts for women who experience discrimination.

With regards to rural women, the Committee mostly addresses health and education of women and girls in rural areas. CEDAW is concerned about high illiteracy among girls and women, unequal access of girls and young women to all levels of education and girls dropping out of school. It encourages the States party to introduce further special measures in the area of education, including incentives for parents to send girls to school and to encourage the recruitment of more qualified women teachers⁴². With regards to health, the Committee is concerned about high rates of maternal and infant mortality, low life expectancy, the low rate of contraceptive use, teenage pregnancies, unsafe abortions and lack of adequate health-care facilities and family planning services, particularly in the rural areas as well as the decline in health services and urges the Government to take actions in these areas⁴³. CEDAW also addresses the lack of information on rural women, especially in the informal sector. The Committee asked Egypt to provide in its next periodic report a comprehensive picture of the situation of rural women, in particular with regard to education, health and employment. It requested Mongolia to collect data and information on women living in poverty, disaggregated by age. Nicaragua was asked to give priority attention to rural women and women heads of household, including in the allocation of budgetary resources.

Access to land and property rights, discrimination in inheritance, access to resources and credit are also often highlighted in the concluding observations. The Government of South Africa was invited to prepare a uniform family code in conformity with the Convention in which unequal inheritance rights, land rights and polygamy are addressed, with the aim of abolishing them. The Committee also noted the need for rural women's participation in land reform programmes. Access to land was also addressed in the case of Namibia. The Committee expressed concern about the fact that despite new laws, women, in particular those in the rural areas, were unable to own land. It was suggested that the Government should endeavour to bring about legal change with regard to land ownership by women, especially in rural areas. As for Vietnam, the Committee recommended that the States party review the existing legal provisions regarding the retirement age of women and men, to ensure that women are entitled to continue productive employment on an equal basis with men.

The full integration of women into rural development, the elimination of

marginalization of women in agriculture and poverty reduction was highlighted in the concluding observations. The Committee recommended that Kazakhstan, for example, set specific targets in poverty alleviation programmes for poor women and, in particular, female heads of household and older and rural women.

Among the specific topics addressed with regard to violation of the human rights of rural women are food taboos in Tanzania, suicide of rural women in China and violence against women in Kyrgyzstan, Egypt and Morocco. In its concluding observations on Peru, the Committee expressed concern about sexual violence against rural and indigenous women and the high rate of sexual abuse of teenagers and girls in emergency zones.

Discriminatory practices and disparities between statutory law and customary law have also been forcefully addressed by other treaty bodies such as the Committee on Economic, Social and Cultural Rights established under the International Covenant on Economic and Social Rights (ICESCR). It invoked discriminatory laws which prevent women from inheriting land in a number of cases, inter alia, in its concluding observations to Cameroon (1999), Sri Lanka (1998) and Morocco (2000)⁴⁴.

e. Challenges ahead

With 26 per cent of initial reports by States parties not submitted, the Committee and the UN system is challenged to encourage, facilitate or pressure Governments to fulfil their reporting requirements. The usefulness of the reporting procedure depends on the willingness and efforts made by States parties to actually report.

With the number of ratifications of all treaty bodies increasing, the reporting process and coordination between the different treaty bodies and complaints mechanisms has become difficult. As illustrated by the high number of countries not able to adhere to their reporting obligations, some changes need to be introduced. The reform agenda of the Secretary-General recognized that the existing treaty bodies and human rights mechanisms and procedures constituted a large and intricate network whose growing complexity and the corresponding burden of reporting obligations strained the resources of Member States and the Secretariat. It was suggested to improve the Organization's work in this area, to strengthen the capacity of the United Nations to help individual countries to build strong human rights and review the procedures of the treaty bodies in order to simplify reporting obligations⁴⁵.

Another challenge is the practical integration of a rights-based approach into all areas of work of the UN system, in particular into development assistance and emergency relief operations. The division between the human rights framework and its machinery and other activities is maintained. There is a need to incorporate a rights-based approach into the United Nations Development Assistance Framework (UNDAF), in particular into the Common Country Assessment (CCA) and the preparation of Poverty Reduction Strategy Papers. This is all the more relevant for the implementation of the Millennium Development Goals and for bringing human rights and development together.

4. Analysis of CEDAW reports

a. Legislation on access to land, ownership and inheritance rights

The Convention contains a number of provisions pertaining to access to land, property rights, inheritance and legal capacity. The discrepancy between de jure and de facto equality is most obvious in the area of law and family life. An analysis of Article 14 (rural women) and Article 15 of (equality before the law) and Article 16 (marriage and family relations) shows that inequalities persist and the gap between de jure and de facto equality remains an obstacle (see Annex, Table 3). In its General Recommendation No. 21, adopted at the occasion of the International Year of the Family in 1994, the CEDAW Committee provides a detailed exegesis of individual articles of the Convention that have particular relevance for the status of women in the family (Articles 9, 15 and 16)⁴⁶.

While women have civil and political rights and can enjoy them, equal rights in marriage and family matters are a different question. Algeria, for instance, highlights the existing dichotomy in the legal status of women, where on one side, the constitutional principle of the equality of the sexes is scrupulously respected when it comes to civil and political rights and women have the status of full citizens, but in their personal status, women's rights are governed by a Family Code, which is based in part on the Shari'ah law.

Most countries have included the principle of equality and non-discrimination in their Constitution or basic law. Many have also brought their civil code and family code in line with the Convention. This gender neutrality does not imply the removal of all discrimination, as women may still suffer from indirect discrimination even in countries where equality is enshrined in the basic law. For this reason, CEDAW insistence on de facto equality is all the more important and helps to reveal the ongoing discrimination. Facts and data are valuable tools to demonstrate how discrimination persists.

In countries governed by Shari'ah law, the principle of equality does not apply to personal law which includes family and inheritance law or the Family code (for instance Maldives). Other countries maintain a dual legal system such as Congo, where a form of modern law was superimposed on the customary law. The Constitution of Zambia recognizes a dual system whereby customary or traditional law is administered by local courts which in practice is often discriminatory against women and upholds customs usually on matters of inheritance, marriage or compensation for property that discriminate against women. Customary law prevails because it is unwritten, administered by a male-dominated local court system composed of untrained justices who come from a patriarchal background. In Kenya, the amended Constitution of 1997 includes provisions against discrimination based on sex, but reserves the right to discriminate in certain matters such as marriage, divorce, devolution of property at death, personal and customary law.

In their reporting on Article 15 of the Convention on equality before the law and

Article 16 on marriage and family relations, States parties provide information on women's legal capacity and right to property and inheritance. Access to land may also be raised under Article 14 on rural women, in particular if a country has implemented land reform or land distribution in rural areas. However, the status of women in the family is the entry point to any discussion of women's right to land and property.