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against Women**
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**Draft general recommendation on article 2 of the Convention on
the Elimination of All Forms of Discrimination against Women**

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I. Introduction

1. Through this general recommendation, 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, 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 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100) and Discrimination in Respect of Employment and Occupation (No. 111), the United Nations Educational, Scientific and Cultural Organization 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 human rights universal framework.

4. The objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex and gender. It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil 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. The term sex 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 likewise 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 purpose or effect of denying women the exercise of human rights and freedoms is discrimination even where discrimination was not intended. This would mean that an 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 accommodation 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, by its consideration of communications and by 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 embedded 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, which are not explicitly mentioned in the Convention but which have an impact on the achievement of equality of women with men and which represent 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 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 against 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. This entails obligations of means or conduct and also 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 due to 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 strategize plans and take measures addressed to the particular needs of women in times of armed conflict and states of emergency.

12. Even though under international law, States primarily exercise territorial jurisdiction; the obligations of States parties apply 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. Article 2 also obliges States parties to prevent discrimination by private actors. In some cases (in particular where a public function has been privatized and its performance contracted out to a private actor), the 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 States parties are obliged to take include the regulation of the activities of private actors in regard to education, employment and health policies and practices, working conditions and work standards, and other areas where private actors provide services or facilities, such as banking and housing.

III. General obligations contained in article 2

A. Chapeau of article 2

14. The chapeau 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 their total opposition to all forms of discrimination against women to all levels and branches of Government, to their population and to the international community, 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 to improve their position and implement their right of de jure and de facto equality with men. States parties should 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 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 should 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 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, religious identity, health, status, age, class, caste, 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 than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. 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, 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.

20. The obligation to fulfil encompasses the obligation of States parties to facilitate access to and to provide for the full realization of women's rights. Women's human rights should be fulfilled by the promotion of equality through all appropriate means, including through concrete and effective policies and programmes aimed at improving the position of women and achieving de facto equality.

21. States parties in particular are obliged to promote the equal rights of girls since girls are within 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 should pay attention to the specific needs of (adolescent) girls by providing sexual and reproductive education and by carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.

22. Equality between men and women, or gender equality, entails 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 which is 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 of means or 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 to 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 chapeau 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 forward movement, 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, towards 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 should 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 should apply to both public and private economic spheres, as well as to the domestic sphere. It should also 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 should 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 forms of intersectional discrimination.

27. The policy should 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 should be action- and results-oriented in that it should establish 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 should ensure that there

are strong and focused bodies (a national women's machinery) within the executive branch of the government to 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, will be established, or that existing national institutes will receive a mandate with respect to the promotion and protection of 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 character. This language is unqualified, and does not allow for any delay or purposely chosen incremental manner in the 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. Paragraphs 2 (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 paragraphs 2 (a)-(f) and all other substantive articles of the Convention.

31. Paragraph 2 (a), 2 (f) and 2 (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, refugee, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victimized by human trafficking, widows and elderly women are particularly vulnerable to discrimination through civil and penal laws and regulations and customary laws. By ratifying the Convention or acceding to it, States parties undertake to incorporate the Convention in 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. Paragraph 2 (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. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement.

33. According to paragraph 2 (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 justifications for failures by States parties to carry out their international obligations.

34. States parties must ensure that by public officials or by private actors women can invoke the principle of equality in support of complaints of discrimination contrary to the Convention. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal with access to a mediation process. 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, to bring the perpetrator(s) to trial and to impose appropriate penal sanctions. States parties should financially support independent women's legal resource associations and centres in their work to educate women about their rights to equality and to assist them in pursuing remedies for discrimination.

35. Paragraph 2 (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. Paragraph 2 (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 to have access to effective remedies; enable women to be actively involved in the formulation and implementation of measures; ensure governmental 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 of States parties requiring them to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination and to 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 also 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 tolerating 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 (protect);
- (c) Fosters wide knowledge about and support for its Convention obligations (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) Establishing valid indicators of the status of and progress in the realization of women's human rights, 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 activities or omission of activities 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 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 for all women within their jurisdiction without discrimination. Furthermore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in 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 all 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 in accordance with 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 obviate 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 acceded to 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 or acceded to by a State party, it should review its reservations to the Convention with a view to withdrawing them.
