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Women's Human Rights in Southeast Asia

Isabel Hörtrreiter

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in Southeast Asia**

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Abbreviations and Acronyms

AIDS	acquired immune deficiency syndrome
CAT	Committee against Torture
CCPR	International Covenant on Civil and Political Rights
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	International Covenant on Economic, Social and Cultural Rights
Children's Convention	Convention on the Rights of the Child
CRC	Committee on the Rights of the Child
CSW	Commission on the Status of Women
HIV	human immunodeficiency virus
HRC	Human Rights Committee
ICC	International Criminal Court
IGO	inter-governmental organization
ILO	International Labour Organization
Lao PDR	Lao People's Democratic Republic
NGO	non-governmental organization
STD	sexually transmitted disease
Torture Convention	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UN Charter	Charter of the United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO Convention	Convention against Discrimination in Education
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
INSTRAW	International Research and Training Institute for the Advancement of Women
Universal Declaration	Universal Declaration of Human Rights
Women's Convention	Convention on the Elimination of All Forms of Discrimination against Women

Preface

IN SOME PEOPLE, the title of this publication might provoke an immediate reaction: Why women's human rights? Are women's human rights different from those of men? Of course, they are not. Human rights are called such because they are attached to each and every individual for the simple reason that they are human beings. Human rights ensure that every human being is able to live his or her life in dignity and freedom.

The reason why this publication specifically addresses women's human rights is because in real life women's human rights are generally less respected than those of men. Customs and traditions, religion and domestic law, all those can and do discriminate against women, making women more vulnerable, limiting their possibilities to participate, reducing opportunities and access to resources and services, which often results in a lower quality of life.

The specific problem of the protection of the human rights of women has been acknowledged in the international human rights discussion for several decades. A number of international forums and international documents have addressed this problem. Unfortunately, discussions of women's human rights seem to play a greater role on the international agenda than on many national agendas. Even though international law lacks the same means of enforcement as municipal law, and even though the actual implementation and protection of women's human rights can take place only on the national level, international documents and mechanisms do offer protection and can be utilized by those groups of activists fighting for women's rights in their countries.

This publication wants to facilitate the use of international human rights law for the promotion and protection of women's human rights. On the one hand it can contribute to raising awareness and sensitizing people to the issue. On the other hand it is designed as a very practical tool and reference for gender activists - both men and women - and for other interested parties.

Chapter 1 summarizes the development of international human rights law and specifically that relating to women's rights. The author also explains terms and procedures, especially mechanisms that are to ensure the implementation of the contents of these documents. Chapters 2 to 5 reflect the reality and point out the continued violation of the human rights of women in four major areas, namely education, work, security of person (violence) and health. Each topical chapter illustrates general and specific problems faced by women by using a number of examples and case studies from different Southeast Asian countries, incorporating tables, graphs and other data. Each of these chapters also discusses which international legal documents and mechanisms can be called upon to protect women in specifically these areas. To further enhance the

practicality of the publication the most important human rights declarations and conventions can be found (in parts or in full) as a reference in the Appendix. Numerous endnotes give more detailed information and lead the interested reader to further reading. Although the book deals in large parts with legal matters, the language is such as to be understood by readers without any training in law.

This publication focuses on social and economic rights. However, this does not mean that political and civil human rights are less important for women, on the contrary. Firstly, these rights are important by themselves. Among many other things, they guarantee that women have the same opportunities to participate in public life as men, that they can enter politics with the same opportunities and under equal and fair conditions. Secondly, political rights can be an important tool for women to achieve greater equality and protection in the socioeconomic sphere as well. Although women are not automatically and thoroughly 'gender sensitized' just by the fact of being women, it is nonetheless more likely that women and not men leaders will recognize gender-based discrimination in policies and decision-making and will act against those. It is also evident that both, civil and political as well as social and economic rights, are closely linked and interdependent. Education clearly is a key area. Improving the access to and the quality of education for girls and women is a vehicle for improving almost all other areas, where the human rights of women are violated and, thus, has an obviously positive effect on women's quality of life. Education, too, is key to the ability to effectively exercise most political rights. To give it the prominence it deserves, the chapter on education has been placed at the beginning of the four thematic chapters of this publication.

In the production of this book, the author and the publisher, the Friedrich Ebert Foundation, are indebted to numerous people. Specifically, we would like to mention Karsta Straub, who assisted with research into case studies and additional data, Gunnar Walzholz of the ILO in Bangkok, who supplied comprehensive material on HIV/AIDS in Asia, Junya Yimprasert of the Thai Labour Campaign and The Friends of Women Foundation of Thailand, who supplied the author with case studies, and the Thai Labour Museum for making photos available for the publication.

The Friedrich Ebert Foundation (FES) is a non-profit organization which promotes democratic development and social justice, research and political education in Germany and throughout the world. With women being a marginalized and vulnerable group, the FES has been addressing gender issues for a number of years now. Our hope is that this publication will prove to be a useful tool and reference for advocacy groups, policy-makers, human rights organizations and any group or individual who seeks to improve the protection of women's human rights.

Mareike Woermer, Resident Director, Friedrich-Ebert-Stiftung, Thailand Office
Bangkok, December 2001

Women's Human Rights In International Law

The Evolution of a Universal Human Rights
Agenda • Women's Human Rights as Part of the
International Human Rights System • Human Rights
Standard Setting • Enforcement Procedures

I. The Evolution of a Universal Human Rights Agenda

1. What is meant by the term "human rights"?

Human rights provide minimum standards and legal obligations that states must fulfill and respect with regard to their respective citizens and other individuals. The term refers to a wide range of values and norms that are universal in character and vital for the individual's life in dignity and freedom. Human rights belong to all individuals equally as a mere consequence of being human.¹ Basic human rights include, among others, the rights to life, liberty, and security of person; freedom from arbitrary arrest, detention, or exile; freedoms of thought, conscience, religion and peaceful assembly. They also embrace the rights to social security, work, education, and an adequate standard of living, including the rights to adequate food, housing, and clothing; as well as the right to participate in the cultural life of the community. Today, human rights are recognized as universal, indivisible, interdependent, and interrelated² and are considered to constitute the foundation of freedom, justice, and peace in the world.³

2. How did the idea of international human rights protection evolve and develop?

Although persons have at all times been taken as slaves, tortured, persecuted for their faith, gender, or ethnicity, or otherwise been deprived of their freedoms, the notion of what has come to be called human rights protection already dates back to ancient times. Throughout history, the political traditions of many societies called on rulers to rule justly and compassionately, and to delineate limits on their power over the lives, property and activities of their citizens. The moral and philosophical origins of human rights protection can be traced back to many religions, including Buddhism, Hinduism, Judaism, Christianity, and Islam.⁴ Written concepts of human rights emerged in national documents such as the Magna Charta (1215), the Petition of Right (1628), and the Bill of Rights (1689) in England, to be followed by the French Declaration of the Rights of Man and of the Citizens (1789) and the Bill of Rights which was added to the U.S. Constitution between 1789 and 1791. However, while all of these instruments

recognized certain eternal and inalienable rights of their citizens under national law, individual human beings were not deemed to have legal rights under international law. International law was understood to only govern relations between nation states. Hence, states were not equipped with any international rules that allowed them to intervene when another state maltreated its own nationals. This notion of non-intervention is called the principle of "state sovereignty." It asserts that all domestic matters, including the question of how a state treats its own nationals, falls exclusively within its own national jurisdiction and no other state may interfere. During the 18th and the 19th century, theories took shape that state sovereignty should be restricted in certain areas in favor of certain inalienable rights of the individual. Hesitantly, states began to restrict their own sovereignty and internationalize human rights by entering into treaties with one or more other states. Early human rights treaties include the Paris Peace Treaty of 1814 between Britain and France, which condemned the slave trade, and the 1864 multilateral Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armies in the Field. Further efforts to internationalize human rights were undertaken after the World War I with the creation of the League of the Nations and the International Labour Organization (ILO) in 1919, the first universal international organizations. However, it was not until the world saw the horrendous and large-scale atrocities committed in the course of World War II, that the pressing need for one universal international organization to save future generations from the scourge of war and to protect and implement international human rights was unanimously recognized. With the ratification of the Charter of the United Nations⁵ (UN Charter) on 24 October 1945, the United Nations Organization (UN) came into existence as a successor organization of the League of the Nations. The Preamble of the UN Charter expressly affirms "the faith in fundamental human rights, [and] in the dignity and worth of the human person." According to Art. 1 of the UN Charter, one of the purposes for the establishment of the UN is to promote and encourage "respect for human rights and for fundamental freedoms for all."⁶ The UN consequently set forth these rights in what has become known as the International Bill of Human Rights and a plethora of more than 90 other human rights instruments. Hence, while international human rights norms were scarce and scattered until 1945, a comprehensive human rights system has evolved under the auspices of the United Nations in the decades that have since elapsed.

3. What is the International Bill of Human Rights?

The International Bill of Human Rights is made up of three human rights instruments, which were created under the auspices of the United Nations. It comprises the 1948 Universal Declaration of Human Rights (Universal Declaration),⁷ the 1966 International Covenant on Civil and Political Rights (CCPR),⁸ and the 1966 International Covenant on Economic, Social and Cultural Rights (CESCR).⁹ The decision that a Bill of Rights be appended to the UN Charter was taken at the very first meeting of the United Nations.¹⁰ Shortly after, the newly founded UN Commission on Human Rights was charged with the drafting of the necessary instruments. In 1948, the UN General Assembly adopted the Universal Declaration as the first all-encompassing human rights

instrument. The Universal Declaration specifically reaffirms the importance of the civil and political rights that were put at risk during World War II as well as guaranteeing certain economic, social and cultural rights.¹¹ The underlying principle of these rights is set forth in the Preamble of the Universal Declaration, which recognizes the "inherent dignity, and the equal and inalienable rights of all members of the human family." Following the adoption of the Universal Declaration, the UN Commission on Human Rights drafted the CCPR with its Optional Protocol to the International Covenant on Civil and Political Rights,¹² as well as the CESCR. These instruments were adopted by the UN General Assembly in 1966 and entered into force in 1976. A Second Optional Protocol to the International Covenant on Civil and Political Rights,¹³ aiming at the abolition of the death penalty, was adopted in 1989, entering into force in 1991. The International Bill of Human rights represents the most authoritative and comprehensive compilation of UN human rights norms and serves as a basis for all other human rights instruments created by the United Nations.

4. What are civil and political rights?

Civil and political rights are those rights necessary to enable the individual to live in dignity and participate freely in society. The two main sources for civil and political rights are the Universal Declaration and the CCPR. The Universal Declaration sets out a catalogue of civil and political rights that includes the right to life, liberty, and security of person, freedoms of expression, peaceful assembly, association, religious belief, and movement; as well as protection from slavery, arbitrary arrest, imprisonment without fair trial, invasion of privacy, and protection from torture, or other cruel, inhuman or degrading treatment. It also provides for the "right to take part in the government of a country, directly, or through freely chosen representatives."¹⁴ While many of the rights set forth in the Universal Declaration and the CCPR match, the Universal Declaration exceeds the Covenant in part. Unlike the Covenant, the Universal Declaration sets out the right to own property, to seek and enjoy asylum and the right to a nationality. The Covenant, on the other hand, is drafted with greater juridical precision and, inversely, also lists rights that are not contained in the Universal Declaration. Among those are the rights of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person.

5. What are economic, social, and cultural rights?

Economic, social, and cultural rights are closely interrelated to civil and political rights in that the full exercise of many civil and political rights requires the enjoyment of certain economic, social and cultural rights. Hence, economic, social, and cultural rights are equally fundamental for enabling the individual to live in dignity and participate freely in society. In the aftermath of Worldwar II, then U.S. President Roosevelt concluded that true individual freedom couldn't exist without economic security and independence. "Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made."¹⁵ Economic, social, and cultural rights are of particular importance for the advancement of women. The two primary

sources for economic, social, and cultural rights are again the Universal Declaration as well as the CESC. Economic, social, and cultural rights comprise three interrelated components. The right to an adequate standard of living, as provided for in Art. 25 of the Universal Declaration and Art. 11 of the CESC, constitutes the core of the social rights.¹⁶ In order to ensure this right, governments must provide for access to adequate nutrition, clothing, housing, and health care as well as for the right to family assistance (Art. 10 CESC). To fully enjoy the social right to an adequate standard of living, the individual must also be granted certain economic rights such as the right to work (Art. 23 Universal Declaration, Art. 6 CESC), and the right to social security (Art. 22 and 25 Universal Declaration, Art. 9 CESC). A third category, according to Art. 27 of the Universal Declaration and Art. 15 of the CESC, includes the right to “participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”¹⁷ The right to education (Art. 26 Universal Declaration, Arts. 13 and 14 CESC) is also an integral component of the category of cultural rights, but is also linked to the enjoyment of social and economic rights. All of these rights are equally applicable to all members of the human family.

6. **What do people mean when they speak of human rights of the first and second generation?**

People sometimes refer to civil and political rights as human rights of the first generation and to economic, social and cultural as human rights of the second generation.¹⁸ The most commonly named reason for this differentiation is that civil and political rights are perceived as largely negative rights meaning that they mostly require governments to abstain from interference.¹⁹ On the other hand, economic, social and cultural rights require positive policies, programs, and economic commitments. While it is relatively easy to define prohibitions in precise legal language, norms, which require governments to undertake specific measures are more difficult to elaborate and monitor.²⁰ This is also reflected in the two Covenants: While the CCPR requires immediate implementation and establishes a comprehensive complaint system, Art. 2 of the CESC merely requires states to provide for most of the rights of the Covenant “to the maximum of (their) available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.” Other provisions of the CESC, however, are to be implemented immediately, such as the non-discrimination clause, the obligation to begin taking steps towards the full realization of the rights in the Covenant, and the prohibition against retrogressive measures.

Civil and political rights are also far less contested in the international community than are economic, social, and cultural rights. Governments are more resistant to bind themselves to economic, social, and cultural rights, as they fear that the economic burden would be too high. Many Islamic States, in particular, oppose economic, social, and cultural rights as these are the primary tools for achieving equality between men and women, which is perceived to be in conflict with Shari’ah law.²¹ Throughout the world, however, there are many more legal, technical, and cultural grounds for which

states are less willing to commit themselves to economic, social, and cultural rights than to civil and political rights. For this reason, the former have often been referred to as human rights of the second generation, which will be achieved in a slower manner than civil and political rights. However, while the categorization in rights in generations may seem convenient, it is contested and largely rejected for its imprecision. Initially it was debated whether civil and political rights and social, economic and cultural rights should even be divided into two covenants at all, as the areas are strongly interrelated and indivisible. In addition, such categorization easily implies a greater importance of civil and political rights, which would be wrong. On the contrary, because economic, social, and cultural rights have been more contested than civil and political rights, they have habitually been neglected and, therefore, ought to receive heightened attention of the international community.

II. **Women’s Human Rights as Part of the International Human Rights System**

1. **How do women’s human rights differ from men’s human rights?**

Women’s human rights do not differ from men’s human rights. On the contrary, the United Nations Charter in its preamble reaffirms “the equal rights of men and women” which legally establishes gender equality as a fundamental human right.²² In addition, Arts. 1(3) and 55 of the Charter include sex in the universally prohibited grounds for discrimination. The principle of gender equality has been strengthened and extended in the International Bill of Human Rights and in many subsequent human rights treaties.²³ However, despite the gender-neutral terminology and the explicit confirmation that men and women possess equal rights, women do not in fact enjoy the rights which are granted to them as human beings. Women are discriminated against in virtually all areas of life. Furthermore, deep-rooted cultural beliefs render them more vulnerable to human rights abuses than men. For example, women are far from enjoying equal rights to speech, participation, travel, or ownership and inheritance of land, and housing.²⁴ In many cultures, women are particularly excluded in the sphere of economic, social, and cultural rights in that they are given less opportunity to work and receive an adequate education.²⁵ Hence, although women’s human rights do not differ from men’s human rights, they require special attention and promotion to enable women to fully enjoy the rights they as human beings possess.

2. **How did the idea to specifically protect women’s human rights develop?**

Soon after the creation of the International Bill of Human Rights, the international community acknowledged that this protection alone was not enough to secure the human rights of women, who as a group have traditionally been subjected to gender-based discrimination. The international community found that additional protection was necessary along with measures to increase public awareness for the disadvantaged situation of women worldwide. The creation of the 1952 Convention on the Political

Rights of Women²⁶ reflects a very early recognition of a lack of women's human rights enjoyment in the sphere of civil and political rights. The UN consequently declared the year 1975 as International Women's Year and convened a World Conference of the International Women's Year in Mexico City. At this first global conference ever held on women, the first World Plan of Action for the Advancement of Women was produced, which marked the starting point in the progression of women's human rights.²⁷ It calls for the preparation and adoption of an international convention against all forms of sex discrimination and recommends procedures for its implementation. Following the 1975 Conference, the UN General Assembly proclaimed the years 1976-1985 as the "United Nations Decade for Women: Equality, Development, and Peace," to be devoted to effective and sustained national, regional, and international action to implement the World Plan of Action.²⁸ The UN Decade for Women brought about considerable results at the international level: First, two additional UN bodies, the United Nations Development Fund for Women (UNIFEM) and the International Research and Training Institute for Women (INSTRAW), were created. These two UN organs are exclusively devoted to women. Second, a human rights treaty designed solely to protect women's human rights, the UN Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention)²⁹ was adopted in 1979 and entered into force in 1981. This Convention constitutes a milestone in women's human rights protection and is sometimes described as a "women's bill of rights."³⁰ In its preamble, the Women's Convention refers to the already existing duty of governments under the two Covenants to ensure equal rights of men and women. Concerned "that despite these instruments extensive discrimination against women continues to exist," the Convention sets up a comprehensive system of rights, aimed at the elimination of discrimination in all areas of private and public life.

In 1980, a second World Conference on Women convened in Copenhagen. In 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade was held in Nairobi. At this conference, the Nairobi Forward-looking Strategies for the Advancement of Women to the Year 2000,³¹ was adopted, identifying certain areas of action to be taken in order to improve the status of women by the year 2000. When the Commission on the Status of Women undertook a five-year review of the Nairobi Forward-looking Strategies, however, it came to the bleak conclusion that although the situation of women had improved in certain aspects, it actually deteriorated in many parts of the world, mainly due to increased poverty which tends to affect women much more seriously than men.³² This concern was addressed at the most recent Conference on Women convened in 1995 in Beijing, which consequently brought about the most comprehensive declaration and program of action, called the Beijing Declaration and Platform of Action.³³ Recognizing that "the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain," the document addresses the most critical concerns and established a global framework of priority actions to be carried out during the upcoming five years. A Five-

Year Review Session, known as "Beijing+5", was held in New York City in June 2000. The outcome document reaffirmed the Beijing Declaration and Platform for Action and strengthened the Platform in some critical areas, addressing specifically the situation of the girl child affected by HIV/AIDS and stressing the need for programmes for healthy and active aging.³⁴ Since the adoption of the Beijing Declaration and Platform for Action, initiatives have been taken to implement the Platform on a national, sub-regional/regional and international level. In Asia and the Pacific region, a monitoring mechanism has been established by governments and non-governmental organizations (NGOs) from the region, which requires governments to present periodic reports on their national implementation of the Platform.³⁵ Numerous additional initiatives were taken by governments, NGOs and Inter-Governmental Organizations (IGOs). Hence, while it is a harsh reality that the factual situation for women has not yet been improved substantially, these conferences and their outcome documents have proven significant. This is, partly because they have raised awareness of the issues facing women and have placed women's human rights both on national as well as the international agendas.

3. **What are the most important legal instruments protecting women's human rights?**
The Women's Convention, which provides for comprehensive protection from discrimination, constitutes one of the primary instruments protecting women's human rights. The Women's Convention supplements the International Bill of Human Rights, which continues to be the principal human rights instrument for women and men alike, in that it prohibits discrimination against women and aims to prevent them from enjoyment of the rights provided for in the two Covenants. The Convention addresses the enjoyment of both civil and political as well as economic, social and cultural rights.

Additionally, the ILO has adopted several conventions which specifically protect women's rights at work. These conventions are an important source in the area of social and economic rights.

Finally, the 1989 UN Convention on the Rights of the Child (Children's Convention)³⁶ protects the rights of the girl child. In addition, there is a plethora of resolutions, declarations, and recommendations adopted by the UN and its specialized agencies that promote gender equality and certain aspects of women's human rights.

4. **How is "gender discrimination" defined in legal terms?**
Art. 1 of the Women's Convention provides for an inclusive definition of the term "gender discrimination." It states:

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.³⁷

According to this definition, a government's treatment of women amounts to gender discrimination if it disadvantages women either intentionally or unintentionally, or which prevents society as a whole from recognizing women's rights in the domestic and in the public sphere.³⁸ The definition, however, also clarifies that not every differentiation in treatment constitutes gender discrimination. We can only speak of discrimination, if the treatment nullifies or impairs women's equal enjoyment of human rights and fundamental freedoms.³⁹

5. **What measure must governments take in order to eliminate discrimination and achieve gender equality?**

While the International Bill of Human Rights already embodies the principle of gender equality, it is the Women's Convention that establishes a comprehensive catalogue of measures that States Parties must undertake to eliminate discrimination and truly achieve gender equality. These are stipulated in Arts. 2 through 5 of the Convention. Article 2 establishes, in a general way, the obligations and policies to be followed by States Parties. The provision recognizes that legislative measures are the most effective prerequisite and should to be taken as the first step towards achieving gender equality. According to this provision, governments must undertake to embody the principle of gender equality in their national constitutions or other appropriate legislation; to adopt legislation that prohibits and, where appropriate, sanctions discrimination; to abolish any discriminatory provisions in existing laws; to establish equal legal protection for men and women; and to ensure the effective legal protection for women against any act of discrimination. Finally, States Parties must take steps to eliminate discrimination in both public and private spheres. Hence, it is not enough to ensure that public authorities do not discriminate against the individual woman; governments must also ensure gender equality on a horizontal level, even within the family.⁴⁰

Art. 3 recognizes that gender equality will not be achieved and women will not be able to exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men, unless active steps are taken to ensure the full development and advancement of women. The provision demonstrates the indivisibility and interdependence of civil and political rights on one hand and economic, social, and cultural rights on the other, in that it stresses that actions must be taken in all of these fields.⁴¹

The gap between men and women with respect to their enjoyment of human rights and fundamental freedoms, however, was so wide that the drafting parties to the Convention were concerned that mere equality before the law would not be sufficient to lead to factual gender equality. Hence, in order to speed up the progress in reaching de-facto equality, Art. 4 declares that temporary measures giving preference to women over men may be lawful and necessary. These may be measures such as positive or affirmative action, preferential treatment, or quota systems to advance women's integration into

education, the economy, politics, and employment.⁴² These measures shall be discontinued when the objectives of equality in opportunity and treatment have been achieved. Finally, Art. 5 addresses the fact that while equality before the law is one important prerequisite for gender equality, it may not be sufficient to eliminate discrimination against women, which is often the result of deep-rooted cultural and social attitudes. Patriarchal social structures throughout the world, including the Southeast Asian region, give preference to men over women, and bestow upon the latter an inferior status. Art. 5 (a) calls upon States Parties to modify the social and cultural patterns of conduct of men and women, and thereby eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Stereotypes are most prevalent with regard to the traditional concept that women's primary responsibility lies in the domestic sphere. Many women are restricted to caring for the family, and are denied education and the right to pursue work outside the family home. In addition, the task of caring for the family is habitually not recognized as work. It is regarded as inferior and women performing such duties are often not deemed to need or even deserve an education.⁴³ Hence, Art. 5 (b) calls on States Parties to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.

Arts. 2 through 5 are applicable to all the specific areas of protection, which are addressed in the Convention and will be dealt with later on in this publication.

III. Human Rights Standard Setting: How do Governments Become Bound?

1. **What are a charter, a covenant, a convention, and a protocol?**

A charter, covenant, convention, and protocol are all binding international treaties (i.e., agreements) which are simply given different names. According to the 1969 Vienna Convention on the Law of Treaties,⁴⁴ which governs the process of creating binding international law, all of these instruments have four common characteristics: First, the instrument must be concluded between states;⁴⁵ second, it must be intended to be binding; third, it has to be governed by international law; and fourth, it must be in writing.⁴⁶ All of these instruments may be bilateral (concluded between two states), although the instruments we are dealing with in this book are multilateral in nature, that is, they involve many state parties. The title that is given to an international agreement has no legal effect and some of the terms can be interchanged.⁴⁷ However, there are some common characteristics that instruments of the same title often share. For example, the term "charter" is commonly used for particularly formal and solemn instruments, such as the constituent treaty of an international organization (i.e., the UN Charter).⁴⁸ Multilateral treaties with a broad number of parties are often called "convention" or

“covenant” (i.e., the Women’s Convention and the two Covenants); they are normally open for participation by the international community as a whole, or by a large number of states.⁴⁹ Finally, the term “protocol” is commonly used for an agreement that is less formal than those entitled “treaty,” “convention,” or “charter.” A protocol is often appended to and augments a convention or treaty. As such, it may establish additional rights and obligations whose necessity was not recognized at the time of the drafting of the instrument or proved to be controversial. In other words, a protocol may enable some of the parties to establish a framework of obligations, which reaches further than the general instrument and to which not all of the parties consent. Just like national law, international law must be flexible and ready to be adapted to new developments. The adoption of a protocol is a good alternative to amending the original instrument as a whole.

2. How do governments become bound?

If an international agreement is adopted, not all states involved in the creation process are automatically bound by it. The text of an international agreement is usually adopted by the consent of all the States participating in its drafting, or, if the agreement is adopted at an international conference by the vote of two-thirds of the States present and voting.⁵⁰ However, a state does not become a party to a treaty until it expressly indicates its consent to be bound by it. This act is called “ratification.” In the case of UN or other multilateral instruments, a depository collects the ratification instruments and keeps all parties informed on the current ratification status. For multilateral agreements it is common to agree on a fixed number of states that must ratify, before the agreement enters into force.⁵¹ Furthermore, by signing a treaty, a state is bound not to carry out an action that defeats the object and purpose of the treaty, notwithstanding the fact that the respective state has not yet ratified the instrument in question.

3. Do governments have to ratify the international agreement as a whole?

When ratifying international human rights instruments, governments are often torn between the desire to protect their sovereignty and the recognized need to advance human rights on a universal level. Concern for their sovereignty would often preclude ratification if governments always had to bind themselves to the agreement as a whole, even if some provisions exceeded the commitment they were willing to undertake. For that reason, many international agreements include a mechanism that allows governments to exclude or alter the legal effect of certain provisions of the treaty in their application to that State.⁵² Such a statement by a government is called a “reservation.” A reservation gives states the opportunity to consent to an international agreement as a whole, yet allowing them to opt out of certain provisions to which they do not want to adhere. This mechanism is good in the sense that it brings about more ratifications. However, there is also the distinct danger that reservations substantially weaken the effects of human rights agreements. For this reason, some treaties prohibit reservations generally or they allow only for certain specified reservations. In any event, a reservation cannot defeat the object and purpose of a treaty.

4. How do I know whether Southeast Asian Governments have ratified human rights treaties that include provisions on women’s human rights?

Both the depository organ of the United Nations and of the International Labour Organization provide for listings that indicate the current ratification status of their respective treaties. From these listings, we can see which Southeast Asian countries have acceded to or ratified the various treaties. Appendix II of this publication provides for the current ratification status of the most important treaties dealing with women’s human rights. It is important to note, however, that as time passes, new governments may accede to international agreements. Hence, the ratification status of an international agreement is constantly changing. Current information can be found through the UN Treaty Collection⁵³ and the ILO.⁵⁴

5. What is a declaration?

The term “declaration” is most commonly used for an international instrument that is not necessarily legally binding. States often choose this method if they want to declare certain aspirations without the intent to create binding obligations.⁵⁵ An example for such instruments is the Declaration on the Elimination of Violence Against Women,⁵⁶ which was adopted by the UN General Assembly in 1993. A declaration, however, may be used as an aide for interpreting international law as the instrument indicates a consensus among the adopting parties on certain aspects of human rights protection. Furthermore, over time a declaration may ripen into customary international law and thus become legally binding on all countries.

6. Is the Universal Declaration of Human Rights legally binding?

Originally, the Universal Declaration was not intended to create binding legal obligations and it is not a treaty in the sense of the 1969 Vienna Convention on the Law of Treaties. However, since its adoption in 1948, virtually all states have embraced the human rights standards proclaimed in the Declaration. During the nearly two decades that elapsed between the adoption of the Universal Declaration and the entry into force of the two Covenants, there was a general lack of binding human rights legislation. Whenever disputes regarding human rights evolved in international and also national settings, recourse was taken to the rights enunciated in the Universal Declaration.⁵⁷ Today, it is recognized that the Universal Declaration has gained binding character as customary international law and constitutes “a common standard of achievement for all peoples and all nations.”⁵⁸ Additionally, the Universal Declaration of Human Rights defines the human rights referred to in the UN Charter, to which all Member States of the United Nations are bound to promote, respect, and observe.

IV. The Enforcement of Women's Human Rights: Monitoring and Complaint Procedures

1. Who ensures that governments comply with their obligation to implement women's human rights?

According to Art. 1 (3) of the UN Charter, one of the organization's purposes is "to achieve international cooperation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all." An important step to accomplish this task was the adoption of human rights treaties. Governments who ratify human rights treaties bind themselves to implement and enforce the rights and obligations proclaimed therein by means of domestic legislation and to apply them in policy and practice. However, a binding international agreement is not worth much, if there is no procedure to ensure that governments adhere to it. Hence, in addition to codifying human rights in international law, it was necessary to establish international bodies to monitor implementation. The UN, the ILO, and UNESCO, whose instruments will be dealt with in the following chapters, have all established bodies and equipped them with tools to supervise the implementation of human rights treaties.

2. Who monitors the implementation of UN treaties dealing with women's human rights?

Under six major UN human rights treaties, individual bodies, or committees, have been established to monitor implementation. To ensure neutrality, these treaty-monitoring bodies consist of independent experts acting in their personal capacity rather than as government representatives. The committees meet periodically throughout the year and the Chairpersons of each of the Committees gather at periodic meetings to report on the implementation status of each of the treaties.

The treaty-monitoring bodies for the UN conventions dealt with primarily in this publication include:

- the Human Rights Committee (HRC) monitoring implementation of the CCPR;
- the Committee on Economic, Social and Cultural Rights monitoring the implementation of the CESCR;
- the Committee on the Elimination of Discrimination Against Women (CEDAW) monitoring the implementation of the Women's Convention; and
- the Committee on the Rights of the Child (CRC) monitoring the implementation of the Children's Convention.

In addition, the Committee against Torture (CAT) monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention),⁵⁹ and the Committee on the Elimination of Racial Discrimination (CERD) oversees adherence to the International Convention on the Elimination of All Forms of Racial Discrimination (Race Convention).⁶⁰ All of these instruments provide for state reporting procedures that allow the competent body to keep informed on progress, or lack thereof, of the States Parties in fulfilling their obligations

under the treaties. In addition, complaint procedures for other State Parties or individuals have been established for certain treaties.

3. How does state reporting take place?

Under all of the treaties, States Parties must submit one initial report upon ratification of the treaty and subsequent periodic reports on the measures they have adopted to implement the rights recognized in the treaties and indicate factors and difficulties affecting the degree of fulfillment of their obligations. These reports are examined in public meetings by the competent Committee through dialogue with representatives of the government whose report is considered. Although only the Committee and the representative of the State Party take part in this dialogue, NGOs are encouraged to submit written reports to the Committee concerning the State Party's compliance with the treaties.⁶¹ The Committee then adopts concluding observations and issues recommendations to the State Party suggesting measures to improve implementation of the Covenant. State reporting is an important procedure that enables the Committees to determine whether States Parties' domestic legislation and practices conform to their obligations under the treaties. The system, however, has also been criticized as being ineffective. The Committees rely largely on the information provided for by the reporting government. The latter, in turn, will naturally always try to draw as positive a picture as possible in reporting on its human rights practice. The situation has improved slightly, since NGO reporting has become a more common practice, which provides for valuable additional information.⁶³ Another major obstacle to effective treaty-monitoring is that many states are in default with the submission of their reports. A 2001 report of the Office of the High Commissioner for Human Rights reveals a pattern of large delays among almost all Southeast Asian countries in their reporting practices.⁶⁴ Such delays, however, paralyze the treaty-monitoring bodies in their function. In the past,

Overdue reports to CEDAW of Southeast Asian States Parties to the Women's Convention as of March 2001⁶²

Indonesia	4 years delay 4th periodic report, date due: Oct. 1997
Lao PDR	9 years delay, no report submitted yet initial report, date due: Sept. 1982 5th periodic report, date due: Sept. 1998
Malaysia	5 years delay, no report submitted yet initial report, date due: Aug. 1996 2nd periodic report, date due: Aug. 2000
Myanmar	on time
Philippines	3 years delay 5th periodic report, date due: Sept. 1998
Singapore	1 year delay 2nd periodic report, date due: Nov. 2000
Thailand	3 years delay 4th periodic report, date due: Sept. 1998
Viet Nam	1½ years delay 5th periodic report, date due: March 1999

measures to improve implementation of the Covenant. State reporting is an important procedure that enables the Committees to determine whether States Parties' domestic legislation and practices conform to their obligations under the treaties. The system, however, has also been criticized as being ineffective. The Committees rely largely on the information provided for by the reporting government. The latter, in turn, will naturally always try to draw as positive a picture as possible in reporting on its human rights practice. The situation has improved slightly, since NGO reporting has become a more common practice, which provides for valuable additional information.⁶³ Another major obstacle to effective treaty-monitoring is that many states are in default with the submission of their reports. A 2001 report of the Office of the High Commissioner for Human Rights reveals a pattern of large delays among almost all Southeast Asian countries in their reporting practices.⁶⁴ Such delays, however, paralyze the treaty-monitoring bodies in their function. In the past,

this could be partly attributed to the fact that governments who were party to all six treaties were facing the burden of having to periodically submit six individual reports. This situation has been improved since reports are now also received at the periodic meetings of the chairpersons, allowing states to submit one national document reporting on the implementation of all treaties.⁶⁵

4. **Which of the Committees may hear inter-state complaints?**

Of the four Committees, only the Human Rights Committee and the CAT are equipped with a procedure to hear complaints by one State Party that another State Party is not fulfilling its obligations under the Covenant. Prerequisite for such procedure is that both the complaining State Party and the State Party allegedly violating the provisions under the treaty have submitted a declaration recognizing the Committee's competence to consider such complaints.⁶⁶ As of October 2001, of all Southeast Asian governments, only the Philippines had issued such a declaration for the CCPR.

5. **Can individuals who consider their human rights violated lodge individual complaints with the treaty-monitoring bodies?**

Although more readily accessible than inter-state complaints, access to individual complaint procedures before the treaty-monitoring bodies is also still limited. The Human Rights Committee may consider individual complaints under the First Optional Protocol to the International Covenant on Civil and Political Rights.⁶⁷ Such individual complaints, however, are only admissible if the government who allegedly violated the rights of the Covenant has ratified both the Covenant itself and the Optional Protocol. As of October 2001, of all Southeast Asian countries only one, the Philippines, had ratified the Optional Protocol.⁶⁸ Complaints can also be lodged before the CAT by individuals who claim to have been tortured or otherwise been subjected to cruel, inhuman or degrading treatment. This procedure, similarly, requires an explicit declaration of the accused State, recognizing the CAT's competence to hear individual complaints.⁶⁹ A similar approach has been adopted by the Race Convention.⁷⁰

As a milestone in the history of women's human rights, the Optional Protocol to the Convention on the Elimination of Discrimination against Women⁷¹ was adopted in 1999 and entered into force in the year 2000. The Protocol establishes a procedure by which individuals may submit a complaint, alleging a violation by a State Party of any of the rights set forth in the Women's Convention.⁷² However, like the other individual complaint procedures before treaty-monitoring bodies, the procedure under the Optional Protocol requires that the State Party, against whom the complaint is lodged, be both party to the Women's Convention and to its Protocol. As of October 2001, only Thailand had ratified the Optional Protocol, while Indonesia and the Philippines at least are among the signatory States of the document, which indicates their overall consent to its provisions. Accessibility to an individual complaint procedure is one of the clearest signs of progress in the advancement of human rights. International human rights protection only becomes truly effective and functional when individuals who claim that

their rights and freedoms have been violated may hold a State accountable for its action before an international body. To make women's human rights truly effective, all Southeast Asian governments must be encouraged to follow the example set by the Thai Government and ratify the Optional Protocol to the Women's Convention.

6. **How does CEDAW's individual complaint procedure work ?**

The Optional Protocol to the Women's Convention has adopted a similar procedure for individual complaints as established for the Human Rights Committee and the CAT. A complaint can be lodged "by or on behalf of individuals or groups of individuals."⁷³ It must be submitted in writing and shall not be anonymous.⁷⁴ Admissibility requires that the same matter has not already been examined by CEDAW and is not under examination in another international procedure. Furthermore, all available domestic remedies must have been exhausted unless such remedies are unreasonably prolonged or unlikely to bring effective relief.⁷⁵ If CEDAW considers the complaint admissible, it notifies the State Party concerned and requests a written explanation or statement clarifying the matter. The Committee may not disclose the complainant's identity to the State Party unless she has consented to it. CEDAW consequently examines the communication in closed meetings and transmits its views together with recommendations, if any, to the parties concerned, that is, the complainant and the State Party. The latter is requested to submit a written response to CEDAW within six months concerning the action it has taken to implement the recommendations that were issued.⁷⁶

7. **What other mechanism is there to ensure the application of the Women's Convention?**

The Optional Protocol to the Women's Convention also provides a new and very practical mechanism for victims of discrimination. The Optional Protocol allows CEDAW to carry out inquiries into grave or systematic violations of the Convention by a State Party.⁷⁷ When CEDAW receives information on such violations, it may appoint one or more of its members to conduct an inquiry, inviting the State Party concerned to cooperate in the examination process. Upon conclusion of the inquiry, CEDAW transmits its findings to the State Party together with comments and recommendations. The State Party then is requested to report on the implementation of these recommendations within a period of six months. This inquiry procedure constitutes another tool for CEDAW to ensure full implementation of the Women's Convention. Together with mechanisms for state reporting and individual complaints, this new procedure has turned the Women's Convention into a powerful tool for the advancement of women's human rights. Like the individual complaint procedure, however, inquiries can only be conducted into violations of States Parties, who have ratified both the Convention and the Optional Protocol.⁷⁸ Again, the importance of universal ratification of both the Women's Convention and its Optional Protocol can, therefore, not be stressed enough.

8. **How is the implementation of the ILO Conventions supervised?**

As a specialized agency of the United Nations, the International Labour Organization has, since its creation in 1919, adopted more than 180 conventions. To ensure effective

implementation, a comprehensive and multi-channeled monitoring system was established. Unlike the UN human rights system, no individual bodies monitor the implementation of its conventions. Instead, the ILO Committee of Experts on the Application of Conventions and Recommendations was established to oversee the implementation of all instruments as a whole. States Parties are requested to submit periodic reports on the implementation of all ILO conventions that the respective State Party concerned has ratified. The Committee of Experts and Recommendations considers these reports in closed meetings and may direct requests to Governments concerning implementation deficiencies. If the Committee determines a persistent problem in the implementation of a convention by a State Party, it makes an "observation" which is published in the Committee of Experts Report. The report is consequently considered at the annual session of the ILO Conference.⁷⁹ In addition, the Committee of Experts may ask individual members to submit reports on conventions, which they have not yet ratified, elaborating their reasons for their abstention.⁸⁰

Furthermore, Art. 24 of the ILO Constitution provides for a procedure by which trade unions or employers organizations can make a so-called "representation" claiming that a given Member State has failed to properly apply a ratified ILO Convention. Such a representation must be submitted in writing to the Director-General who forwards it to the ILO Governing Body. For admissible representations, a committee of three members is set up. The Committee examines the matter, scrutinizing the representation and information that is made available by the Member State on the allegations. Upon conclusion of the examination, the Committee submits its report to the Governing Body which may ask the Member State to undertake specific measures. Often the matter is also followed up by the Committee of Experts in the discussion of consequent reports submitted by the Government concerned.⁸¹ A special procedure has been established for representations and complaints concerning alleged infringements on the right to freedom of association. Such complaints may be lodged either directly or through the United Nations by governments, national employers' organizations, or workers' organizations. They are examined by the Committee on Freedom of Association, which was especially set up as part of the Governing Body to deal with cases involving alleged infringements of freedom of association.

Finally, Art. 26 of the ILO Constitution introduces a mechanism for inter-state complaints. They may be submitted by any Member State which has ratified the same convention, by any delegate of the International Labour Conference, or the Governing Body itself. Although the ILO does not provide for a procedure under which an individual may lodge complaints, an individual who considers her or his workers' rights violated, may be advised to contact a workers organization who may then decide whether or not to bring the matter to the attention of the ILO.⁸²

9. **Who monitors implementation of the UNESCO Conventions?**

As a UN specialized agency, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has, in addition to many other activities, undertaken important standard setting tasks. Most UNESCO instruments establish their own monitoring system. The Convention against Discrimination in Education,⁸³ which will be dealt with in detail in Chapter 2, provides for a reporting system to the UNESCO General Conference.⁸⁴ It also directs that disputes arising between two or more States Parties concerning the interpretation or application of the Convention "shall at the request of the parties to the dispute be referred, failing other means of settling the dispute, to the International Court of Justice for decision."⁸⁵

10. **Does UNESCO also provide for an individual complaint procedure to have human rights violations examined?**

In addition to the procedure laid down by the Convention against Discrimination in Education, in 1978, the Executive Board of UNESCO established a confidential complaint procedure for alleged human rights violations in its field of competence, namely education, science, culture, and information.⁸⁶ The big advantage of this procedure is that it is independent of a specific convention, which a government who allegedly violated human rights must have ratified. For example, the complainant may refer to a violation of human rights that are enshrined in the Universal Declaration. Rights that could be claimed under the Universal Declaration include the right to education (Art. 26), the right to share in scientific research (Art. 27), and the right to participate freely in cultural life (Art. 27). Individuals, groups of individuals, and non-governmental organizations can submit complaints to UNESCO, whether they are themselves victims of such violations or believe to have reliable knowledge of such violations. To be admissible, communications must not be anonymous or "manifestly ill-founded and must appear to contain relevant evidence."⁸⁷ Further, they shall not be based exclusively on information disseminated through the mass media and must establish that domestic remedies have been exhausted. As with complaints before the treaty-monitoring bodies, complaints are not admissible, if they are considered in another international procedure. The complaints are examined by the UNESCO Committee on Conventions and Recommendations who, having determined the admissibility of a communication, informs both the government concerned and the complainant of its decision on admissibility. The latter may, upon request, remain anonymous to the government against whom the communication is directed. The Committee then considers the communication in a private session that may be attended by a government representative to provide for additional information on the allegations. The complainant and the government concerned are consequently informed on the Committee's decision, which shall be reached in a spirit of international cooperation and mutual understanding.⁸⁸

Women and Education

Women's Education: The Path to Development • Women's Right to Education under International Law • Rural Women and Education • Women with Disabilities

I Women's Education: The Path to Development

1. **What effects does a woman's education have on herself and on her surroundings?**
 A woman's education is decisive for her own as well as her family's future well-being. Most obviously, a woman's education determines her earning capacity, access to paid employment and, thus, her overall standard of living. Education is the primary tool to encourage her to step out of traditional, and often subjugated, roles and lead both her life as a family member and her working life on terms of equality with men. Her education also enhances her health and her control over family planning. For example, surveys have shown that women with seven or more years of education tend to get married four years later, are more likely to use birth control measures, and have an average 2.2 less children than women with less education.⁸⁹ This reduces the rate of still births and maternal mortality, as very young women and women who already have given birth many times are primarily at risk.

The benefit that a woman's education has on others is also often overlooked. For instance, as education enhances the mother's health and overall well-being, it has a beneficial effect on the day-to-day care she gives to her children. A woman with education has better access to information on child education and better means to ensure to the family's food safety. It is estimated that women's education has contributed by 43% to the substantial worldwide reduction of child malnutrition in the years 1975-1995.⁹⁰ Finally, a woman tends to multiply the benefits of her own education by sharing her knowledge with others, particularly with her daughters. For all of these reasons, a woman's education is a potent investment not only in her own future, but also in the future of her family and society as a whole.

2. **What is the status of women's education in Southeast Asia?**
 Over the past decades, Southeast Asian countries have progressed tremendously in providing women with access to education. In fact, the ascent of women's education presents the most significant step ahead in the advancement of women in most countries

of the region. In particular, there has been a sharp decline in youth illiteracy over the past 20 years, which indicates that the system of primary education is more efficient than it was 20 years ago. As school enrolment has risen throughout the region, women now count for 50% or more in 2nd and 3rd level education in Brunei Darussalam, Malaysia, Myanmar, and the Philippines. However, while these numbers clearly demonstrate impressive progress, it would be misleading to assume that there exist equal educational opportunities. Although illiteracy has decreased greatly, in many Southeast Asian countries, more than twice as many women than men continue to be illiterate. The most striking imbalance can be found in primary school enrolment in Laos and Cambodia, where the percentage gap between girls and boys attending primary school is more than 15%. This affects the largest percentage of the population in these countries, as less than 40% have the privilege to enroll in secondary school. Evidence suggests that the rate of school dropouts has further increased during the time of the Asian financial crisis.⁹¹ In times of economic distress, parents often take their daughters out of school first. This is because girls are expected to assume their mother's household duties when she takes up paid work outside the home and because boys tend to have better chances on the job market than girls, giving boys' education a much higher economic value.

Chart: Illiteracy in Southeast Asia, People Aged 15+ ⁹²

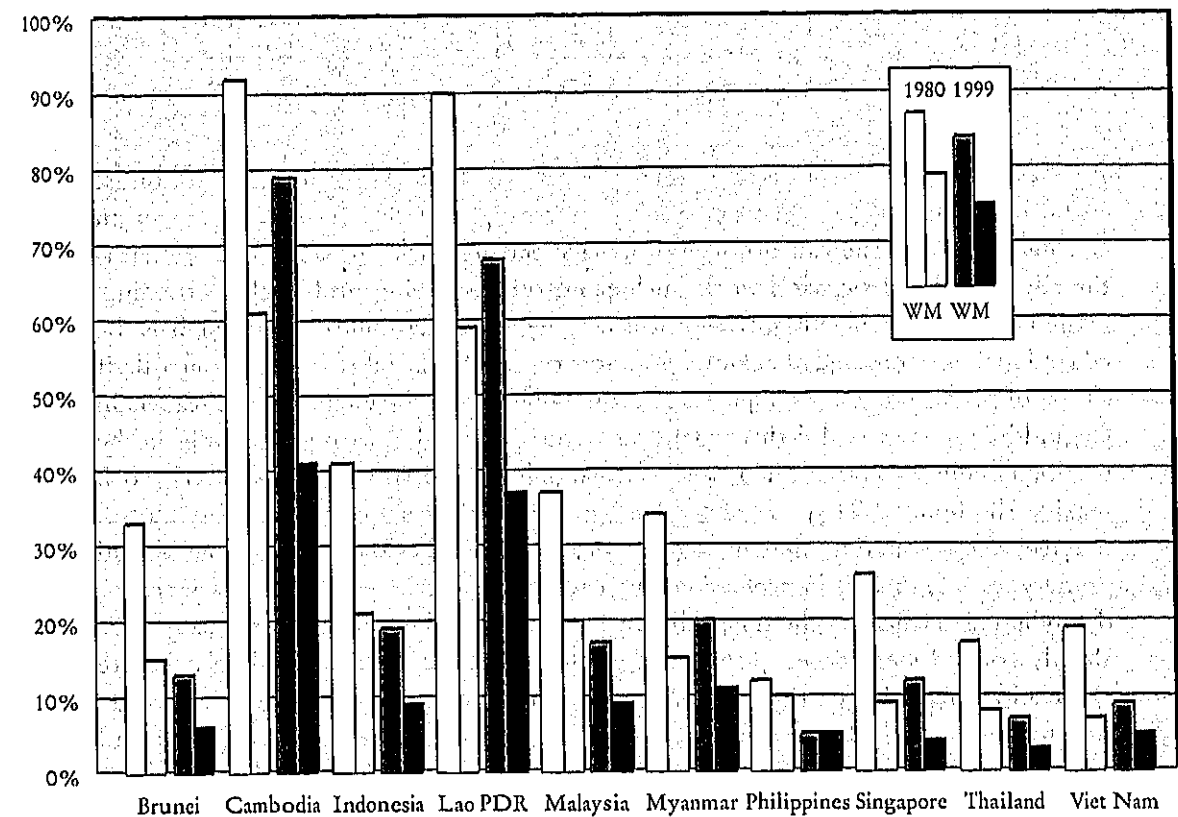
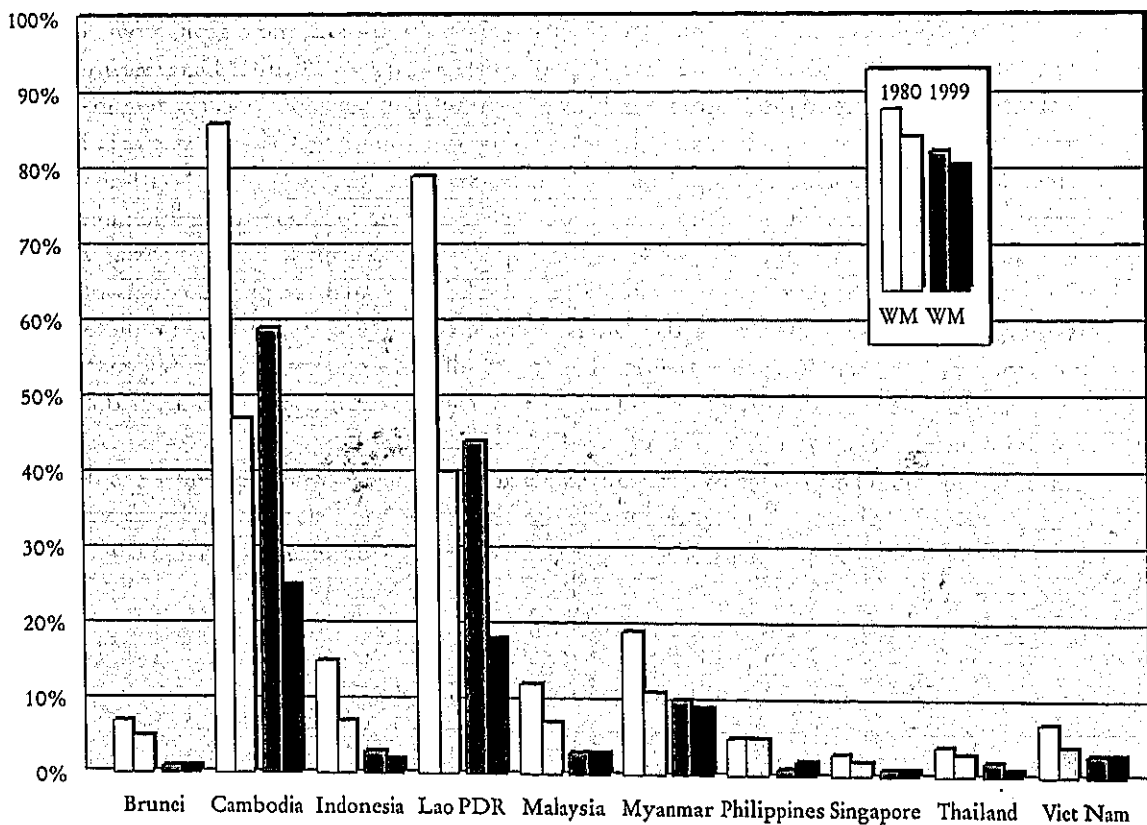
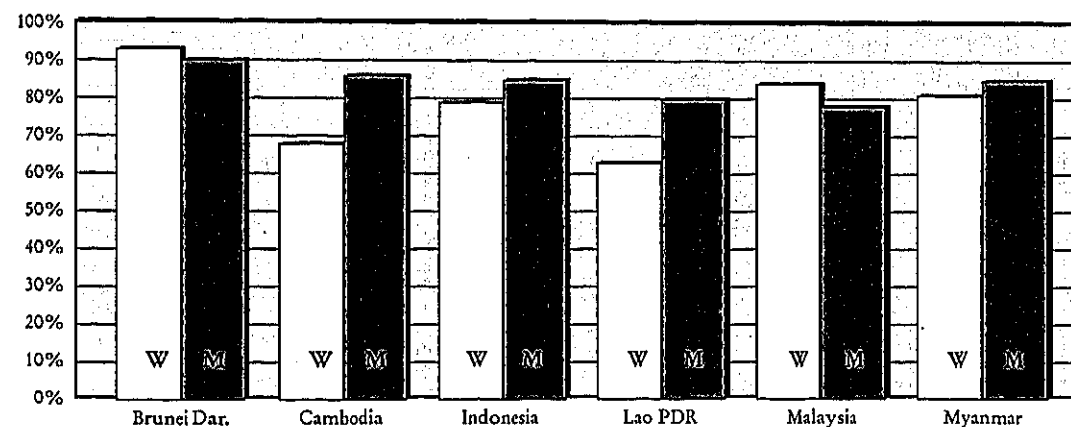


Chart: Illiteracy in Southeast Asia, People Aged 15-24 ⁹²

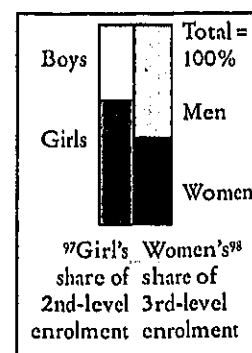
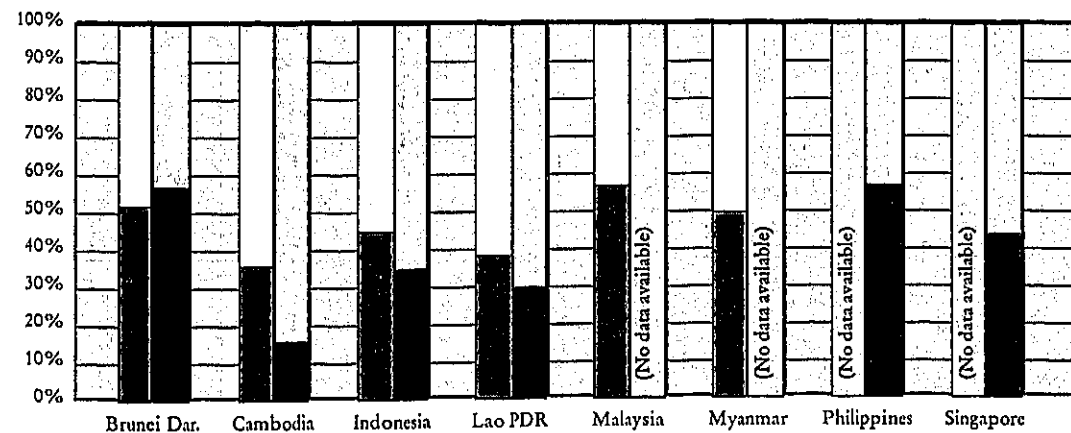


Although the high female secondary and tertiary level enrolment in many Southeast Asian countries suggests gender equality, stereotypes in the choice of occupation continues to exist. The vast majority of women enroll in fields of study that are traditionally considered women's work, such as nutrition, nursing, and teacher's training, while men favor engineering, law, agriculture, and technical training.⁹³ Often, it is the educational system itself that nurtures stereotypes and socializes women into their choice of profession. For example, a review of public elementary school basic readers in Cebu, Philippines revealed that women are overwhelmingly pictured primarily in the traditional roles as mothers, housekeepers, and only secondarily as participants of work outside the home.⁹⁴ They are shown in typical female occupations such as nurses, teachers, and secretaries. Men, in comparison, are pictured as the heads of families and primary income earners in professions such as farming, business, medicine, science, or the military.⁹⁵ Hence, by the time children have completed primary school, many have already formed stereotyped pictures of gender roles and have adapted their future expectations accordingly. In Singapore, a government quota system that gives preference to males over higher scoring females for entering Singapore's only medical school illustrates how these stereotypes can lead to blatant gender discrimination. For instance, at the Medical School of the National University of Singapore, male students

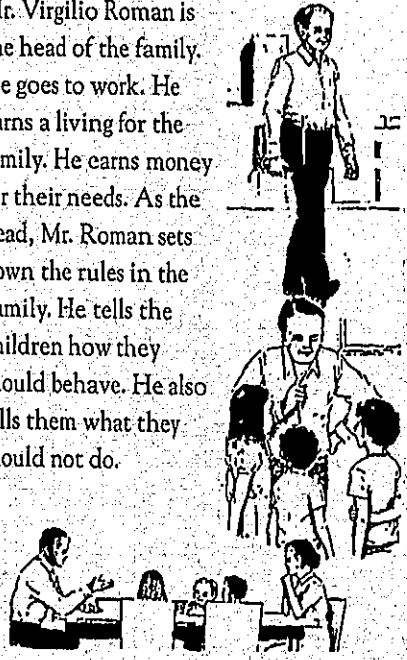

Summary Education Profile 1992/1997⁹⁶
Combined 1st and 2nd-level gross enrolment (per 100 of gender group).



Share of school enrolment by gender



outnumber females by two to one. This disparity, officials argue, is because "women leave the profession to have babies and the city-state cannot afford to subsidize expensive education for those who don't make medicine a life-time career."⁹⁹ While the system forces many wealthy young women to pursue their medical education overseas, it prevents women without the necessary financial means to study overseas from becoming doctors, even though their scores may be equal to or higher than those of admitted male students.

<p>Third Grade Reader: Mr. Roman Mr. Virgilio Roman is the head of the family. He goes to work. He earns a living for the family. He earns money for their needs. As the head, Mr. Roman sets down the rules in the Family. He tells the children how they should behave. He also tells them what they should not do.</p> 	<p>Third Grade Reader: Wife and Mother Mrs. Roman is a good wife and mother. She also goes to work. She helps Mr. Roman earn a living for the family. Mrs. Roman works at home. She prepares breakfast for the family. She also prepares their supper. Mrs. Roman loves Father. She loves the children, too. She looks after their needs.</p> 
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II. Women's Right to Education under International Law

1. Do women have a right to education under international law?
Although international law does not specifically provide for women's right to education, under several international instruments, females have a right to education in their capacity of being human. The right to education is expressly recognized in Art. 26 of the Universal Declaration, Art. 13 of the CESC, and Arts. 28 and 29 of the Children's Convention. Education shall be directed to the development of the child's personality, talents, and abilities to their fullest potential. Although established primarily to end discriminatory practices in the field of education, the 1960 Convention against Discrimination in Education (UNESCO Convention)¹⁰¹ also recognizes the right to education in its preamble. In addition, Art. 10 of the Women's Convention indirectly addresses women's right to education in that it requires governments to ensure equal rights with men in the field of education.
2. What is the scope of the right to education?
All of the above provisions establish some common conditions that must be met by Member States to enable individuals to fully exercise and benefit from their right to education. First, primary education must be free and compulsory.¹⁰² Second, states must

encourage secondary education and make it accessible to every person, without discrimination, and make higher education accessible to all on a basis of capacity.¹⁰³ Such accessibility shall be achieved by the progressive introduction of free education. Third, all provisions require that states lay down educational minimum standards and ensure that all schools conform to these standards.¹⁰⁴

3. Which international norms specifically protect women from discrimination in the field of education?

All instruments referring to the right to education were passed on the notion of equality between men and women. The principle of gender equality is reconfirmed in the preamble of the Children's Convention and in Art. 3 of the CESC. In addition, some international norms specifically prohibit discrimination in the field of education. For instance, the 1960 UNESCO Convention is solely dedicated to the prohibition of discrimination in the field of education. The Convention defines discrimination in education to include "any distinction, exclusion, limitation or preference based on race, color, sex, or other factors, with the purpose or effect of nullifying or impairing equality of treatment in education."¹⁰⁵ It further declares any practice to be discriminatory that deprives any person or group of persons of access to education of any type or at any level, or that limits any person or group of persons to education of an inferior standard. States Parties are obliged to abolish any discriminatory statutory provisions or administrative practices and to enact the necessary legislation to abolish discrimination in education.

An additional provision addressing gender equality and the elimination of discrimination in education is Art. 10 of the Women's Convention. Specifically, Art. 10 (a) and (b) require "the same conditions for career and vocational guidance, for access to studies ... in rural as well as in urban areas; access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality." To further and advance gender equality in the minds of future generations, Art. 10 (c) requires that stereotyped concepts of the roles of men and women be abolished from textbooks as well as from all school programmes. Finally, Art. 10 (f) addresses the fact that more girls drop out of school than boys and requires states to take all appropriate measures for the "reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely."

III. The Cycle of Poverty: Rural Women and Education

1. Why are girls and women in the rural areas of Southeast Asian countries particularly underprivileged with respect to their right to education?
As rural societies in Southeast Asia traditionally are hardest hit by poverty, many girls and women in rural areas do not attain formal education. While child labour is common among girls and boys in rural areas, the lowest priority for education is given to girls,



Schoolchildren in Malaysia. © Ulla Kunze

which many families keep at home to look after their siblings and to do fieldwork. Long distances and poor roads are an additional burden that prevents many children to attend village schools. Many girls, who do enroll in primary school do not continue beyond the first two grades, because it is not feasible for them to walk the long distances to the next village. Particularly in rural areas, however, women without formal education stand very slim chances to receive employment. Uneducated rural women tend to marry early, give birth to a large number of children, and work in the lowest paying positions with the poorest working conditions. Hence, preventing girls in rural areas from attending school introduces them into a cycle of poverty, which many of them cannot escape for the remainder of their lives.

2. **Does specific international legal protection exist for rural women's right to education?**
In addition to the general international standards addressing women's right to education, Art. 14 of the Women's Convention aims at protecting women in rural areas. Art. 14 (1) states:

States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.¹⁰⁶

In addition, Art. 14 (2) (d) requires States Parties to provide women with the right "to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency."¹⁰⁷

IV. Overcoming Multiple Barriers: Women with Disabilities

1. **Why do disabled girls and women in Southeast Asia face multiple barriers?**
Disabled girls and women in Southeast Asia live under the double burden of being both disabled and female.¹⁰⁸ As disabled persons belong to a group that is even more marginalized than women, disabled girls and women have not received their share in the overall improvement of female education in Southeast Asia. While the value of female education is widely recognized throughout the region, the education of disabled women is often viewed to be of secondary importance. School attendance for disabled girls is not compulsory in many Southeast Asian countries and schools do not provide for the necessary facilities or specially trained teachers.¹⁰⁹ Lack of education, however, has a much more devastating affect on disabled women than on others. A disabled woman without education has nearly no chance to find paid employment. At the same time, disabled women tend to be burdened with higher expenses for health care, transportation, adequate accommodation, and the like. Hence, disabled women who have not benefited from a good education system are likely to suffer lifelong dependency on their families, or to fall into poverty.
2. **Is there specific international legal protection for women and girls with disabilities?**
Art. 23 of the Children's Convention reiterates the rights of mentally or physically disabled children. Specifically, Art. 23 (2) requires States Parties to ensure "that the disabled child has effective access to and receives education, training, ... [and] preparation for employment ... in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."¹¹⁰ In addition, the 1975 Declaration on the Rights of Disabled Persons recognizes that disabled persons have the same fundamental rights as their fellow citizens of the same age, including the right to "education, vocational training ... other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration."¹¹¹ As the instrument is only a declaration, however, it is not legally binding.

Women and Work

Gender Equality at Work • The Right to Work and Rights at Work under International Law • Women in Industry • Women Home Workers and the Informal Sector • Trafficking in Women • The Economic Exploitation of the Girl Child

I. Gender Equality at Work: a Long Road to Travel

1. Why do Southeast Asian women workers require specific protection?

It appears to be common knowledge that throughout the world women must struggle harder to succeed in the working world than men do. Unfortunately, this applies particularly to women in the Southeast Asian region. In the past, women's roles in Southeast Asia was largely restricted to child rearing and domestic tasks. In addition, women in the poor rural areas were also responsible for helping out on the family farm. The traditional view that women ought to stay at home has changed since many families became dependent on a second income. Women from impoverished families started to work for pay, soon to be followed by those of the middle class. However, while it is now widely accepted that women pursue paid work outside the home, they still lag significantly behind men in virtually all areas of employment. Women tend to work longer hours, receive lower wages, and endure poorer working conditions than men. It must be recognized that domestic work, in and of itself, is also work, even though in most cases it is unpaid. As women continue to bear the primary responsibility for child rearing, domestic work and the care for elderly family members, they are "at work" most of their lives.

Many employers believe that this double burden of domestic and paid work outside the home will make women less committed to the latter. Thus, women are habitually the ones to be hired last and fired first. It is also considered socially more acceptable to lay off women rather than men, and employers often invoke the excuse that since women are not the families' primary breadwinners, they don't need the job as much as a man.¹¹²

These inequalities are further enhanced by the socio-cultural attitude that women by their very nature should be employed in jobs of low complexity and with little room for decision making.¹¹³ Most Southeast Asian countries are known for their patriarchal structure and the gender stereotype that women are "followers not leaders" continues to prevail in many parts of the region. This attitude also explains, in part, why the

overall improvement of women's educational levels did not necessarily translate into better jobs as compared to men.¹¹⁴ Women continue to be concentrated in sales and services, and the low-level manual labour positions in the Southeast Asian export - processing zones. These are typically the positions that provide for the least job security, poorest working conditions, and little access to skill development opportunities. Even when women are employed in higher positions, however, statistics show that women earn only 50% to 80% of what men earn in the same position.¹¹⁵ Specific protection for women with regard to their employment is, therefore, necessary to eliminate discrimination against women in all areas of employment.

Women and Employment in Southeast Asia

Country	Women participation in the adult labour force 1995/97 ¹¹⁶	Wage and salaried workers		Self-employed workers		Contributing family workers		Change in female share of administrative and managerial positions (female share as % of total) ¹²⁰	
		1990/97 ¹¹⁷		1990/97 ¹¹⁸		1990/97 ¹¹⁹		1980s 1990s	
		W	M	W	M	W	M	1980s	1990s
Brunei Dar.	34 %	---	---	---	---	---	---	6%	17%
Cambodia	53 %	---	---	---	---	---	---	---	---
Indonesia	40%	24%	32%	29%	52%	45%	14%	---	---
Lao PDR	47%	---	---	---	---	---	---	---	---
Malaysia	44%	72%	71%	14%	25%	15%	4%	9%	19%
Myanmar	44%	---	---	---	---	---	---	---	---
Philippines	38 %	41%	42%	30%	40%	19%	10%	22%	33%
Singapore	41%	93%	83%	6%	17%	2%	0%	---	---
Thailand	45 %	34%	41%	21%	43%	44%	16%	20%	21%
Vietnam	49 %	---	---	---	---	---	---	---	---

2. What Effect did the Asian Economic Crisis have on Women Workers?

Although it is uncontested that the Asian economic crisis brought tremendous hardship to the entire Asian - Pacific population, research indicates that the region's women bear the brunt of the crisis and its aftermath. In response to the economic crises, companies failed to implement minimum wages and discriminated against women by paying them lower wages than men.¹²¹ Many companies were forced to dismiss large numbers of their workers; women were often the first to be laid off, as they occupied most of the temporary, part-time, or other low-level dispensable jobs. As these occupations habitually provide for very limited, if any, social security, women were also more adversely affected by the overall poor coverage of social security. At the same time, training programs and loan policies favored men, which made it even more difficult for women to move on to other employment opportunities, or to open up their own businesses. A vast number of women were forced to accept poorly paid informal work or work in the

sex industry. While many rural families saw their only chance in sending their daughters to earn an additional income in the cities, many migrant workers were deported back to their home countries. Hence, the crisis exacerbated existing gender inequalities and led to increased unemployment and dislocation for women.

II. Women's Right to Work and Rights at Work under International Law

1. Where do we find international legislation protecting women workers?

The ILO is the main body established to promote and protect international labour rights. International labour rights are standards set by the international community in order to improve the conditions of life and work worldwide. These standards aim to achieve full employment, share the fruits of progress fairly, protect the life and health of workers, and to promote dialogue and cooperation between workers, employers, and governments. In short, they address the rights of every person at work.

Since its creation in 1919, the organization has adopted more than 180 conventions. Compared to other human rights instruments, which mostly lay down fundamental principles and use broad language, the ILO conventions are very elaborate and contain well-defined rights. In addition to the ILO conventions, we find women's workers' rights recognized in several UN human rights instruments, such as the Women's Convention, the Universal Declaration, and the CESCR. These instruments address both the right to work and the rights at work.

2. What do labour rights have to do with human rights protection?

Labour rights are human rights. Furthermore, labour rights constitute one of the best-defined areas of international human rights law. This linkage is often not sufficiently recognized by human rights organizations and trade unions, which tend to work parallel to each other on similar issues, rather than in collaboration which would prove beneficial to both.¹²² Labour rights and human rights are often viewed as two separate areas of law, partly because the International Labour Organization has accomplished the largest part of norm setting in the area of labour rights, and the ILO is not part of the general system of United Nations human rights bodies. Rather, it is a specialized agency of the United Nations responsible specifically for the promotion of workers rights. The ILO, however, actively interacts with UN human rights bodies, in particular with CEDAW and the UN Commission on the Status of Women (CSW).

3. Is there a right to work under international law?

There are several provisions that guarantee the right to work. Art. 23 of the Universal Declaration and Art. 6 of the CESCR expressly recognize everyone's right to work. In addition, Art. 11 of the Women's Convention requires States Parties to ensure, on a basis of equality of men and women, "the right to work as an inalienable right of all human beings."¹²³

4. What does the right to work encompass?

According to Art. 23 of the Universal Declaration, the right to work includes the "right to free choice of employment, to just and favorable conditions of work and to protection against unemployment."¹²⁴ Art. 6 (1) of the CESCR articulates more cautiously that States Parties must take appropriate steps to safeguard that everyone is provided with the opportunity "to gain his living by work, which he freely chooses or accepts."¹²⁵ To achieve the full realization of this right, Art. 6 (2) requires States parties to provide for "technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."¹²⁶

5. Which of the ILO Conventions are of particular relevance to women workers?

Because of the multitude of ILO legislation, this publication only provides for a general overview over those conventions which are relevant to the protection of women workers. The following ILO instruments are considered to be the cornerstones for promoting women's rights at work:

Elimination of Discrimination in Employment:

Equal Remuneration Convention, 1951 (C100):¹²⁷ This Convention obliges States Parties to implement the principles of equal pay for women and men for work of equal value.

Discrimination (Employment and Occupation) Convention, 1958 (C111): This Convention aims at promoting equality of opportunity and treatment with respect to employment and occupation; it prohibits any form of discrimination based on race, colour, sex, religion, political opinion, national extraction, or social origin.

Workers with Family Responsibilities Convention, 1981(C156): This Convention applies to women and men alike who bear responsibilities for dependent children or other members of their family. It requires States to take measures so that persons with such responsibilities can engage in employment without being discriminated against and to minimize areas of conflict between employment and family responsibilities.

Maternity Protection:

Maternity Protection Convention, 1919 (C3), 1952 revised (C103): Both of these Conventions provide for maternity protection. While Convention No. 3 applies to women working in industry and commerce, the revised Convention No. 103 extends the protection to women in non-industrial undertakings, including wage-earners working at home or in domestic work in private households.¹²⁸ The Conventions require States to ensure a minimum of twelve weeks of maternity leave, six weeks of which have to be taken after confinement.¹²⁹ States shall guarantee paid benefits sufficient for the full and healthy living of mother and child, either from public funds or from an insurance scheme, and free medical care by a doctor or a certified midwife. Furthermore, States Parties must prohibit a woman's dismissal from work during the time of her maternity leave and shall ensure that after her return to work she will be

allowed to interrupt her work for the nursing of the child; these interruptions shall be counted as working hours.

Maternity Protection Convention, 2000 (C183): A third revision of the Maternity Protection Convention has been adopted in June 2000. This Convention brings about some substantial innovations, including its applicability to all employed women and a non-discrimination clause, requiring States Parties to ensure that maternity does not constitute a source of discrimination in employment, including access to employment. The Convention, however, has not yet entered into force.¹³⁰

Plantations Convention, 1958 (C110) and Protocol, 1982: Part VII of this Convention provides for additional maternity protection for women working on plantations.

Maternity Leave Benefits in Southeast Asia as of 1998¹³¹

Country	Length of maternity leave	% of wages paid in covered period	Provider of coverage
Cambodia	90 days	50 %	Employer
Indonesia	3 months	100 %	Employer
Lao PDR	90 days	100 %	Social Security
Malaysia	60 days	100 %	Employer
Myanmar	12 weeks	66.7 %	Social Security
Philippines	60 days	100 %	Social Security
Singapore	8 weeks	100 %	Employer
Thailand	90 days	100 % for 45 days, then 50 % for 15 days	Employer for 45 days, then Social Security
Viet Nam	4-6 months	100%	Social Security

Conditions of work, and health and safety at the workplace:

A number of ILO Conventions protect the health and safety of women working with particularly hazardous materials or whose work requires them to carry heavy loads. Others contain protective regulations regarding women's working conditions, generally. These protective conventions include:

- White Lead (Painting) Convention, 1921 (C13)
- Maximum Weight Convention, 1967 (C127)
- Benzene Convention, 1971 (C136)
- Chemicals Convention, 1990 (C170)
- Night Work (Women) Convention, 1919 (C 4)
- Night Work (Women) Convention, (Revised), 1948 (C89) and Protocol, 1948
- Night Work Convention, 1990 (C171)
- Underground Work (Women) Convention, 1935 (C45)

Some of the protective standards have come under attack as being discriminatory. Critics particularly assert that protective provisions which do not specifically aim at women's reproductive capacities are too strict and may amount to gender discrimina-

tion in that they limit women's free choice of employment.¹³² This criticism applies, for instance, to the case of night work and underground work. The ILO has, therefore, recommended that that domestic protective legislation should be adopted equally for both sexes.¹³³ Measures that apply only to one sex shall be grounded on and justified by objective scientific evidence on certain biological conditions of that sex.¹³⁴

Freedom of Association:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87): This convention constitutes one of the fundamental ILO Conventions. It recognizes the rights of workers to establish and join organizations of their own choosing with a view to defending and furthering their respective interests.

Right to Organize and Collective Bargaining Convention, 1949 (C98): This Convention is equally fundamental to all workers. It protects workers from anti-union discrimination. In particular, workers shall be protected against refusal of employment or dismissal because of union membership and against interference by other union or employer's organizations. The Convention further promotes the full development and utilization of mechanisms for voluntary negotiation between employers or employer's organizations and worker's organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Other Conventions of significance to women workers:

There are several ILO Conventions, which are not specifically designed for women's protection, but may be, nevertheless, of paramount importance for women workers. These include:

- Minimum Age Convention, 1973 (C138)
- Worst Forms of Child Labour Convention, 1999 (C182)
- Forced Labour Convention, 1930 (C29)
- Abolition of Forced Labour Convention, 1957 (C105)
- Rural Workers' Organizations Convention, 1975 (C141)
- Employment Policy Convention, 1964 (C122)
- Human Resources Development Convention, 1975 (C142)
- Vocational Rehabilitation and Employment (Disabled Persons Convention), 1983 (C159)
- Termination of Employment Convention, 1982 (C158)
- Social Policy (Basic Aims and Standards) Convention, 1962 (C117)
- Social Security (Minimum Standards) Convention, 1952 (C104)
- Paid Educational Leave Convention, 1974 (C140)

6. Why may it be advisable to revert to human rights norms other than the ILO Conventions?

If one takes a look at the ratification chart of ILO Conventions,¹³⁵ s/he will find that many Southeast Asian countries have ratified none or very few of the ILO Conventions. The Philippines shows the best ratification status, having ratified 12 of the 22 conven-

tions that are considered as being relevant to women's rights at work. The average number of applicable conventions ratified by Southeast Asian states, however, lies around six or lower, although it must be noted that a majority has ratified the fundamental Equal Remuneration Convention and the Right to Organize and Collective Bargaining Convention. If countries have not ratified the relevant conventions, however, they are not legally bound by them. In this case it may be advisable to revert to human rights conventions with corresponding provisions, which your country has ratified. In any event, one should always use all available international instruments available for the promotion and protection of labour rights.

7. Which human rights conventions - other than those of the ILO - protect the rights of women workers?

The most important human rights instruments for women workers are the Women's Convention, the Universal Declaration, and the CESC. Although their standards are often more general in their wording, one can find many standards for women's workers rights that correspond to those embodied in ILO Conventions.

Elimination of Discrimination in Employment:

Art. 11 (1) of the Women's Convention requires States Parties to eliminate discrimination against women in the field of employment. The provision sets out a number of employment related rights that parallel those set out by the ILO. For instance, it obliges States Parties to guarantee the equal right to work, the right to equal employment opportunities, the right to free choice of profession and employment, the right to equal remuneration, the right to social security, and the right to health and safety at the workplace. In addition, Art. 10 of the Women's Convention states that governments shall ensure the same conditions for career and vocational guidance. Furthermore, the principle of equality at the workplace is enshrined in Art. 7 ECSCR. Art. 7 (a) (i) provides for "fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work." Art. 7 (c) calls for the "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence." The right to equal remuneration is, furthermore, enshrined in Art. 23 (2) of the Universal Declaration.

Maternity Protection:

Provisions governing maternity protection are contained in Art. 11 (2) of the Women's Convention and in Art. 10 (2) of the CESC. According to Art. 11 (2) of the Women's Convention, states shall introduce maternity leave with pay or comparable social benefits, prohibit dismissal on the grounds of pregnancy or of maternity leave, provide for "the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life." Art. 10 (2) of the CESC notes that "special protection should be accorded to mothers during a reason-

able period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."

Conditions of work, and health and safety at the work place:

Conditions of work with respect to minimum wages, hours of work, and occupational health and safety are dealt with in Art. 7 (b) and (d) of the CESC, respectively. Art. 12 (2) (b) and (d) require States Parties to take all necessary steps to prevent occupational diseases and improve environmental and industrial hygiene. Moreover, Art. 11 (2) (d) calls on States Parties to provide special protection to women during pregnancy in types of work proved to be harmful to them.

The right of association and the right to organize and bargain collectively:

These rights are enshrined in Art. 8 of the CESC. Furthermore, Art. 23 (4) of the Universal Declaration recognizes everyone's right to form and to join trade unions for the protection of his interests.

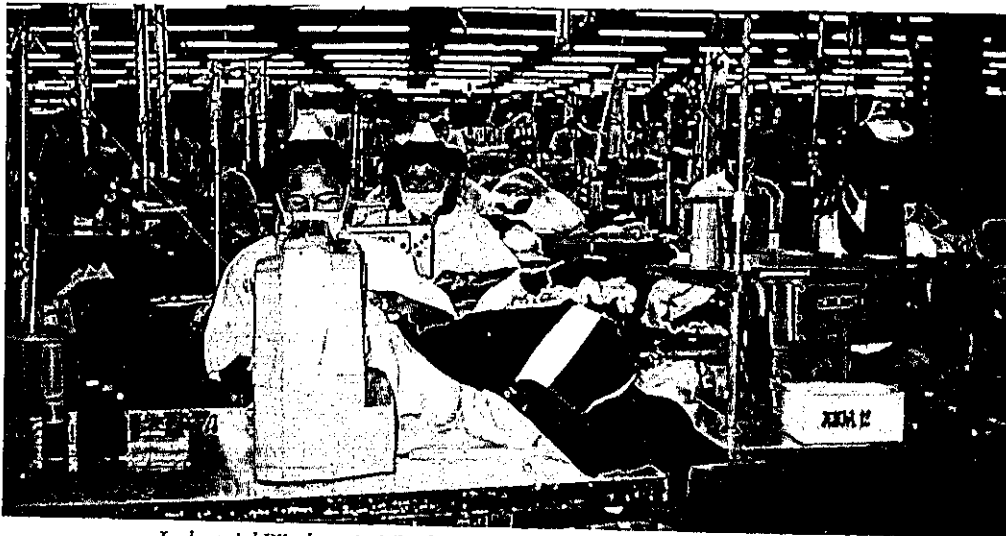
III. Women in Industry: Hired Last Fired First

1. What is the situation of female factory workers in Southeast Asia?

Dr. Lae Dilokvidhayarat, Director of the Labour Management and Development Center at Bangkok's Chulalongkorn University, once resolved: "It is known that if a woman and a man enter a factory at the same time, usually the man will be trained and promoted while the woman remains in the same job. And when they have to lay off workers, of course, the unskilled workers go first."¹³⁶ Considering that throughout the region women constitute almost half of the labour force, Mr. Dilokvidhayarat's statement shows that discrimination in industry is not incidental; it happens on a large scale and affects many women throughout the region. The bulk of women work in industries like textiles, shoes, and electronics assembly. For instance, in the textile industry, as many as 80% of the workers are women.¹³⁷ It is always the low paying jobs of unskilled workers that are risky and governed by poor working conditions. Working through nights and weekends is not unusual when there are rush orders to fill. Although minimum wages were imposed by national governments, many companies have failed to implement these in the aftermath of the economic crisis. In fact, in many enterprises minimum wages have effectively become maximum wages. In addition, women in industry - like in other work sectors - invariably get paid less than men. In 1997, female employees in the manufacturing industry earned, as a percentage of male employees earnings, 58% in Malaysia, 96% in Myanmar, 60% in Singapore, and 68% in Thailand.¹³⁸

2. Do women in trade unions not fight for gender equality?

In the past, equality related issues were often treated as personal rather than as collective concerns. Unions now increasingly stress the importance of promoting gender equality in the workplace, however. The promotion of gender equality is undertaken primarily



Industrial Workers in Thailand. © Thai Labour Museum, Bangkok

through collective bargaining mechanisms. Another initiative, for example, is the establishment of a national vocational training centre in the Philippines to improve women's skills, which was initiated jointly by unions, employers, and the National Commission on the Role of Women.¹³⁹ Likewise, the introduction of karaoke in the unions staff room in a Malaysian factory animated women to step forward and gave them the confidence to participate and speak at official union meetings.¹⁴⁰ However, some major obstacles continue to impede trade unions in their strive to promote gender equality. One primary concern is that the right to organize and collective bargaining generally lacks recognition in the Southeast Asian region. Thus, many women workers find themselves in a double plight: They are not only denied their rights to equality and freedom from discrimination at work, they also do not enjoy the rights that give them the necessary tools to stand up for gender equality. The ILO aptly observed that "the quality of jobs which many women hold, particularly in developing countries, is as poor as the attention that is given to their rights to organize in order to defend themselves better."¹⁴¹ Although the increased participation in the workforce has resulted in increased female union participation, compared to men, women generally continue to be less willing to join a trade union. In a 2000 survey on trade unions worldwide, the ILO found the four primary barriers to female union-membership to be:

- (1) A lack of understanding of how unions can help them;
- (2) Fear of reprisals from employers;
- (3) Conflicting family responsibilities; and
- (4) Male-dominated culture/activities of the union.¹⁴²

In particular, women continue to be greatly underrepresented in the unions' highest-ranking decision-making bodies, where in 60% of the unions examined, women account for less than a third of these bodies.¹⁴³ It is self-evident, that a trade union whose leaders are mostly men is unlikely to give gender equality a high priority.

The Thai Durable Textiles Company¹⁴⁴

Suntana is a 52 two year old women, who has been working for the Thai Durable Textiles Company (TDT) in Bangkok since she was 12 years old. Throughout the 40 some years of her work for TDT, her wage has climbed slowly from an initial 8 to 250 Baht per day. A single woman, Suntana has been living in the TDT dormitories. The company and her women co-workers, with many of whom she both lived and worked, have become her life. Established more than 40 years ago, TDT is one of Thailand's oldest companies, employing overall 1,800 persons. As many as eighty percent of them are women who have been working for the company for more than 15 years. These women form a strongly unionized labour force. Suntana has been a member of the Thai Krieng Union for many years. Without her and the other union members' commitment, it is doubtful whether the workers would be able to profit from many rights and benefits, which they do enjoy today. Mothers' rights have been improved and pregnant women now receive a 90 day maternity leave; the Social Welfare Act was implemented for the factory's workers and occupational safety was improved. The TDT workers union also became famous for its push for gender equality: Although women constituted the vast majority of workers, they received far lower pay. For instance, while men received 50 days worth of pay for a bonus, women only received 10 days. As a result of the union's advocacy, pay bonuses are now nearly equal between men and women, although the salary of women workers is still lower than that of men.

When the company was hit by the economic crisis in 1997, Thai Krieng workers forewent pay raises, bonuses, and other benefits. In an act of solidarity with fellow workers whom the company threatened to dismiss, the union negotiated that during the time of the crisis all workers receive only 60% wages and work on a rotating scheme, thereby allowing all workers to remain employed. However, when the company found its accounts in the black again in 1999, contrary to its original promise, the TDT's management refused to raise pay rates according to the former schedule. After rounds of unsuccessful negotiations, in the course of which TDT insisted that pay raises were in the sole discretion of the company's management, Suntana and other TDT workers announced a strike. On 30 May 2000, 1000 women workers occupied the factory. Their strike has now lasted for more than one year and is still continuing as of October 2001. The TDT management's first reaction was the dismissal of 400 workers, most of whom are members of the TDT labour union. To break down the strike, the TDT management allegedly hired persons to attack the protesters with tear gas and other chemicals. According newspaper reports, 100 men broke through the company's gates on 22 June 2000, and attacked 200 women union members. The police witnessed the incident, but apparently no action was taken. To intimidate the workers, the company brought a lawsuit claiming millions of Baht in damages against the striking women as well as lawsuits for the worker's use of the company's water and electricity during the strike. Although it is deemed highly unlikely that the company will succeed with this suit, it was a successful device for intimidating some of these women whose earnings were not

substantially above the minimum wage level. It also served to keep them away from the protest with some women having to testify as many as 14 times in court. The company later refused to reinstate any of the 1000 workers involved in the strike and consequently denied them to access the TDT premises. To press the government for action, the strikers decided to demonstrate for their reinstatement in front of the government building. Based upon the unionist's petition, the ILO requested the Ministry of Labour to intervene, which ordered all 1000 women workers to be reinstated in October 2000. The TDT management followed this request only with regard to 680 workers. Suntana is one of the remaining 390 mostly middle-aged women that have since continued with their protest in front of the government building and are still waiting to be reinstated.

The Thai Krieng example demonstrates how arduous and, in some cases, even dangerous the struggle for pay raise and improved working conditions can be. Unions are considered expensive by employers, as they fight for fair wage increases and other improvements which usually require some investment by the employer. Hence, many employers spare no efforts to discourage union membership, intimidate their members, and dismiss them to be replaced by more subservient personal. Many women fear to enter in such struggles, as they do not want to risk losing their jobs. The TDT union members, for example, have now had to survive on donations for more than a year, as they have not been paid since the staging of the strike in June 2000. The Thai Krieng example demonstrates how important government action is to protect workers rights. Unlike the beliefs of the TDT management, pay raises are not left to the sole discretion of the company's management's. Workers are entitled to participate fairly in a company's economic growth. The ILO Freedom of Association and Protection of the Right to Organize Convention (C87), and the Right to Organize and Collective Bargaining Convention (C98), oblige governments to take measures that protect workers against acts of anti-union discrimination and ensure the exercise of collective bargaining. Thailand has ratified neither of these conventions which are deemed fundamental for the improvement of workers' rights. Thailand is, however, obliged under Art. 8 of the CESC to ensure the right to form and function freely in trade unions and the right to strike.

IV. Invisible Women: Home Workers and the Informal Sector

1. What is the informal sector?

The term "informal sector" refers to the notion that underneath the organized and visible sector of work lies another "informal" sector, where people, who are unable to get work in the formal sector, sustain themselves on their own account with a variety of activities. They are informal in the sense that they are mostly unregulated and unrecorded in official statistics, although attempts have been made to develop national statistics. No unanimous definition of the "informal sector" exists and its scope remains controversial. The ILO has described it as follows: "The informal sector consists of

small-scale, self-employed activities (with or without hired workers), typically at a low level of organization and technology, with the primary objective of generating employment and incomes. The activities are usually conducted without proper recognition from the authorities, and escape the attention of the administrative machinery responsible for enforcing laws and regulations."¹⁴⁵

2. What are the advantages and what the dangers of the informal sector?

Some describe the informal sector as a safety net for workers, who fall out of the formal sector. Since in most Southeast Asian countries unemployment coverage extends only to a minority of formal sector employees, engagement in the informal sector is the only way for many unemployed workers to contribute to the family income. Access to work is relatively easy and the informal sector takes in large quantities of workers falling out of the formal sector. Hence, the ILO estimated that the urban informal sector in Asia grew at 4 percent or more a year through the 1980s, while the formal sector only managed 2 percent.¹⁴⁶ While no data on labour distribution exists for the time after the Asian economic crisis, it is to be expected that the informal sector has increased even more significantly since 1997. Thus, in situations like in Southeast Asia where the safety net for unemployed workers is largely insufficient, it is fortunate that the informal sector exists. It gives unemployed workers a survival strategy providing an opportunity to gain some income, even though it may be marginal. It must be recognized that in the vast majority of cases, workers in the informal sector fall out of any scheme designed for the rights of workers and the protection of their health and safety. The majority of urban informal sector workers operate under precarious and hazardous working conditions. According to the ILO some of the most prevalent problems regarding working conditions are: poor lighting, lack of ventilation, excessive heat, poor housekeeping, inadequate work space and working tools, lack of protective equipment, exposure to hazardous chemicals and dusts, and long hours of work.¹⁴⁷ Minimum wages are not implemented and informal sector workers are not covered by any social security system. While unionism in the informal sector has not been deemed necessary in the past, it is now recognized that the informal sector is not a temporary phenomenon, but is permanent. Hence, the ILO and other organizations now advocate unionism in order to preserve the income-generating potential of the informal sector on one side, while removing exploitation and gradually raising employment standards on the other.

3. What is women's share in the informal sector?

Because of the unregulated and unregistered nature of informal work, it is even more difficult to establish comprehensive data than in other areas of employment. The following table contains data on a selected number of Southeast Asian countries on employment in the urban informal sector in the years 1994-1996.

We can see from these statistics that already in the first half of the 1990s a large percentage of the overall workforce of these countries was employed in the informal sector and that women represented a larger percentage of informal workers throughout

Informal Sector Employment¹⁴⁸

Urban informal sector employment as a percentage of total urban employment					
Country	Year	Total	Male	Female	
Indonesia	1995	20.6%	19.1%	22.7%	Urban and rural areas, manufacturing only
Myanmar	1996	54.2%	52.6%	56.9%	Agriculture, trade, hotels and restaurants excluded
Philippines	1995	17.0%	15.8%	19.4%	Capital area only
Thailand	1994	76.8%	75.3%	78.6%	Urban and rural areas

the region. Until now, no precise data have been collected on the status of the informal sector after the Asian economic crisis. It is known, however, that the crisis resulted in a tremendous overall growth of the informal sector. As women were the primary victims of formal sector dismissals, the informal sector was the only option for many of them to find work. Hence, the gap between male and female employment in the informal sector is believed to have increased even more significantly since 1997.

4. Is home work one type of informal work?

Home work is sometimes but not always considered informal work; but almost always it takes place on terms and condition that must be considered informal.¹⁴⁹ To reduce the fixed wages and fringe benefits of employees, employers have increasingly resorted sub-contracting home workers for low level tasks as the last link in a sub-contracting chain. In Thailand, an estimated 25% to 50% of workers work from home, and the vast majority of them are women.¹⁵⁰ They may sew uniforms, fill pencil boxes with colored pencils, or snip threads off Barbie doll dresses. For instance, women in Bangkok have been reported to sew uniforms at home for 15 Baht per set. In order to earn the 162 Baht, which constitutes the daily minimum wage in Bangkok, they have to sew 11 uniforms a day.¹⁵¹ Home work is a primary working area for women, not only because of their difficulty in finding better paid jobs in the formal sector, but also because the lack of child care facilities ties many women to their homes.

5. What international legislation protects women workers in the informal sector?

Specific protection can be found at least for home workers in the ILO Home Work Convention (C177). This Convention defines homework as work carried out for remuneration by a person "in his or her home or in other premises of his or her choice, other than the workplace of the employer." The work must result "in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used." Persons with a degree of autonomy or economic independence that is necessary to be considered independent workers do not fall under the protection of the Convention.¹⁵² The Convention aims at improving the situation of home workers by promoting equality between home workers and other wage earners, as well as the formation of unions, social security, and the improvement of health and

safety of the workplace. Minimum age and maternity protection are also covered by the Convention. However, although the Convention has entered into force in April 2000, no Southeast Asian country has ratified it yet.

In addition, Art. 13 (b) of the Women's Convention is of particular relevance for women working in the informal sector. The provision requires States Parties to ensure, on a basis of equality with men, the same rights to bank loans, mortgages and other forms of financial credit. For rural women, Art. 14 (2)(g) obliges governments to grant equal "access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes." Naturally, these provisions are equally applicable to all women. They are, however, of particular importance for women in the informal sector, as these most often work self-employed. Throughout the Southeast Asian region, women are discriminated against when it comes to granting them access to bank loans. In addition to adequate training, however, access to bank loans is the most fundamental prerequisites for opening a profitable enterprise. Without change, women, who are not granted these two devices, will always be restricted to the lowest types of self-employment such as food processing, vending, or domestic services.

V. Trafficking in Women: Domestic Workers, Mail-Order Brides, and Women in the Sex Industry

1. What is meant by the term "trafficking"?

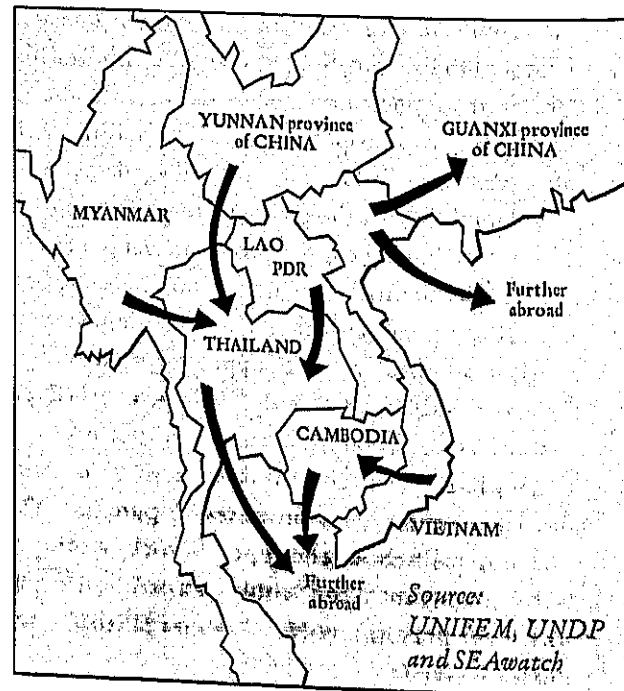
The first ever definition of the term "trafficking in persons" has been introduced with the newly adopted UN Convention Against Transnational Organised Crime.¹⁵³ It's Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines the term to mean "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."¹⁵⁴ This is a lengthy definition, which requires some unraveling. Two of the core components of the definition are coercion and deception. Coercion, involves any use of threat or force by the trafficker, with kidnapping as its most serious form. Coercion, however, can also originate within the family.¹⁵⁵ Impoverished parents may abuse their authority and practically sell their children to the traffickers. More commonly, however, trafficking takes place by means of deception. The term deception refers to situations where traffickers make false promises to parents, other family members, or the trafficking victim herself about the type of work, working conditions, payment, and the like. A third component is the "abuse of a position of vulnerability." This refers to situations in which the person involved has no real and acceptable alternative but to submit to the abuse involved.¹⁵⁶

2. In what forms does trafficking of women occur in Southeast Asia?

Surveys on trafficking in women show that most Southeast Asian countries are both sending and receiving countries for trafficking in women. An estimate 200-225,000 women and children are trafficked annually from Southeast Asia.¹⁵⁷ This constitutes one third of the global trafficking trade. About 60% of these women and children are trafficked to major cities of other Southeast Asian countries and about 40% to the rest of the world.¹⁵⁸

The majority of women are trafficked for work in the sex industry although trafficking for sweatshop labour, marriage, and street begging is also common.¹⁵⁹ The majority of trafficking victims are women and children from poor rural areas. This is because their families are most severely affected by poverty, have no viable employment alternative in their home area and are most vulnerable to deception. Regardless of the area of work in which they end up, migrant workers are exposed to abuse by virtue of the fact that they are living in a foreign country. Discrimination, abuse, and exploitation are common for all migrant trafficking victims. Many trafficked women are reported to have suffered inhumane and slave-like tortures during the trafficking process and while in the receiving countries.¹⁶⁰ Employment agencies commonly collect exorbitant employment fees, which trafficking victims are required to work off upon entering their employment, and collect their passports until the fees are paid back. With no command of the language of the country of destination, and an overall poor educational background, many women are unaware of their rights and have little means of defending themselves or seeking help from the authorities. The additional pressure of wanting to support their families financially makes most trafficking victims comply silently with whatever their employer demands from them.

Trafficking of women in the Mekong sub-region¹⁶¹



Trafficking of Women from Thailand to Japan¹⁶²

Khai is a young woman who was trafficked from Thailand to Japan in 1991. She grew up in Bangkok, where she lived with a family and worked as their maid since the age of four. Khai was told that she was a refugee, but she did not know where and exactly when she was born. Since she did not possess any official papers, Khai was one of the many children in Thailand who were never allowed to visit a school. Khai reports that her family treated her like an animal rather than a person. Living with that family, she felt so lonely and desperate that she attempted to commit suicide and had to be treated at a hospital for over a month after she took an overdose of medicine. When she was barely a teenager, Khai decided to leave the family she was living with and find a job elsewhere. The family's son rented an apartment for her and arranged for clients to engage in commercial sex with her. Khai recalls that she was working as a prostitute when she was just beginning to develop breasts and before she had started menstruating. Khai later went to southern Thailand to work as a masseuse and prostitute in a massage parlor. At the age of sixteen, she was approached by a client, who offered her to arrange for a well paid job in Tokyo. Upon her objection that she did not possess any identification, the client explained that he could obtain a passport for her, because he was a member of parliament. Khai then went to have her body examined and an agent arranged for a false passport. Khai traveled to Japan with her agent and four other women, pretending to be a family of father and mother and four sisters. Upon her arrival, a broker sold her to the "mama" of a prostitution snack bar in Tokyo. Mamas are female managers of snack bars, who are most commonly from Thailand, the Philippines, or Korea. They introduce customers to the hostesses and the clients pay the mama rather than the hostess for a night or several hours with her. Before leaving Thailand, Khai's recruiter had told her that she would owe 120 Bai (US \$ 9,000) to cover for the travel and other expenses. Khai did not know how much that was and thought that it was about US \$ 1,200. When she started working in Tokyo, however, her mama told her that she had to pay off US \$ 26,000 to repay her purchase price, plus other fees and expenses. To prevent her from escaping, the mama confiscated her passport and in order to repay her debt, Khai was expected to fulfill whatever clients demanded from her. Khai accounts that the mama would beat her whenever she did anything that did not please the client and that she was not allowed to insist on the use of condoms. Khai was also severely abused by clients, who would beat her and burn her with cigarettes. The mama made her pay for her own birth control pills, which she had to take without any days for menstruation for one and a half years. After several months of work, Khai had her blood checked and found out that she was HIV positive. However, still heavily indebted, Khai could not pay for medication and the mama refused to give her money to pay for it. When Khai finally had paid off her debt, her mama asked for an additional US \$4,000 to obtain back her (fake) passport. When Khai did not agree to work off the additional sum, the mama sold her to another snack bar, where she was again in debt for US \$16,000. Khai escaped from this snack bar after having repaid half of her debt to the owner and started working as a prostitute in the streets. Since she was desperately longing to go back to Thailand, she

sent her earnings to a friend in Thailand, who promised to get her a Thai ID card to travel back. Khai later learned that her friend had spent all the money instead of saving it for her.

3. What specific international legal protection exists?

The bulk of legislation addressing trafficking in persons directly or indirectly demonstrates the magnitude of the problem and pressing need to combat trafficking. Trafficking in women is a labour issue, a human rights concern, and a problem in criminal law and has, consequently, been addressed in all three areas of international law. In international labour law, the ILO Forced Labour Convention from 1930 (C29) aims at suppressing forced or compulsory labour, which it defines as all work or service for which the said person has not offered him- or herself voluntarily.¹⁶³ In the broader area of general human rights legislation, Art. 6 of the Women's Convention urges governments to take appropriate measures to suppress all forms of traffic in women as well as the exploitative prostitution of women. Furthermore, Art. 8 CESCR prohibits slavery and slave trade.

The girl child is protected from trafficking by Art. 35 of the Children's Convention, which provides that States Parties shall take all appropriate measures to prevent the abduction of, sale of, or traffic in children for any purpose or in any form. Art. 34 of the Children's Convention requires governments to protect the child from all forms of sexual exploitation. In addition, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁶⁴ was adopted in 1990 to provide special protection for migrants. It establishes, in certain areas, the principle of equality of treatment with nationals for all migrant workers and their families, irrespective of their legal status. It also addresses the need for the sending, transit and receiving countries to institute protective action on behalf of the migrant workers. The Convention, however, has not yet entered into force.

The 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others¹⁶⁵ is a specific instrument for the prevention and punishment of trafficking in persons for the purpose of prostitution. Punishable under this Convention are persons who procure, entice, or lead away other persons for purposes of prostitution, or who exploit the prostitution of others, even with their consent.¹⁶⁶ Another instrument of interest is the UN Slavery Convention from 1926.¹⁶⁷

Finally, the newly adopted UN Convention against Transnational Organized Crime,¹⁶⁸ and its Protocol to Prevent, Suppress, and Punish the Trafficking in Persons, especially Women and Children¹⁶⁹ deals extensively with the trafficking of persons. The Protocol calls for effective domestic legislation to secure the criminalization of trafficking, prosecution and punishment of traffickers, as well the protection of trafficking victims. Another Protocol against the Smuggling of Migrants by Land, Air and Sea¹⁷⁰ supple-

ments the Convention. Once entered into force, these instruments will constitute the core legislation for dealing with trafficking in persons.

VI. The Economic Exploitation of the Girl Child

1. What is child labour?

For a valid definition of "child labour" we must identify first, who is considered a child, and second, what types of work amount to labour. For the purpose of prohibiting child labour, a child is every person that has not yet reached the minimum age for employment. The ILO Minimum Age Convention, 1973 (C138) specifies that the minimum age for employment "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years."¹⁷¹ Art. 2 (4) of the Convention allows developing countries to lower the minimum age to 14 years. Furthermore, Art. 3 specifies the minimum wage for any work that may be harmful to the young person in that it may jeopardize his or her health, safety, or morals to be less than 18 years. In addition, Art. 1 of the Children's Convention defines a child as every human being below the age of eighteen years unless majority is attained earlier under domestic law.¹⁷²

Not every type of work performed by children is considered to amount to child labour. Some forms of work are considered to be "good" in a sense that they contribute to the child's development and do not interfere with the child's education. On the contrary, the term "child labour" applies to types of work that are harmful to the child's development, as they interfere with his or her schooling, are profit orientated, and may be exploitative. The Director-General of the ILO defines work undertaken by children that amounts to child labour as: "work that places too heavy a burden on a child; work that endangers his [or her] safety, health or welfare; work that takes advantage of the defenselessness of the child; work that exploits the child as a cheap substitute for adult labour; work that uses the child's effort but does nothing for his [or her] development; [or] work that impedes the child's education and training and thus prejudices his [or her] future."¹⁷³

2. In what forms are girls in Southeast Asia involved in child labour?

As child labour in general is performed largely hidden in the informal sector, it is difficult to determine the exact amount of labour performed by girl children in Southeast Asia. Data that has been gathered, however, shows that girl child labour is not only prevalent, but even increasing throughout the region. The ILO estimates that 250 million children aged between 5 and 14 years perform child labour worldwide. Of these 250 million, 61% (nearly 153 million) live in Asia.¹⁷⁴ Although ILO statistics show that boys perform 54% and girls only 46% of child labour in Asia, these statistics do not take into account unpaid economic activity carried out in and around the household. Hence, the ILO highlights that if such full-time house work was considered in the statistics, the number of girls performing child labour would be equal or could even

exceed that of boys.¹⁷⁵ Reports also establish that girls frequently work more than twice as many hours as boys do, and comprise the majority of the "very young" workers.¹⁷⁶ Most commonly, girls work as domestic servants, perform household or farm tasks for their own family, or assist their families in home-based work for wages.¹⁷⁷

Throughout the region, many poor families send their daughters to work as domestic servants in better situated families in the cities to contribute to the family income. Domestic work requires no formal training and employers prefer children rather than adults as they are cheaper, more submissive, and do not require social securities. Girls who work as domestic servants often work six to seven days a week and are expected to be on call around the clock. Many do not earn proper wages but work only for a meager keep. Any additional sum they may receive, is sent home to support their family, and at times, to pay for their brother's education. As it is easier for boys than for girls to find a formal job, parents often send their sons to school, while daughters are left behind. Girls who are engaged in child labour either do not have the time to go to school at all, or they cannot benefit adequately from their education, as they tend to be tired at school and cannot find time for their studies. Furthermore, the trafficking of girls has become a serious problem throughout the area. Girls are trafficked from rural areas to cities or other countries. According to UNIFEM reports, the majority of child trafficking victims in the Mekong sub-region are girls aged 13 to 17.¹⁷⁸ Traffickers often offer substantial amounts of money to poor families, to send their daughters to work in factories or for families. While some girls do become factory workers or domestic servants, many end up in brothels. Many customers prefer to have sex with children rather than adult women. It is a common, yet mistaken assumption that children are less likely to be infected with contagious diseases and superstitions are fed that sex with a virgin will increase a man's fertility. Thus, the younger a child is, the more customers are willing to pay. NGO workers report that child prostitution has become socially acceptable in times of economic crisis, as children are expected to support their family financially.¹⁷⁹

All girls that are sent from their families to work outside the home have in common their fear that they will not fulfill their family's expectations. The concern to be a good daughter and sending home money often makes them endure whatever hardship they face: exploitative working hours, degrading verbal treatment, domestic violence, or even rape and sexual abuse.

3. Is there specific international legislation to protect the girl child?

Although there is no particular instrument relating to the girl child specifically, several conventions prohibit child labour in general. Art. 32 of the Children's Convention obliges States Parties to protect the child from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." This prohibition of harmful work is supported by Art. 31,

granting the child's right to rest and leisure. With regard to child prostitution, Art. 34 of the Convention obliges States Parties to protect the child from all forms of sexual exploitation and sexual abuse. In addition, the newly adopted Optional Protocol on the sale of children, child prostitution and child pornography,¹⁸⁰ which was annexed to the Children's Convention in 2000, deals specifically with the sexual exploitation of the child. The Protocol has not yet entered into force, however.

As noted above, the ILO Minimum Age Convention, 1973 (C138) requires governments to abolish child labour by adopting minimum age legislation. Yet, another milestone in the strive towards abolishing child labour was set in 1999, with the adoption of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182). According to Art. 3 of the Convention, the term "worst forms of child labour" comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

As these forms of child labour are harmful for the child, the Convention, in accordance with the Minimum Age Convention (C138), is applicable to all persons under the age of 18.¹⁸¹ It obliges governments to take all necessary measures to prevent the engagement in the worst forms of child labour and assist removal thereof. Governments are further required to provide access to free basic education and take account of the special situation of girls.¹⁸²

It must be noted that all Southeast Asian countries have ratified the Children's Convention and are thus obliged to protect children from child labour. Likewise, 6 countries - Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam - are party to the Worst Forms of Child Labour Convention (C181). The fact that 61% percent of all child labour is undertaken in Asia clearly elaborates that ratification of international legal instruments alone is not sufficient. International instruments can only be effective if they are adequately implemented on a national level.

Women and Violence

Violence against Women in Southeast Asia • Women's Protection from Violence under International Law • Spousal Abuse • Violence against Women at their Workplace • Ill-Treatment of Women in Custody • Women as Victims of War • Violence against Refugee and other Displaced Women

I. Violence against Women in Southeast Asia: Enforcing Gender Hierarchies

1. What is violence against women?

One of the most prominent demonstrations of the unequal social position of women is that violence against women continues to persist and has even increased in most countries of the world. The 1993 Declaration on the Elimination of Violence against Women¹⁸³ defines "violence against women" to embody "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹⁸⁴ Based on this definition, violence against women includes any form of physical, sexual, or mental harm or suffering inflicted on a woman, whether committed in the house, at work, in the street, in the police station, in prison, or any other place.

2. What forms of violence do women encounter in Southeast Asia?

Women in Southeast Asia experience violence in various forms, affecting women across the life-span in virtually all spheres of their daily lives. While domestic violence is still one of the most prevalent forms of violence throughout the region, sexual assault, harassment at the workplace, trafficking, as well as violence against refugee women, against women in custody, and against women prostitutes are also common. In addition, violence against women in armed conflict has recently been highlighted as a major issue of concern in East Timor. A particularly worrisome trend is that violence against the girl child appears to be at the increase. For example, a 1999 report on sexual abuse and domestic violence against women in Thailand shows that of all reported cases in the first half of 1999, almost 70% of the victims were under 15 years old. More than half of these cases took place in the victim's home.¹⁸⁵ Gender-based violence is one of many manifes-

tations of the deep-rooted patriarch cultures and attitudes that predominate in Southeast Asia. Non-fatal consequences of such violence may range from minor cuts and bruises to chronic disability, or mental health problems including anxiety, depression, and post-traumatic stress syndrome. Violence against women, however, often ends fatally; either by intentional homicide as a result of the injuries sustained, death by AIDS, or by suicide used as a last resort to escape the violence.¹⁸⁶

By ratifying international conventions, Southeast Asian governments have assumed the obligation to ensure women's equality before the law, the effective protection of their fundamental human rights as well as effective legal remedies when their rights are violated. With regard to the protection of women's physical integrity, governments in the past have consistently failed to fulfill this duty. In some instances, state agents themselves commit violence against women, for example, in cases of rape by members of the armed forces. When private actors rape or otherwise abuse women, governments are indirectly responsible if they consistently fail to prevent such conduct.¹⁸⁷ The Beijing Declaration and Platform of Action¹⁸⁸ addresses violence against women as one of the most critical areas of concern for the advancement of women.¹⁸⁹ In accordance with this classification, governmental reports on the implementation of the Platform of Action show that combating gender-based violence was among the primary efforts undertaken by Southeast Asian countries.¹⁹⁰ Of all reporting countries, the Governments of Indonesia, Malaysia, Myanmar, the Philippines, and Vietnam accounted for the scale of the problem in their respective country and discussed national actions undertaken to eliminate violence against women. Measures that were taken included the adoption of an anti-rape law in the Philippines¹⁹¹ and educational modules on the newly enacted Domestic Violence Act as well as the establishment of shelters for victims of domestic violence in Malaysia.¹⁹²

II. Women's Protection from Violence under International Law

1. How are women protected from violence in international law?

At the time when the Women's Convention was adopted in 1979, violence against women was rarely a topic of discussion. Violence against women was largely regarded as a private matter between individuals rather than a public human rights topic. It was not until women's organizations strongly advocated the position that violence against women is an all-encompassing human rights issue requiring international action that the international community began to slowly reframe the issue of violence against women.¹⁹³

To enhance state accountability, the UN General Assembly adopted in 1993 the Declaration on the Elimination of Violence against Women.¹⁹⁴ In its preamble, the international community expresses its concern about the long-standing failure to protect women from violence. It recognizes that "violence against women is a manifestation of historically unequal power relations between men and women ... and one of the crucial

social mechanisms by which women are forced into a subordinate position compared with men." The Declaration also sets out a comprehensive catalogue of measures to be taken by governments as well as the bodies of the United Nations for combating gender-based violence.¹⁹⁵ However, since it is only a declaration, the instrument does not create any binding international obligations. Unfortunately, the Convention on the Elimination of All Forms of Discrimination against Women does specifically relate to violence against women. Hence, no binding international norm exists that explicitly obliges states to protect women from violence. Nevertheless, today it is universally recognized that women have a fundamental right to be protected from gender-based violence. This recognition is reflected in the Declaration on the Elimination of Violence against Women itself as well as the Beijing Declaration and Platform of Action, which reinstates the determination of the international community to "prevent and eliminate all forms of violence against women and girls."¹⁹⁶ It is, likewise, recognized that women's right to freedom from any kind of violence is included and implied in several international human rights such as the right to life and physical integrity, the right to health, and the right to equal legal protection.¹⁹⁷

The Right to Life and Physical Integrity:

In many cases of violence against women, the life and physical integrity of the victim is endangered. The right to life and physical integrity is enshrined both in the Universal Declaration and the CCPR. While Art. 6 (1) CCPR grants the right to life, Art. 7 CCPR states that "no one shall be subjected to torture or to other cruel, inhuman, or degrading treatment or punishment." Furthermore, Art. 9(1) CCPR grants the right to liberty and security of the person. These rights are embodied respectively in Arts. 3 and 5 of the Universal Declaration.

The Right to Health:

Violence against women has become a major health concern. Medical assistance and counseling services are often inadequate to deal with the consequences of violence against women. In the aftermath of physical, sexual, and emotional abuse, women may suffer long-term effects, including unwanted pregnancies, post-traumatic stress, or HIV infections. The right to health is enshrined in the CESCRC and the Women's Convention. Art. 12 CESCRC recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In addition, Art. 12 of the Women's Convention requires governments to ensure equal access to health care services for women and men, including those related to family planning.¹⁹⁸

The Right to Equal Legal Protection:

Law enforcement officials often discriminate against women, by prosecuting domestic and sexual crimes less vigorously than other violent acts. In addition, many domestic laws are too weak and do not offer adequate protection against domestic violence. Arts. 2, 26, and 14 CCPR and Art. 2 of the Women's Convention require States Parties to guarantee equal protection before the law and equal access to legal protection for men

and women through competent national tribunals and other public institutions.

Protection from violence for the girl child:

While no human rights norm directly addresses the issue of violence against women, the girl child is protected from violence under Art. 19 of the Children's Convention. This provision requires States Parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." This provision includes traditional or culturally based practices which discriminate against the girl child and which may place her health at risk.

2. Do these norms protect women from violence regardless whether committed by a public or a private actor?

Early on, human rights norms were articulated to only protect persons from state actions. Hence, the right to life and freedom from torture or other cruel, inhuman, or degrading treatment was deemed to protect the individual only from such acts committed by, or on behalf of, the state. Interference with conduct between private actors, such as between a husband and a wife, in order to prevent ill-treatment was not considered to be part of the state's responsibility under international law. This understanding, however, changed as women's rights advocates began increasingly to voice women's stories of violence, making it clear to the international community that violence against women runs counter to women's dignity and erodes their full enjoyment of human rights. This, along with the increasing realization of the extent to which the threat of violence permeates women's day to day lives, helped to pave the way for including violence against women within the domain of international human rights law.

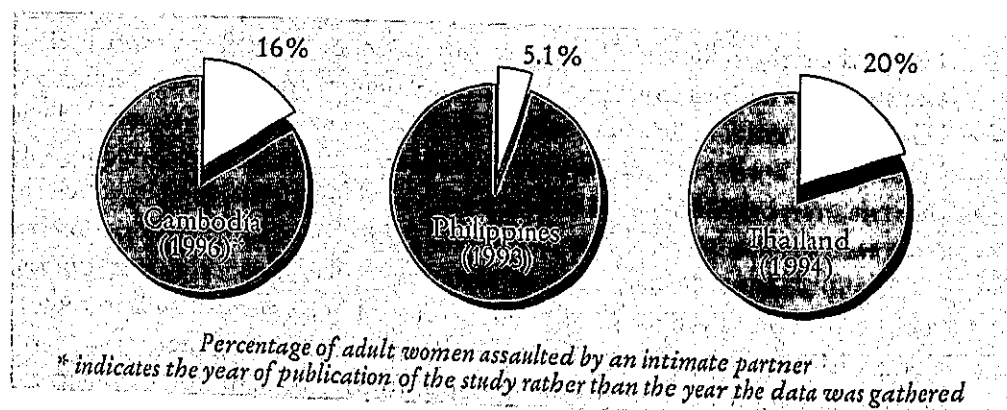
The Declaration on the Elimination of Violence against Women defines violence against women to include acts committed by both private and public actors and expressly recognizes the governments' obligation to protect women from such acts. This obligation has been reiterated in the Beijing Declaration and Platform for Action and other instruments, and it is now recognized that a state can be held responsible under international law not only for its action but also for its inaction. Thus, if a state shows a consistent pattern of failure to prevent violence by private actors it can be held responsible for it under international law.

III. Spousal Abuse in Southeast Asia

1. What is the situation in Southeast Asia with regard to spousal abuse?
Spousal abuse is widespread throughout Southeast Asia, although the overall regional statistics are improved by Laos, Myanmar and Singapore where wife abuse is reportedly

less common. In these countries, domestic violence is not as socially accepted and, additionally, is sanctioned with harsh penalties.¹⁹⁹ Overall, the largest percentage of violence against women is committed in the family home. Domestic violence occurs in families of all economic, educational, racial, and religious backgrounds. The home, which ought to be a safe haven to all family members, turns into a place of constant fear and suffering for many women worldwide. In addition to physical torment, battering and sexual assault causes trauma and destroys women's self-esteem. Women often keep silent about their suffering for many reasons: they may be made to believe that they provoked the violence by their behavior; they may fear social stigmatization; they may lack the necessary social support which would allow them to leave situations of abuse, or they may stay in violent relationships as a way to protect their children, fearing that they will lose their children to their violent partner and that the violence will in the future be carried out on their backs.

Prevalence of Violence against Women by an Intimate Partner²⁰⁰



Further, when stepping forward, many women are confronted with obstacles in gaining justice before the courts. As law officials often consider acts of domestic violence to be a private matter between husband and wife, they are prosecuted with less vigor than violent acts committed by strangers.²⁰¹ Such official conduct sends the message that domestic violence is justified or, at least, tolerated. Like other forms of discrimination against women, domestic violence is supported by patriarchal attitudes that require wives to obey while husbands claim to be the families' leaders. For example, statistics show that in Singapore, 33% of men approved wife-beating in cases where the husband suspects his wife to be sexually involved with another man.²⁰² Of the same men questioned, 5% approved wife beating in cases where the wife refuses to have sex with her husband.²⁰³ However, every wife has the right to refuse to have sex with her husband. If in these instances, the husband forces himself on her, he commits the crime of marital rape. The Government of the Philippines has taken on a leading role in the region, in extending the definition of the crime of rape to include marital rape.²⁰⁴ Malaysian law presents a more controversial picture. Although the Domestic Violence Act in Malaysia states that a man has no right to force his wife to engage in sexual acts,

criminal law defines rape as non-consensual sex with a woman other than the perpetrator's wife.²⁰⁵ The Parliament of Malaysia passed its Domestic Violence Act in 1994. It finally entered into force in 1996, after overcoming long standing resistance by religious leaders, who feared that the Act would lead to a decay of power of the Islamic family court.²⁰⁶

Pensri²⁰⁷ is a 42 year-old woman who works as a fruit vendor in the streets of Bangkok. Her first husband died when she was in her early thirties. A young widow without financial security, Pensri did not want to see her 3 year-old son grow up without a father and consented to marry Somchai, who was eighteen years older than her. At that time, Pensri did not know that Somchai had already been married twice and that his previous wives had escaped their marriages, because Somchai had repeatedly abused them. About one year of their marriage had passed, when Somchai first hit Pensri in the face. During the subsequent years, he would beat her up two to three times a week, even when she was pregnant with her second child. Pensri says that Somchai would always be drunk when he beat her and that he would have violent jealousy attacks as soon as she would speak a word to another man. Neighbors were witnessing the violence but did not intervene. Pensri kept quiet about the abuse she suffered for almost ten years until - for the sake of her own and her children's safety - she summoned the courage to move out into a separate apartment. As soon as she had moved out with the children, Somchai threatened that he would cut off her fingers if she didn't agree to come back to him. Upon the advice of friends and relatives, Pensri agreed to meet Somchai for a conversation at his workplace, which they considered a neutral and safe surrounding, as other persons would be around. As soon as Pensri entered the office at her husband's work, Somchai attacked her and started to beat her violently. Colleagues and other staff members witnessing the scene chose not to interfere as they considered the conflict to be a family matter. As a last resort, Pensri then pulled a small knife to avert Somchai's attacks. In the course of the ongoing struggle, Somchai was injured so severely that he died shortly after from his injuries. Pensri was subsequently arrested and taken into pretrial detention. Her case became a symbol for the ongoing battle against domestic violence, when her now adolescent son informed the press and petitioned to the Government for the release of her mother. Pensri was released after 70 days of detention and cleared of all charges. In her free time, Pensri now works as a counselor for battered women who have the courage to speak out and step forward for a violence-free life.

2. Does international human rights law address the issue of spousal abuse? As with violence against women in general, no specific norm exists to protect women from spousal abuse. However, in addition to the human rights discussed in section II, from which we can infer women's right to freedom from violence, Art. 16 of the Women's Convention makes provisions for equality between men and women in the family life, including "the same rights and responsibilities during marriage and its dissolution." CEDAW has affirmed that domestic violence against women impairs women's ability to participate in family life and in public life on a basis of equality.²⁰⁸

A growing number of human rights experts understand domestic violence to constitute torture with the significant consequence that the UN Torture Convention would apply in cases of domestic violence, including marital rape.²⁰⁹ The Committee against Torture, which has been established to supervise the implementation of the Convention, does not only receive and consider state reports but also individual complaints.²¹⁰ Hence, the applicability of the Torture Convention would open another complaint procedure to the individual woman. The view that domestic violence constitutes torture is contested, however, and does not yet constitute the leading opinion.²¹¹

IV. Violence against Women at their Workplace: Contemporary Forms of Slavery

1. In what forms does violence at the workplace occur?

Women throughout the world are also confronted with gender-based violence in the workplace. Violence at the workplace ranges from degrading sexist comments, a hostile work environment, and inappropriate touching up to rape and battery. Women have reported rape, sexual assault, beating, kicking, slapping and burning by their employers as well as illegal confinement and prolonged working-hours leading to extreme debilitation of the employee.²¹² According to Art. 2 (2) of the Declaration on the Elimination of Violence against Women, violence at the workplace encompasses "physical, sexual and psychological violence ... including rape, sexual abuse, sexual harassment, intimidation ... and forced prostitution."

Just like husbands who abuse their wives, employers use violence to demonstrate power and control over female employees. In all parts of the world, women are overwhelmingly relegated to those positions which offer the least prestige, power and pay. This imbalance means that employers may grant employment, pay raises or promotions only in return for sexual favors; and that fatigue or inaccuracy may be responded to with corporal punishment. The harshest forms of violence are regularly administered in areas where exploitation is high, and where the women's economical dependency on the job is the greatest. Thus unskilled factory workers, women workers in the sex industry, and domestic servants face a particularly high risk of becoming victims of violence. The international community has shown particular concern for female trafficking victims. There is an unending list of tales about Asian women who were lured into migrating to other countries with promises of high pay and good working conditions and ended up in slavery. Often, these women have to endure severe physical and sexual abuse. A recent study by the Asian Migrant Centre found that more than 25% of Asian female migrant domestic workers had suffered abuse by their employer.²¹³ In Hong Kong, a female employer was jailed for 22 months for beating her Indonesian maid with a wooden brush until it broke and placing a hot iron on her neck, when she fell asleep exhausted at the iron board. The employee reported that she had never had a day off and that her working day started at 4am, lasting into the night, when she worked in the

family's watch-making factory.²¹⁴ Another Hong - Kongese employer was sentenced to 31/2 years imprisonment for frequently inflicting blows on the chest, abdomen, and lower body of her Indonesian maid, who was brought to hospital after falling unconscious while vomiting blood as a result of the sustained injuries. The maid had endured this abuse silently many times before, as her employer had threatened to send someone to kill the maid's relatives in Indonesia if she contacted the police.²¹⁵

2. What international legal protection exists?

All international human rights norms protecting women from violence are also generally applicable in the case of violence at the workplace. In addition, Art. 11 of the Women's Convention obliges governments to eliminate discrimination in the field of employment and, specifically, to ensure the right to health and to safety of working conditions. In its General Comment No. 19, CEDAW confirmed that equality in employment can be seriously impaired when women are subjected to gender-based violence at their place of work.²¹⁶ The ILO does not have a Convention on sexual harassment or violence against women at their workplace. The ILO's view is that these acts are covered by the 1958 Discrimination (Employment and Occupation) Convention (C.111). In addition, the international legislation addressing the issue of trafficking in persons also addresses issues pertaining to violence against women as it occurs within the home and receiving countries as well as at the hands of traffickers and clients.²¹⁷

V. State Officials as Perpetrators: Ill-treatment of Women in Custody

1. What circumstances foster violence against women in custody in Southeast Asia?

In many Southeast Asian countries prison conditions are far below United Nations standards and prisoners - men and women alike - suffer from overcrowded prisons, lack of medical care, guard abuse and corruption. As we have seen in the previous sections, a weak and dependent position of the woman on one side and a powerful position of the man on the other side often facilitates gender-based violence. The risk of violence against women, exercised by men as a demonstration of power, increases with the level of female dependency. As the power balance between female detainees and male guards is particularly unequal, women habitually face a high risk of abuse while in custody. Guards have used any conceivable form of sexual and other bodily coercion against female prisoners. For instance, in an investigation on the human rights situation in Myanmar, the UN Special Rapporteur of the Commission of Human Rights received information that female victims had suffered severe beatings, shackling, near suffocation, burning, stabbing, rubbing of salt and chemicals into open wounds, sexual assaults and rape and the cutting off of parts of their bodies (for example, ears and tongue).²¹⁸ Women in custody also face the common threat of abuse by other inmates. In 1997, four Laotian girls, aged between 16 and 18, illegally crossed the Thai border to work in Rayong's industrial zone. Arrested by the Thai Immigration police, they were put in an

overcrowded cell at Rayong police station, in which the toilet was broken. Instead of having it fixed, the policemen told the girls to use the men's toilet. At this toilet, the four girls were reportedly gang-raped over four consecutive days. According to the girls' account, they asked the police officers for help, but no one came to their aid.²¹⁹

*Rape and Sexual Abuse of Women in Custody in the Philippines*²²⁰

The Human Rights Organization Amnesty International reports that women who are taken into custody and imprisoned in the Philippines face a high risk of becoming victims of rape, sexual assault, and other forms of physical and mental abuse. In the years 1995 - 2000, the organization received reports of more than 30 cases of rape and sexual abuse of women and girls during police custody in the Philippines. The organization fears, however, that this number represents only a fraction of the actual number of incidents. The victims of such abuses are often of low social status and in an economically disadvantaged position. Particularly at risk are prostitutes, street children, drug addicts, and those who live in absolute poverty. Many of the victims are arrested on suspicion of minor crimes, such as petty theft, or violation of an anti-vagrancy law. Amnesty International reports that women are particularly at risk of being raped in the period between their arrest and arrival at the police station. For example, in April 2000, an 18-year-old woman suspected of violating an anti-vagrancy law was arrested late at night in Manila. Instead of being taken to the local police station, she was reportedly brought to a private jeep, forced inside, and raped at gunpoint by two police officers and a third man. The three men were arrested after they were discovered by the owner of the jeep, who was also a police officer. Criminal and administrative charges were prepared against them, but the final outcome of this case is unknown. Once in police custody, female detainees have reported various forms of ill-treatment, such as threats, slaps, punches, kicks, rape, and sexual abuse. Some police officers also allegedly offered release or preferential treatment in exchange for sex. According to Bukal, an NGO working with street prostitutes in the Cubao and Quezon Avenue areas of Quezon City, Metro Manila, of thirty women questioned by the organization, sixteen reported sexual assault and eleven said they were raped while in police custody on suspicion of violating the anti-vagrancy law.²²¹ Many of the women said they had been threatened by police officers with their guns and that arresting officers had pulled them by the hair, slapped and punched them in the face and stomach, or kicked them. Similar incidents are reported to have taken place in provincial, municipal, and city jails. For instance, in January 2000, a 17-year-old girl detained at Dagupan City Jail reportedly accused the former jail warden and 11 guards of raping her. She claimed that the male jail guards also threatened her with their guns and forced her to drink alcohol and perform oral sex on them. Her attempts to complain and request medical treatment were allegedly ignored until she was finally admitted to a clinic, complaining of severe pain in her genitals and suffering from a sexually transmitted disease. According to the information the organization has gathered, many of the detained women are unaware of their right not to be subjected to torture or ill-treatment by law officials and are too afraid to complain.

Lodging a complaint would require them to report the abuse to another police officers or a prison ward, which many do not have the courage to do in fear of additional abuses and corruption. Fear of social stigmatization, feelings of shame, and the perpetrator's threat of reprisals if the victim tells anyone of the assault are factors that pose additional obstacles that prevent women from stepping forward. Once women have assumed the courage to bring charges against the perpetrator, law enforcement officials reportedly often threatened the victim with acts of revenge against them or members of their family if they did not drop the charges. Police officers or prison wards who are found guilty of raping or otherwise abusing women in their custody face high penalties under Philippine law. However, although perpetrators have on several occasions been brought to justice in the past, the authorities have been criticized for failing to react promptly when charges are brought against law enforcement officials. Most police officers lack the necessary training and gender sensitivity to deal with cases of rape and sexual abuse. Victims commonly reported that police officers did not take them seriously and that they were subjected to further humiliation during the interrogation procedure. In addition, medical reports in rape cases in the Philippines often appear to be imprecise, incomplete, or to contain irrelevant information and employ non-medical terminology such as "non-virgin state". The organization Amnesty International fears that unless women are given the necessary encouragement and protection to enable them to report rape, sexual abuse, and other forms of violence in custody, many perpetrators will evade justice and the cycle of impunity will continue.

2. **What international legal protection exists to protect women in custody from violence?**
In addition to international legislation protecting women from violence in general, some specific rules apply when state officials use violence against women in custody. Art. 10 (1) CCPR provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." In cases, where physical abuse amounts to torture, the Torture Convention²²² is applicable, which provides for a complaint procedure for the individual before the UN Committee against Torture. Several additional United Nations documents provide parameters for the treatment of prisoners, including the Standard Minimum Rules for the Treatment of Prisoners.²²³ Although the Standard Minimum Rules not a treaty, it constitutes an authoritative guide to binding treaty standards such as Art. 10 CCPR.

VI. Violence against Women in Times of War: Rape as a Weapon of War

1. **Why is violence against women so often an immutable ingredient of war?**
Throughout history, soldiers have committed horrendous crimes against women in times of armed conflict. In times of war, where hostilities are bred and violence becomes part of the daily life, soldiers can commit the most heinous of atrocities. Being a member of the civilian population on the enemy side is often reason enough for a woman to be taken sexual property for purposes of mass rape, sexual mutilation, domestic enslave-

ment, and often murder. In a patriarchal society, raping the enemy's wife is like destroying his property. It has long been recognized that women are not only raped randomly by rampaging soldiers; in many cases rape takes place in a deliberate and organized scheme designed to systematically break the enemy's resistance and destroy its collective will.

In September 1999, following the referendum on the independence of East Timor, Indonesian soldiers and pro-Indonesian militia raped hundreds of women and girls. Upon investigating the events in September 1999, an international commission appointed by the United Nations Secretary General found a pattern of violence against women, including sexual abuse, rape, stripping and sexual slavery.²²⁴ Sexual violence also occurred during the forced movement of East Timorese people to West Timor, where apparently many women were raped by members of the militia on a boat from Dili to West Timor.²²⁵ While violence against women by Indonesian soldiers and members of the militia has ended in East Timor, as of January 2001, more than 100,000 East Timorese refugees remain in West Timor. There, refugee women continue to be victims of violence. According to the Special Rapporteur on Violence against Women, refugee women are regularly taken from their camps and raped by Indonesian soldiers and militia members; forced labour and sexual slavery have also been reported.²²⁶

The East Timorese example is just one out of many, where women have become primary victims of war. Unlike for soldiers, who die or are wounded during combat, no monuments are erected in remembrance of victims of rape and sexual slavery. On the very contrary, rape victims are often shamed by their husbands and families and are treated like social outcasts by the community, particularly, when they give birth to an "enemy bastard."

2. What international legal protection exists for women against rape and sexual violence in times of war?

Rape is specifically prohibited both in international and in internal conflicts by the 1949 Geneva Conventions, which constitute the main body of international humanitarian law.²²⁷ It may also constitute a crime under international criminal law. In the past, however, rape committed in times of war was rarely prosecuted, when the conflicts had come to an end and the perpetrators had returned home. In most cases, governments of the soldiers' home countries were unwilling to prosecute them themselves or, if the crimes were committed within the context of an international conflict, to extradite them to the country where the crimes had been committed. It seemed unbearable to many within the international community that while an insular murder or an insular rape is prosecuted under the criminal justice system of a country, crimes of this nature, committed on a massive scale, routinely went unpunished. The international community thereby decided that a permanent international body should be established, to prosecute war criminals in cases where national courts were unable or unwilling to prosecute the offenders themselves.²²⁸

As a groundbreaking development, the Rome Statute for the Establishment of a Permanent International Criminal Court (ICC) was adopted in 1998.²²⁹ Under this statute, rape and other forms of sexual violence can constitute the crime of genocide,²³⁰ crimes against humanity,²³¹ and war crimes.²³² The Court will be seated in The Hague, where it will hold its trials. Convicted war criminals will serve their prison sentences in the prisons of the Statute's Member States. The Court has not yet been established, because 60 states have to ratify the Statute, before it enters into force and the Court can take up its jurisdiction. As of October 2001, 43 states - but none of the Southeast Asian states - had ratified the Statute. We can hope that in the near future, violence against women committed during times of war will no longer remain invisible to the world, excused on the one hand and denied on the other. Rather, understanding the violence committed against women during times of war as constituting war crime sends a clear message that such abuses will not be tolerated. Hopefully, the prospect of being brought to trial before the Permanent International Criminal Court may deter members of the armed forces from committing such heinous crimes.

In addition, we can find protection against rape and other forms of violence against women in times of war in international human rights legislation. Although in times of war and public emergency, some rights may be legitimately suspended, the core human rights principles are non-derogable and may be applied simultaneously with humanitarian law.²³³ As we have seen above, the United Nations have recognized that the protection of women from violence is a core human rights issue. Thus, all international human rights norms, protecting women from violence are applicable in case of rape and other forms of sexual violence committed during armed conflict.

VII. Violence against Refugee and Other Displaced Women

1. How do refugee women encounter violence?
The case of East Timor demonstrates the particular susceptibility of refugee women and internally displaced women to sexual violence. According to the UNHCR, women and children constitute 80 percent of all refugees worldwide.²³⁴ Sadly, although many women flee from rape and sexual assault in their home country, they may be subjected to the same treatment during their flight and in the asylum countries. Many women experience sexual and other forms of violence by the local population of the host country, guards of refugee camps, border officials, immigration officers, or other refugees. In addition, internally displaced persons are often relatively near to the site of the conflict that caused their displacement. Like in the East Timorese example; displaced persons may remain in the hands of opponent groups even after the original conflict ended. According to interviews held by the international human rights organization Human Rights Watch, refugee and other displaced women often suffer from long lasting traumas and medical problems after having been violently abused. Reported medical problems included miscarriages when raped during pregnancy; hemorrhaging; inability

to control urination; sleeplessness; nightmares; chest and back pains; and painful menstruations.²³⁵

2. **What specific international legal protection exists for refugee women?**

Sexual violence in the home country itself may constitute persecution and thus a legal ground for asylum under the 1954 Convention on the Status of Refugees.²³⁶ However, our questions at issue is, how refugees can be protected from violence on their journey and in the hosting country. Although governments often show little concern for violence experienced by refugees, their obligation to protect the human rights of persons is not limited to its own citizens; it extends to all persons within their territory. The general human rights provisions protecting women from violence are, therefore, applicable for refugees and displaced persons just as for anybody else.

CHAPTER 5

Women and Health

The Status of Women's Health in Southeast Asia •
Women's Right to Health under International Law •
Women's Reproductive and Sexual Rights • Southeast
Asian Women and HIV/AIDS

I The Status of Women's Health in Southeast Asia

1. **What is meant by the term "health"?**

The World Health Organization defines the term "health" as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.²³⁷

2. **Which status enjoys women's health in Southeast Asia?**

Although the life expectancy of women in Southeast Asia exceeds that of men by an average four years, women are reported to suffer more from illness and distress than men.²³⁸ While biological aspects have some impact on this higher level of illness, social and cultural gender inequalities also greatly contribute to women's increased exposure to risk factors that endanger their health. Poverty and economic disparities lead to greater illness among women on one hand and to more limited access to health services on the other. It is estimated that of all people living in poverty worldwide, more than 70% are females; in South and Southeast Asia alone, 250 million women are believed to live in absolute poverty.²³⁹ Poverty among women is caused by unequal opportunities in education, employment, inheritance and property laws; and by cultural patterns that restrict women's autonomy in decision making. Today, many of the region's women contribute to the family's income by pursuing paid work outside the family home. Nevertheless, females continue to bear the primary if not the sole responsibility for domestic work, child care, and care for the elderly and sick family members. This double workload puts a heavy toll on women's health and immune system and increases their vulnerability to diseases such as malaria, tuberculosis, HIV/AIDS, hepatitis, cardiovascular diseases, diabetes and cancer.

Although statistics show that more men than women in Southeast Asia are infected with diseases such as tuberculosis, malaria, or leprosy, women tend to be affected more severely by them. One of the primary reasons for these adverse effects on women is that women tend to seek medical assistance at a much later stage than men, thereby allowing

the illness to reach a more advanced stage.²⁴⁰ Women wait longer before they visit a doctor, because their tight schedule of domestic work and outside jobs often does not give them the opportunity to seek medical assistance. In addition, many women lack the necessary education that would enable them to recognize their indisposition as a sign of a potentially serious illness requiring medical attention. Finally, women may not seek health care services because they may not feel entitled to invest resources on themselves. Community based studies also indicate that women are disproportionately affected by mental health problems.²⁴¹ The underlying factors for this greater exposure include the conflicting roles which women must assume, involving a constant movement from strength to passivity, which they must demonstrate when fulfilling multiple household and employment tasks on one side while remaining within their anticipated gentle and obedient roles on the other.²⁴² Poverty, discrimination and harassment, physical and sexual abuse, domestic violence, unwanted pregnancies and pregnancy losses are also common breeding-grounds for mental and emotional disorders.

II. Women's Right to Health under International Law

1. How can the right to health be defined?

As we have seen earlier, the term "health" is described as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."²⁴³ It is clear, however, that no government could guarantee to each individual the constant state of physical and mental well being. The right to health must, therefore, not be misunderstood as a right to be healthy.²⁴⁴ International human rights law rather describes the right to health as the states' obligation to provide for the highest attainable standard of physical and mental health for its population. Inevitably, this level of attainability varies from country to country.

2. Which international norms provide for women's right to health?

Several international human rights norms provide for the right to health. Its foundation can be seen in Art. 25 of the Universal Declaration of Human Rights which states broadly that "everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and his [her] family, including food, clothing, housing and medical care and necessary social services" Art. 12 CESCRCR consequently elaborates this principle in a more comprehensive manner. Its first paragraph recognizes "the right of everyone to the enjoyment of the highest attainable standards of physical and mental health."

In order to achieve this goal, the provision mandates in its second paragraph specific steps to be taken towards the improvement of children's health, environmental and industrial hygiene, the treatment and control of diseases as well as the creation of conditions that assure access to medical services to everyone. Thus, already at the time of the Covenant's creation in 1966, the drafting parties understood that the health of children's

is particularly at risk and specific measures for their protection must be proclaimed. They did not recognize, however, that this equally applies to women who as a group are susceptible to illness and require special medical attention connected to their reproductive function. Hence, the advancement of women's health does not find specific mention in Art. 12 CESCRCR.

However, women can invoke the right to health in Art. 12 CESCRCR in their capacity as human beings. It is particularly important to note that women's rights to sexual and reproductive health have been interpreted to constitute components of the general right to health as provided for in Art. 12 CESCRCR.²⁴⁵ Art. 12 of the Women's Convention is the first norm to specifically address gender inequalities and discrimination in the health sector and to recognizes the need for specific protection of women's right to health. Its first paragraph obliges the States Parties to take "appropriate measures to eliminate discrimination in the field of health care, in order to insure, on a basis of equality between men and women, access to health care services, including those related to family planning." In its second paragraph, the norm addresses the specific needs of women during pregnancy, childbirth, and the post-natal period. While women's right to healthy working conditions is protected in several ILO Conventions,²⁴⁶ rural women are expressly protected by Art. 14 (2) (b) of the Women's Convention. This norm requires States Parties to ensure that rural women have "access to adequate health care facilities, including information, counseling and services in family planning." Finally, the girl child is protected by Art. 24 of the Children's Convention, which elaborates children's right to health in the most precise and comprehensive manner.

It has also been suggested that the right to life, as provided for in Art. 3 UDHR, and Art. 6 CCPR obliges States Parties to ensure the health of the individual. The Human Rights Committee has asserted that the right to life must not be narrowly interpreted and considers it desirable that States Parties take all possible measures to reduce infant mortality and increase life expectancy.²⁴⁷ An argument can thus be made that a woman's right to life entitles her to access to health care services, in particular those relating to reproductive health, as the latter reduces the risk of both infant and maternal death.²⁴⁸

3. Does international law guarantee the right to access to health care to the individual?

This question has been a source of disagreement ever since the drafting of Article 12 CESCRCR in 1966. It is widely accepted today that Article 12 CESCRCR creates a responsibility for governments to provide for the health of its population. The question, how far this responsibility should reach, however, remains a source of dispute. Art. 12 CESCRCR can be interpreted in two ways: First, as a public norm, which obligates the States Parties to provide for a comprehensive health care system for its population. This interpretation thus acknowledges the state's general responsibility for the health of its population. Second, Art. 12 CESCRCR can be interpreted in a way that in addition to the obligation to create such system for the public, the state has to guarantee to each

individual access to adequate health care at all times. This interpretation goes further than the first one and puts a higher responsibility on the Member State. Unfortunately, no general agreement has yet been reached that Art. 12 CESCRC ought to be interpreted in the second way. The introduction of such entitlement to the individual would require the States Parties to commit themselves to major investments which some states are unwilling or may be unable to undertake. At this point of time the above questions can, therefore, not be answered with an unequivocal "yes," although many human rights advocates have expressed their preference towards the second interpretation.

III. The Management of Female Sexuality: Women's Reproductive and Sexual Rights

1. What is reproductive health?

In accordance with the general definition of "health," the WHO describes "reproductive health" as a state of physical, mental, and social well-being in all matters relating to the reproductive system at all stages of life. "Reproductive health implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Implicit in this are the right of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choice, and the right to appropriate health-care services that enable women to safely go through pregnancy and childbirth."²⁴⁹

2. What is the state of women's reproductive health in Southeast Asia?

Women's reproductive health is dependent on reproductive decision-making on one hand and on adequate family planning and health care facilities on the other. In addition, factors like limited access to food and health care during childhood profoundly affect women's health during their reproductive years.²⁵⁰ Reproductive decision-making includes the voluntary decision to enter into marriage and to engage in sexual activity, free choice of timing and number of child-births, the use of contraception, and abortion. An important prerequisite is, furthermore, the right to have access to the information and means needed to exercise voluntary choice.

Although women's enjoyment of reproductive decision-making varies from country to country, the overall situation in Southeast Asia is not as bleak as in other Asian countries, as women's sexuality is not placed under such severe restrictions as, for example, in South Asia. Throughout the region, women are expected to abstain from sexual activity before marriage. Although earlier sexual activities are at an increase, this rule is still widely obeyed. For example, the median age at first intercourse (18.5 years) almost coincided with the median age at first marriage (18.6 years) among women aged 25-29 in Indonesia in 1991.²⁵¹

Indicators on Household and Childbearing in Southeast Asia²⁵²

Country	Average household size 1991 - 94	Use of contraceptives (married women)	Total fertility rate (births per woman)	
			1990 - 95	1995 - 2000
Brunei Dar.	5.8	---	3.1	2.8
Cambodia	---	---	4.9	4.6
East Timor	---	---	4.8	4.4
Indonesia	4.5*	57	2.9	2.6
Lao PDR	---	19	6.3	5.8
Malaysia	4.8	48*	3.6	3.2
Myanmar	---	17	2.7	2.4
Philippines	5.3*	47	4.0	3.6
Singapore	4.2*	---	1.8	1.7
Thailand	4.4*	74	1.9	1.7
Viet Nam	4.8*	65	3.3	2.6

* Data refer to a year between 1985 and 1990.

However, rural women in particular tend to marry at a very young age, which leads to early child-birth, shorter birth spacing and more abortions. These factors pose a considerable threat to women's reproductive health and contribute greatly to the continuously high rate of maternal deaths in the region. For instance, in Viet Nam, early marriages among rural women appear to be at the increase, with 4.2% women getting married between the age of 15-17 and 0.7% when they are 13-14 years old.²⁵³ In Laos, many women marry at the age of sixteen, while in remote areas marriages between the ages of 14-16 are common.²⁵⁴ The maternal death rate in Laos is the second highest in Asia, with an average 900 deaths per 100,000 life births in remote parts of the country.²⁵⁵

In addition to imperiling women's reproductive health, early marriage and child birth also impairs women's participation in education and employment. However, a steady decline of fertility rates throughout the region indicates that education and services with regard to birth control and birth spacing, although far from being sufficient, are at least improving. During the 1990s, 57% of married women in Indonesia, as many as 72% of married Thai women and only 17% of married women in Myanmar used any method of contraception.²⁵⁶ In contrast, male use of contraceptives is negligible throughout the region. This is particularly regrettable in light of the increasing spread of sexually transmittable diseases (STDs), which can only be effectively prevented by use of condoms. STDs carry a whole spectrum of hazardous and life-threatening consequences, including pregnancy-related complications, sepsis, spontaneous abortions or premature births, infertility, and maternal and postpartum deaths.²⁵⁷ Women, and in particular young women, are biologically more susceptible to STDs, which explains why worldwide five times as many women are infected as men.

Early marriage and sexual activity and limited information about reproductive health and family planning also contribute to high abortion rates. For instance, Viet Nam is one of the five countries with the highest abortion rates, worldwide.²⁵⁸ While in Myanmar it is estimated that one abortion takes place for every three life-births, the ratio assessment in Indonesia lies at 1:4.²⁵⁹ Abortion is legally extremely restricted or not entirely prohibited in all Southeast Asian countries. In Indonesia and Myanmar, abortion is only permitted to save the mother's life, while Thai law provides for the additional grounds of pregnancy caused by rape or incest and further changes are in debate.²⁶⁰ Statistics on abortion in Southeast Asia demonstrate, however, that legal prohibition does not prevent abortions; it only makes them unsafe as illegal abortions are often carried out under the most precarious circumstances. A large percentage of maternal deaths are related to unsafe abortions. Southeast Asian countries can prevent these senseless deaths by employing a double strategy: First, the use of contraceptives must be made more widely accessible so that women cease using abortion as a mean of family planning, and second, governments must regulate rather than prohibit abortion by law and provide for adequate abortion facilities with medically trained personnel.



Pregnant woman and child in Thailand. © Surat Swvanich

Indicators on life expectancy, maternity care and maternal mortality²⁶¹

Country	Pregnant women who received prenatal care 1996	Deliveries attended by skilled attendant 1996	Maternal mortality ratio (per 100,000 live births) 1980/1998
Brunei Dar.	100 %	98 %	0
Cambodia	52 %	21 %	470
Indonesia	82 %	36 %	450
Lao PDR	25 %	30 %	650
Malaysia	90 %	98 %	39
Myanmar	80 %	52 %	230
Philippines	83 %	53 %	170
Singapore	100 %	100 %	6
Thailand	77 %	71 %	44
Viet Nam	78 %	79 %	160

3. What international legal protection exists for women's reproductive health?

Women need health services even when they are not ill, to prevent unwanted pregnancies, to carry wanted pregnancies to term, and to deliver safely. Art. 12 (2) of the Women's Convention addresses the specific needs connected to women's reproductive health. It requires States Parties to ensure women "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation." From the perspective of protecting the health of the child, the right to pre- and post-natal health care for mothers is also embodied in Art. 24 (2) (d) of the Children's Convention.

Women's right to reproductive choice is enshrined in Art. 16 (1) (e) of the Women's Convention, which provides for the same rights for women and men to "decide freely on the number and spacing of children and to have access to the information, education, and means to enable them to exercise these rights." Art. 23 CCPR codifies the right to found a family and obliges the State Parties to "to ensure the equality of rights and responsibilities of spouses." This Article has been interpreted to contain the right of a woman, to positively plan, time, and space births of children in order to increase health and well-being of mother and child.²⁶² It has, furthermore, been argued that the right to liberty and security of person, as enshrined in Art. 9 CCPR, may be interpreted in a way that gives women the right to reproductive choice.

IV. Southeast Asian Women and HIV/AIDS

1. To what extent does HIV/AIDS impair women's right to health in Southeast Asia? The spread of HIV/AIDS has been recognized as a major threat to the health and development for the population of all Southeast Asian countries. The epidemic started in the mid-to-late 1980s and has since been on a constant rise. Countries which show the highest HIV prevalence in the region include Cambodia, Myanmar and Thailand, while the prevalence in Indonesia, the Lao's PDR, the Philippines and Brunei Darussalam is still relatively low. Although less women are infected than men are, female infection is at an increase with an estimated 250,000 women having become infected in South and Southeast Asia in the course of the year 2000 alone.²⁶³

Women are biologically more susceptible to HIV infection than men, because the male semen has a much higher concentration of HIV than vaginal fluid and women have a larger mucosal surface which is exposed to infection.²⁶⁴ In addition, socio-economic factors and a general lack of respect for women's human rights increase women's susceptibility to HIV. Devastating economic circumstances force many young girls and women into prostitution each year. Many brothel owners continue to deny their employees the right to insist on the use of condoms, which is the only effective method for preventing infection. As adolescent women are at a particularly high risk of infection, child prostitutes are often the first to be infected. Thus, throughout the region female sexual workers show one of the highest infection rates. They spread the disease to their male clients, who, in turn will give it to their regular sexual partners, in particular, their wives.

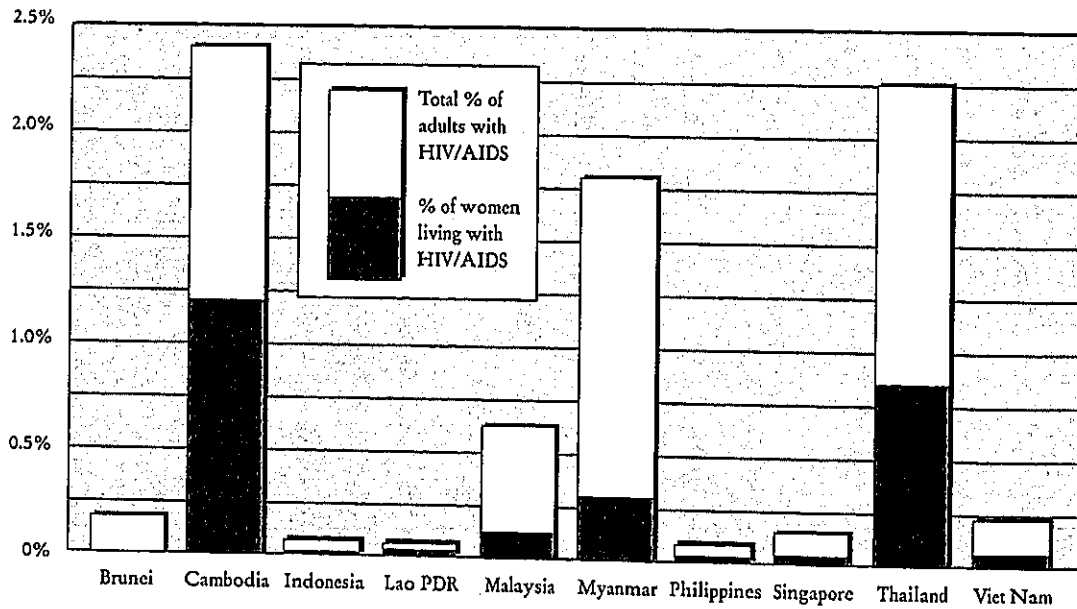
Cultural and social norms restrict the majority of Asian women from pre- or extramarital sex.²⁶⁵ In contrast, it appears to be socially accepted for men to have sex with more than one partner, including commercial sex workers. Many women believe that they do not have the right to deny sex to their husbands or to insist on the use of condoms. This makes it difficult for them to protect themselves from infection. It is fortunate that the overall mother-to-infant transmission rate as well as the number the number of pediatric AIDS cases and maternal AIDS orphans are still comparatively low in the region.²⁶⁶

Yet, with the increasing prevalence of female infection, the prevention of such transmission will constitute an imperative challenge to Southeast Asian countries. Nowadays, effective methods of medical treatment have been developed to prevent mother-to-child transmission. However, to save children in Southeast Asia from the scourge of the epidemic, programs medical and health infrastructures, including routine HIV testing and counseling programs for antenatal females must be established. In addition, cultural and societal norms surrounding the construction of male and female sexuality must be changed in order to ensure the sexual health of both men and women. In particular, a woman's ability to choose when, with whom, and under what conditions she will have sex must be ensured.



Young woman and child with AIDS in Thailand. © Karsta Straub

Prevalence of HIV/AIDS in Southeast Asia in 1997²⁶⁷



2. Do international legal instruments specifically protect women from HIV/AIDS? Binding international norms do not specifically address the HIV/AIDS epidemic. Women's right to be provided with access to adequate health care services, counseling and education to prevent them from, and provide for medical treatment in the case of, HIV infection, is included in their general right to health. However, with the overall spread of the epidemic, CEDAW affirmed the necessity to raise awareness for women's specific needs of prevention. In 1990, the Committee adopted a General Comment on the avoidance of discrimination against women in responding to AIDS.²⁶⁸ The Committee, inter alia, recommended that States Parties undertake increased efforts to inform the public of the risk of women's and children's HIV infection. It further advocated "programmes to combat AIDS with special attention to the rights and needs of women and children, with particular focus on the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection." The increase of infection of HIV/AIDS and other sexually transmittable diseases among women was, furthermore, identified as one of the critical areas of concern in the Beijing Declaration and Platform for Action.²⁶⁹

Endnotes

- CHAPTER 1
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 - 4 Frank Newman & David Weissbrodt, *INTERNATIONAL HUMAN RIGHTS, LAW, POLICY, AND PROCESS*, (2nd Ed. Ohio 1996), at 2.
 - 5 U.N. Charter amended, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153 (entered into force 24 October 1945).
 - 6 This purpose is reaffirmed in Chapter IX of the U.N. Charter, prescribing measures for international economic and social cooperation. Art. 55 of this section states:
With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
a. higher standards of living, full employment, and conditions of economic and social progress and development;
b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.
 - 7 See *supra*, note 3.
 - 8 International Covenant on Civil and Political Rights, 16 December 1966, adopted by G.A. res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 March 1976).
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 - 11 Newman & Weissbrodt, *supra* note 4, at 8.
 - 12 Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966, adopted by G.A. res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302 (entered into force 23 March 1976).
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 - 14 See Universal Declaration, *supra* note 3, Art. 21.
 - 15 Franklin D. Roosevelt, State of the Union Message, 90-1 CONG. REC. 55,57 (1944), excerpted in Newman & Weissbrodt, *supra* note 4, at 50.
 - 16 Asbjørn Eide, *Economic, Social and Cultural Rights as Human Rights*, in: Kelly D. Askin & Dorean M. Koenig, *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, VOL. I* (New York 1999), at 14, 19.
 - 17 See Universal Declaration, *supra* note 3, Art. 27.
 - 18 In recent years, solidarity rights have been added as a third category. These include the right to self-determination, the right to development, the right to environment and the right to peace, which are not expressly recognized in the Covenants, see Allan Rosas, *So-Called Rights of the Third Generation*, in: Askin & Koenig, *supra* note 16, at 243, 244.
 - 19 A general classification of civil and political rights as "negative rights", however, would be misleading as they also include certain rights that can be categorized as "positive" since they require some state action, such as the right to participate in free elections and the right to a fair trial. See Berta Esperanza Hernández-Truyol *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution*, in: Askin & Koenig, *supra* note 16, at 3, 25.
 - 20 Katarina Tomasevski, *WOMEN AND HUMAN RIGHTS* (London, New Jersey 1995), at 107.
 - 21 Eide, *supra* note 16, at 23.
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 - 23 It is interesting to note, however, that an early

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- 24 Hernández-Truyol, *supra* note 19, at 26.
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- 26 Convention on the Political Rights of Women, December 20, 1952, adopted by G.A. res. 7/640 (VII), U.N. GAOR, 7th Sess., Supp. No. 20., at 27, U.N. Doc. A/2361 (1952), (entered into force 7 July 1954).
- 27 World Plan of Action for the Implementation of the Objectives of the International Women's Year, included in the Report of the World Conference of the International Women's Year, held in Mexico city from 19 June to 2 July 1975, U.N. Doc. E/CONF.66/34 (76.IV.1). A, 1976. Reprinted in: United Nations, THE UNITED NATIONS AND THE ADVANCEMENT OF WOMEN, 1945-1995 (New York 1995), at 177.
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- 29 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979 adopted by G.A. res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), (entered into force 3 September 1981).
- 30 United Nations, *supra* note 22, at 1.
- 31 The Nairobi Forward-looking Strategies for the Advancement of Women, included in: *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held in Nairobi from 25 to 26 July 1985*, U.N. doc. A/CONF.116/28/Rev.1(85.IV.10), 1986, reprinted in: United Nations, *supra* note 27, at 300.
- 32 United Nations, *supra* note 22, at 2.
- 33 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, U.N. Doc. A/CONF. 177/20 (1995) and A/CONF. 177/20/Add. 1 (1995).
- 34 UN Division for the Advancement of Women, *preliminary Analysis of the Beijing+5 Outcome Document*, June 2000 at: www.un.org/women-watch/daw/followup/analysis.html, last visited on 19 October 2001.
- 35 Asian and Pacific Development Centre, ASIA-PACIFIC POST - BEIJING IMPLEMENTATION MONITOR, (Kuala Lumpur 1998), at 2.
- 36 Convention on the Rights of the Child, 20 November 1989, adopted by G.A. res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (entered into force 2 September 1990).
- 37 Convention on the Elimination of All Forms of Discrimination against Women *supra* note 29, Art. 1.
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- 39 *Id.*
- 40 *Id.* at 10.
- 41 *Id.*
- 42 *Id.* at 8.
- 43 *Id.* at 13.
- 44 Vienna Convention on the Law of Treaties, 23 May 1969, U.N. Doc A/Conf 39/28, UKTS 58 (1980), 8 ILM 679 (entered into force 27 January 1980).
- 45 A second 1986 Vienna Convention on the Law of Treaties between States and International Organizations, 21 March 1986, U.N. Doc. A/CONF.129/15 (1986), 25 ILM 543 extends the definition of treaties to include international agreements involving international organizations as parties. The Convention has not yet entered into force.
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- 47 United Nations Treaty Collection, *Treaty Reference Guide*, at: <http://untreaty.un.org/English/guide.asp>, last visited on 15 October 2001, at 1.
- 48 *Id.* at 4.
- 49 *Id.*
- 50 1969 Vienna Convention on the Law of Treaties, *supra* note 44, Art. 9.
- 51 United Nations Treaty Collection, *supra* note 47, at 8.
- 52 United Nations Treaty Collection, *supra* note 47, at 10.
- 53 At: <http://untreaty.un.org>, last visited on 20 October 2001. While this database used to be openly accessible, unfortunately it is now available only for paid subscribers. At <http://www1.umn.edu/humanrts/>, last visited on 20 October 2001, one can find the full text version of all relevant human rights treaties with all the current ratification information that is openly available.
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- 56 Declaration on the Elimination of Violence Against Women, 20 December 1993, adopted by G.A. res. 48/104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993).
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- 63 Tomasevski, *supra* note 20, at 109.
- 64 See Office of the High Commissioner for Human Rights, *Recent Reporting History under the Principal International Human Rights Instruments as of March 31, 2001*, 26 June 2001, U.N. doc. HRI/GEN/4/Rev.1 (2001).
- 65 Tomasevski, *supra* note 20, at 109.
- 66 See CCPR, *supra* note 8, Art. 41 and Torture Convention, *supra* note 59, Art. 21.
- 67 *Supra* note 12.
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- 70 See Race Convention, *supra* note 60, Art. 14.
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- 73 *Id.*
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- 76 *Id.*, Art. 7.
- 77 *Id.*, Arts. 8, 9.
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- 81 *Id.*, at 71.
- 82 *Id.*
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- 88 For more detailed information on admissibility and procedure, see 104 EX/Decision 3.3 of the Executive Board of UNESCO, *supra* note 87, and United Nations Educational, Scientific, and Cultural Organization (UNESCO), *Complaints concerning violations of Human Rights in UNESCO'S fields of competence*, at: <http://www.unesco.org/general/eng/legal/hrights/procedure.shtml>, last visited on 20 October 2001.

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- 95 *Id.*
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- CHAPTER 3
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- 125 CESC, *supra* note 9, Art. 6 (1).
- 126 *Id.* at Art. 6 (2).
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- CHAPTER 4
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- 188 *Supra* note 33.
- 189 *Id.* para. 46.
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- 195 In 1994, the United Nations Commission on Human Rights promptly implemented one of the proposed measures by appointing a Special Rapporteur on Violence against Women. Her function is to collect and analyze data from Governments, other UN bodies, governmental, non-governmental organizations and individuals and to recommend measures aimed at eliminating violence against women. It may be of interest for the reader that the Special Rapporteur also evaluates reports on violence against women by individuals or non-governmental organizations, in particular women's organizations. Individuals or organizations may send their information, which will be kept confidential, to the following address: THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, OHCHR-UNOG, 1211 GENEVA 10, SWITZERLAND; (Fax: 00 41 22 917 9006, e-mail: csaunders.hchr@unog.ch).
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- 207 The information for this case study was provided for by the *Friends of Women Foundation (FOW)* Bangkok. The names of the persons mentioned in this study have been changed, but are known to FOW.
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For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
- 210 See *supra*, Chapter I, section IV.
- 211 See Nigel Rodley, *Can Armed Opposition Groups Violate Human Rights?* in: Kathleen Mahoney & Paul Mahoney, HUMAN RIGHTS IN THE TWENTY - FIRST CENTURY; A GLOBAL CHALLENGE 297, 301 (Zoetermeer 1993). In 1993, the Committee against Torture considered, however, whether the state's tolerance of corporal punishment of children administered by their parents violated Art. 16 of the Torture Convention, which obliges States Parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture." See Committee against Torture, Consideration of reports submitted by States Parties under Article 19 of the Convention, Canada, U.N. Doc. A/48/44 at 48 (Forty-eighth session, 1993).
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- 226 Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, 23 January 2001, UN doc. E/CN.4/2001/73, (2001), at 90.
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- 228 In the cases of Rwanda and the former Yugoslavia, the Security Council of the United Nations thus established two ad-hoc tribunals for the prosecution of war crimes, crimes against humanity, and the crime of genocide. However, the jurisdiction of these tribunals does not extend beyond the respective territories and the time period during which the armed conflicts occurred.
- 229 Rome Statute of the International Criminal Court, 17 July 1998, U.N. Doc. A/CONF.183/9 (1998).
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- 231 According to Art. 7 of the Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; ...; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."
- 232 Art. 8 of the Statute defines 'war crimes' to include: Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health ...; Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: ...; (x) Subjecting persons who are in the power of an adverse party to physical mutilation ...; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; ...; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.
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- 240 World Health Organization, South East Asia Regional Office, *Women's Health in South-East Asia, Women's Health Status*, at: <http://w3.whoasia.org/women2/wmortality.htm>, last visited on 29 October 2001.
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- 245 Aart Hendriks, *The close Connection between Classical Rights and the Right to Health, with special reference to the Right to Sexual and Reproductive Health*, 18 *Medicine and Law* (1999), at 225, 230.
- 246 See *supra*, Chapter 3, section II.
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- 249 World Health Organization, *Definition of Reproductive Health*, at: http://www.rho.org/html/definition_.htm, last visited on 29 October 2001.
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APPENDICES

APPENDIX A

Basic Documents Supplement to Women's Human Rights in Southeast Asia

CHARTER OF THE UNITED NATIONS, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945
(excerpts)

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a) higher standards of living, full employment, and conditions of economic and social progress and development;
- b) solutions of international economic, social, health, and related problems and international cultural and educational co-operation; and
- c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) (excerpts)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**International Covenant on Economic, Social and Cultural Rights,
G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc.
A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976
(excerpts)**

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before

and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for

human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
- (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 (excerpts)

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, politics or other opinion, national or social origin, property, birth or other status.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with

hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981 (unabridged)

The States Parties to the present Convention,
Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,
Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set

forth therein, without distinction of any kind, including distinction based on sex,
Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,
Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,
Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,
Concerned, however, that despite these various instruments, extensive discrimination against women continues to exist,
Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,
Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,
Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neocolonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,
Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual cooperation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,
Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,
Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women

and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

Part I

Article 1

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 2

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 and, to this end, undertake:

- a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c) 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;
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and

cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Part II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Part III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g) The same opportunities to participate actively in sports and physical education;
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human beings;
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.
- d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and

the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to family benefits;
- b) The right to bank loans, mortgages and other forms of financial credit;
- c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- a) To participate in the elaboration and implementation of development planning at all levels;
- b) To have access to adequate health-care facilities, including information, counselling and services in family planning;
- c) To benefit directly from social security programmes;
- d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;
- e) To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;
- f) To participate in all community activities;
- g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Part IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a) The same right to enter into marriage;
- b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- c) The same rights and responsibilities during marriage and at its dissolution;
- d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Part V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of



Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

a) Within one year after the entry into force for the State concerned;

b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

Part VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- a) In the legislation of a State Party; or
- b) In any other international convention, treaty or agreement in force for that State.

Article 24

State Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Declaration on the Elimination of Violence Against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) (unabridged)

The General Assembly,
Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,
Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,
Concerned that violence against women is an obstacle to the achievement of equality,

development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

Convinced that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetuated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. These rights include, inter alia:

- a) The right to life;
- b) The right to equality;
- c) The right to liberty and security of person;
- d) The right to equal protection under the law;
- e) The right to be free from all forms of discrimination;
- f) The right to the highest standard attainable of physical and mental health;
- g) The right to just and favorable conditions of work;
- h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4

States should condemn violence against women and should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination Against Women or withdrawing reservations to that Convention;
- b) Refrain from engaging in violence against women;
- c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence: women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies to the

harm they have suffered; States should also inform women of their rights in seeking redress through mechanisms;

e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

f) Develop, in a comprehensive way, preventative approaches and all those measures of legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women to eliminate prejudices, customary practices and all other practices based on the idea of inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, inter alia:

a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;

c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;

d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;

g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

**Convention on the Rights of the Child, G.A. res. 44/25, annex, 44
U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered
into force Sept. 2 1990 (excerpts)**

Preamble

The States Parties to the present Convention,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the

care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to a such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- a) To diminish infant and child mortality;
- b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and

through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

d) To ensure appropriate pre-natal and post-natal health care for mothers;

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of

understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

APPENDIX B

Status of Ratification of the Principal International Human Rights Treaties Relating to the Human Rights of Women by Southeast Asian Countries

Ratification Status of UN Human Rights Conventions
as of September 2001

I. Ratification Status of UN Human Rights Conventions as of September 2001

Country	CESCR	CCPR	CCPR OP 1	Women's Convention	Women's Convention OP	Children's Convention	Torture Convention
Brunei Dar.							X
Cambodia	X	X		X		X	X
Indonesia				X	S	X	X
Lao PDR	S	S		X		X	X
Malaysia				X			X
Myanmar				X			X
Philippines	X	X	X	X	S	X	X
Singapore				X			X
Thailand	X	X		X	X		X
Viet Nam	X	X		X			X

X - country has ratified the treaty S - country has signed the treaty OP - Optional Protocol

II. Ratification Status of ILO Conventions as of November 2001

Country	C 3	C 4	C 13	C 29	C 45	C 87	C 89	C 98	C 100	C 103
Cambodia		X	X			X		X	X	
Indonesia				X	X	X		X	X	
Lao PDR		X	X	X						
Malaysia				X				X	X	
Myanmar				X		X				
Philippines						X	X	X	X	
Singapore				X	X			X		
Thailand				X					X	
Viet Nam					X				X	

* Brunei Darussalam is not a member of the ILO X - country has ratified the convention

Country	C 104	C 105	C 110	C 111	C 117	C 122	C 127	C 136	C 138	C 140
Cambodia		X				X			X	
Indonesia		X		X					X	
Lao PDR									X	
Malaysia										
Myanmar										
Philippines		X	X	X		X			X	
Singapore										
Thailand	X	X				X	X			
Viet Nam				X						

Country	C 141	C 142	C 156	C 158	C 159	C 170	C 171	C 182	C 183
Cambodia									
Indonesia								X	
Lao PDR									
Malaysia								X	
Myanmar									
Philippines	X							X	
Singapore								X	
Thailand								X	
Viet Nam								X	

APPENDIX C

List of ILO Conventions of Particular Relevance to Women

- C 3 Maternity Protection Convention, 1919
- C 4 Night Work (Women) Convention, 1919
- C 13 White Lead (Painting) Convention, 1921
- C 29 Forced Labour Convention, 1930
- C 45 Underground Work (Women) Convention, 1935
- C 87 Freedom of Association and Protection of the Right to Organise Convention, 1948
- C 89 Night Work (Women) Convention (Revised), 1948
- C 98 Right to Organise and Collective Bargaining Convention, 1949
- C 100 Equal Remuneration Convention, 1951
- C 103 Maternity Protection Convention (Revised), 1952
- C 104 Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955
- C 105 Abolition of Forced Labour Convention, 1957
- C 110 Plantations Convention, 1958
- C 111 Discrimination (Employment and Occupation) Convention, 1958
- C 117 Social Policy (Basic Aims and Standards) Convention, 1962
- C 122 Employment Policy Convention, 1964
- C 127 Maximum Weight Convention, 1967
- C 136 Benzene Convention, 1971
- C 138 Minimum Age Convention, 1973
- C 140 Paid Educational Leave Convention, 1974
- C 141 Rural Workers' Organisations Convention, 1975
- C 142 Human Resources Development Convention, 1975
- C 156 Workers with Family Responsibilities Convention, 1981
- C 158 Termination of Employment Convention, 1982
- C 159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983
- C 170 Chemicals Convention, 1990
- C 171 Night Work Convention, 1990
- C 182 Worst Forms of Child Labour Convention, 1999
- C 183 Maternity Protection Convention, 2000