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## American Bar Association Section of International Law and Practice and the Standing Committee on World Order under Law Reports to the House of Delegates - Women's Human Rights

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## **SECTION RECOMMENDATIONS AND REPORTS**

### **American Bar Association Section of International Law and Practice and the Standing Committee on World Order under Law Reports to the House of Delegates\***

#### **I. Women's Human Rights**

##### **RECOMMENDATION**

**BE IT RESOLVED**, that the American Bar Association commends the United Nations and its Member States for the Declaration and the Platform for Action adopted at the Fourth World Conference on Women in Beijing, China in September 1995, and in particular, for the progress achieved at the Conference in advancing the human rights of women and girls, including its recognition that women's rights are human rights, its reaffirmation of the universality of human rights, and the recognition that violence against women is a violation of human rights;

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\*The House of Delegates adopted these Recommendations and Reports in February 1996. They were produced by the Working Group on Beijing Conference Follow-up, chaired by Lucinda A. Low.

**BE IT FURTHER RESOLVED**, that the American Bar Association strongly supports the Platform's focus on the role of law in promoting the equality, equal protection and equal access to opportunities and benefits for women, and affirms the importance of legal literacy to the functioning of democracies and the exercise of human rights by all individuals in society;

**BE IT FURTHER RESOLVED**, that the American Bar Association supports the Platform for Action's provisions calling for the integration of a gender perspective into development assistance programs generally, and in particular supports the integration of such a perspective into the programs for law development and law reform around the world, including those programs supported with technical legal assistance of the American Bar Association; and

**BE IT FURTHER RESOLVED**, that the American Bar Association, in light of the Platform for Action's call to governments, non-governmental organizations, and international organizations to implement the Platform's action items by the year 2000, and recognizing the implementation that has already occurred, urges all levels of government in the United States to implement as soon as possible but in any event by the year 2000 the relevant commitments/action items in the Platform for Action.

## REPORT

### I. Introduction and Background

#### A. THE UNITED NATIONS FOURTH WORLD CONFERENCE ON WOMEN

The United Nations Fourth World Conference on Women (the "Conference" or the "4WCW") took place in Beijing, China from September 4-15, 1995. At the conclusion to the Conference, the delegates from the 187 attending governments issued a Declaration<sup>1</sup> (the "Beijing Declaration" or "Declaration") and committed themselves to the implementation of a Platform for Action (the "Platform" or "PfA") that identifies strategies and concrete steps to eliminate barriers to the full participation of women in twelve critical areas of concern described below.<sup>2</sup> The Declaration and the Platform represented the culmination of work over 20 years to secure the equality of women, beginning with the First World Conference on Women in Mexico City in 1975, and continuing through the Third World Conference on Women in Nairobi, Kenya in 1985.<sup>3</sup>

1. *Beijing Declaration of the Fourth World Conference on Women*, adopted September 15, 1995 [hereinafter "Declaration"].

2. Platform for Action, adopted September 15, 1995 [hereinafter "PfA"].

3. *The Nairobi Forward-Looking Strategies for the Advancement of Women*, adopted by the World Conference to Review and Appraise the Achievements of the U.N. Decade for Women: Equality, Development and Peace (Nairobi, Kenya, July 15-26, 1985), G.A. Res. 40/108 (December 13, 1985), U.N. Series No. E. 85, IV.10.

This Report, the first in a series of three reports and recommendations arising from the Conference,<sup>4</sup> provides an overview of the Platform for Action and a summary of its key achievements, emphasizing its legal aspects, as well as a description of the ABA's role in the Conference.

## B. PURPOSE, FOCUS AND STRUCTURE OF THE PLATFORM FOR ACTION

The Platform for Action—a 200-plus page document—is the principal product of the Conference. Although agreed upon by governments, it is not a binding legal treaty in the normal sense of the term. Rather, it is an action document. By signing it, a government makes a political commitment to implement the action items in the Platform that are relevant to it. This commitment is reaffirmed by the express language of the accompanying Declaration.<sup>5</sup>

To understand the recommendations of this Report and Recommendations and its two companion Reports and Recommendations, it is important to understand how the Platform is structured.

The Platform for Action is comprised of six chapters: I. Mission Statement; II. Global Framework; III. The Critical Areas of Concern; IV. Strategic Objectives and Actions; V. Institutional Arrangements; and VI. Financial Arrangements.

As set forth in the Mission Statement, the Platform for Action “aims at accelerating the implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women and at removing all the obstacles to women’s active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.”<sup>6</sup> Twelve areas are identified in the Platform for particular focus as the “critical areas of concern”:

- The persistent and increasing burden of poverty on women
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation

4. The others in this series are: (1) a Report and Recommendation reaffirming ABA support for U.S. ratification of the Convention on the Elimination of All Forms of Discrimination Against Women; and (2) a Report and Recommendation on implementation of the Platform by the United Nations.

5. In the Declaration, the participating governments state: “We hereby adopt and commit ourselves as Governments to implement the following Platform for Action, ensuring that a gender perspective is reflected in all our policies and programs. We urge the United Nations system, regional and international financial institutions, other relevant regional and international institutions and all women and men, as well as non-governmental organizations, with full respect for their autonomy, and all sectors of civil society, in cooperation with Governments, to fully commit themselves and contribute to the implementation of this Platform for Action.” Declaration, ¶ 38.

6. PfA Ch. I, ¶ 1.

- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women's access to and participation in all communications systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child<sup>7</sup>

With respect to each of those twelve areas, Chapter IV of the Platform identifies a number of strategic objectives. (For a list of these objectives, see Appendix A.) It then goes on to identify action items under each strategic objective. Some of the action items are directed towards governments, some towards international organizations, some towards non-governmental organizations ("NGOs"), and others toward some combination of the three.

As discussed in more detail below, many of the action items have a legal component. Attached as Appendix B is a list of those items.

### C. SUMMARY OF ACHIEVEMENTS OF THE CONFERENCE

While the Conference's achievements are not limited to the legal arena, there are numerous—indeed, several key—achievements of the Conference that affect laws or legal systems.

#### 1. *Human Rights*

As described in more detail in Section II.A. below, the Platform for Action is an important contribution to the development of human rights law. Most significant is the consensus reflected throughout the Platform that "women's rights are human rights"; that is, that the human rights of women and girls are not a separate or special category of rights, but an integral and indivisible part of international human rights. A second key achievement in this area is the Platform's reaffirmation of the universality of human rights—that there are certain rights that are inalienable and are not qualified by local practices arising from culture, tradition, or religion. Third is the Platform's provisions on violence against women, which reflect the growing international consensus that violence against women is a violation of human rights. These are important achievements of the Conference,<sup>8</sup> not just for the follow-on work to the Conference but also for human rights law

7. PfA Ch. III, ¶ 46.

8. These are not the sole achievements of the Conference in the human rights area.

more broadly, and should be supported by the ABA, consistent with its past policies in the human rights arena. *See* Appendix C.

## 2. *Ratification of the Women's Convention and Support for Development of an Optional Protocol*

The Platform calls upon countries which have not already done so to ratify the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW" or the "Women's Convention").<sup>9</sup> It calls upon states which have ratified the Women's Convention but made significant reservations to it to reconsider those reservations.<sup>10</sup> Finally, the Platform calls for the development of an optional protocol to the Women's Convention which would provide for an individual right of petition to address a state's failure to implement the Convention.<sup>11</sup> As described in more detail in the accompanying Report and Recommendation on the Women's Convention, the ABA should reaffirm its support, first established in 1984, for U.S. ratification of this Convention, subject to the reservations, understandings and declarations previously supported. It should also express its support in principle for the development of the optional protocol, to ensure that the Convention, once adopted, is effectively implemented.

## 3. *Law Reform and Legal Literacy*

The Platform recognizes the need for law reform in a number of areas to achieve its goal of equal rights for women. It also recognizes the need for effective implementation and enforcement of laws granting equal rights and protections. Finally, it recognizes the importance of educating women and girls about their rights under the law—legal literacy—as an essential component of effective law reform. These provisions are consistent with a host of ABA policies, as set forth in Section II.B and Appendix C to this Report. As the largest legal NGO in the world, it is important that the ABA support the law reform process that is necessary to achieve the equality of women around the world, and support educational efforts that will assist in empowering women and supporting the rule of law in societies.

## 4. *Gender Perspective in Technical Legal Assistance*

The Platform calls for governments to integrate a gender perspective in all of their policies and programs, including their development assistance programs. As appreciation of the link between women and development grows, the understanding of a need for a gender perspective in development assistance has grown

9. PfA Ch. IV.I, ¶ 230(b), Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1979).

10. PfA Ch. IV.I, ¶ 230(c&d).

11. PfA Ch. IV.I, ¶ 230(l).

as well. This includes technical assistance programs focused on law development and reform. The ABA itself is an actor in this area, providing technical legal assistance to law reform, democratization and other projects around the world. Just as U.S. and international development agencies are revising their policies and practices following the 4WCW to incorporate a gender perspective in their programs and activities, so the ABA needs to ensure that this perspective is included in its programs. Section II.C discusses this in further detail.

### *5. Implementation of the Platform by the U.S. Government*

As noted at the outset, the Conference was intended as a conference of commitment to future action. The Declaration and the Platform call for implementation of the action items in the Platform within five years, i.e., by the year 2000.<sup>12</sup> Some governments and international organizations have already announced steps toward implementation. The U.S. Government announced at the Conference certain commitments it was making in four priority areas: equality and power-sharing; economic security, including balancing work and family responsibilities; the human rights of women, with particular emphasis on violence against women; and health.<sup>13</sup> (See Section II.D for a detailed discussion of those commitments.) It also established an implementation structure within the U.S. Government. This is a beginning, but other steps remain to be taken for the U.S. Government to have fully implemented its Platform commitments. In keeping with the Platform, the target date for this implementation should be the year 2000.

### *6. Implementation by the United Nations*

The Platform also calls for the United Nations to institute internal reforms in keeping with the Platform goals. Consistent with the ABA's support for reform of the United Nations, a separate Report and Recommendations on U.N. Implementation focuses on implementing steps to be taken by that body.

## **D. THE ABA'S ROLE IN THE CONFERENCE**

Pursuant to a resolution adopted last fall,<sup>14</sup> the ABA participated actively in the Conference and the Conference preparations. Focusing on the legal issues

12. Declaration, ¶ 22; PFA Ch. V, ¶¶ 286, 294, 305.

13. United States Commitments Announced at the Fourth World Conference on Women, Beijing, China (September 1995) at 2 [hereinafter "U.S. Commitments"].

14. In November 1994, the ABA adopted a resolution endorsing "international and domestic efforts to promote and protect women's human rights through the adoption and enforcement of legal provisions for equality and equal protection of the law", and recommending that the U.S. Government and NGOs participating in the Conference "actively support the inclusion in the Platform for Action of effective measures to accelerate the removal of the remaining obstacles to the realization of women's basic rights". American Bar Association Section of International Law and Practice Report to the Board of Governors, *Recommendation*, November, 1994, at 1. In addition to this resolution, numerous other ABA resolutions provide policy support for the ABA's activities at the Conference and NGO Forum and for the followup outlined here. These are set forth in Appendix C. The ABA has thus

of human rights, violence against women, law reform to promote equality, and legal literacy, the ABA, as a co-chair of the Working Group on the Human Rights of Women, developed a legal framework for the Platform,<sup>15</sup> participated in the Preparatory Conference in New York City in March 1995, sponsored several workshops on law-related topics at the NGO Forum (the parallel event to the Conference for non-government organizations and individuals), and attended the Conference as an accredited NGO to work on the Platform issues that the ABA delegation had identified as its priority issues. In particular, the ABA delegates focused on provisions in the draft Platform that would, if adopted, have undermined the universality of human rights. The extent to which traditional practices or cultural behavior could qualify human rights norms, was, as suggested earlier, a major issue in the Conference negotiations. The Platform, as finally agreed to, does not permit such qualification; following the conceptual approach suggested by the ABA, the Platform language makes clear that human rights norms are not to be so qualified, but without making culture or tradition completely irrelevant to how countries implement the Platform.<sup>16</sup>

ABA follow-up to the Conference, in addition to this series of reports and recommendations and actions taken to implement them, will include (1) study and development of model domestic violence legislation for use abroad; and (2) technical legal assistance to a domestic microenterprise initiative announced by the U.S. government at the Conference to promote self-sufficiency and combat poverty and welfare dependence.<sup>17</sup> These projects require no special policy action by the ABA beyond what is set forth here. Other projects may be identified at a future date.

With this background, the next section of this Report reviews in more detail the five areas highlighted in Part I.C. of this Report.

## II. Issue-by-Issue Analysis

### A. HUMAN RIGHTS

The principal focus of the Conference was on the fulfillment of existing rights found in widely-adopted international human rights treaties.<sup>18</sup> In so doing, how-

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supported virtually all the human rights treaties including those which apply specifically to women and children, domestic legislation granting equal status under the law, equal protection of the law, and equality of opportunity and access to government benefits to women. It was one of the earliest groups to support effective measures to combat violence against women, including domestic violence, among other things.

15. Working Group on the Human Rights of Women (WGHRW), *Human Rights Framework for the Platform of Action of the Fourth World Conference on Women: Action for Equality, Development and Peace* [hereinafter "WGHRW Framework"]. The Working Group is a national network of approximately 35 international human rights organizations.

16. See discussion in II.A.

17. See discussion in II.E.

18. See WGHRW Framework.



ever, the Conference made several important contributions to the development of international human rights law.

### 1. *Recognition That Women's Rights Are Human Rights*

The single greatest achievement of the Conference is the participating states' affirmation in the Beijing Declaration and the PfA that women's rights are human rights. The Platform "reaffirms the fundamental principle set forth in the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in 1993,<sup>19</sup> that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights."<sup>20</sup> The Platform thus rejects the notion that the human rights of women and girls are special or separate rights.<sup>21</sup>

Throughout the Platform, the critical issues are analyzed through a life-cycle perspective, based on the recognition—not novel but extremely important for an action document—that the inequalities that women face as adults begin in childhood. The Platform therefore focuses on what it refers to as the "girl child" as well as women, and speaks in terms of "promot[ion] and protect[ion] of the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle."<sup>22</sup>

### 2. *Reaffirmation of the Universality of Human Rights*

A second human rights achievement of the Conference—and one whose importance goes far beyond the documents it produced—is the reaffirmation of the universality of human rights. At the Vienna Conference on Human Rights, the participating governments reaffirmed the universality of human rights.<sup>23</sup> Universality is the concept that international human rights are applicable to all people, wherever located. The Beijing Conference reinforced that important principle. Paragraph 9 of the Platform states that:

While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

In the context of this Conference, which confronted many traditional practices involving girls and women that challenge universal human rights,<sup>24</sup> such a reaffir-

19. Vienna Declaration and Programme of Action, see U.N. doc. A/CONF. 157/23 (1993), 32 I.L.M. 1661 (1993) [hereinafter "Vienna Declaration"].

20. PfA Ch. I, ¶ 2.

21. The action corollary to this legal concept is the mainstreaming, or integrating, of gender considerations into the policies and programs of governments. See, e.g., PfA Ch. IV.H, ¶¶ 207(e), 208(g).

22. PfA Ch. I, ¶ 3.

23. Vienna Declaration, Ch. I, ¶ 1.

24. Examples of such practices are bride-burning and female genital mutilation.

mation is particularly significant. Conversely, allowing international human rights norms to be qualified by such practices would have potentially damaged the fabric of human rights law in general.<sup>25</sup>

### 3. *Violence Against Women as a Violation of Human Rights*

The Platform confirms that violence against women—whether it occurs in the private sphere (e.g., domestic violence) or in the public sphere (e.g., by the military or police) “both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.”<sup>26</sup> The Platform’s affirmation that violence against women violates and impairs women’s human rights is significant, because it provides a strong basis for the Platform’s call on governments to recognize their responsibility to take steps to eliminate violence against women.

The Platform addresses violence against women as a separate “Critical Area of Concern.”<sup>27</sup> It also specifically includes it under the human rights section. The Platform firmly articulates the need to confront global violence against women. It acknowledges the longstanding failure of governments to promote and protect a woman’s human right to be free of violence.

The language of the Platform tracks the strong language of the Declaration on the Elimination of Violence Against Women<sup>28</sup> and outlines many specific actions governments, non-governmental groups and others should take to confront the problem.<sup>29</sup> Recommended actions include strengthening legal systems’ response to all forms of violence against women, including domestic violence.<sup>30</sup> These recommendations include reviewing and adopting effective laws to prevent and punish such violence, providing effective remedies for victims of violence and providing training programs for law enforcement officials in dealing with victims of and perpetrators of violence against women.

The three areas reviewed here by no means represent the only human rights achievements of the Conference. Because of the importance of these three areas,

25. As noted earlier, the ABA was particularly active on this issue in its work in the Conference. See Section I.D. Although subsequent language in paragraph 9 of the Platform speaks of giving “full respect” to religious and ethical values, cultural backgrounds, and philosophical convictions; that language does not modify the duty of states to respect international human rights or to implement the Platform in accordance with such rights, which is established by the first sentence of paragraph 9, quoted in the text above.

26. PfA Ch. IV.D, ¶ 113. The Platform defines “violence against women” as “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 private life.” *Id.*, ¶ 114; see also Ch. IV.E, ¶ 132, Ch. IV.I, ¶ 232(g).

27. PfA Ch. III; Ch. IV.E, ¶¶ 113-131.

28. Declaration on the Elimination of Violence Against Women, February 23, 1994, G.A. Res. 48/104, U.N. GAOR, 48th Sess., U.N. Doc. A/48/629 (1994).

29. PfA Ch. IV.E, ¶¶ 125-131.

30. PfA Ch. IV.E, ¶ 125.

and in view of the ABA's focus on them in the Conference and the NGO Forum, it is appropriate for the ABA to highlight them in this Report and Recommendations.

## B. SUPPORT FOR LAW DEVELOPMENT, REFORM, AND IMPLEMENTATION; LEGAL LITERACY

### 1. *Support for Law Reform*

The Beijing Declaration and Platform for Action contain many provisions that call for reform of laws, regulations and treatment under the law. A catalogue of these provisions is attached at Appendix B.

The principal focus of this reform effort is the elimination of discrimination under the law based on gender, the assurance of equal protection of the law regardless of gender, and equal access to resources (such as credit) based on gender. The Platform recognizes the importance of a non-discriminatory rule of law to the achievement of the full equality of women.<sup>31</sup>

The ABA should give its full support to this effort. As reflected in the policies listed in Appendix C, the ABA has endorsed many efforts to eliminate discrimination on the basis of status, both gender-based discrimination and discrimination based on other immutable characteristics. Because of this, and the U.S. history of using law as a tool to combat discrimination, the ABA is uniquely positioned to take a leadership role in the elimination of discrimination under the law around the world.

### 2. *Support for Legal Literacy*

It is essential that women be aware of their human rights in order for those rights to be realized and in order for women to be able to participate effectively in political and decision-making processes. Many women, however, do not know that they have internationally recognized human rights or what those rights actually are. The Platform for Action recognizes this situation and identifies as Strategic Objective I.3 to "Achieve legal literacy." The Platform specifies a variety of actions to be taken by governments, non-governmental organizations, and international organizations. These include: publicizing and disseminating laws, conference documents, and other information relating to the equal status and human rights of all women; translating such documents into local and indigenous languages and into formats appropriate for persons with disabilities and lower levels of literacy; implementing educational programs to make women aware of their human rights; and making widely available information on the existence of national, regional, and international mechanisms for seeking redress when the human rights of women are violated.<sup>32</sup> The Platform for Action also specifically recognizes that legal literacy is important for women living in poverty.<sup>33</sup>

31. PfA Ch. IV.I, ¶ 232.

32. See PfA Ch. IV.I, ¶¶ 230(g), 233.

33. PfA Ch. IV.A, ¶¶ 60(r), 63(a).

The United States commitments announced at the 4WCW recognize the importance of legal literacy, as well. In the Political Participation and Legal Rights Initiative, the USG commits to support programs to strengthen women's legal literacy and integrate gender issues into law school curricula, including through cooperation with NGOs and legal professionals. In addition, the Women's Legal Rights Initiative of USAID will adopt a strategy to develop and disseminate information regarding women's legal status, including identifying the highest priority legal rights issues affecting women.<sup>34</sup> See II.E.1.a.(i)(b) *infra*.

The ABA has supported legal literacy efforts in the past. (See Appendix C: Bicentennial of Constitution and Bill of Rights (8/84); Citizenship Education (2/92); Law-Related Citizenship Education (8/75).) The proposed resolution would ensure that these efforts include a gender dimension, and would include international as well as domestic efforts.

### C. GENDER PERSPECTIVE IN TECHNICAL ASSISTANCE

As noted earlier, one of the key outcomes of the 4WCW was the reaffirmation that women's rights are human rights.<sup>35</sup> Inherent in that concept is the notion that women's rights are an essential component for the realization of social equality, development and peace. But along with that reaffirmation was the recognition that, despite progress in raising awareness about women's rights in the world community, there remains a great gap between the concept and effective enjoyment by women of their full human rights.<sup>36</sup>

34. United States Commitments Announced at the Fourth World Conference on Women, U.S. Department of State, September, 1995.

35. See Declaration, ¶ 14.

36. As pointed out throughout the Platform, women, particularly in developing countries and countries in transition, continue to suffer disparate effects from political, economic, social and cultural policies which in effect denies them full enjoyment of their human rights. This may be the result of overt discrimination, or it may be the result of structural biases. Women and girls often suffer discrimination in the allocation of economic and social resources. PfA Ch. IV.I, ¶ 220. In the past decade the number of women living in poverty has increased disproportionately to the number of men, particularly in developing countries. PfA Ch. IV.A, ¶ 50. The feminization of poverty has become a significant problem in the countries with economies in transition as a short-term consequence of the process of political, economic and social transformation. *Id.* Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision-making process. PfA Ch. IV.A, ¶ 53. In many countries the social welfare systems do not take sufficient account of the specific conditions of women living in poverty. With an increasing tendency to scale back social programs, there is greater risk of women falling into poverty, particularly where social security systems are based on the principle of continuous remunerated employment. PfA Ch. IV.A, ¶ 54.

Women may face additional barriers to the enjoyment of their human rights because of such factors as race, language, ethnicity, culture, religion, disability, socio-economic class, or their status as migrants or refugees. This may be compounded by a general lack of knowledge and recognition of their human rights. PfA Ch. IV.I, ¶ 226. Finally, there are areas in which women suffer disproportionately. For example, the factors that cause the flight of refugee women, other displaced women in

The gap between the recognition of women's rights as human rights and women's enjoyment of those rights is partly the result of the lack of sufficient mechanisms at all levels to promote the advancement of women. Therefore, the Platform for Action identifies this as one of the critical areas of concern that need immediate attention.<sup>37</sup> An essential component of this action item is the need to "mainstream the gender perspective". Specifically, the Platform calls on governments and other actors, including non-governmental organizations like the ABA, to promote an active and visible policy of mainstreaming a gender perspective in all policies and programs so that, before decisions are taken, an analysis is made of their effects on women and men.<sup>38</sup>

This mainstreaming of the gender perspective is crucial to bridging the gap between the ideal of women's rights as human rights and the actual enjoyment of those rights by women around the world. It requires a commitment by governments and others to consider the impact on women of policies, legislation, and programmatic development and changes during the planning or decision-making phase, when changes can be made to prevent or alleviate any negative impact on women. Accomplishing this goal may require becoming familiar with and training personnel regarding methodologies for gender-based analysis. But it mostly requires a commitment to the notion that every person is entitled to participate in, contribute to and enjoy cultural, economic, political and social development. This does not mean special treatment but recognition of the differential impact of policies and laws on people in different circumstances.

In its Preliminary Commitments announced in Beijing, the U.S. Government has indicated that its development assistance programs, for example through the Agency for International Development, will have integrated into them a gender perspective. *See* II.E.1. *infra*. The World Bank has made a similar announcement.<sup>39</sup>

The ABA's legal technical assistance programs<sup>40</sup> play a critical role in helping governments, particularly those of developing countries and countries in transition to democracy, develop and reform their laws. In order to ensure equality and non-discrimination under the law,<sup>41</sup> the Platform for Action calls on governments to review national laws, including customary laws and legal practices in the areas

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need of international protection and internally displaced women may be different from those affecting men. PfA Ch. IV.I, ¶ 226 *bis*. Domestic violence is another area in which women are the principal group affected.

37. *See* PfA Ch. III; PfA Ch. IV.H.

38. PfA Ch. IV.H, ¶¶ 204, 208(c&d) (legal policy and programming reforms). *See also*, PfA Ch. V, ¶¶ 292, 295.

39. *See Gender Equality is Key to Development*, Xinhua News Agency, August 24, 1995, available in LEXIS, News Library, Xinhua File.

40. The ABA has a variety of technical legal assistance programs, operating in both the domestic and the international arenas. An example of domestic technical assistance is the work of the Commission on Homelessness and Poverty in microenterprise credit. The Central and Eastern European Law Initiative ("CEELI"), and the Section's Cambodia project and Latin America Administrative Law project, are examples of such projects operating internationally.

41. This is strategic objective 1.2., PfA Ch. IV.I, ¶ 232.

of family, civil, penal, labor, commercial, and criminal law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments and prevent any disproportionate negative impact on women.<sup>42</sup>

The Platform for Action notes that while implementation is primarily the responsibility of governments, it is also dependent on other institutions.<sup>43</sup> In particular, the Platform notes that NGOs have a specific role to play in creating a social, economic, political and intellectual climate based on equality.<sup>44</sup> Given the ABA's longstanding support for human rights, and in particular its support for the elimination of discrimination against women, it is only natural that we should support the concept of integrating women's perspectives and concerns for gender impact into the development of our technical assistance programs for law development and law reform.

Integration of such perspectives does not mean adding a "women's issues" component to a legal technical assistance project. Some projects, upon examination, may be found to be gender-neutral and require no changes. Others may require reconceptualization in whole or in part to address gender-impact issues. Such projects should be designed to serve the needs of both men and women in society, and to minimize their adverse impact on particular groups.

#### D. IMPLEMENTATION OF THE PLATFORM BY THE UNITED STATES GOVERNMENT

##### 1. *Preliminary Commitments*

To demonstrate its support for the principles embodied by the Conference, the United States Government went to Beijing prepared with an announcement of preliminary commitments in four areas: i) equality and power sharing; ii) economic security, including balancing work and family responsibilities; iii) the human rights of women, particularly regarding violence against women; and iv) health. Although these areas were identified as being priorities for American women, actions on these commitments would benefit women around the world as well as in the United States. Specific commitments are as follows:

##### (i) Equality and Power Sharing:

###### (a) *Domestic Process:*

The United States announced the creation of an Inter-Agency Council, operating out of the White House, to direct implementation and follow-up efforts to the Conference with the private sector and NGO community. The U.S. delegation to the Conference, consisting of government and non-government individuals

42. PfA Ch. IV.I, ¶¶ 232(d) and (1).

43. PfA Ch. V, ¶ 286.

44. PfA Ch. V, ¶ 289.

of wide geographic and demographic representation and expertise, will serve as an advisory body to the Council. The Council and advisory body will undertake a year-long process to develop a comprehensive implementation plan until the year 2000. The Council's work will include, inter alia, outreach to American women, maintaining communications between the government and NGOs, consideration of possible legislative action or reforms at all levels of government, and the development of private initiatives.

(b) *U.S. Agency for International Development ("USAID"):*

USAID is launching two mutually reinforcing initiatives to increase women's political participation and access to information in order to improve their legal status and ability to benefit from economic and social progress. The Women's Political Participation program will provide assistance to women living in transitional and consolidating democracies around the world. Assistance will be provided in the areas of political leadership training, networking, civic and voter education, and technical training and leadership services in order to improve women's participation in the political process.

The Women's Legal Rights Initiative will work to develop knowledge and disseminate information regarding women's legal status. It will identify the highest priority legal rights issues by region or country, and the most effective ways of producing changes. Concurrently, USAID will assist NGOs and other institutions to build their capacity to implement corrective programs and actions. Emphasis will be given to supporting programs that, inter alia, strengthen legal literacy, integrate gender issues into law school curricula, provide gender sensitivity training to the judiciary, provide or support legal clinics, and engage in direct policy dialogue with legislators to promote more equitable laws.

(ii) *Economic Security*

Starting in September, the Women's Bureau of the Department of Labor began a year-long campaign to make the workplace better for women and their families. The Bureau will solicit pledges from employers, organizations and community groups to make systematic changes in policies and practices in the workplace in three broad categories: (a) improved pay and benefits (e.g., a group of small businesses will collectively purchase health insurance for employees and their families); (b) work and family (e.g., a school district will redesign its bus schedule to make it easier for children to attend after-school child care programs); and, (c) increased value for women's work (e.g., a professional association will establish a job-training scholarship for women reentering the workforce).

The U.S. Department of the Treasury has recently established several microenterprise initiatives which, although geared to the population at large, may be of particular benefit to women. The recently established Community Development Financial Institutions Fund will help promote the development of micro-lenders and financial institutions devoted to community development. In addition, the Department of the Treasury, through the Fund, will serve as coordinator of a

new Federal Microenterprise Initiative to ensure coherence among the many microenterprise programs across Federal agencies.<sup>45</sup>

On the international front, USAID will be contributing to a \$200 million microenterprise fund to be managed by the World Bank's newly created Consultative Group to Assist the Poorest (CGAP). About \$150 million of this money will be used to make loans to women around the world.

Also in September, the Interagency Committee on Women's Business Enterprise ("IACWBE") submitted its first annual report to the President and Congress. The report is an assessment of the programs for women's business enterprise across all of the federal agencies. Innovative programs have been identified and will be shared across the agencies and with women across the country.

### (iii) Human Rights/Violence Against Women

Earlier in the year, President Clinton announced the creation of the Violence Against Women Office at the Justice Department, following the passage of the Violence Against Women Act. This office will lead a comprehensive national effort to fight domestic violence and other crimes against women, through outreach to the public, and training for law enforcement, prosecutors and court personnel. In addition, the United States noted its continued support for enforcement of the Freedom of Access to Clinic Entrances Act of 1994. Finally, as noted earlier, the Administration reaffirmed its commitment to obtaining Senate ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

### (iv) Health

Domestically, the Department of Health and Human Services will take action on a range of problems of concern to women of different backgrounds throughout the life cycle, with special attention being given to women of low income and from ethnic and racial minorities. Some of the programs include: a comprehensive plan to reduce smoking by children and adolescents; prevention of teenage pregnancy by encouraging abstinence and health education in schools; establishing a Governing Council on Children and Youth; addressing the health needs of older women through the Women's Health Initiative; contraceptive research and development; health promotion and disease prevention particularly geared towards women; and development of a public policy agenda on HIV/AIDS specific to women, adolescents and children.

On the international front, USAID will continue its support of public education campaigns to provide information on women's reproductive and sexual health and the availability of health, education and legal services.

The U.S. Government demonstrated commendable dedication in announcing these commitments before the end of the Conference. In particular, we are encour-

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45. The ABA has been asked to provide technical legal assistance to this project.



aged by the creation of the Inter-Agency Council at the White House level, which is consistent with the Platform's call for the creation of implementing mechanisms at the highest political level. The inclusion of the women's perspective, in particular the relevance of women's life-cycle perspective, in Department of Health and Human Services' programs is consistent with the identification of women's health as a critical area and with one of the key goals of the Conference—mainstreaming a women's perspective. USAID's programs to increase political participation and legal literacy are directly on point regarding the Platform's calls for increasing women's capacity to participate in decision-making and achieving legal literacy among women. Finally, the Administration's continued support for implementation of the Violence Against Women Act and the Freedom of Access to Clinic Entrances Act of 1994 is an affirmation of the principle of women's rights as human rights. But by signing the Declaration and Platform for Action, the United States committed itself to much more.

a. *Further Commitments*

Governments have the primary responsibility for implementing the Platform. A fundamental condition for effective implementation is the promotion of an active and visible policy of mainstreaming the gender perspective. The U.S. Government must ensure the consideration of a gender perspective and the impact of actions on women in the decision-making process for all policies and programs. This commitment must be well publicized and emanate from the highest levels to be effective.

In addition, the U.S. Government must ensure that all agencies have adequate human and financial resources to implement the Platform. This not only includes providing adequate financing for programs dedicated to the advancement of women, but also providing sufficient resources for agencies to undertake gender-impact analysis. In addition, the Platform calls on governments to make efforts to systematically review how women benefit from public sector expenditures and to adjust budgets to ensure equality of access to public sector expenditures, both for enhancing productive capacity and for meeting social needs.

These general commitments are necessary to position the U.S. Government to implement fully the many actions set out in the Platform. Particularly, the United States should pay attention to the following action items identified in the Platform:

- ensure access to free or low-cost legal services;
- ensure equal access to education, including by promoting an educational setting that eliminates barriers to the schooling of pregnant adolescents and young mothers;
- review existing legislation and policies to reflect a commitment to women's health, and provide accessible, available and affordable primary health-care services, including sexual and reproductive health care; and
- integrate a gender perspective into all economic restructuring and structural adjustment policies.

The ABA should support the full and timely implementation of the Platform by the U.S. Government, particularly those aspects which have a legal dimension. Such support is consistent with ABA policies regarding legal services, health care, education, and others. *See* Appendix C. These will be difficult areas to address in a time of declining government spending, re-examination of the role of the federal government, and a re-orientation of many programs. But it is precisely during such times that consideration of these issues becomes the most critical.

### CONCLUSION

It is appropriate for the ABA, as the world's largest legal NGO, to give its strong support to the implementation of the Platform for Action, especially those aspects which are law-related. Our democracy is built on the rights of the individual. The ABA has long supported human rights for all, at the national and international levels. By recognizing that women's rights are human rights, the Platform has made the proper implementation a concern for all. By supporting those aspects of the Platform highlighted in this report and the related reports, the ABA is supporting equality and justice for all.

November 17, 1995

Respectfully submitted,  
Michael D. Sandler  
Chairman

## **Appendix A**

### **Platform for Action**

#### **CHAPTER IV: STRATEGIC OBJECTIVES**

##### **A. *Women and Poverty***

- A.1. Review, adopt and maintain macroeconomic policies and development strategies that address the needs and efforts of women in poverty
- A.2. Revise laws and administrative practices to ensure women's equal rights and access to economic resources
- A.3. Provide women with access to savings and credit mechanisms and institutions
- A.4. Develop gender-based methodologies and conduct research to address the feminization of poverty

##### **B. *Education and Training of Women***

- B.1. Ensure equal access to education
- B.2. Eradicate illiteracy among women
- B.3. Improve women's access to vocational training, science and technology, and continuing education
- B.4. Develop non-discriminatory education and training
- B.5. Allocate sufficient resources for and monitor the implementation of educational reforms
- B.6. Promote lifelong education and training for girls and women

##### **C. *Women and Health***

- C.1. Increase women's access throughout the life cycle to appropriate, affordable and quality health care, information and related services
- C.2. Strengthen preventive programs that promote women's health
- C.3. Undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and sexual and reproductive health issues
- C.4. Promote research and disseminate information on women's health
- C.5. Increase resources and monitor follow-up for women's health

##### **D. *Violence Against Women***

- D.1. Take integrated measures to prevent and eliminate violence against women
- D.2. Study the causes and consequences of violence against women and the effectiveness of preventive measures
- D.3. Eliminate trafficking in women and assist victims of violence due to prostitution and trafficking

### E. *Women and Armed Conflict*

- E.1. Increase the participation of women in conflict resolution at decision-making levels and protect women living in situations of armed and other conflicts or under foreign occupation
- E.2. Reduce excessive military expenditures and control the availability of armaments
- E.3. Promote non-violent forms of conflict resolution and reduce the incidence of human rights abuse in conflict situations
- E.4. Promote women's contribution to fostering a culture of peace
- E.5. Provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women
- E.6. Provide assistance to the women of the colonies and non-self-governing territories

### F. *Women and the Economy*

- F.1. Promote women's economic rights and independence, including access to employment and appropriate working conditions and control over economic resources
- F.2. Facilitate women's equal access to resources, employment, markets and trade
- F.3. Provide business services, training and access to markets, information and technology, particularly to low-income women
- F.4. Strengthen women's economic capacity and commercial networks
- F.5. Eliminate occupational segregation and all forms of employment discrimination
- F.6. Promote harmonization of work and family responsibilities of women and men

### G. *Women in Power and Decision-Making*

- G.1. Take measures to ensure women's equal access to and full participation in power structures and decision-making
- G.2. Increase women's capacity to participate in decision-making and leadership

### H. *Institutional Mechanisms for the Advancement of Women*

- H.1. Create or strengthen national machineries and other governmental bodies
- H.2. Integrate gender perspectives in legislation, public policies, programs and projects
- H.3. Generate and disseminate gender-disaggregated data and information for planning and evaluation

I. *Human Rights of Women*

- I.1. Promote and protect the human rights of women through the full implementation of all human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination against Women
- I.2. Ensure equality and non-discrimination under the law and in practice
- I.3. Achieve legal literacy

J. *Women and the Media*

- J.1. Increase the participation and access of women to expression and decision-making in and through the media and new technologies of communication
- J.2. Ensure equality and non-discrimination under the law and in practice

K. *Women and the Environment*

- K.1. Involve women actively in environmental decision-making at all levels
- K.2. Integrate gender concerns and perspectives in policies and programs for sustainable development
- K.3. Strengthen or establish mechanisms at the national, regional and international levels to assess the impact of development and environmental policies on women

L. *The Girl Child*

- L.1. Eliminate all forms of discrimination against the girl child
- L.2. Eliminate negative cultural attitudes and practices against girls
- L.3. Promote and protect the rights of the girl child and increase awareness of her needs and potential
- L.4. Eliminate discrimination against girls in education, skills development and training
- L.5. Eliminate discrimination against girls in health and nutrition
- L.6. Eliminate the economic exploitation of child labor and protect young girls at work
- L.7. Eradicate violence against the girl child
- L.8. Promote the girl child's awareness of and participation in social, economic and political life
- L.9. Strengthen the role of the family in improving the status of the girl child

## **Appendix B**

### **Catalog of Law-Related Strategies and Action Items in the Platform for Action**

#### *Declaration*

33. Ensure respect for international law, including humanitarian law, in order to protect women and girls in particular;

#### *Chapter III: Critical Areas of Concern*

46. [G]overnments, the international community and civil society, including non-governmental organizations and the private sector, are called upon to take strategic action in the following critical areas of concern:

- 9. Lack of respect for and inadequate promotion and protection of the human rights of women;

#### *Chapter IV: Strategic Objectives and Actions*

##### *A. Women and Poverty*

58. Sustainable development and economic growth that is both sustained and sustainable are possible only through improving the economic, social, political, legal and cultural status of women;

60(l). Ensure the full realization of the human rights of all women migrants, including women migrant workers, and their protection against violence and exploitation; introduce measures for the empowerment of documented women migrants, including women migrant workers, and facilitate the productive employment of documented migrant women through greater recognition of their skills, foreign education and credentials, and facilitate their full integration into the labor force;

60(r). Ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty;

62(f). Mobilize to protect women's right to full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.

63(a). Ensure access to free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty;

63(b). Undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies;

63(c). Consider ratification of Convention No. 169 of the International Labor Organization ("ILO") as part of their efforts to promote and protect the rights of indigenous people.

64(a). Enhance the access of disadvantaged women, including women entrepreneurs, in rural, remote and urban areas to financial services through strengthening links between the formal banks and intermediary lending organizations, including legislative support, training for women and institutional strengthening for intermediary institutions with a view to mobilizing capital for those institutions and increasing the availability of credit;

#### *B. Education and Training of Women*

82(j). Encourage ratification of the International Covenant on Economic, Social and Cultural Rights where they have not already done so.

85(k). Remove legal and regulatory and social barriers, where appropriate, to sexual and reproductive health education within formal education regarding women's health issues.

#### *C. Women and Health*

107(b). Reaffirm the right to the enjoyment of the highest attainable standards of physical and mental health, protect and promote the attainment of this right for women and girls and incorporate it in national legislation, for example; review existing legislation, including health legislation, as well as policies, where necessary, to reflect a commitment to women's health and to ensure that they meet the changing roles and responsibilities of women wherever they reside;

108(d). Reinforce laws, reform institutions and promote norms and practices that eliminate discrimination against women and encourage both women and men to take responsibility for their sexual and reproductive behavior, endure full respect for the integrity of the person, take action to ensure the conditions necessary for women to exercise their reproductive rights and eliminate coercive laws and practices;

108(i). Adopt regulations to ensure that the working conditions, including remuneration and promotion of women at all levels of the health system, are non-discriminatory and meet fair and professional standards to enable them to work effectively;

108(q). Adopt specific preventive measures to protect women, youth and children from any abuse—sexual abuse, exploitation, trafficking and violence, for example—including the formulation and enforcement of laws, and provide legal protection and medical and other assistance.

109(b). Review and amend laws and combat practices, as appropriate, that may contribute to women's susceptibility to HIV infection and other sexually transmitted diseases, including enacting legislation against those socio-cultural practices

that contribute to it, and implement legislation, policies and practices to protect women, adolescents and young girls from discrimination related to HIV/AIDS;

#### *D. Violence Against Women*

123. The effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern. Implementation of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as well as other relevant instruments, needs to be reviewed and strengthened. The use of women in international prostitution and trafficking networks has become a major focus of international organized crime. The Special Rapporteur of the Commission on Human Rights on violence against women, who has explored these acts as an additional cause of the violation of the human rights and fundamental freedoms of women and girls, is invited to address, within her mandate as a matter of urgency, the issue of international trafficking for the purposes of the sex trade, as well as the issues of forced prostitution, rape, sexual abuse and sex tourism. Women and girls who are victims of this international trade are at an increased risk of further violence, as well as unwanted pregnancy and sexually transmitted infection, including infection with HIV/AIDS;

125(c). Enact and/or reinforce penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society;

125(d). Adopt and/or implement and periodically review and analyze legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators;

125(e). Work actively to ratify and/or implement international human rights norms and instruments as they relate to violence against women, including those contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

125(f). Implement the Convention on the Elimination of All Forms of Discrimination against Women, taking into account general recommendation 19 adopted by the Committee on the Elimination of Discrimination against Women, at its eleventh session;

125(i). Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, prenatal sex selection, infanticide and dowry-related violence and give vigorous support to



the efforts of non-governmental and community organizations to eliminate such practices;

125(o). Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties, review existing legislation and take effective measures against the perpetrators of such violence;

131(a). Consider the ratification and enforcement of international conventions on trafficking in persons and on slavery;

#### *E. Women and Armed Conflict*

145(c). Take action to investigate and punish members of the police, security and armed forces and others who perpetrate acts of violence against women, violations of international humanitarian law and violations of the human rights of women in situations of armed conflict;

145(e). Recognizing that women and children are particularly affected by the indiscriminate use of antipersonnel land-mines:

(i) Undertake to work actively towards ratification, if they have not already done so, of the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, particularly the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II), with a view to universal ratification by the year 2000;

(ii) Undertake to strongly consider strengthening the Convention to promote a reduction in the casualties and intense suffering caused to the civilian population by the indiscriminate use of land-mines;

(v) Adopt at the earliest possible date, if they have not already done so, a moratorium on the export of antipersonnel land-mines, including, to non-governmental entities, noting with satisfaction that many States have already declared moratoriums on the export, transfer or sale of such mines;

145(f). Recognizing the leading role that women have played in the peace movement:

(i) Work actively towards general and complete disarmament under strict and effective international control;

(ii) Support negotiations on the conclusion, without delay, of a universal and multilaterally and effectively verifiable comprehensive nuclear-test-ban treaty that contributes to nuclear disarmament and the prevention of the proliferation of nuclear weapons in all its aspects;

(iii) Pending the entry into force of a comprehensive nuclear-test-ban treaty, exercise utmost restraint in respect of nuclear testing.

146(a). Consider the ratification of or accession to international instruments containing provisions relative to the protection of women and children in armed

conflicts, including the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949, the Protocols Additional to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) and to the Protection of Victims of Non-International Armed Conflicts (Protocol II);

146(b). Respect fully the norms of international humanitarian law in armed conflicts and take all measures required for the protection of women and children, in particular against rape, forced prostitution and any other form of indecent assault;

147(e). Reaffirm that rape in the conduct of armed conflict constitutes a war crime and under certain circumstances it constitutes a crime against humanity and an act of genocide as defined in the Convention on the Prevention and Punishment of the Crimes of Genocide; take all measures required for the protection of women and children from such acts and strengthen mechanisms to investigate and punish all those responsible and bring the perpetrators to justice;

147(f). Uphold and reinforce standards set out in international humanitarian law and international human rights instruments to prevent all acts of violence against women in situations of armed and other acts of conflict; undertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery; prosecute all criminals responsible for war crimes against women and provide full redress to women victims;

147(k). Take measures in accordance with international law with a view to alleviating the negative impact of economic sanctions on women and children;

149(h). Apply international norms to ensure equal access and equal treatment of women and men in refugee determination procedures and the granting of asylum, including full respect and strict observation of the principle of non-refoulement through, *inter alia*, bringing national immigration regulations into conformity with relevant international instruments, and consider recognizing as refugees those women whose claim to refugee status is based upon the well-founded fear of persecution for reasons enumerated in the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, including persecution through sexual violence or other gender-related persecution, and provide access to specially trained officers, including female officials, to interview women regarding sensitive or painful experiences, such as sexual assault;

149(k). Ensure that the human rights of refugee and displaced women are protected and that refugee and displaced women are made aware of these rights; ensure that the vital importance of family reunification is recognized;

149(o). Develop awareness of the human rights of women and provide, as appropriate, human rights education and training to military and police personnel operating in areas of armed conflict and areas where there are refugees;

150(a). Disseminate and implement the UNHCR Guidelines on the Protection of Refugee Women and the UNHCR Guidelines on Evaluation and Care of Victims of Trauma and Violence, or provide similar guidance, in close cooperation with refugee women and in all sectors of refugee programmes;

*F. Women and the Economy*

167(a). Enact and enforce legislation to guarantee the rights of women and men to equal pay for equal work or work of equal value;

167(b). Adopt and implement laws against discrimination based on sex in the labor market, especially considering older women workers, hiring and promotion, the extension of employment benefits and social security, and working conditions;

167(e). Undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other properties, credit, inheritance, natural resources, and appropriate new technology;

167(i). Review and amend laws governing the operation of financial institutions to ensure that they provide services to women and men on an equal basis;

167(p). Enact and enforce equal opportunity laws, take positive action and ensure compliance by the public and private sectors through various means;

167(s). Reform laws or enact national policies that support the establishment of labor laws to ensure the protection of all women workers, including safe work practices, the right to organize and access to justice;

168(h). Review, reformulate, if necessary, and implement policies, including business, commercial and contract law and government regulations, to ensure that they do not discriminate against micro, small and medium-scale enterprises owned by women in rural and urban areas;

180(a). Implement and enforce laws and regulations and encourage voluntary codes of conduct that ensure that international labour standards, such as ILO Convention 100 on equal pay and workers' rights, apply equally to female and male workers;

180(b). Enact and enforce laws and introduce implementing measures, including means of redress and access to justice in cases of non-compliance, to prohibit direct and indirect discrimination on grounds of sex, including reference to marital or family status or sexual orientation in relation to access to employment, conditions of employment, including training, promotion, health and safety, as well as termination of employment and social security of workers, including legal protection against sexual and racial harassment;

180(c). Enact and enforce laws and develop workplace policies against gender discrimination in the labor market, especially considering older women workers, in hiring and promotion, and in the extension of employment benefits and social security, as well as regarding discriminatory working conditions and sexual ha-

rassment; mechanisms should be developed for the regular review and monitoring of such laws;

181(c). Ensure, through legislation, incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits. Promote the equal sharing of responsibilities for the family by men and women, including through appropriate legislation, incentives and/or encouragement, and also promote the facilitation of breast-feeding for working mothers;

182(c). Enact and enforce laws against sexual and other forms of harassment in all workplaces.

#### G. *Women in Power and Decision-Making*

192(a). Commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including, *inter alia*, setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action, in all governmental and public administration positions;

192(c). Protect and promote the equal rights of women and men to engage in political activities and to freedom of association, including membership in political parties and trade unions;

#### H. *Institutional Mechanisms for the Advancement of Women*

204. In addressing the issue of mechanisms for promoting the advancement of women, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that, before decisions are taken, an analysis is made of the effects on women and men, respectively;

207(d). Work with members of legislative bodies, as appropriate, to promote a gender perspective in all legislation and policies;

208(c&d). Undertake activities focusing on legal reform with regard, *inter alia*, to the family, conditions of employment, social security, income tax, equal opportunity in education, positive measures to promote the advancement of women, and the perception of attitudes and a culture favourable to equality, as well as promote a gender perspective in legal policy and programming reforms;

#### I. *Human Rights of Women*

230(b). Ratify and accede to and ensure implementation of the Convention on the Elimination of All Forms of Discrimination against Women so that universal ratification of the Convention can be achieved by the year 2000;

230(g). Develop a comprehensive human rights education programme to raise awareness among women of their human rights and among others of the human rights of women;

230(h). If they are States parties, implement the Convention by reviewing all national laws, policies, practices and procedures to ensure that they meet the obligations set out in the Convention; all States should undertake a review of all national laws, policies, practices and procedures to ensure that they meet international human rights obligations in this matter;

232(b). Provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination on the basis of sex for all women and girls of all ages and assure women of all ages equal rights and their full enjoyment;

232(c). Embody the principle of the equality of men and women in their legislation and ensure, through law and other appropriate means, the practical realization of this principle;

232(d). Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labor and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, and revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice;

232(l). Review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women in order to ensure that criminal law and procedures guarantee women effective protection against, and prosecution of, crimes directed at or disproportionately affecting women, regardless of the relationship between the perpetrator and the victim, and ensure that women defendants, victims and/or witnesses are not revictimized or discriminated against in the investigation and prosecution of crimes;

233(a). Translate, whenever possible, into local and indigenous languages and into alternative formats appropriate for persons with disabilities and persons at lower levels of literacy, publicize and disseminate laws and information relating to the equal status and human rights of all women, 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, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention of the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration on the Right to Development and the Declaration on the Elimination of Violence against Women, as well as the outcomes of relevant United Nations conferences and summits and national reports to the Committee on the Elimination of Discrimination against Women;

233(b). Publicize and disseminate such information in easily understandable formats and alternative formats appropriate for persons with disabilities, and persons at low levels of literacy;

233(c). Disseminate information on national legislation and its impact on women, including easily accessible guidelines on how to use a justice system to exercise one's rights;

233(d). Include information about international and regional instruments and standards in their public information and human rights education activities and in adult education and training programmes, particularly for groups such as the military, the police and other law enforcement personnel, the judiciary, and legal and health professionals to ensure that human rights are effectively protected;

233(e). Make widely available and fully publicize information on the existence of national, regional and international mechanisms for seeking redress when the human rights of women are violated;

233(f). Encourage, coordinate and cooperate with local and regional women's groups, relevant non-governmental organizations, educators and the media, to implement programmes in human rights education to make women aware of their human rights;

233(g). Promote education on the human and legal rights of women in school curricula at all levels of education and undertake public campaigns, including in the most widely used languages of the country, on the equality of women and men in public and private life, including their rights within the family and relevant human rights instruments under national and international law;

233(h). Promote education in all countries in human rights and international humanitarian law for members of the national security and armed forces, including those assigned to United Nations peace-keeping operations, on a routine and continuing basis, reminding them and sensitizing them to the fact that they should respect the rights of women at all times, both on and off duty, giving special attention to the rules on the protection of women and children and to the protection of human rights in situations of armed conflict;

233(i). Take appropriate measures to ensure that refugee and displaced women, migrant women and women migrant workers are made aware of their human rights and of the recourse mechanisms available to them;

#### *J. Women and the Media*

243(f). Take effective measures or institute such measures, including appropriate legislation against pornography and the projection of violence against women and children in the media;

#### *K. Women and the Environment*

252. In addressing the lack of adequate recognition and support for women's contribution to conservation and management of natural resources and safeguarding the environment, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies

and programmes, including, as appropriate, an analysis of the effects on women and men, respectively, before decisions are taken;

258(c). Ensure the full compliance with relevant international obligations, including where relevant, the Basel Convention and other conventions relating to the transboundary movement of hazardous wastes (which include toxic wastes) and the IAEA Code of Practice relating to the movement of radioactive wastes; enact and enforce regulations for environmentally sound management related to safe storage and movements; consider taking action towards the prohibition of those movements which are unsafe and insecure and ensure the strict control and management of hazardous wastes and radioactive waste, in accordance with relevant international and regional obligations and eliminate the exportation of such wastes to countries that, individually or through international agreements, prohibit their importation;

#### *L. The Girl Child*

274(a). By States that have not signed or ratified the Convention on the Rights of the Child, take urgent measures towards signing and ratifying the Convention, bearing in mind the strong exhortation made at the World Conference on Human Rights to sign it before the end of 1995, and by States that have signed and ratified the Convention, ensure its full implementation through the adoption of all necessary legislative, administrative and other measures and by fostering an enabling environment that encourages full respect for the rights of children;

274(e). Enact and strictly enforce laws to ensure that marriage is only entered into with the free and full consent of the intending spouses. In addition, enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and raise the minimum age for marriage where necessary;

275(b). Generate social support for the enforcement of laws on the minimum legal age for marriage, in particular by providing educational opportunities for girls;

282(b). Define a minimum age for a child's admission to employment in national legislation, in conformity with existing international labor standards and the Convention on the Rights of the Child, including girls in all sectors of activity;

282(d). Strengthen, where necessary, legislation governing the work of children and provide for appropriate penalties or other sanctions to ensure effective enforcement of the legislation;

282(e). Use existing international labor standards, including, as appropriate, ILO standards for the protection of working children, to guide the formulation of national labor legislation and policies;

283(a). Take effective actions and measures to enact and enforce legislation to protect the safety and security of girls from all forms of violence at work, including

training programmes and support programmes, and take measures to eliminate incidents of sexual harassment of girls in educational and other institutions;

283(b). Take appropriate legislative, administrative, social and educational measures to protect the girl child, in the household and in society, from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse;

283(d). Enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection, genital mutilation, incest, sexual abuse, sexual exploitation, child prostitution and child pornography, and develop age-appropriate safe and confidential programmes and medical, social and psychological support services to assist girls who are subjected to violence;

### *Chapter V: Institutional Arrangements*

292. To ensure effective implementation of the Platform for Action and to enhance the work for the advancement of women at the national, subregional/regional and international levels, Governments, the United Nations system and all other relevant organizations should promote an active and visible policy of mainstreaming a gender perspective, *inter alia*, in the monitoring and evaluation of all policies and programmes;

295. The active support and participation of a broad and diverse range of other institutional actors should be encouraged, including legislative bodies, academic and research institutions, professional associations, trade unions, cooperatives, local community groups, non-governmental organizations, including women's organizations and feminist groups, the media, religious groups, youth organizations and cultural groups, as well as financial and non-profit organizations.

## **Appendix C**

### **American Bar Association Policy on Legislative and National Issues**

#### *Subject and Adoption Dates*

#### **A. Health Care**

- A.1. Abortion. Opposes state or federal legislation which restricts the right of woman to choose to terminate a pregnancy (i) before fetal viability; or (ii) thereafter, if such termination is necessary to protect the life or health of the woman; supports states and federal legislation which protects the right of a woman to choose to terminate a pregnancy (i) before fetal viability; or (ii) thereafter, if such termination is necessary to protect the life or health of the woman. 8/92



- A.2. Access to Quality Health Care. Reaffirm its support of legislation that would provide for every American to have access to quality health care regardless of the person's income, and provide five characteristics to be included in any such legislation. 2/90

Reaffirm support of legislation that would provide for every American to have access to quality health care regardless to the person's income, with any such legislation to include certain specified characteristics. 2/94

- A.3. Financing of Abortions for Indigent Women. Support legislation on the federal and state level to finance abortion services for indigent women. 8/78

- A.4. Support for Repeal of Medicaid Estate Recovery Mandate. Support repeal of Medicaid estate recovery mandate enacted under the Omnibus Budget Reconciliation Act (OBRA) of 1993 and the reinstatement of the pre-OBRA 1993 state option for Medicaid estate recovery programs.

Suggest, in absence of repeal, amendment of applicable laws and regulations by the Federal Government, states and territories, to protect the poorest and most vulnerable recipients of Medicaid from shouldering the burden of estate recovery. 2/95

- A.5. Planning Long-Term Care. Support action by federal, state, territorial and local governments to create legal mechanisms that allow people with HIV, AIDS or other debilitating, chronic, fatal illnesses to better plan for long-term care for themselves and their families, including standby guardianships, advance medical directives, and viatical settlements. 8/95

#### B. *Legal Literacy/Constitutional Literacy*

- B.1. Bicentennial of Constitution and Bill of Rights. Recognize and encourage public understanding of the Constitution and Bill of Rights as a national educational priority and encourage the commitment of substantial energies and resources to improving public understanding of these documents of American Law. 2/91

- B.2. Citizenship Education. Reaffirm support for citizenship education in elementary and secondary school, including essential components, study of the Constitution, the extended Bill of Rights and law generally; and urge the legal profession, policymakers, educators, members of the private sector, the media, and the general public to support effective citizenship education in public policy at the federal, state, territorial, and local levels. 2/92

- B.3. Public Education. Commit support for public education to foster understanding of the Constitution and the rights and responsibilities of citizenship and advance this goal of civic literacy as fundamental to the continued functioning of the United States as a constitutional democracy and a nation under the rules of law.

Urge the legal profession and the organized bar to engage the support of policymakers, educators, the media and the general public to further this goal through the implementation of national education goals and voluntary standards for civics education at the elementary and secondary school level. 2/95

- B.4. Dispute Resolution. Urge action encouraging the creation of curricula on dispute resolution and peer mediation programs in schools. 2/95

### C. *Human Rights*

- C.1. American Convention of Human Rights. Support accession of the United States to the convention subject to several reservations, understandings and declarations. 8/79

Reiterate support for the ratification by the United States of American Convention of Human Rights and for the enforcement of judgment of the Inter-American Court of Human Rights. 8/94

- C.2. Geneva Conventions. Urge ratification of Protocol II Additional to Geneva Conventions of August 1949 relating to the protection of victims of international armed conflicts, with reservations and understandings along the lines proposed by the Reagan administration; recommend that the Senate Foreign Relations and Armed Services Committees conduct careful studies and hold public hearings so that the Senate may be able to express its views on Protocol I Additional to the Geneva Conventions of August 1949 relating to the protection of victims of international armed conflicts. 8/87
- C.3. Human Rights. Support implementation of the provisions of the Helsinki Accords, especially those concerning human rights and humanitarian cooperation; encourage the review of implementation efforts by the Belgrade Conference and the U.S. Commission on Security and Cooperation in Europe. 2/78
- C.4. International Covenant on Civil and Political Rights. Support ratification of the covenant subject to several understandings, declarations and reservations recommended to the Senate by the Departments of State and Justice. 2/79
- C.4. International Covenant on Economic, Social and Cultural Rights. Support ratification of the covenant subject to several understandings, declarations and reservations recommended to the Senate by the Departments of State and Justice. 2/79

### D. *Rights of Children*

- D.1. Children's Issues. Urge the legal profession to direct attention to issues affecting children including the preservation of children's legal rights; the needs of children who have no effective voice of their own in government; establishment of character, citizenship, parenting skills

and child safety programs in public education; implementation of statutory and programmatic resources to meet the health and welfare needs of children; missing and molested children; and establishment of guardian and ad litem programs. 2/84

- D.2. United Nations Convention on the Rights of the Child. Suggest that the United States' ratification of the United Nations Convention on the Rights of the Child be accompanied by 8 specific Reservations, Understandings and Declarations. 2/94
- D.3. Immigration Law. Urge action concerning the rights of children regardless of their citizenship or immigration status or the immigration or citizenship status of their parents. 2/95
- D.4. Public Benefits. Oppose any state, federal, or territorial legislation, rule, or regulation that denies the public benefits or the incremental increase to benefits to which a family otherwise would be entitled upon the birth of a child, based on the family's receipt of public assistance at the time of the child's conception or birth, or the mother's age or marital status at the time of the child's birth, or the fact that the child's paternity has not been established. 2/95
- D.5. Child Abuse. Encourage support for, and implementation of, "Resource Guidelines: Improving the Child Abuse and Neglect Court Process," published by the National Council of Juvenile and Family Court Judges. 8/95

#### E. *Economic Assistance*

- E.1. Association Assistance to Other Countries. Directed ABA President to (1) identify those countries struggling to find a path to greater freedom through more democratic governments and considering fundamental changes in their judicial systems; and (2) offer the assistance of attorneys from the United States to such countries, and, if the offer is accepted, or if assistance is otherwise requested, authorize the President to appoint panels of attorneys to provide such assistance to each requesting country. Resolve that every effort be made to convey that this is an initiative of substance and goodwill undertaken voluntarily by the attorneys of the United States to support those countries in their efforts to provide greater freedom and more just societies for their people, and that this initiative is not associated with any governmental enterprise. 2/90
- E.2. Community Reinvestment Programs. Support creation of effective community reinvestment programs in all financial institutions to help avoid discrimination and to stabilize housing and business in low-and-moderate income communities by providing credit to residents, small businesses and projects in such communities; resolve commitment to placing AA accounts in financial institutions that have shown outstanding

or satisfactory performance in helping to meet the credit needs of their entire communities including low-moderate-income neighborhoods; and encourage specific actions consistent with fiduciary prudence. 2/91

#### F. *Violence Against Women/Torture*

- F.1. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Urge the United States to promptly sign and ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 2/86
- F.2. Crimes of Violence. Condemn crimes of violence including those based on bias or prejudice against the victim's race, religion, sexual orientation or minority status, and urge vigorous efforts by federal, state and local officials to prosecute the perpetrators and to focus public attention on the problem. 8/87
- F.3. Family Violence. Support federal, state and local efforts to combat family violence, and recommend the adoption of certain procedures by the police, prosecution and the courts to make the criminal justice system more responsive to the problem. 2/78; 8/78
- F.4. Insurance for Victims of Domestic Violence. Urge Congress and the various states and territories to enact legislation to provide that no person or entity could deny insurance benefits solely on the basis of the applicant's status as a victim of domestic violence. 2/95
- F.5. Community-Based Programs. Urge Congress, the states and territories, local governments and agencies, and nongovernmental victim services programs to support efforts to pass legislation and secure funding for the development of multidisciplinary, community-based programs to respond to the current epidemic of domestic violence. 8/95

#### G. *Family Law*

- G.1. Family and Medical Leave. Support legislation establishing minimum requirements for reasonable, unpaid, job-protected family and medical leave for employees, for organizations which have more than a reasonable threshold number of employees; and support legislation mandating a study of means for providing salary replacement during all or part of such leave and establishment of federal minimum requirements for unpaid leave pending the outcome of the study. 2/88
- G.2. Social Security Benefits for Widows. Support amendments to the Social Security Act that would allow working widows who delay receipt of benefits under the Act to be granted delayed retirement credits and eliminate the restriction requiring a divorced person aged 62 or over to wait two years after divorce to receive Social Security benefits if the former spouse is still in the work force. 8/95

H. *Non-Discrimination/Advancement of Women and Minorities*

- H.1. Discrimination Based on Sex. Urge law schools and law firms to refrain from discriminating against women. 8/72

Favor enactment of legislation to ensure that employers are prohibited from discriminating against applicants or employees on the basis of sex. 2/74

Support legislation that prohibits discrimination in the sale and rental of housing on the basis of sex or marital status. 2/74

Support legislation that prohibits discrimination in credit practices by creditors against individuals on the basis of sex or marital status. 2/74

- H.2. Discrimination in the Court System. Urge judicial leaders to encourage and promote the full participation in the work forces of the court systems under their jurisdiction of all persons regardless of their race, sex, color, national origin, religion, age or handicap; encourage adoption of merit-based personnel systems that encompass all facets of court personnel management, incorporation of affirmative action values in deciding whom to recommend and appoint to judicial positions; and encourage implementation of equal employment opportunity and affirmative action plans and programs in the courts. 2/90

- H.3. Sex Discrimination in Employment. Support federal and state legislation assuring that prohibitions against sex discrimination in employment will also prohibit employment discrimination because of pregnancy. 2/78

- H.4. Discrimination in the Judiciary. Urge appointing authorities to ensure that there are no barriers to the selection of women and minorities as judges and for service on merit selection judicial nominating commissions. 8/86

- H.5. Sex Discrimination. Support legislation to prohibit discrimination on the basis of sex in sale or rental of housing or in granting mortgage credit. 8/74

- H.6. Sex Discrimination in Public Accommodations. Urge the amendment of the public accommodations section of the 1964 Civil Rights Act to prohibit sex discrimination in public accommodations, provided however that such amendment not require access by both sexes to the same facilities where legitimate privacy concerns are involved. 8/80

- H.7. Discrimination, Tax. Recommend careful study of the U.S. Internal Revenue Code and income tax laws of the states to determine whether there is tax discrimination against a person on the basis of marital status. 8/74

Urge prompt, vigorous and effective implementation of Title IX of the Education Amendments Act of 1972, which promotes equal

- educational opportunity without regard to sex, to the full extent of the powers granted in the statute. 8/75
- H.8. Discriminatory Hiring Practices. Strongly condemn all forms of discriminatory hiring practices within the legal profession, whether on the basis of sex, religion, race or national origin. 2/72
  - H.9. Equal Rights Amendment. Support ratification of the proposed Twenty-seventh Amendment to the Constitution. 2/72; 8/74
  - H.10. Private Clubs. Endorse amendments to Title II of the Civil Rights Act to include in the definition of the term "public accommodation" any private club or other establishment that derives a substantial portion of its income from business sources; and provide an adequate objective standard by which to measure "a substantial portion of income from business sources." 8/83
  - H.11. Required Use of Contraceptives. Oppose legislation of judicial action that requires a woman to use any method of contraception or sterilization, or to otherwise refrain from bearing children, as a penalty for any conduct or as a condition for probation or parole. Oppose legislation, or rule or regulation, that (1) requires a woman to use any method of contraception or sterilization, or to otherwise refrain from bearing children, in order to be eligible for the receipt or continuation of public benefits; or (2) offers financial incentives or otherwise conditions the level of public benefits received upon a woman's use of a method of contraception or sterilization or her agreement to refrain from child bearing. For purposes of this recommendation, reimbursement for medical expenses or other actual costs associated with the purchase or use of a method of contraception or sterilization does not constitute a financial incentive. 8/93
  - H.12. Women in the Legal Profession. Recognize that persistence of overt and subtle barriers denies women the opportunity to achieve full integration and equal participation in the work, responsibilities and rewards of the legal profession; affirm the fundamental principle that there is no place in the profession for barriers that prevent the full integration and equal participation of women in all aspects of the legal profession; and call upon members of the legal profession to eliminate such barriers. 8/88
  - H.13. Child Custody. Support enactment of legislation and the implementation of public policy providing that child custody and visitation shall not be denied or restricted on the basis of sexual orientation. 8/95
  - H.14. Legal Remedies. Endorse legal remedies and voluntary actions that take into account as a factor race, national origin, or gender to eliminate or prevent discrimination or otherwise serve a compelling societal interest.