

# RECLAIMING



# REDEFINING RIGHTS

Guidance Series: Analysing Sexual and Reproductive  
Health and Rights under the Convention on the  
Elimination of All Forms of Discrimination  
against Women (CEDAW)

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By Amy Lynne Locklear and Sunila Abeysekera

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GLOSSARY

ARROW	Asian-Pacific Resource and Research Centre for Women
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COs	Concluding Observations (COs)
GR24 ICPD PoA	General Recommendation 24 International Conference on Population and Development Programme of Action
MDGs NGOs	Millennium Development Goals Non-government Organisations
OP-CEDAW	The Optional Protocol to CEDAW
SRHR	Sexual and Reproductive Health and Rights
UN IWRAW (Asia Pacific)	United Nations International Women’s Rights Action Watch Asia Pacific

PREFACE

The Asian Pacific Resource and Research Centre for Women (ARROW) along with our partners at the national and regional levels are working towards reaffirming women’s agency to claim sexual and reproductive health and rights. Towards this endeavor, ARROW is actively engaging in research, monitoring, knowledge management and advocacy at national, regional and international levels around the United Nations International Conference on Population and Development (ICPD) held in 1994. ICPD marked a significant milestone in the area of sexual and reproductive health and rights with its emphasis on the rights of individuals and empowerment of women.

At the same time ARROW has been examining the possibilities of using human rights conventions, covenants, treaties strategies to mainstream and integrate SRHR within these, so as to further affirm government commitments on SRHR at the national level. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a source of international law and considered legally binding. CEDAW addresses all forms of discrimination against women including discrimination in relation to right to health and health services, and guarantees women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. ARROW underscores the distinguished position of CEDAW convention, the General Recommendations and the Optional Protocol to CEDAW as playing a critical role in women sexual and reproductive health rights.

In line with this thinking, ARROW worked with Amy Lynne Locklear and Sunila Abeysekera who are resource persons well versed with CEDAW to bring together a guidance series on integrating sexual and reproductive health and rights and SRHR. The guidance series provides an analytical understanding of both CEDAW and the ICPD PoA, and an awareness of the links between the two frameworks that reinforce and strengthen the commitment of states to women’s health, including their reproductive and sexual health.

This Guidance series is published in two sections. Section one which is the Guidance - aim to demonstrate the potential links between CEDAW and the International Conference on Population and Development Programme for Action (ICPD PoA). It emphasises the interrelatedness and inter-dependence of rights and highlight the ways in which discrimination against women contributes to women’s lack of choices and appropriate services in sexual and reproductive healthcare and denies

their rights to autonomy, bodily integrity, and choice in matters related to their reproductive and sexual lives. Section two on Guidelines is intended to be a companion to the Guidance publication and is designed to build greater understanding on CEDAW among sexual and reproductive health rights advocates, so that they can use the text of CEDAW and the standard-setting work of the CEDAW Committee to engage in advocacy to encourage states parties to fulfill all of their obligations under CEDAW and to meet the recommendations in the Programme of Action (PoA) of the International Conference on Population and Development (ICPD) of 1994.

This publication uses the ARROW ICPD+15 country monitoring studies generated as part of the ARROW ICPD +15 monitoring project (2008-2010), to provide insights into the possible use of the frameworks provided by CEDAW and the PoA to advance women’s rights to free and informed choice in matters relating to their sexual and reproductive health.

I thank Amy Lynne Locklear and Sunila Abeysekara for their committed work in bring together this publication. I express my sincere gratitude to all the other reviewers who provided valuable insights, including the ARROW project team. I am also grateful to the FordFoundation for giving us this opportunity to explore these important intersections of CEDAW and SRHR

Through this publication ARROW hopes that SRHR organisations and advocates, working towards the advancement of women’s sexual and reproductive health and rights will use both CEDAW and the ICPD PoA more substantively and strategically to ensure that the commitments made by states on SRHR are implemented in policy and practice

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SECTION 1  
THE GUIDANCE NOTE

SEXUAL AND REPRODUCTIVE HEALTH AND  
RIGHTS ARE WOMEN'S HUMAN RIGHTS:  
**GUIDANCE NOTE -  
ANALYSING SEXUAL  
AND REPRODUCTIVE  
HEALTH AND RIGHTS  
UNDER CEDAW**





## 1. INTRODUCTION TO THE GUIDANCE NOTE

Women's activism for rights related to their health and reproductive and sexual lives and choices is perhaps one of the oldest in the history of struggles for women's rights around the world. The Asian-Pacific Resource and Research Centre for Women (ARROW) has consistently linked its work on women's reproductive and sexual health to the broader framework of women's rights and is supporting the active engagement of its partners with the international human rights system to advance and expand women's rights, particularly in the areas of reproductive and sexual rights.

This section "Guidance Note-Analyzing Sexual and Reproductive Health Rights under the Convention on the Elimination of All Forms of Discrimination against Women" ( "Guidance Note") - is designed to assist ARROW's partners in the Asia-Pacific region as well as other women's activists around the world, who are interested in further integrating the principles of the Convention (or CEDAW) in their advocacy on women's sexual and reproductive health and rights.

This Guidance Note demonstrates the potential links between CEDAW and the International Conference on Population and Development Programme of Action (ICPD PoA).

The Guidance Note also emphasizes the inter-relatedness and inter-dependence of rights. It highlights the ways in which discrimination against women contributes to women's lack of choices and appropriate services in sexual and reproductive healthcare and denies their rights to autonomy, bodily integrity, and choice in matters related to their reproductive and sexual lives. It proposes that any effort to guarantee women's sexual and reproductive health and rights must focus both on providing affordable, accessible, and appropriate healthcare services to women and guaranteeing equality for women in all aspects of life.

Specifically, the Guidance Note aims to:

- Outline CEDAW's overall objectives and how they can be used to analyse issues concerning women's sexual and reproductive health and rights, the interpretation of the CEDAW's provisions related to women's sexual and reproductive health and rights by the CEDAW (implementing) Committee, and the recommendations on women's sexual and reproductive health and rights of the ICPD PoA;
- Facilitate greater understanding among sexual and reproductive health and rights advocates on CEDAW's comprehensive approach to the

promotion of women's rights and the potential for their strengthening of their advocacy by linking CEDAW and the ICPD PoA; and

- Provide guidance on using the framework of CEDAW and the ICPD PoA in advocacy aimed at encouraging states parties to fulfil their obligations to women's rights, including their reproductive and sexual rights under CEDAW and under the recommendations in the ICPD PoA in a meaningful and holistic manner.

## 2. BACKGROUND ON CEDAW

CEDAW is a United Nations treaty that came into effect in 1981 and forms part of the larger body of international human rights law. One hundred and eighty-seven (187)<sup>1</sup> countries have ratified the Convention. A ratifying state or a state party to the treaty is obliged to take a variety of steps to protect and promote women's human rights. For example, CEDAW requires states to, among other things:

1. Condemn and eliminate all discrimination against women;
2. Take all appropriate actions to bring about equality between women and men in all areas, including political, social, economic, and cultural fields;
3. Adopt temporary special laws and policies to bring about equality between women and men, such as giving women priority in employment and education;
4. Modify social and cultural norms, values, and practices that promote stereotypes about the role of women and men or that are based on the inferiority of one sex; and
5. Take actions to eliminate discrimination against women in the areas of employment, education, health, economic and social life, marriage, and family life.

### 2.1 The CEDAW Reporting Process

A state party to the CEDAW is required to report on progress made in terms of implementing the treaty to the CEDAW Committee, first, within one year of ratification and every four years thereafter.<sup>2</sup> In these reports, the state describes how it has met its obligations or explains why it has been unable to do so. Representatives of the state must appear in person before the Committee and answer questions regarding the report.

The CEDAW Committee is comprised of 23 independent experts who are elected every four years. When a country is due to report to the Committee, the Committee appoints one of its members as the "Country Rapporteur" and this person then assumes the primary responsibility for the review of that country.

States parties are required to prepare two documents for submission to the Committee. One is known as the "common core document" and must include an overview of the state party's

demographic, economic, legal, and political structure. This document is submitted to all treaty monitoring Committees. Second is a treaty-specific document in which the state party reports on how it has implemented a particular treaty. Each treaty body has issued guidelines for this purpose.<sup>3</sup> The reporting process also provides an opportunity for nongovernment organisations (NGOs) to submit their own reports, called "shadow" or "alternative" reports. Such a report contains information on the status of women with respect to their ability to access, exercise, and enjoy their rights under CEDAW and recommendations on how the state party can improve this status.<sup>4</sup> This information often supplements a state report. A shadow report could also include a critique of the information in a state report.<sup>5</sup> Usually, NGOs prepare a shadow report after or contemporaneous with the state's preparation of its report to the Committee. NGOs can also prepare an alternative report when the state has failed to prepare a report, is unwilling to share its report with NGOs, or when a state report is not available prior to the Committee's review.<sup>6</sup> The Committee has shown a willingness to review a state party in their absence if the state persistently fails to report.<sup>7</sup>

In contrast to states parties, the Committee has not issued guidance to NGOs on the organization or content of shadow or alternative reports, but has noted that:

NGOs are encouraged to provide alternative or shadow reports on States parties' reports relating to the implementation of some or all the provisions of the Convention or specific themes focusing on gaps in implementation of the Convention or the Committee's concluding observations. NGOs may provide comments and suggestions to the State party's reports in any way they see fit.<sup>8</sup>

Once an NGO decides to submit a shadow or alternative report to the CEDAW Committee, there are different stages at which they can engage with the Committee providing further and up-to-date information and meeting with the Country Rapporteur and other members of the Committee prior to the state's review. These present the NGOs with opportunities to highlight important issues and concerns. The review itself is in the format between the representatives of the state and members of the Committee. Following the completion of the review, the Committee issues Concluding Observations, which provide recommendations to the state on how it can better meet its obligations under CEDAW. The Committee asks that these Concluding Observations (COs) be disseminated within the country as widely as possible. In certain cases, the Committee specifies a time frame before the next report from the Country falls due and asks for further information to be provided to the Committee on a particular issue or concern.

### Box 1: NGOs' Role in the CEDAW Review Process

Before the review: Engage in advocacy with the state regarding key concerns; raise public awareness about the review; build broad consensus among women's groups and develop alternative report/s; respond to CEDAW Committee's list of issues and questions  
During the review: Conduct NGO briefing for members of the Committee; engage in advocacy with Committee  
After the review: Disseminate Concluding Observations; monitor implementation of COs

## 2.2.The CEDAW Pillars

CEDAW describes specific areas in which a state party must act to eliminate discrimination against women, including employment, education, health, legal capacity, economic and social life, marriage, and family life. To achieve the ultimate goal of equality between men and women, CEDAW establishes a blueprint based on three primary principles: substantive equality, non-discrimination, and state obligation. In combination, these principles mean that states have an obligation to respect, protect, and fulfil women's rights to non-discrimination and equality in all aspects of women's lives.<sup>9</sup>

It is critical that advocates understand these principles if they are to take full advantage of CEDAW's potential for bringing about conditions of equality and non-discrimination for women in the area of sexual and reproductive health and rights.

### First Pillar: Substantive Equality

CEDAW requires states parties to undertake legal reforms that “embody the principle of equality of men and women” in national constitutions and laws.<sup>10</sup> But it also reflects that equality under the law (i.e. *de jure* equality) is not sufficient. CEDAW therefore also calls on states parties to ensure that women enjoy *de facto* (i.e. in fact or actual) equality by ensuring “through law and other appropriate means, the practical realization of” the principle of equality.<sup>11</sup>

For example, a state party would fail to achieve substantive equality if the state passes a law ensuring a woman's right to run for public office on the same basis as men,<sup>12</sup> but then fails to address the cultural or social factors, such as notions about the proper role of women, that prevent women from actually enjoying their rights. In such circumstances, CEDAW would require the state to take further action to secure a woman's right to run for public office by, for example, adopting and implementing a plan for modifying the cultural or religious beliefs and practices that prevent women from pursuing election

or appointment to public office. Such a plan could include a public awareness campaign to educate citizens on the importance of women's participation in public office, including the diverse roles women play in society (beyond domestic work and caring for children and family members, for example) and the important contributions women can make as members of parliament or local councils.<sup>13</sup>

To bridge the gap between equality in law and equality in fact, states parties must ensure equality of opportunity, by enacting appropriate laws, policies, and programmes, and equality of results, by ensuring women can access opportunities and enjoy their intended benefits. Thus, as noted above, where a law provides equality between women and men to run for public office, a state party must ensure that any barriers to accessing that right (e.g. cultural taboos about women in public life or a woman's lack of qualifications to serve in public office based on historical discrimination in education) are removed so that women actually enjoy the intended benefit of the law (i.e. the right to run for and be elected to public office).

### Second Pillar: Non-discrimination

The realization of substantive equality depends on the eradication of discrimination against women, including both direct and indirect discrimination.<sup>14</sup>

### Box 2: Discrimination Defined

Article 1 of CEDAW defines discrimination as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of women and men, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”

A law that expressly denies women the right to education would constitute direct discrimination and CEDAW would require that a state repeal such a law because it would have the “purpose” of impairing and nullifying the right of women to equality in education.

In addition, a state policy that is neutral (e.g. does not expressly deny a woman a right or mention sex in connection with a right), but that has the “effect” of impairing or nullifying a woman's right to education would constitute “indirect discrimination”. For example, a policy that imposes a testing requirement on all students, boys and girls alike, to qualify for advancement to the next level of education could indirectly discriminate against girls if a history of discrimination in education makes it unlikely that girls will pass the test.

Another type of discrimination is cross-cutting, where discrimination in one area contributes to or exacerbates discrimination with respect to another right. For example, Article 14(g) of CEDAW requires states parties to eliminate discrimination against rural women with respect to accessing agricultural credit and loans. In addressing discrimination in this area, a state party must consider, for example, whether discrimination under inheritance laws have prevented women from owning the land that banks typically require as collateral for accessing agricultural loans. If inheritance laws prevent women from inheriting property, then a state party may have to modify the law to remove this impediment. A state might also need to encourage banks to allow women to provide other forms of collateral to guarantee a loan.

The Committee has interpreted Article 1's reference to discrimination based on sex as including gender-based discrimination against women.<sup>15</sup> The Committee defines sex as the “biological differences between men and women” and gender as “socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women”.<sup>16</sup>

Because the definition of discrimination includes treatment having the effect of denying a right, it would include denials based on the failure to recognise a “pre-existing gender-based disadvantage that women face”.<sup>17</sup> One example of gender-based discrimination is gender-based violence. The Committee has explained that stereotypes about women's roles or traditional values that subordinate women to men contribute to violence against women.<sup>18</sup> Gender-based violence is defined as “violence that is directed against women because they are women or that affects women disproportionately”.<sup>19</sup> Under CEDAW, affirmative action programs (known as temporary special measures) that permit discrimination in favour of women and are designed to address historical injustice are not considered discrimination.<sup>20</sup>

### Third Pillar: State Obligation

The state party is responsible for ending discrimination against women and ensuring that women enjoy their right to substantive equality. CEDAW Article 2 lists some actions a state must take to achieve this end. State obligation means that states parties have the responsibility “to respect, protect, and fulfill women's right to non-discrimination and to the enjoyment of equality”.<sup>21</sup>

### Box 3: Eliminate Discrimination

Article 2 of CEDAW requires states parties “to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”

The obligation to respect means that states parties must not make laws, policies, regulations, programmes, or create institutions or structures that deny women, whether directly or indirectly, equal enjoyment of their human rights.<sup>22</sup> A state party must protect women against discrimination caused by private actors,<sup>23</sup> for example, and take measures to eliminate customs and other practices that perpetuate the notion of the inferiority or superiority of men or women or that assign stereotypical roles for men or women.<sup>24</sup> To fulfil its obligations to women's rights under CEDAW, a state party must take a variety of actions to bring about conditions of both *de jure* and *de facto* equality.<sup>25</sup>

The obligation to fulfil calls on states parties to craft policies, programs, and institutions that satisfy women's specific needs and which lead to their “full development of potential on an equal basis with men”.<sup>26</sup> Furthermore, states parties must not cause discrimination against women by failing to act. State parties would violate this obligation by failing to adopt laws and policies on equality between women and men, failing to collect and analyse data on the status of women, or allowing private actors to discriminate against women.<sup>27</sup> The obligations of states parties under CEDAW continue during armed conflict and in states of emergency caused by political events or natural disasters and such obligations apply to both citizens and non-citizens, including refugees, asylum seekers, migrant workers, and stateless persons.<sup>28</sup> Thus, a state party cannot deny a woman protection under CEDAW because, for example, she is a refugee.



## 2.3 Specific Rights Protected

CEDAW also protects specific rights critical to the well-being of women, and calls for the elimination of discrimination against women “in all forms”,<sup>29</sup> and requires states to take action “in all fields” particularly “in the political, social, economic, and cultural fields”.<sup>30</sup> This recognition of rights is: with respect to trafficking of women and exploitation of prostitution of women,<sup>31</sup> political and public life,<sup>32</sup> representation at the international level and participation in work of international organisations,<sup>33</sup> nationality,<sup>34</sup> education,<sup>35</sup> employment,<sup>36</sup> health,<sup>37</sup> economic and social life,<sup>38</sup> rural women,<sup>39</sup> equality before the law,<sup>40</sup> and marriage and family relations.<sup>41</sup>

## 2.4 Reservations

Although many states parties have adopted CEDAW, some have done so subject to reservations, which purportedly relieve them of their obligations under certain parts of the treaty on the basis that compliance with the treaty would contravene other national, religious, or customary laws and practices.

If a state party has entered reservations to particular rights, then it is technically not obligated to report on such rights during its periodic reports to the Committee.<sup>42</sup> While Article 28 anticipates that states parties may ratify CEDAW subject to reservations, it also provides that reservations “incompatible with the object and purpose” of CEDAW are not allowed.<sup>43</sup> The Committee has repeatedly expressed concern that reservations to some parts of CEDAW are invalid because they undermine the overall purpose and intent of the treaty.<sup>44</sup>

The Committee consistently urges states parties to withdraw reservations and take the necessary steps to remove the barriers that prevent it from withdrawing such reservations, especially with respect to cultural or religious values that support continued discrimination against women in the area of family and marriage.<sup>45</sup>

## 2.5 General Recommendations

From time to time, the CEDAW Committee elaborates a General Recommendation that gives more clarity to a particular Article or on any issue that affects women to which it believes the states parties should pay more attention. At present there are 28 General Recommendations.

In addition to General Recommendation 24, which relates to Article 12 on women’s health, the Committee has adopted several other General Recommendations addressing specific issues affecting women’s health (or specific groups of

women), including female circumcision,<sup>46</sup> HIV/AIDS,<sup>47</sup> disabled women,<sup>48</sup> violence against women (which includes guidance on violations associated with sexual abuse and coercive practices related to fertility and reproduction)<sup>49</sup> and equality in family relations (which includes guidance on voluntary regulation of fertility, rights’ violations that result from coercive practices related to fertility, the right to determine, under conditions of equality, number and spacing of children and the right to choose a spouse and freely enter into marriage).<sup>50</sup>

## 2.6 Optional Protocol to CEDAW

The Optional Protocol to CEDAW (OP-CEDAW) is a separate treaty, which can be ratified by states who are already party to CEDAW. Under the OP-CEDAW, an individual who has suffered a violation of rights under CEDAW can submit a complaint, called a communication, to the Committee, once she/he has exhausted all domestic legal remedies.<sup>51</sup> If the Committee decides that a communication meets the procedural requirements set out in the OP-CEDAW and is admissible<sup>52</sup>, it will review the document and issue views and recommendations to the state party.<sup>53</sup> The state party has six months to provide information on actions it took in response to the Committee’s views and recommendations.<sup>54</sup>

To date, the Committee has issued twenty-three decisions on communications; among them are one on forced sterilisation and another on the right to a therapeutic abortion and maternal health.<sup>55</sup>

The OP-CEDAW also allows individuals to request that the Committee undertake an inquiry on the basis of information pointing to “grave or systematic violations by a State Party of rights” protected under CEDAW.<sup>56</sup> At the conclusion of the inquiry, the Committee sends findings, comments, and recommendations to the state party, which then has six months to respond to the Committee.<sup>57</sup> The inquiry procedure has been used only once so far, in a case where the Committee found that Mexico had violated CEDAW when it failed to adequately prevent, investigate, and punish crimes involving the rape, abduction, and murder of women in and around Ciudad Juarez in the State of Chihuahua.<sup>58</sup>

### Box 4: The Philippine Case: Inquiry on Pro-life City Law

Between 2008 and 2010, the Philippine-based Task Force CEDAW Inquiry, led by EnGendeRights, Inc. and WomenLead, partnered with the Center for Reproductive Rights and the International Women’s Rights Action Watch Asia Pacific to submit a request and supplemental documents to the Committee, requesting an inquiry into the Philippine government’s violation of women’s reproductive and other human rights. The case put forward was on the impact of an order issued by then Manila Mayor Atienza, on February 29, 2000 (City of Manila EO 003 Series of 2000 - EO 003), declaring Manila a “pro-life city”. The order effectively banned city and local government hospitals and clinics from providing information on and access to modern contraceptives and also led to pressure on private health providers, including NGOs, to stop providing such information and resources.

Source: Clara Rita A. Padilla and Anita B. Visbal, EnGendeRights, Inc. 2012. Advancing Reproductive Rights Using the Inquiry Procedures of the OP CEDAW and the UN Special Procedures: The Philippine Experience, pp. 1-2. Available: [http://cedaw-seasia.org/docs/Advancing\\_Repro\\_Rights\\_Using\\_the\\_Inquiry\\_Procedure\\_EnGendeRights\\_.pdf](http://cedaw-seasia.org/docs/Advancing_Repro_Rights_Using_the_Inquiry_Procedure_EnGendeRights_.pdf).

### 3. CEDAW'S ROLE IN PROMOTING WOMEN'S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

#### 3.1 Provisions Relevant to Women's Sexual and Reproductive Health And Rights

Several articles of CEDAW address women's sexual and reproductive and health rights:

- Article 5(b) requires states parties "[t]o ensure that family education includes a proper understanding of maternity as a social function".
- Article 10(a) and 10(h) require states parties to take actions to eliminate discrimination against women in education and to provide women with equal access to educational materials and advice on family planning, both of which assist women in accessing healthcare, reduce the drop-out rate among female students often caused by premature pregnancy, and ensure family well-being.<sup>59</sup>
- Article 11(2) requires states parties to adopt measures prohibiting the dismissal of women workers on the grounds of pregnancy, providing maternity leave, promoting the development of a network of child care, and providing pregnant women with special protection from harmful work.
- Article 14 requires states parties to ensure the right of rural women to access healthcare facilities, including family planning services and information and to adopt measures to ensure adequate living conditions, including housing, sanitation, electricity and water supply, and communications, which promote disease prevention and good healthcare.<sup>60</sup>
- Article 16 requires states parties to eliminate discrimination against women in all matters concerning marriage and family relations and recognises<sup>61</sup> the right to equality in deciding on number and spacing of children, to information, education and means for exercising these rights and the right to be free from betrothal and marriage during childhood, which can result in early childbirth and associated physical and emotional harm.<sup>62</sup>

In addition to these specific areas, Article 12 of CEDAW provides as follows:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a

basis of equality of men and women, access to healthcare services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The Committee has interpreted Article 12's duty to ensure women's equal access to healthcare services, information, and education as implying an obligation to respect, protect, and fulfil a woman's right to healthcare.<sup>63</sup>

Taken together, the articles described above form the basis of a comprehensive state obligation to ensure that women's sexual and reproductive health and rights are respected, protected, and fulfilled.

#### 3.2 The Committee's General Recommendation<sup>64</sup> No.24

##### 3.2.1 Overview

The Committee expands its interpretation of Article 12 in General Recommendation No.24,<sup>65</sup> which provides advice to states parties regarding their obligations to report on the status of women's health and in particular, the specific kind of information they should include in their reports to the Committee. In addition, it highlights particular issues associated with the status of women's health and how these issues point to violations of states parties' obligations under Article 12. General Recommendation No.24 also details how a state party can meet its obligations to respect, protect, and fulfil women's rights to health under CEDAW.

By necessity, much of General Recommendation No.24's guidance is generic and does not focus on particular health conditions. Nevertheless, this general guidance is useful in thinking about how to organise information on women's sexual and reproductive health and rights for a shadow or alternative report.

##### 3.2.2 Overall State Obligation

States parties are required "to eliminate discrimination against women in their access to healthcare services, throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period".<sup>66</sup> To demonstrate that it has complied with

Article 12, a state party report should identify the tests it uses to evaluate whether women and men have equal access to healthcare services and describe the effect of health policies, procedures, laws, and protocols on women in comparison to men,<sup>67</sup> considering the definition of discrimination under Article 1.

A state party report should detail laws, policies, and plans relating to women's health, and include data (disaggregated by sex) on the incidence and severity of diseases and conditions hazardous to women's health and nutrition and on the cost and availability of measures to cure and prevent them.<sup>68</sup> The Committee uses this information to evaluate whether the state party's actions to eliminate discrimination against women are appropriate. A state must demonstrate that it bases these laws, policies, and plans on scientific and ethical research and assessment of women's health status and needs, taking into account ethnic, regional, or community variations or practices based on religion, tradition, or culture.

A state party report should also include information on health conditions that impact on women or groups of women differently than on men, and actual or potential approaches to addressing these conditions.<sup>69</sup> A state party's actions to eliminate discrimination are not appropriate where the health system does not provide services to prevent, detect, or treat women-specific illnesses.<sup>70</sup> A state party must explain its "understanding of how policies and measures on health care address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors which differ for women in comparison to men"<sup>71</sup> with regard to biological factors,<sup>72</sup> socio-economic factors,<sup>73</sup> and psycho-social factors<sup>74</sup> and the implications of the lack of confidentiality, which will cause women to be less willing to seek care for genital tract diseases, contraception, incomplete abortion, or for sexual and physical violence.<sup>75</sup>

State party legislation, policy and executive action must comply with the states' three obligations to respect, protect and fulfil women's right to health and the state must establish infrastructure to ensure "effective judicial action".

##### 3.2.3 How State Parties Respect Rights

To respect rights, states parties must not obstruct women's pursuit of their health goals.<sup>76</sup> A state party report must explain how both public and private healthcare providers satisfy their obligations to respect women's rights to access healthcare. States parties may not limit women's access

to health services, condition their delivery on authorisation from husbands, partners, parents, or health authorities or refuse service because they are unmarried or because they are women. States parties must not impose other barriers to access, such as laws criminalising certain procedures that only women require or punishing women who have such procedures.

##### 3.2.4 How States Parties Protect Rights

To protect rights, states parties must take action to protect women's rights including their reproductive and sexual rights, and also take action against private persons or organisations that violate women's rights to health.<sup>77</sup> In this regard, states parties must address gender-based violence by enacting and enforcing laws and policies on violence against women, abuse of girl children, and the provision of appropriate health services to victims of violence. States parties must also provide gender-sensitive training for law enforcement officials and healthcare workers, establish procedures and impose sanctions on healthcare professionals who sexually abuse female patients, and enact and enforce laws prohibiting female genital mutilation and marriage of girl children.

The Committee has provided specific guidance to states parties with respect to special situations, such as armed conflict,<sup>78</sup> and for women from minority, vulnerable and disadvantaged groups, including internally displaced<sup>79</sup> and refugee women,<sup>80</sup> women in prostitution,<sup>81</sup> older women,<sup>82</sup> women with disabilities,<sup>83</sup> the girl child,<sup>84</sup> indigenous women,<sup>85</sup> and rural women.<sup>86</sup> In general, the Committee notes that, in addition to disparities between women and men, the status of health among women can vary as a result of social factors related to minority and other disadvantaged status and that states parties must give special attention to the health needs and rights of women from these groups and in situations of armed conflict.<sup>87</sup>



### 3.2.5 How States Parties Fulfil Rights

A state party's obligation to fulfil the rights of women to health requires that it take a variety of actions, including, but not limited to, legislative, judicial, administrative, budgetary and economic measures, designed to secure women's rights to healthcare.<sup>88</sup> States parties should report on how they have addressed the magnitude of poor health among women and especially with respect to preventable conditions such as tuberculosis and HIV/AIDS.

The Committee has noted that states parties are transferring their obligations to fulfil women's rights to health to private agencies, and has reiterated that such a move does not relieve the states from their duties. Under such circumstances, states parties must report on how they exercise public power to promote and protect women's health, including state measures to reduce third party violations of women rights, to protect women's health and to ensure the provision of health services.

The Committee has explained that HIV/AIDS and sexually transmitted diseases are important issues with respect to women and adolescent girls' rights to sexual health and that women and girls lack the information and services necessary to enjoy their rights.<sup>89</sup>

Women in sex work are especially susceptible to these diseases. Furthermore, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices because of unequal power relations. Girls and women are at risk of contracting HIV/AIDS and other sexually transmitted diseases as a result of marital rape and harmful traditional practices (e.g. female genital mutilation, polygamy).

States parties are obligated to ensure that, without prejudice and discrimination, women and girls (including trafficked women and girls even if not legally resident in the country) realise their right to access sexual health information, education, and services. Specifically, states parties are responsible for ensuring the rights of adolescents "to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality".<sup>90</sup>

### 3.2.6 Right to Full Information on Treatment Options

The Committee has noted the right of women to full information provided by trained personnel on the options for treatment and research for health conditions, benefits and adverse effects and available alternatives.<sup>91</sup>

### 3.2.7 State Measures to Eliminate Obstacles to Accessing Healthcare

State reports should include information on state actions to eliminate obstacles women encounter in accessing healthcare services (e.g. high fees; need for authorisation from spouse, parent, or hospital authorities; access to health facilities).<sup>92</sup> State reports must also account for the quality of healthcare services that women can access, including whether women find such services acceptable (i.e. services that are sensitive to women's needs and perspectives, guarantee their fully informed consent, respect their dignity, and secure confidentiality). Coerced or mandatory treatments or tests (e.g. non-consensual sterilisation, mandatory testing for sexually transmitted diseases or pregnancy) violate women's rights to informed consent and dignity.<sup>93</sup>

### 3.2.8 Family Planning Services

States parties should report on actions adopted to provide timely access to services related to family planning, as well as sexual and reproductive health generally, with special attention to the education of adolescents regarding health and counselling and information on family planning methods.<sup>94</sup>

### 3.2.9 Pregnancy, Confinement, and Postnatal Healthcare Services

States parties should report on their actions to ensure services for pregnant women and during confinement and the post-natal period, as well as information on the extent to which these actions have reduced maternal mortality and morbidity, including reductions among vulnerable groups, regions, and communities.<sup>95</sup> States parties' reports should also demonstrate how states provide free services when necessary to ensure safe pregnancies, childbirth, and post-partum periods.<sup>96</sup> The Committee notes that inability to obtain or access services related to pregnancy (including antenatal, maternity, and post-partum) as a result of poverty put many women at risk of death or disability. States parties have an obligation to secure women's right to safe motherhood and emergency obstetric services and fund these services to "the maximum extent of available resources".<sup>97</sup>

### 3.2.10 Recommendations for Comprehensive National Strategies on Women's Health

To promote women's health throughout her lifespan, the Committee recommends that states parties implement a comprehensive national strategy, which includes measures to prevent and treat diseases and conditions affecting women, to address violence against women and that provides "universal access for all women to a full range of high-quality and affordable healthcare, including sexual and reproductive health services".<sup>98</sup>

States parties should allocate sufficient budget and human and administrative resources so that women's health enjoys a portion of the state's overall health budget that is equal to the amount set aside for men's health, in light of their different health needs.<sup>99</sup>

The Committee's specific guidance to states parties with respect to women's health includes the following:

- Place a gender perspective at the centre of all policies and programmes affecting women's health and involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;
- Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;
- Prioritise the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalising abortion should be amended to remove punitive provisions imposed on women who undergo abortion;
- Monitor the provision of health services to women by government, NGOs, and the private sector, to ensure equal access and quality of care;
- Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice; and
- Ensure that the training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.<sup>100</sup>

### 3.3 Committee's Jurisprudence under the Optional Protocol

In 2011, the Committee issued views in response to two communications that alleged, among other things, state party violations of the right to access healthcare services related to sexual and reproductive rights. Although the Committee's views on communications are directed only to the state party that has violated CEDAW, they provide useful guidance on how the Committee applies CEDAW in the context of women's sexual and reproductive health and rights.

In *L.C. v. Peru*,<sup>101</sup> the author, T.P.F., submitted the communication on behalf of her daughter, the victim, L.C., who, at the time of the violations, was 13-years old. She was raped by a 34-year old man, became pregnant and depressed, and was paralysed after attempting suicide by jumping from a building. The Committee considered whether the state violated L.C.'s rights under articles 1, 2(c) and (f), 3, 5, 12 and 16, paragraph 1(e) of CEDAW when the public hospital that treated L.C. for the injuries caused by her suicide attempt refused to perform a therapeutic abortion and delayed scheduling the spine operation on the basis that it would jeopardise the pregnancy.<sup>102</sup>

The Committee found that the spinal surgery was necessary and should have been performed as early as possible and that the doctors found that the pregnancy was "high risk, leading to elevated maternal morbidity".<sup>103</sup> The Committee noted that prior law establishing a procedure for obtaining therapeutic abortions had been repealed and had not been replaced and thus, a legal vacuum existed. Furthermore, the Committee found that the doctors evaluating L.C.'s request for a therapeutic abortion did not consider the impact of continuing the pregnancy on L.C.'s physical and mental health, despite the Peruvian law authorising therapeutic abortions when necessary "to avoid serious and permanent harm to the health of the mother".<sup>104</sup>

Instead, the doctors based their refusal to authorise the abortion on the finding that L.C.'s life was not in danger. The Committee concluded that L.C. "did not have access to an effective and accessible procedure allowing her to establish her entitlement to the medical services that her physical and mental condition required", which included the spinal surgery and the therapeutic abortion.<sup>105</sup> Peru's failure to provide such access constituted a violation of article 12 of CEDAW. Furthermore, the hospital's decision to postpone the surgery because of the pregnancy constituted a violation of article 5 of CEDAW because the delay was based on the stereotype that the health of the mother was subordinate to the protection of the foetus.

The Committee further concluded that Peru had violated its obligations under article 2 of CEDAW to provide an effective remedy for ensuring the protection of L.C.'s rights. The Committee found that the hospital's process for issuing a decision on a request for a therapeutic abortion was untimely, the legal remedy available (*amparo*) was ineffective and the absence of laws and regulations governing the procedure for requesting a therapeutic abortion resulted in each hospital arbitrarily determining the requirements, procedures and time frame and the importance of the mother's views in the determination.

The Committee recommended that Peru make reparations to L.C. in the form of compensation for the material and moral damages caused by the violations and “measures of rehabilitation” to ensure that she enjoyed “the best possible quality of life”.<sup>106</sup> The Committee also recommended that Peru review its laws to provide a means for women to access their right to therapeutic abortions, and to educate healthcare workers on CEDAW and General Recommendation 24 with the goal of changing their attitudes towards adolescent women seeking reproductive health services, and in addressing healthcare needs that arise as a result of sexual violence. The Committee also advised the state party to review its laws with the goal of decriminalising abortion in the case of pregnancy that results from rape or sexual abuse.

The Committee repeated its concluding observation to Peru after its review of the state party's sixth periodic report, which urged the state to review its restrictive interpretation of therapeutic abortion.

In *Alyne da Silva Pimentel (deceased) v. Brazil (Pimentel v. Brazil)*,<sup>107</sup> Maria de Lourdes da Silva Pimentel, the mother of the victim, submitted a communication alleging that Brazil had violated articles 1, 2, and 12 of CEDAW by failing to ensure that her daughter had access to quality healthcare, including timely emergency obstetric care, during and after the delivery of her stillborn foetus.

The Committee found the relevant facts as follows: (1) the doctors at the health centre where she sought care ignored the victim's complaints of severe nausea and abdominal pain during her sixth month of pregnancy and failed to perform an urgent urine and blood test until two days after her initial complaint, which caused the victim's condition to deteriorate; (2) the doctors at the health centre did not perform the curettage surgery to remove the placenta and afterbirth (which had not been fully expelled during the delivery) until 14 hours after they induced labour, which could have caused the haemorrhaging and death; (3) the health centre was not properly equipped to perform the surgery; and (4) the victim's transfer to the municipal hospital

took eight hours and the health centre's failure to send the victim's medical history with her rendered the transfer ineffective because after arriving at the hospital, she was left in a hallway for 21 hours until she died. The Committee noted that under CEDAW Article 12, as interpreted in General Recommendation No.24, a state fails to meet its obligation to eliminate discrimination against women if its healthcare system “lacks services to prevent, detect and treat illnesses specific to women”.<sup>108</sup> After noting Brazil's failure to deny the relevant facts, the Committee rejected the State Party's argument that it was not responsible for the failures because private institutions were responsible for delivering the care. The Committee found that, based on its due diligence responsibility under article 2(e) of CEDAW to adopt measures ensuring the appropriateness of private actors' activities with regard to health policies and practices, Brazil was “directly responsible for the action of private institutions when it outsources its medical services” and obligated to regulate and monitor those institutions.<sup>109</sup> The Committee found that Brazil had failed to satisfy this requirement.

The Committee acknowledged that Brazil had a number of policies addressing the specific needs of women, but that the State Party's obligation extended beyond the adoption of policies. The Committee referred to General Recommendation No.28 (which, as noted earlier, addresses core state obligations), and explained that Brazil's policies “must be action- and results-oriented as well as adequately funded”.<sup>110</sup> The policies must ensure that the State Party's Executive Branch (or bodies within it) is strong and focused on implementing the policies. The Committee explained that “[t]he lack of appropriate maternal health services in the State party that clearly fails to meet the specific, distinctive health needs and interests of women not only constitutes a violation of article 12, paragraph 2” of CEDAW “but also constitutes discrimination against women under article 12, paragraph 1, and article 2 of CEDAW”.<sup>111</sup>

The Committee further concluded that intersectional discrimination contributed to the victim's death, based on the fact that she was a woman of African descent and with limited socio-economic resources. As a result, the Committee found that Brazil had violated of Article 2 of CEDAW (as interpreted in General Recommendation No.28), which recognises the close relationship between discrimination against women based on their sex and gender and on other bases such as “race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.”<sup>112</sup>

The Committee also concluded that Brazil had violated articles 12 and 2(c) of CEDAW by failing to ensure effective judicial action and protection, noting that, to date, the State Party has failed to bring

proceedings to establish the responsibility of those who provided medical care to the victim.<sup>113</sup> The Committee further noted that the victim's daughter had suffered material and moral damage as a result of her mother's death.<sup>114</sup>

On the basis of these violations, the Committee specifically recommended that Brazil provide financial and other reparations to the victim's family and recommended that the State Party meet its obligation, consistent with General Recommendation No.24, to ensure the “right to safe motherhood and affordable access for all women to adequate emergency obstetric care”; the Committee also called on Brazil to ensure that health workers are adequately trained to provide quality healthcare with respect to women's reproductive health, that effective remedies were established in the case of violations of a women's reproductive health rights, that training was provided for the judiciary and law enforcement, that steps were taken to ensure that private healthcare providers follow national and international standards regarding reproductive healthcare, that sanctions be imposed on those violating women's reproductive health rights and that maternal mortality be reduced by implementing national legislation on reducing such mortality at the state and municipal levels, consistent with the Committee's 2007 concluding observations for Brazil.<sup>115</sup>

### 3.4 The Interrelationship between Women's Sexual and Reproductive Health and Rights and Other Rights Recognised under CEDAW

It is important that advocates identify how a state party's failure to fulfil other rights contributes to women's poor sexual and reproductive health. For example, fulfilling the right to education is viewed as enabling access to healthcare and reducing school drop-out rates associated with teenage pregnancy.<sup>116</sup>

In describing the health status of women in a country, an advocate should consider information on rates of poverty and unemployment among women, prevailing religious and cultural values, and the number of women represented in public office and how this overall context is undermining the ability of women to access their right to health.<sup>117</sup>

## 3.5 The Rights of Women from Vulnerable and Disadvantaged Groups under CEDAW and the Special Challenges They Face in Accessing their Right to Sexual and Reproductive Health

The Committee has identified women from specific groups that may be more vulnerable to rights violations because they face multiple forms of discrimination on the basis of their sex, as well as their racial, ethnic or religious background, or because of their age, class, caste, sexual orientation, or gender identity. An intersectional analysis of discrimination explains how sex and gender discrimination may impact women belonging to specific groups or communities who face discrimination on the basis of others factors, in ways and to a degree that is different from other women who do not share these characteristics.<sup>118</sup> The Committee has advised states parties to “legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”<sup>119</sup>

With respect to health, as noted above, the Committee has singled out women from minority, vulnerable and disadvantaged groups, including migrant women<sup>120</sup>, internally displaced<sup>121</sup> and refugee women,<sup>122</sup> women in prostitution,<sup>123</sup> older women,<sup>124</sup> women with disabilities,<sup>125</sup> the girl child,<sup>126</sup> indigenous women,<sup>127</sup> and rural women<sup>128</sup> as those who may suffer from multiple and intersecting forms of discrimination.

For example, the Committee has expressed concern about health services for older women, who often care for their ageing spouses, live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases.<sup>129</sup> The Committee has advised states parties to ensure access to health services that respond to women's disabilities associated with ageing. The Committee has explained that disabled women have difficulty physically accessing healthcare that women are disproportionately vulnerable to mental illness because of “gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation” and that women with mental disabilities are especially vulnerable.<sup>130</sup>

The Committee has not yet prepared a general recommendation on discrimination against women on the basis of their sexual orientation or gender identity. However, in its General Recommendation No.28, on the Core Obligations of States Parties under Article 2 (on discrimination), it has clearly stated that discrimination on the basis of sex and



gender is inextricably linked with other factors that affect women and includes sexual orientation and gender identity in the listing of such factors.<sup>131</sup> In recent years, national NGOs from countries under review have provided information on the challenges faced by lesbians, bisexual women and trans persons in accessing their rights and the Committee has issued Concluding Observations to several states parties regarding this issue.<sup>132</sup>

4. OVERVIEW OF THE ICPD PoA

The ICPD PoA agreed upon by 179 member states of the United Nations in Cairo in 1994 was based on a consensus that sexual and reproductive health and rights, as well as women's equality and empowerment were global priorities. It focused on the interrelationships between population, sustained economic growth and sustainable development. It reaffirmed the principal consensus of the World

Conference on Human Rights in Vienna in 1993 that the human rights of women and the girl child are an inalienable, integral, and indivisible part of universal human rights.

The ICPD PoA and benchmarks agreed upon at the ICPD+5 Review in 1999 were reaffirmed in the UN Millennium Declaration of 2000 and articulated in the Millennium Development Goals (MDGs). States around the world have used the principles, objectives and actions set out in the ICPD PoA to develop laws,

policies, and programmes on women's equality and empowerment and on their sexual and reproductive health and rights, often in collaboration with the United Nations Population Fund (UNFPA) and other UN, international and national agencies and organisations.

The ICPD PoA contains a number of recommendations on women's sexual and reproductive health and rights. Chapter 4 is devoted to gender equality, equity and women's

Box 5: ICPD PoA Chapter 2: Principles

- Principle 1**

All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person.
- Principle 2**

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. People are the most important and valuable resource of any nation. Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water, and sanitation.
- Principle 3**

The right to development is a universal and inalienable right and an integral part of fundamental human rights and the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights. The right to development must be fulfilled so as to equitably meet the population, development and environment needs of present and future generations.
- Principle 4**

Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in civil, cultural, economic, political and social life, at

- the national, regional, and international levels, and the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community.
- Principle 5**

Population-related goals and policies are integral parts of cultural, economic, and social development, the principal aim of which is to improve the quality of life of all people.
- Principle 6**

Sustainable development as a means to ensure human well-being equitably shared by all people today and in the future, requires that the interrelationships between population, resources, the environment and development should be fully recognised, properly managed and brought into harmonious, dynamic balance. To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate policies, including population-related policies, in order to meet the needs of current generations without compromising the ability of future generations to meet their own needs.
- Principle 7**

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world. The special situation and needs of developing countries, particularly the least developed, shall be given special priority. Countries with economies in transition, as well as all other countries, need to be fully integrated into the world economy.
- Principle 8**

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to healthcare services, including those
- related to reproductive healthcare, which includes family planning and sexual health. Reproductive healthcare programmes should provide the widest range of services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so.

**Principle 9**

The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support. In different cultural, political, and social systems, various forms of the family exist. Marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners.

**Principle 10**

Everyone has the right to education, which shall be directed to the full development of human resources, and human dignity and potential, with particular attention to women and the girl child. Education should be designed to strengthen respect for human rights and fundamental freedoms, including those relating to population and development. The best interests of the child shall be the guiding principle of those responsible for his or her education and guidance; that responsibility lies in the first place with the parents.

**Principle 11**

All States and families should give the highest possible priority to children. The child has the right to standards of living adequate for its well-being and the right to the highest attainable standards of health, and the right to education.

The child has the right to be cared for, guided and supported by parents, families, and society and to be protected by appropriate legislative, administrative, social, and educational measures from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sale, trafficking, sexual abuse, and trafficking in its organs.
- Principle 12**

Countries receiving documented migrants should provide proper treatment and adequate social welfare services for them and their families, and should ensure their physical safety and security, bearing in mind the special circumstances and needs of countries, in particular developing countries, attempting to meet these objectives or requirements with regard to undocumented migrants, in conformity with the provisions of relevant conventions and international instruments and documents. Countries should guarantee to all migrants all basic human rights as included in the Universal Declaration of Human Rights.

**Principle 13**

Everyone has the right to seek and to enjoy in other countries asylum from persecution. States have responsibilities with respect to refugees as set forth in the Geneva Convention on the Status of Refugees and its 1967 Protocol.

**Principle 14**

In considering the population and development needs of indigenous people, States should recognise and support their identity, culture and interests, and enable them to participate fully in the economic, political, and social life of the country, particularly where their health, education and well-being are affected.

**Principle 15**

Sustained economic growth, in the context of sustainable development, and social progress require that growth be broadly based, offering equal opportunities to all people. All countries should recognise their common but differentiated responsibilities.

The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development, and should continue to improve their efforts to promote sustained economic growth and to narrow imbalances in a manner that can benefit all countries, particularly the developing countries.
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empowerment, Chapter 5 looks at the family, its roles, rights, composition and structure and Chapter 7 specifically looks at reproductive rights and reproductive health.

Although not legally binding, commentators have noted that the ICPD PoA bears “great authority” since “the vast majority of governments” endorsed the document.<sup>133</sup> One commentator has noted the power of the ICPD PoA to increase general awareness and to support arguments interpreting existing legal norms.<sup>134</sup>

The ICPD PoA is based on a set of fifteen principles.<sup>135</sup> Many of these principles reflect established human rights embodied in existing international conventions, including the right to life, liberty and security and the highest attainable standard of mental and physical health and education. Furthermore, the principles note the goal of the eradication of all forms of discrimination against women, the elimination of violence against women and the full and equal participation of women in all aspects of civil, political, social, economic and cultural life.

Advocates should view Chapter 4 of the ICPD PoA which outlines recommendations to governments for bringing about gender equality and empowering women, as buttressing the protections and provisions set out in CEDAW. Paragraphs 4.15-4.23 provide specific recommendations on the girl child and Paragraphs 4.24-4.29 outline actions related to male participation in bringing about equality between the sexes. Chapter 12 provides guidance on a topic that is equally critical for population and development policies and the implementation of CEDAW: the collection, analysis and evaluation of data on population and development, including gender and ethnicity-specific data.<sup>136</sup>

Chapter 7 calls for “the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health”.

Because the 15 Principles and the “basis of action” and “objectives” in each of the Chapters 3-16 provide important information that further expands on the spirit and intent of the ICPD PoA with regard to sexual and reproductive health and rights, they should be drawn on and referenced when engaging in advocacy for women’s sexual and reproductive health and rights around the CEDAW review process. For example, Section 12.1 describes the shortcomings in gender and ethnicity-specific information and the need for such information to “enhance and monitor the sensitivity of development policies and programmes”.

This basis of action supports the argument that a state party’s failure to establish a reliable system of data collection, analysis and evaluation of the effectiveness of a family planning program targeting women seriously undermines the state’s ability to secure a woman’s right under Article 16 of CEDAW to “freely and responsibly” decide the number and spacing of her children and to family planning information essential to the exercise of that right.

In conclusion, rather than solely focusing on the specific “action” prescribed by the ICPD PoA, each “action” related to sexual and reproductive rights should be viewed together with the relevant principles underlying the ICPD PoA, the “basis for the action” and the “objective” of the action. Using this holistic approach ensures that the action achieves its specific goals and addresses the problem it was designed to address within a human rights framework.

## 5. USING CEDAW AND ICPD PoA TO ANALYSE WOMEN’S SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

### 5.1 Differences and Overlaps between CEDAW and ICPD PoA

In using CEDAW and the ICPD PoA as advocacy tools for improving women’s sexual and reproductive health and rights, it is important to bear in mind the distinct, yet overlapping, concerns and objectives that guide each document. CEDAW is concerned with the elimination of discrimination against women. One aspect of achieving this goal is the realisation of equality between men and women in the area of sexual and reproductive health. Women and girls alone are the subjects of CEDAW protections.<sup>137</sup>

The ICPD PoA addresses a broad range of issues, some of which are critical to eliminating discrimination against women and concern women’s sexual and reproductive health and rights.<sup>138</sup> The majority of its recommendations address both women and men.

Despite these differences, CEDAW and ICPD PoA each have unique strengths. CEDAW defines the obligations of the state in eliminating discrimination against women, and provides a framework that guides states parties in developing laws, policies, and institutions that can help achieve substantive equality and non-discrimination for women.<sup>140</sup> The reporting structure and the Optional Protocol provide CEDAW with a specific monitoring framework as well as a follow-up mechanism.

The ICPD PoA has evolved into a strong policy document on sexual and reproductive health and rights. Its recommendations are much more detailed than the individual articles of CEDAW, because the ICPD PoA was designed as an action document. These distinct strengths complement each other, with CEDAW serving as a framework and the ICPD PoA providing detail on the specific approaches a state party can take to bring about conditions of equality and non-discrimination for women in the area of sexual and reproductive health.

Finally, it is important to note that, in preparing General Recommendation No.24, the Committee took the ICPD PoA “into account”.<sup>141</sup>

Similarly, Paragraph 4.5 of the ICPD PoA urges countries to implement and enforce CEDAW at the domestic level. Thus, it is clear that both authorities support the overall goals of equality and non-discrimination for women.

### 5.2 Introduction to Analysing Women’s Rights

The following case studies deal with three broad categories reflected in the ICPD PoA: women’s empowerment, women’s reproductive health, and women’s sexual health. The first part of the analysis summarises the provisions in CEDAW and ICPD PoA relevant to the case study. The second part applies those provisions in assessing the extent of the state party’s progress in implementing CEDAW and the ICPD PoA recommendations.<sup>142</sup>

### 5.3 Case Study on Sexual Harassment CEDAW and ICPD PoA Guidance on Gender-Based Violence, Violence against Women, and Sexual Harassment

The Committee has issued extensive guidance on violence against women (VAW), which includes sexual harassment. CEDAW does not explicitly mention gender-based violence or violence against women. In 1992, the Committee elaborated on the issue in its General Recommendation No.19, and concluded that the definition of discrimination under Article 1 includes gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” and includes acts that inflict or threaten to inflict physical, mental or sexual harm or suffering, coercion and other deprivations of freedom.<sup>143</sup> Gender-based violence that impairs or nullifies a woman’s enjoyment of her human rights and fundamental freedoms<sup>144</sup> is defined as discrimination under Article 1 of CEDAW.<sup>145</sup>

CEDAW requires states parties to refrain from committing acts of violence against women.<sup>146</sup> States parties have an obligation to exercise due diligence to prevent gender-based violence by private actors, and to investigate and punish acts of violence and provide compensation for resulting injury.<sup>147</sup>

The Committee has explained the role of traditional attitudes in the perpetuation of gender-based violence.<sup>148</sup> Such attitudes support stereotypes about the proper role of men and women and the idea that women are subordinate to men, which perpetuates violence against women and coercion.<sup>149</sup> Traditional attitudes also provide justification for gender-based violence as a means of controlling or purportedly protecting women.<sup>150</sup> Such violence deprives women of “the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms”.<sup>151</sup> The Committee has noted how gender-based violence contributes to the continued subordination of women and their low levels of political participation,

education, skills, and work options.<sup>152</sup> Traditional attitudes also contribute to the proliferation of pornography and the view of women as sexual objects instead of individuals, which leads to gender-based violence.<sup>153</sup>

The Committee has noted the impact of sexual harassment on the ability of women to enjoy their rights to equality in employment, which is guaranteed by Article 11 of CEDAW.<sup>154</sup> The Committee has defined sexual harassment to include the following<sup>155</sup>:

Unwelcome sexually determined behaviour... physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment. The ICPD PoA also addresses sexual harassment, albeit to a more limited extent. It contains two explicit references to sexual harassment: In Chapter IV, Paragraph 4.5 urges countries to enact and enforce national laws and international conventions (including CEDAW) that protect women from economic discrimination and sexual harassment and Paragraph 4.9 provides that countries “should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents, and children.”

In addition to these express references, paragraph 4.4(e) recommends that countries take actions to empower women and to eliminate inequalities between men and women by, among other things, eliminating violence against women. Paragraph 4.24 of the ICPD PoA explains that “men play a key role in bringing about gender equality” since they have greater power than women in almost every sphere of life. To this end, the ICPD PoA describes a series of steps a government should take to include men in the effort to end discrimination against women. Parents and schools are urged to instil in boys at the earliest age, attitudes respectful of women and the belief that girls are equals. Furthermore, paragraph 4.19 of the ICPD PoA directs that schools, the media and social institutions eliminate from educational and communication materials stereotypes that reinforce existing inequality between males and females and that undermine the self-esteem of girls.

#### *Facts for Case Study: Sexual Harassment in Thailand*

A study conducted by the Southeast Asian Consortium on Gender, Sexuality, and Health in 2009 reported that sexual harassment is a

widespread problem in Thailand and stems from the country's patriarchal culture.<sup>156</sup> Current Thai law does not address sexual harassment as a form of sex discrimination or violence against women and girls and Thai lawmakers have yet to exhaustively consider it as such.

While existing laws have been used in sexual harassment cases, in the absence of a specific law and a clear, standard definition of sexual harassment, there has been “inconsistent law enforcement, interpretation, and public concern”.<sup>157</sup> The Thai Labour Protection Law deems sexual harassment illegal, but the law only applies to persons working in large factories and enterprises and therefore, the law does not protect women in informal sectors (e.g. NGOs and domestic workers). Furthermore, existing laws do not recognise the primary forms of sexual harassment: *quid pro quo*,<sup>158</sup> which is often treated as a consensual arrangement of two adults, and hostile environment harassment, which Thai culture consider an inconsequential issue that causes no harm. The Thai cultural mindset “which is at the same time gender-biased, and creates sexual double standard”<sup>159</sup> makes it difficult for survivors to file a complaint or obtain redress in the event a complaint is filed.

The Thai Labour Standard recommends that private enterprises establish policies and systems to prevent sexual harassment and provide redress for its victims, but only a limited number of enterprises have done so. When such policies are established, however, women's rights are not mentioned. Furthermore, it is difficult to enforce such policies because there are no definitions for or recognition of different types of sexual harassment. For example, some professions identify sexual harassment as grounds for discipline, but other places of employment do not expressly include sexual harassment as a disciplinary violation, instead defining violations as actions against norms and rules. In addition, the NGO-supported programmes providing services to victims of sexual violence pay little attention to sexual harassment.

#### *Analysis*

As a general matter, the case study indicates that sexual harassment is a serious problem in Thailand and the government is not doing enough to fulfil the rights of women to be free from this form of gender-based violence. More particularly, the case study points to the following three areas where the Thai government is failing to meet its obligations under CEDAW and follow the recommendations in the ICPD PoA: failure to enforce existing laws; inadequate laws, policies, and programmes addressing sexual harassment; and failure to take measures to modify existing cultural norms that condone sexual harassment.

#### *Inadequate enforcement of existing laws and policies*

Thailand's failure to consistently enforce its existing laws on sexual harassment violates CEDAW. The Committee has specifically recommended that states parties adopt “effective legal measures” to address violence against women, which includes sexual harassment.<sup>160</sup> Legal measures that are not consistently enforced are not effective. The mere existence of laws providing *de jure* equality does not mean that states parties under CEDAW have met their obligation to ensure substantive equality (i.e. *de facto* equality) for women where those laws are ineffective or not enforced.<sup>161</sup>

The Thai Labour Standards recommend a model for preventing and providing redress for sexual harassment, but the Thai government has not ensured that private enterprises adopt such measures. By failing to require private businesses to adopt the measures, which, if properly enforced, could protect women from sexual harassment, the Thai government cannot meet its obligations under CEDAW to ensure that women do not face discrimination at the hands of private persons or enterprises.

#### *Absence of adequate laws and programmes addressing sexual harassment*

The lack of a specific law and a clear standard definition of sexual harassment are factors that have contributed to inconsistent law enforcement. In addition, Thai legislators have failed to address sexual harassment as a form of discrimination and violence against women. Attempts to use existing laws to address cases of sexual harassment have not been effective. It can therefore be argued that the Thai government is failing to meet its obligation under CEDAW, by not establishing a legal framework that effectively addresses sexual harassment as discrimination against women and more particularly, as a form of gender-based violence.<sup>162</sup> The case study also notes the lack of programs for women who are survivors of sexual harassment. This reflects the Thai government's failure to follow the Committee's recommendation that it adopt appropriate protective and support services for victims of gender-based violence.<sup>163</sup>

#### *Failure to address underlying cultural norms*

Existing Thai laws on sexual harassment do not reflect the primary forms of *quid pro quo* and hostile environment harassment. The Committee has expressly defined sexual harassment to include both of these types of violence against women.<sup>164</sup> Furthermore, Thai legislators have not addressed sexual harassment as a form of sex discrimination or violence against women or addressed the patriarchal nature of Thai culture and the Thai cultural mindset.

These facts point to, first, the Thai government's failure to comply with Article 5 of CEDAW, which requires states parties to take measures to modify social and cultural patterns of conduct that contribute to stereotypes, and second, to the idea of the superiority and inferiority of the sexes. The Thai government has failed to adopt effective measures to help the society overcome the attitudes that perpetuate sexual harassment, including through education and public information programs designed to eliminate prejudices that hinder women's equality. Furthermore, the government may have also failed to adopt measures to ensure the media respects and promotes respect for women, as recommended by the Committee.<sup>165</sup>

The government's failure to address the strong cultural norms that perpetuate sexual harassment also reflects the government's failure to follow the recommendations in the PoA to “take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children”.

#### *Failure to develop programmes and policies that involve men in bringing about gender equality*

Men play a pivotal role in committing sexual harassment and perpetuating the cultural and social conditions that condone it. It appears that the Thai government has failed to follow the ICPD PoA recommendation that men play a critical part in addressing the issue. The case study does not identify the sex of the persons who lead the industries where sexual harassment continues to exist or the legislative bodies that have failed to adopt effective measures to address sexual harassment. Nevertheless, given the prevailing trends in most countries in Southeast Asia, it is likely that males dominate these sectors (i.e. industry and government) and hold the most important leadership roles. If sexual harassment is to be comprehensively addressed, the Thai government must take action to ensure that men are key actors in making the legal, policy and societal changes necessary to eliminate this form of violence against women.



## 5.4 Case Study on Women's Reproductive Health: Access to Family Planning Services, Including Contraception and Abortion CEDAW and ICPD PoA Guidance on Family Planning

CEDAW contains several references to family planning in the context of education, healthcare and rural women. For example, Article 10(h) of CEDAW requires equality in access to educational information, including on family planning. Article 12 requires the elimination of discrimination in access to health services, including family planning and Article 14(2)(b) requires states parties to secure the right of rural women to access healthcare facilities, including family planning services.

In addition, Article 16(1)(e) reflects the right of women to make, on terms of equality with men, decisions on the number and spacing of children and the right to access the information, education and means required to exercise such rights, which includes access to information on contraceptive services.

The ICPD PoA's Principle 8 recognises family planning as a part of reproductive healthcare and emphasises the basic right of couples and individuals to decide freely and responsibly, and without coercion, the number and spacing of their children, and to have the information, education and means to do so. Chapter 7 provides specific guidance on family planning, focusing on the right of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning. This Chapter has a specific section on family planning, emphasises informed, free choice, pointing to the fact that informed individuals can and will act responsibly in the light of their own needs and those of their families and communities.<sup>166</sup> Among the objectives identified are increased male participation and sharing of responsibility in the practice of family planning.<sup>167</sup>

The ICPD PoA states that family planning programmes are most successful when women participate fully in their design, delivery, management and evaluation and when integrated into broader reproductive health programmes.<sup>168</sup> It encourages countries to identify and repeal all barriers to utilising family planning services, including inadequate or poor quality services, high cost of services, flaws in the design and scope of existing services and legal, medical, clinical, and regulatory barriers.<sup>169</sup> In addition, governments and political and community leaders are urged to promote and legitimise family planning services, create an environment favourable

to “good-quality public and private family planning... through all possible channels” and provide adequate budget, human and administrative support to meet the needs of persons who cannot afford the full cost of family planning services.<sup>170</sup>

Other recommendations important to women's equality are (1) the creation of family planning programmes that include components for monitoring and evaluating such services to identify, prevent, and manage abuse by family-planning providers, in the understanding that since women are often the clients of such providers, they are vulnerable to abuse in the context of the delivery of such services; (2) the mobilisations, including by NGOs, of community and family support to increase access and acceptance of family planning, in the understanding that objections to contraceptive use by a partner, a husband, or older family members is a significant barrier to women's choice; and (3) an emphasis on breast-feeding education and support services, which can assist with spacing births and improve maternal and child health.<sup>171</sup> The ICPD PoA also details the steps governments should take to improve the quality of family planning programmes.<sup>172</sup>

### *CEDAW and ICPD PoA Guidance on Abortion*

The CEDAW Committee has encouraged states to amend laws that criminalise abortion to eliminate provisions punishing women who have abortions.<sup>173</sup> In the context of gender-based violence, the Committee has noted the responsibility of states parties to take actions “to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control”.<sup>174</sup>

The ICPD PoA states that abortion should not be promoted as a method of family planning and that governments and other organisations (i.e. intergovernmental and non-governmental) should intensify their commitment to women's health so as to address the health impact of unsafe abortions as a major public health concern, expand family planning services to reduce the use of abortion, eliminate the need for abortion, prioritise the prevention of unwanted pregnancy and provide reliable information and compassionate counselling for women who have unwanted pregnancies.<sup>175</sup>

While acknowledging that the national legislative process is the forum where the nature of abortion services will be determined, the ICPD PoA states that if abortion is not illegal it should be safe and under all circumstances, women who have undergone abortion should be able to access quality services for the management of complications<sup>176</sup> and governments should always provide humane treatment and counselling for women who have had abortions.<sup>177</sup> To avoid further abortions, post-abortion

counselling, education and family planning should be promptly provided.<sup>178</sup> Governments should generally adopt measures that assist women in avoiding abortion.<sup>179</sup>

### *Facts for Case Study: Reproductive Health Services in Pakistan*

In 2009, Shirkat Gah, Pakistan, a partner of ARROW, undertook a study on reproductive health services available to rural women and men in Piyaro Lund Village in Sindh and in Huft Madre Village in Punjab.<sup>180</sup> The study assessed, among other things, the experience of poor and wealthy women and men from majority and minority religions (including marginalised communities) in accessing and obtaining contraception and abortion services from a government healthcare facility.

The study indicated that the users of the government facility were not satisfied with the healthcare they received because the facility was poorly equipped, understaffed, and maintained a poor supply and quality of medicine. In addition, the staff at the facility was not gender-sensitive, and users were charged fees for services that should have been free or low-cost. Those participating in the study said they preferred private healthcare services.

Although the need for family planning was strong, the participants in the study indicated that they failed to use or to continue using contraception because of cost, side effects, lack of effectiveness or lack of money to obtain treatment for the side effects.

Those who received pills from the Lady Health Worker discarded them because they had been distributed free of cost.<sup>181</sup> Men bought condoms secretly from the local pharmacy. The study revealed that women preferred sterilisation as a method of birth control because “they were discouraged by the perceived side effects of other modern contraception methods”.<sup>182</sup>

The study noted that men, especially those from Christian communities, had the lowest awareness of family planning methods.

The poor quality of family planning services meant that women turned to abortion to terminate unwanted pregnancies. The study revealed high rates of unsafe abortion. The men interviewed for the study reported that abortion was a sin, but the practice was common among women, especially those in the Punjab village. Poor women received unsafe abortion services that led to severe complications and death, while wealthier women obtained services from qualified medical doctors. The cost of abortion was high and more expensive if the girl or woman was unmarried. The government health facility did not provide post-abortion care facilities.

### *Analysis*

Several of Shirkat Gah study's findings point to serious violations of women's rights under CEDAW and the failure of Pakistan to follow the recommendations in the ICPD PoA regarding contraception, and abortion.

### *Failure to meet basic right to access healthcare services*

The fact that the government health facility provided poor quality services and supplies, that led women to resort to sterilisation and abortions is strong evidence that Pakistan has failed to secure women's basic right under Article 12 of CEDAW to access quality healthcare services, including family planning services.

### *Failure to safeguard right to family planning information and services*

While under law, women may have the right to healthcare, in practice, Pakistan is failing to guarantee substantive equality. Women are being forced to resort to sterilisation or abortion because they are not provided with the information or means to use alternative methods of birth control.<sup>183</sup>

In particular, the fact that women are turning to sterilisation reveals that they are not receiving full information on birth control methods by properly trained personnel on their options for treatment, potential adverse effects and proposed alternatives.<sup>184</sup>

The poor quality of the services also reflects Pakistan's failure to follow the recommendations in the PoA on improving the quality of family planning services. For example, the case study suggests that, in providing family planning services, the personnel at the government health facility failed to provide complete and accurate information about family-planning methods, including information on the widest possible range of methods, and hence women resorted to sterilisation and abortion.

They failed to provide adequate follow-up care including treatment for side-effects of using contraceptives, which resulted in the failure to use or discontinuing use of the contraceptives, and had not established an adequate evaluation and survey system that could provide feedback from users on the quality of the services.<sup>185</sup>

It also appears that the healthcare workers failed to receive proper training in interpersonal communications and counselling, as the study participants reported that the staff's attitudes towards users can be improved.<sup>186</sup>

The fact that the government health facility charged fees where services should have been low-cost or free represents Pakistan's failure to meet its obligation under CEDAW to remove barriers that prevent women from accessing healthcare.<sup>187</sup>

In addition, Pakistan appears to be falling short of the ICPD PoA recommendation that its leaders and legislators allocate adequate human and administrative resources to meet the family planning needs of those who cannot pay the full costs of services.<sup>188</sup>

The fact that healthcare facility staff have poor attitudes may impact women more significantly than men since it may translate into lack of respect for confidentiality, which may make women less willing to seek certain services related to sexual and reproductive health.<sup>189</sup>

*Social and cultural patterns as a barrier to accessing right to information on and services related to family planning*

The case study suggests that social and cultural patterns and stereotypes are general issues preventing women from accessing family planning services and contraception or causing them to resort to abortion. For example, men, particularly those from Christian communities, had the lowest level of knowledge about family planning; they believed that abortion was a sin, whereas women acknowledged that it was a common practice. In addition, the case study states that men (not women) purchase condoms at the local pharmacy, suggesting that it might be inappropriate for women to do so. Abortion services for unmarried women were more expensive than for married women, suggesting that unmarried women faced additional discrimination. Thus, Pakistan may be failing to meet its responsibility to adopt measures to eliminate the social and cultural values limiting women's ability to access information about family planning and contraception.

In addition, the low levels of knowledge among men on family planning suggests that Pakistan may be falling short of the ICPD PoA recommendation that governments create an environment that promotes and legitimises the use of family planning services.<sup>190</sup> The low level of knowledge also suggests that Pakistan is not doing enough to increase male participation in and sharing of responsibility for family planning, which is one of the overall objectives of the ICPD PoA's recommendations on family planning.<sup>191</sup>

*Intersectional discrimination as a barrier to poor and unmarried women accessing safe and affordable abortion*

Intersectional discrimination is also playing a role in access to abortion, with poor women receiving

unsafe abortion services that lead to complications or death, while wealthy women have the means to seek abortion services from qualified doctors. Unmarried women face an extra barrier, as they have to pay more for abortion services than married women. Pakistan has an obligation under CEDAW to address the barriers facing all women, especially those who experience multiple forms of discrimination based on their status as women and as poor or unmarried.

*Failures in connection with abortion services*

The case study states that the government health facility did not provide post-abortion services. This fact indicates Pakistan's failure to meet its obligation under Article 12 to ensure that health services only required by women are not denied.<sup>192</sup> In addition, Pakistan is failing to follow the ICPD PoA recommendation that governments provide humane treatment and counselling of women who have had abortions and provide quality services for complications arising from abortion.<sup>193</sup> Furthermore, the case study suggests that Pakistan has not adopted policies consistent with the ICPD PoA's recommendations on abortion, which urge governments to take measures to assist women in avoiding abortion, to address the health impact of unsafe abortion as a significant public health concern, to reduce abortion through expanded and improved family-planning services and where abortion is legal, to ensure it is safe.<sup>194</sup> Finally, to the extent women are forced to seek unsafe abortions because the government is failing to provide adequate family planning information and services, Pakistan is neglecting its duty, as described by the Committee, to adopt measures so that women do not seek unsafe abortions because of a lack of appropriate services with respect to fertility control.<sup>195</sup>

5.5 Case Study on Women's Sexual Health and Rights: Legal Age for Marriage CEDAW and ICPD PoA Guidance on Legal Age for Marriage

Article 16(2) of CEDAW provides that "[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory". The Committee has explained that the Convention on the Rights of the Child prohibits states parties from permitting or validating a marriage between persons below the age of majority and defines a child as "a human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier", but "the Committee considers the minimum age for marriage should be 18 years for both man and woman".<sup>196</sup>

The Committee further explained that, because the partners in a marriage "assume important responsibilities", they should not be allowed to marry before "they have attained full maturity and capacity to act".<sup>197</sup> Minors, especially girls, who marry and have children, face adverse health consequences and barriers to obtaining an education, which later restricts their ability to be economically independent. Early marriage and pregnancy "limits the development of their skills and independence and reduces their access to employment, thereby detrimentally affecting their families and communities".<sup>198</sup>

According to the Committee, legal provisions that assign different ages for marriage for male and females should be abolished, as they are based on the false assumptions that women and men have different rates of intellectual development or that physical and intellectual development is not relevant to readiness for marriage.<sup>199</sup> The betrothal of girls or actions by family members on their behalf contravenes CEDAW and women's right to freely choose her partner.<sup>200</sup>

The Committee advises states parties to require marriage registration for civil, customary, or religious marriages so that the state can ensure CEDAW compliance, equality between partners, a minimum marriage age, prohibitions against bigamy and polygamy, and protection of children's rights.<sup>201</sup> With respect to gender-based violence, the Committee has noted that a state party's obligation to protect a women's right to health includes the enactment and enforcement of laws prohibiting the marriage of girl children.<sup>202</sup>

The ICPD PoA contains a number of provisions

on girl children, which are designed to eliminate discrimination against girls and the roots causes of son preference, increase public awareness of the value of girl children, improve the status, self-esteem and self-image of girls and improve their health, nutrition, and education.<sup>203</sup> It lists a variety of actions designed to bring about these objectives, including strict enforcement of laws ensuring that marriage is only entered into with the free and full consent of the partners and the enforcement of the minimum legal age of consent and other marriage laws.<sup>204</sup> It also recommends that governments raise "the minimum age at marriage where necessary".<sup>205</sup> Finally, the ICPD PoA recommends that governments and NGOs "generate social support for the enforcement of laws on the minimum legal age at marriage, in particular by providing educational and employment opportunities".<sup>206</sup>

*Facts for Case Study: Child Marriage in India*

In India, the Child Marriage Restraint Act 1974 criminalises the marriage of children below the age of 18 and men below the age of 21, yet young adolescents continue to marry before they reach the legal ages established by the law. According to the National Family Health Survey for 2005-2006, more than one-quarter (27 percent) of Indian women between the ages of 20-49 married before age 15; over half (58 percent) married before the legal minimum marriage age of 18, and three-quarters (74 percent) married before reaching age 20.<sup>207</sup> While trends over time show a gradual decline in the proportion of girls and women married by ages 15, 18, and 20 years from the oldest to the youngest age groups, increases in the median age at first marriage are proceeding at a very slow pace and a considerable proportion of women still marry below the legal minimum age. The national mean age at marriage for women in the age group 25-49 is 17.4.<sup>208</sup>

Feudal and patriarchal cultural norms and institutions contribute to child marriage in many parts of India, while other social and economic factors such as poverty also play a role. Marriage at a very young age carries grave health consequences for both the girl and her children. Adolescent mothers are more likely to experience complications such as obstetric fistula. Women who were married as children were significantly more likely to have three or more childbirths, a repeat childbirth in less than 24 months, multiple unwanted pregnancies, pregnancy termination, and sterilisation. One consequence of sterilisation is the reduced use of condoms among couples, which heightens the risk of HIV and other sexually transmitted infections. Other consequences of child marriage include poor health and lack of educational, economic, and employment opportunities.



## Analysis

This case study finds that India's patriarchal social norms largely contribute to violations of women's rights under CEDAW, as India fails to bring about *de jure* and *de facto* equality. It also highlights India's failure to follow the recommendations in the ICPD PoA regarding the elimination of discrimination against women and girls.

### Failure to bring about *de jure* and *de facto* equality

India is failing to meet one of its most basic duties under CEDAW: to repeal laws that discriminate against girls and women. The Child Marriage Restraint Act 1974 establishes different legal ages for the marriage of males and females, permitting females to marry at an earlier age. There is no basis for this different and discriminatory treatment. Although the Committee recommends that the legal age of marriage should be at least 18 years of age and the Child Marriage Restraint Act 1974 meets this guideline, CEDAW does not tolerate *de jure* discrimination against women.

The case study also reveals that girls and women are facing *de facto* discrimination because more than a majority of women (58 percent) are marrying before they turn 18 years old which is the age prescribed in the Child Marriage Restraint Act 1974. Therefore, India is failing to enforce the law. In addition, 27 percent of Indian women are marrying before the age of 15 years. These are the girls most vulnerable to health complications from early pregnancies and are most likely to face significant obstacles in obtaining an education and/or economic independence.

### Failure to address underlying cultural norms and societal values and stereotypes

The case study indicates that “[f]eudalistic and patriarchal cultural norms and institutions” contribute to child marriage. Thus, India is failing to meet its obligations under Article 5 of CEDAW to address the societal norms and stereotypes that tolerate child marriage.

### Failure to eliminate discrimination against girls

Although the case study does not provide much detail on the factors leading to child marriage, it is likely that son preference influences a family's decision to arrange for early marriages for their daughters. For some families, a girl is perceived as a burden to be passed on to a husband and his family, rather than as a human being equal with boys in her rights and potential abilities and opportunities.

The ICPD PoA identifies son preference as one of the underlying causes of “the practice of prenatal sex

selection, higher rates of mortality among very young girls, and lower rates of school enrolment for girls as compared with boys”, which limits girls' access to food, education and healthcare. In addition to its recommendations on consent and minimum age of marriage, the ICPD PoA provides a comprehensive list of actions, all of which are designed to change the way that families and society value girl children so that they are seen as more than potential child bearers and caretakers. These comprehensive actions are designed to ensure that girls and boys are treated equally with respect to their educational, health, social, economic, political, and inheritance rights.<sup>209</sup>

An important component of the ICPD PoA recommendations on girl children relates to leaders speaking out and acting against gender discrimination and schools, the media, and social institutions eliminating stereotypes in communication and educational materials.<sup>210</sup> Furthermore, governments are encouraged to “develop an integrated approach to the special nutritional, general, and reproductive health, education, and social needs of girls and young women”, as these can compensate for earlier inadequacies that girls and adolescent women suffered in nutrition and healthcare.

India should carefully study these ICPD PoA recommendations and integrate them into a comprehensive program for addressing child marriage. Without such a program, the marriage of girls, and consequent violation of their human rights, will continue.

## 6. CONCLUSION ON THE GUIDANCE NOTE

This Guidance Note sought to provide basic background information on both CEDAW and the ICPD PoA with a specific focus on their positioning on sexual and reproductive health and rights.

It identified the obligations of states that have ratified CEDAW, which is a part of international human rights law, to respect, protect, and fulfil women's rights to health including sexual and reproductive health. It also identified the consensus of 179 states on matters relating to sexual and reproductive health and rights, which forms the basis of the ICPD PoA.

The case studies provided insights into the possible use of the frameworks provided by CEDAW and the PoA to advance women's rights to free and informed choice in matters relating to their sexual and reproductive health.

The Guidance Note, aimed to develop an analytical understanding of both CEDAW and the ICPD PoA, and an awareness of the links between the two frameworks that reinforce and strengthen the commitment of states to women's health, including their reproductive and sexual health.

Through this process, ARROW hopes that its partners and others seeking to advance the agenda for women's sexual and reproductive health and rights will use both CEDAW and the ICPD PoA more substantively and strategically to ensure that the commitments made by states are honoured in practice.



ENDNOTES

1 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

2 Because the Committee receives an increasing number of state party reports, our understanding is that it is requesting that states parties submit combined reports covering multiple reporting periods.

3 New Guidelines for Human Rights Treaty Reporting: Opportunities for Women's Human Rights NGOs (Final Draft for Comment). 2008. International Women's Rights Action Watch. Available: <http://www1.umn.edu/humanrts/iwraw/CCDmanual-09.html#NewHarmonizedGuidelines>.

4 International Women's Rights Action Watch Asia Pacific. IWRAW Asia Pacific Shadow Report Guidelines. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm).

5 International Women's Rights Action Watch Asia Pacific. IWRAW Asia Pacific Shadow Report Guidelines. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm).

6 International Women's Rights Action Watch Asia Pacific. IWRAW Asia Pacific Shadow Report Guidelines. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm).

7 See for example: Note by the Secretary-General, Results of the 42nd and 43rd decisions of the Committee on the Elimination of Discrimination against Women, paragraph 14 (E/CN.6/2009/CRP.1). Commission on the Status of Women, 53rd Session. 2009. Available: <http://www2.ohchr.org/english/bodies/cedaw/docs/E-CN6-2009-CRP-1.pdf>.

8 Committee on the Elimination of Discrimination against Women. 2010. Statement by the Committee on the Elimination of Discrimination against Women on its relationship with nongovernment organisations. 45th Session. Available: <http://www2.ohchr.org/english/bodies/cedaw/docs/statements/NGO.pdf>. Paragraph 7.

9 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>.

10 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 2(a).

11 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 16.

12 Article 7 of CEDAW requires states parties to take measure "to eliminate discrimination against women in the political and public life of the country" and to ensure women enjoy equality with respect to their

right "to be eligible for election to publicly elected bodies" and "to hold public office".

13 In addition to stereotypes, there are many reasons that prevent women from running for public office, such as poverty and lack of education. To properly fulfil its obligation under Article 7 of CEDAW, states would need to analyse all of the factors preventing women for enjoying this right and develop a comprehensive plan for addressing them.

14 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraphs 5 and 16. The Committee has defined direct and indirect discrimination as follows: "Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme, or practice appears to be neutral as it relates to women and men, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognise structural and historical patterns of discrimination and unequal power relationships between women and men."

15 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 5.

16 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 5.

17 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 5.

18 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 11.

19 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of

States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 6.

20 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 4.

21 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

22 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

23 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

24 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

25 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

26 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

27 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 10: States parties have an obligation of due diligence to prevent discrimination by private actors. Paragraph 13. For

example, states parties must regulate private actors in the areas of education, employment, health, banking, and housing. Furthermore, states parties must prevent gender-based violence against women that is perpetuated by family members. Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(a)-(b).

28 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraphs 11 and 12.

29 The Committee has noted that CEDAW accommodates new forms of discrimination that had not been identified at the time the instrument was drafted. Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th Session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 9.

30 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 2.

31 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 6.

32 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 7.

33 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 8.

34 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 9.

35 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 10.

36 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 11.

37 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 12.

38 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 13.

- 39 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 14.
- 40 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 15.
- 41 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 16.
- 42 An advocate preparing information for a shadow or alternative report to the Committee on sexual and reproductive health rights must be familiar with her state's reservations. In such cases, an advocate should prepare information on the reserved article, regardless of the state party's position.
- 43 United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 28(2).
- 44 Committee on the Elimination of Discrimination against Women. 1987. General Recommendation No. 4, 6th Session: Reservations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom4>.
- 45 For example, in its recommendations to Jordan, the Committee advised that the state withdraw reservations to Article 16 and revise its personal status laws in light of comparative jurisprudence providing progressive interpretations of Islamic law, which give women greater rights in marriage, divorce and child custody. Concluding comments of the Committee on the Elimination of Discrimination against Women: Jordan, 10 August 2007 (39th Session, 23 July-10 August 2007) (CEDAW/C/JOR/CO/4).
- 46 Committee on the Elimination of Discrimination against Women. 1990. General Recommendation No. 14, 9th Session: Female circumcision. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom14>.
- 47 Committee on the Elimination of Discrimination against Women. 1990. General Recommendation No. 15, 9th Session: Women and AIDS. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom15>.
- 48 Committee on the Elimination of Discrimination against Women. 1991. General Recommendation No. 18, 10th Session: Disabled women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom18>.
- 49 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.
- 50 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. While this Guidance does not summarise General Recommendations 14-15, 18-19 and 21, advocates should consult and use them in preparing information on these specific issues or groups for a shadow or alternative report.
- 51 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 2.
- 52 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 4.
- 53 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 7(3).
- 54 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 7(4).
- 55 The Committee's decisions on communications submitted under the Optional Protocol are available on the UN Office of the High Commissioner for Human Rights website at <http://www2.ohchr.org/english/law/jurisprudence.htm>.
- 56 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 8(1).
- 57 United Nations. 2000. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/protocol/>. Article 8(3)-8(4).
- 58 CEDAW/C/2005/OP.8/MEXICO, Paragraph 55, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, 27 January 2005.
- 59 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 60 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 61 CEDAW does not grant rights. Women's human rights belong to every woman by virtue of her status as a human being. Thus, CEDAW is a treaty that recognises and describes existing human rights and anticipates that other rights will be recognised in the future.
- 62 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 63 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 13.
- 64 Under CEDAW, Article 21(1), the Committee has authority to issue General Recommendations, which provide guidance to state parties on how they can meet their obligations under CEDAW.
- 65 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. The Committee notes that, in preparing General Recommendation 24, it took into account the ICPD PoA (General Recommendation 24, Paragraph 3). In addition, the Committee notes its other General Recommendations in which it refers to Article 12 with respect to female circumcision, HIV/AIDS, disabled women, violence against women and equality in the family (General Recommendation 24, Paragraph 5).
- 66 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 2.
- 67 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 19.
- 68 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 9.
- 69 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 10.
- 70 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 11.
- 71 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 12.
- 72 For example, menstrual cycle, reproductive function and menopause, and women's higher risk of exposure to sexually transmitted diseases.
- 73 For example, the negative effect of unequal power relations in the home and workplace on women's nutrition and health, the different forms of violence women experience, cultural, or traditional practices such as female genital mutilation and the vulnerability of girls to sexual abuse by older men, which puts them at risk for physical and psychological harm and unwanted and early pregnancy.
- 74 For example, differences between women and men with regard to depression and post-partum depression and psychological conditions such as eating disorders.
- 75 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 12.
- 76 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 14.
- 77 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 15.
- 78 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 16.
- 79 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 80 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 16.
- 81 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 82 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 24.
- 83 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 25.
- 84 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 85 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available:



- <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 86 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 87 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 88 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 17.
- 89 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 18.
- 90 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 18.
- 91 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 20.
- 92 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 21.
- 93 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 22.
- 94 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 23.
- 95 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 26.
- 96 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 27.
- 97 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 27.
- 98 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 29.
- 99 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 30.
- 100 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 31.
- 101 Views adopted by the Committee at its 50th Session (3-21 October 2011), U.N. Doc. CEDAW/C/50/22/2009 (25 November 2011).
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- 103 L.C. v. Peru, paragraph 8.12.
- 104 L.C. v. Peru, paragraph 8.14.
- 105 L.C. v. Peru, paragraph 8.15.
- 106 L.C. v. Peru, paragraph 9.1.
- 107 Views adopted by the Committee at its 49th Session (11-29 July 2011), U.N. Doc. CEDAW/C/49/D/17/2008 (27 September 2011).
- 108 Pimentel v. Brazil, paragraph 7.3.
- 109 Pimentel v. Brazil, paragraph 7.5.
- 110 Pimentel v. Brazil, paragraph 7.6.
- 111 Pimentel v. Brazil, paragraph 7.6.
- 112 Pimentel v. Brazil, paragraph 7.7.
- 113 Pimentel v. Brazil, paragraph 7.8.
- 114 Pimentel v. Brazil, paragraph 7.9.
- 115 Pimentel v. Brazil, paragraph 8.
- 116 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 117 This kind of information is critical in addressing the interrelationship between women's rights and how denial of rights in one area undermines the realisation of other rights. Furthermore, it is also important for advocacy around women's sexual and reproductive health rights to highlight and consider how barriers to the enjoyment of such rights undermine women's ability to enjoy other rights. For example, a girl forced to marry will be severely restricted in her ability to enjoy rights to education, employment, and decisions on if and when to have children.
- 118 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 18.
- 119 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 18.
- 120 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6. The CEDAW Committee has also adopted General Recommendation No. 26 on women migrant workers (General Recommendation No. 26), CEDAW/C/2009/WP.1/R (CEDAW 42nd Session, 5 December 2008), which addresses the obligations of state parties with respect to migrant women workers. Several Paragraphs of General Recommendation No. 26 address sexual and reproductive health rights and the right of migrant women workers to be free from sexual harassment and violence. See, for example, Paragraphs 17, 18, 24 (b) (i) and (d) and 26(b), (g), (i), (j) and (l). See also, the International Labour Convention concerning decent work for domestic workers, adopted at the International Labour Organization's 100th Session on 1 June 2011, and in particular: (1) Article 5, which requires member parties to ensure that domestic workers are protected against abuse, harassment and violence; (2) Article 13(1), setting out the right to a safe and healthy working environment; and (3) Article 14(1), which requires member parties to ensure that domestic workers enjoy conditions no less favourable than other workers with respect to social security and maternity.
- 121 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 122 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 16.
- 123 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 124 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 24.
- 125 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 25.
- 126 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 127 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 6.
- 128 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 28.
- 129 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 24.
- 130 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraphs 6 and 24.
- 131 Committee on the Elimination of Discrimination against Women. 2010. General Recommendation No. 28, 47th session: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Available: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/GC/28&Lang=E>. Paragraph 18.
- 132 For example, at its 48th Session, the Committee recommended to Belarus that it collect disaggregated data on the status of lesbians and adopt measures to eliminate discrimination they face. 48th Session (17 January-4 February 2011), CEDAW Concluding Observations on seventh period report of Belarus, CEDAW/C/BLR/CO/7 (4 February 2011), paragraphs 41-42. The Committee recommended that Sri Lanka decriminalize sexual relationships between consenting adults of the same sex. 48th Session (17 January-4 February 2011), CEDAW Concluding Observations on combined fifth, sixth and seventh periodic reports of Sri Lanka, CEDAW/C/LKA/CO/7 (4 February 2011), paragraphs 24-25. The Committee expressed concern about reports of discrimination against women in Kyrgyzstan based on their sexuality and urged the state party to ensure that CEDAW applied to all women. 42nd Session (22 October-7 November 2008), CEDAW Concluding Observations third periodic report of Kyrgyzstan (14 November 2008), paragraphs 43-44.
- 133 Maja Kirilova Eriksson. 2000. Reproductive Freedom in the Context of Human Rights and Humanitarian Law. The Hague: Martinus Nijhoff Publishers/Kluwer

- Law International, p. 177.
- 134 Maja Kirilova Eriksson. 2000. *Reproductive Freedom in the Context of Human Rights and Humanitarian Law*. The Hague: Martinus Nijhoff Publishers/Kluwer Law International, p. 177.
- 135 United Nations Population Fund. 1994. *International Conference on Population and Development Programme of Action*. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Chapter 2.
- 136 United Nations Population Fund. 1994. *International Conference on Population and Development Programme of Action*. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Chapter 12 identifies many areas where additional data, information and research on women (or on topics related to women or gender) should be collected or undertaken by governments. See, for example, paragraphs 12.7, 12.13, 12.17, 12.19, 12.24 and 12.16.
- 137 As noted earlier, the Committee is in the process of considering the role of CEDAW in protecting the rights of transgendered persons. In its Concluding Observations on Germany's sixth periodic report, the Committee urged Germany to dialogue with nongovernment organisations representing intersexual and transsexual people so that the state party could better "understand their claims" and take actions "to protect their rights". Concluding Observations of the Committee on the Elimination of Discrimination against Women, 43rd Session (19 January-6 February 2009) (12 February 2009), CEDAW/C/DEU/CO/6. As noted earlier, General Recommendation No. 28, paragraph 18 suggests that CEDAW protects the rights of transgendered women, based on its reference to intersectional discrimination based on "gender identity".
- 138 With respect to achieving gender equality and equity, the ICPD PoA describes this goal as important to attaining development. Although the ICPD PoA does provide that improved political, social, economic and health status of women is "a highly important end in itself", such improved status is at least equally important because it is "essential for the achievement of sustainable development" and key to effective population programmes. ICPD PoA, paragraph 4.2. This equality of the three purposes is borne out by the ICPD PoA recommendations on empowering women, which are designed to "achieve equality and equity based on harmonious partnership between men and women and enable women to realise their full potential", to "ensure the enhancement of women's contributions to sustainable development" by ensuring they participate fully in policy and decision-making in all areas of life "as active decision-makers, participants and beneficiaries" and "ensure that all women, as well as men, are provided with education necessary for them to meet their basic human needs and to exercise their human rights." ICPD PoA, paragraph 4.3. To these ends, countries are advised to empower women and eliminate inequality between men and women "as soon as possible" with respect to political and public life, in education and employment and with respect to all practices that discriminate against women. ICPD PoA, Paragraph 4.4(a)-(b). CEDAW requires that state parties, "agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women". United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women*. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 2.
- 139 The general objectives of the ICPD PoA are sustained economic growth in the context of sustainable development, education, especially for girls, gender equity and equality, infant, child and maternal mortality reduction and the provision of universal access to reproductive health services, including family planning and sexual health. ICPD PoA, Paragraph 1.12.
- 140 Based on the numerous references to development in its preamble, one could argue that the goal of development was also an important justification for CEDAW. For example, discrimination is identified as a circumstance that "hampers the growth of the prosperity of society and...makes difficult the full development of the potentialities of women in the service of their countries and of humanity". CEDAW Preamble, Paragraph 7. Furthermore, "full and complete development of a country...require[s] the maximum participation of women on equal terms with men in all fields". CEDAW Preamble, Paragraph 12.
- 141 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 3.
- 142 The general approach for this analysis and the subsequent use of the analysis in preparing information for a shadow or alternative report is as follows: (1) the issue is identified (Issue); (2) the relevant "rule" as established in CEDAW or the ICPD POA is identified (Rule); (3) the rule is applied to analyse the extent to which the state is or is not adequately addressing the issue (Analysis); and (4) a conclusion is developed, which provides recommendations on how the state can improve its handling of the issue to ensure that rights are protected, as required by the rule (Conclusion). This approach, which is a method of analysis sometimes employed by American law students and lawyers, is referred to by its acronym "IRAC". Parts (but not necessarily all) of the IRAC approach feed into the information that will be reflected in the shadow or alternative report. For example, the recommendations in the shadow or alternative report may be closely related to the Conclusion that results from the Analysis. The Analysis may be reflected in the portion of the shadow or alternative report that identifies the shortcomings in the state's actions on women's rights.
- 143 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 6.
- 144 These rights and fundamental freedoms include the right to life, to be free from torture or cruel, inhuman or degrading treatment, equal protection in the context of international or internal armed conflict, equality in the family, the highest attainable standard of physical and mental health and just and favourable conditions of work. Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 7.
- 145 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 7.
- 146 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 8.
- 147 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 9.
- 148 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 11.
- 149 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 11.
- 150 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 11.
- 151 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 11.
- 152 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 11.
- 153 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 12.
- 154 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 17. Some of the Committee's recommendations for states parties that are particularly relevant to combating sexual harassment include: compiling statistics and research on gender-based violence and effectiveness of measures to deal with it; the adoption of effective legal measures, including penal sanctions, civil remedies, and compensation to protect women from among other things, sexual assault and harassment in the workplace; the adoption of measures to ensure the media respects and promotes respect for women; reporting on the nature and extent of attitudes, customs and practices that support VAW and the kind of violence that results, as well as actions taken to address the violence and the effectiveness of the actions; adoption of measures to overcome the attitudes, customs and practices that support VAW, including education and public information programmes to eliminate prejudices that prevent women's equality; establishment of effective complaints procedures and remedies for VAW; reporting on sexual harassment and measures adopted to protect women from such harassment and other violence or coercion in the workplace; establishment of support services for victims of gender-based violence; adoption of all measures necessary to effectively protect women against gender-based violence, including legal measures, preventive measures and protective measures; and reporting on all forms of gender-based violence with data on the incidence of each form and effects on women victims. Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24 (c)-(f), (j), (t), (u) and (v).
- 155 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 18.
- 156 Box 14: Spotlight on Sexual Harassment in Thailand. In *Reclaiming and Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights in Asia*. (2009). Kuala Lumpur: ARROW, p.110.
- 157 Box 14: Spotlight on Sexual Harassment in Thailand. In *Reclaiming and Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights in Asia*. (2009). Kuala Lumpur: ARROW, p.110.
- 158 Quid pro quo harassment is the most commonly recognised form of sexual harassment. It occurs when (1) job benefits, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment, are made contingent on the provision of sexual favours, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment actions, or (2) the rejection of a sexual advance or request for sexual favours results in a tangible employment detriment, a loss of a job benefit of the kind described above.
- 159 Box 14: Spotlight on Sexual Harassment in Thailand. In *Reclaiming and Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights*



- in Asia. (2009). Kuala Lumpur: ARROW, p.110.
- 160 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(t)(i).
- 161 Furthermore, Thailand's failure to enforce the laws that could be used to address sexual harassment also reflects the government's failure to follow the recommendations in the ICPD PoA that governments enforce laws to protect women from sexual harassment and to "take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children".
- 162 Similarly, Thailand's failure to enact laws directly addressing sexual harassment also reflects the government's failure to follow the recommendations in the ICPD PoA to enact laws to protect women from sexual harassment and to "take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children".
- 163 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(b).
- 164 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 18.
- 165 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(d), (f).
- 166 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.12.
- 167 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 7.19-7.20.
- 168 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.13.
- 169 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.14(e)-(f).
- 170 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.21.
- 171 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 7.17, 7.18 and 7.23(h).
- 172 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.23.
- 173 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 31.
- 174 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(m).
- 175 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 8.25.
- 176 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 8.25.
- 177 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 7.24.
- 178 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 8.25.
- 179 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 7.24.
- 180 Box 6: Spotlight on Reproductive Health Services in Pakistan. In Reclaiming and Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights in Asia. (2009). Kuala Lumpur: ARROW, p. 46.
- 181 It is not clear what kind of pills these were, although it is implied that they were birth control pills.
- 182 Box 6: Spotlight on Reproductive Health Services in Pakistan. In Reclaiming and Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights in Asia. (2009). Kuala Lumpur: ARROW, p. 46.
- 183 The case study suggests that both women and men are not receiving adequate healthcare, including family planning services. Nevertheless, it appears that women are suffering disproportionately as a result of the failure of Pakistan to provide such services, as they are the ones who are resorting to sterilisation and abortion procedures to cope with their inability to secure accurate information on contraception and alternative methods of birth control of adequate quality. Thus, even if the discrimination against women is not direct or explicit, Pakistan's failure to provide quality healthcare has the effect of causing women to experience diminished health status in comparison to men. Furthermore, historical discrimination against women, which traditionally limited her control over her fertility, is no doubt continuing to contribute to her diminished health status and therefore, Pakistan must acknowledge and address this historical discrimination if it is to meet its obligation under Article 12.
- 184 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 20.
- 185 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.23(b), (e), (g).
- 186 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.23(d).
- 187 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 21.
- 188 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.21.
- 189 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 12(d).
- 190 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.21.
- 191 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.14(e).
- 192 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 11. a state party's actions to eliminate discrimination are not appropriate where the health system does not provide services to prevent, detect, or treat women-specific illnesses.
- 193 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 7.24 and 8.25.
- 194 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs, 8.25.
- 195 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(m).
- 196 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 36.
- 197 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 36.
- 198 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 37.
- 199 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 38.
- 200 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 38.
- 201 Committee on the Elimination of Discrimination against Women. 1994. General Recommendation No. 21, 13th Session: Equality in marriage and family relations. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>. Paragraph 39.
- 202 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 15(d).
- 203 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.16.
- 204 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.21.
- 205 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.



- popin/icpd/conference/offeng/poa.html. Paragraph 4.21.
- 206 United Nations Population Fund. 1994. *International Conference on Population and Development Programme of Action*. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.21.
- 207 International Institute for Population Sciences (IIPS) and Macro International. (2007). *National Family Health Survey (NFHS-3), 2005–06: India: Volume I*. Mumbai: IIPS.
- 208 International Institute for Population Sciences (IIPS) and Macro International. (2007). *National Family Health Survey (NFHS-3), 2005–06: India: Volume I*. Mumbai: IIPS. The mean age of marriage varies in different states of India.
- 209 United Nations Population Fund. 1994. *International Conference on Population and Development Programme of Action*. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.17.
- 210 United Nations Population Fund. 1994. *International Conference on Population and Development Programme of Action*. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 4.17 and 4.19.

SECTION 2  
THE GUIDELINES

SEXUAL AND REPRODUCTIVE HEALTH AND  
RIGHTS ARE WOMEN'S HUMAN RIGHTS:  
**GUIDELINES ON  
ANALYSING SEXUAL  
AND REPRODUCTIVE  
HEALTH AND RIGHTS  
UNDER CEDAW**



## 1. INTRODUCTION TO THE GUIDELINES

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international human rights treaty that defines discrimination against women and provides the framework upon which states that ratify CEDAW (known as state parties) must act to respect, protect, and fulfil women's rights. A state party to CEDAW is required to submit a report regularly to the CEDAW Committee, a group of 23 experts tasked with monitoring the implementation of CEDAW.

The CEDAW reporting process is participatory in that it includes a space for women's groups and nongovernment organisations (NGOs) working on women's rights issues to engage with the Committee's review of their state by submitting their own reports. Women's groups and NGOs may submit to the Committee: (a) a "shadow" report that provides additional or alternative information to the state report, or (b) an "alternative" report in cases when the state fails to submit its report.

### Box 6: Shadow vs. Alternative Report

"When an NGO writes its report, with access to the government report submitted to the CEDAW Committee, this is called a shadow report. When an NGO writes its report where no government report is available (e.g. either because their government has not written one or it writes it too late), this is called an alternative report."

Source: International Women's Rights Action Watch Asia Pacific. 2007. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sreport\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sreport_guidelines.htm).

Engagement with the CEDAW review process enables women's rights advocates, including those who work in the areas of sexual and reproductive health and rights, to ensure that their governments take their obligations under CEDAW seriously, and that they work to fully implement the commitment in CEDAW to respect, protect and fulfil women's right to health.

ARROW views the CEDAW review process as a promising means of encouraging states that are parties to both the International Conference on Population and Development Programme of Action (ICPD PoA) and CEDAW to fulfil the commitments they made in the ICPD PoA. Advocates can integrate the commitments of the ICPD PoA into the CEDAW reporting process, the Committee can continue to monitor states' efforts to ensure that women enjoy

their sexual and reproductive health and rights free from inequality and discrimination. It is hoped that these Guidelines will contribute towards this goal.

### Use and Purpose

These "Guidelines-Analyzing Sexual and Reproductive Health Rights under the Convention on the Elimination of All Forms of Discrimination against Women" ("Guidelines") are a companion to the Guidance Note, and are intended to be used in conjunction with the Guidance Note.

Generally, these Guidelines: (1) outline the overall objectives of CEDAW and how it can be used to analyze an issue concerning women's sexual and reproductive health and rights, (2) outline the Committee's interpretations of CEDAW that relate to women's sexual and reproductive health and rights, (3) outline the recommendations on women's sexual and reproductive health and rights in the ICPD PoA, and (4) explore the processes involved in developing a shadow or alternative report, locating sexual and reproductive health and rights within a broader human rights framework and highlighting the interrelated and interdependent nature of rights.

In addition, these Guidelines provide guidance<sup>1</sup> to ARROW's partners in Asia-Pacific region and others, that are engaged in advocacy around women's sexual and reproductive health and rights and interested in preparing a shadow or alternative report to the CEDAW Committee, by:

1. Illustrating how an analysis of sexual and reproductive health and rights under CEDAW, linked to the consensus set out in the ICPD PoA, can be developed and used as the basis for a CEDAW shadow or alternative report;
2. Facilitating greater understanding among sexual and reproductive health and rights advocates on the comprehensive approach to the promotion of women's rights taken by CEDAW, so that they can engage more with the CEDAW review process, including through the preparation and submission of shadow or alternative reports, direct and indirect advocacy with the members of the CEDAW Committee on issues pertaining to women's health in their country, and active encouragement of states parties to fulfil their obligations under CEDAW and implement the recommendations set out in the Concluding Observations; and
3. Linking the analysis on women's sexual and reproductive health and rights in CEDAW with the commitments made by states in the ICPD PoA and encouraging referencing of material in the CEDAW alternative reports to the ICPD PoA in a meaningful and holistic manner.

## 2. THE SHADOW OR ALTERNATIVE REPORT

A shadow or alternative report submitted to the CEDAW Committee can be a valuable tool for protecting and promoting women's rights. The process of developing a shadow or alternative report can bring together diverse groups of women working on women's health issues in a particular country and enable the emergence of a more focused and comprehensive approach on women's health.

While a shadow report can identify gaps in a state party's report, more importantly, it can highlight the most important rights violations that women face from the point of view of women themselves. An alternative report raises these issues without reference to a state party report. This can be especially important, for example, in cases where the national health system is not sensitive to gender. The information in a shadow or alternative report can also contribute to the Committee's ability to issue Concluding Observations that provide strong and specific directions on how to address these violations and improve the situation of women's health in the country. Women's health advocates can then use the Concluding Observations in lobbying for change at the national and local level. Preparing a shadow or alternative report can also help in building and strengthening links between women's health rights advocates and government officials and decision-makers.

### 2.1 Preparing Information

The success of a shadow or alternative report depends on the process undertaken by national women's groups and organisations working on women's rights. The process provides an opportunity for advocates of women's sexual and reproductive health and rights to bring information together, and develop a collective approach and analysis as well as a shared advocacy strategy. This involves collaboration among multiple stakeholders and requires a significant commitment of time. Advocacy at the level of the CEDAW Committee and advocacy for the implementation of the Concluding Observations of the Committee is most effective and can best be achieved if there is a broad consensus and a strong base of support for the issues that are presented in the shadow or alternative report.<sup>2</sup>

The consultative process is important because there may be pressing issues affecting a minority group of women or women who are unable to effectively advocate on their own behalf.<sup>3</sup> Thus, the Committee may never become aware of these issues in the absence of a shadow or alternative report. For example, migrant women from South and Southeast

Asia who work as domestic workers in their own countries and abroad are vulnerable to a wide range of human rights violations, yet they may lack the skills, resources, or space to advocate for their rights. In many instances, these women suffer the most serious types of violations, including physical and sexual violence at the hands their employers. Under such circumstances, it would be absolutely critical to identify their issues in a shadow or alternative report.

The process of creating a shadow or alternative report to CEDAW must therefore strike a balance between prioritising issues that affect the majority of women in a country, and those issues that impact on particular communities or groups of women who are marginalised because of their identity or status and are especially vulnerable to serious violations of their rights.<sup>4</sup>

### 2.2 The Structure of the Report

A shadow or alternative report should be structured according to the articles of CEDAW.<sup>5</sup> This means that, for each article of CEDAW, information should be prepared to address the particular subjects of the article. In every case, there should be particular attention to provide information on discrimination against women, including in the fields of sexual and reproductive choice, since ending discrimination against women is a core principle of CEDAW and is set out in Article 2. (refer to Box 7)

**Box 7: CEDAW Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

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

Source: United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women*. Available: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2>.

In addition, women's health rights advocates should always prepare some information relating to the area covered by Article 5 of the CEDAW, which calls on states to take steps to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.” Article 5(b) is especially relevant to work on

sexual and reproductive health and rights because it requires that states,

ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Information on sexual and reproductive health and rights that is included in a comprehensive shadow or alternative report could be placed in a number of places, since women's sexual and reproductive health and rights are related to a number of articles of CEDAW. Although the organisation of the report will ultimately be negotiated among those persons preparing it, and thus, will vary from one country to the next, one approach to organising information on sexual and reproductive health and rights is to include such information under the section of the report that addresses Article 12, which specifically refers to women's health rights and provides as follows:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

This could be cross-referenced to related issues in other articles of the CEDAW, for example, Articles 10 (h), which refers to “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”, 14 (b), which refers to the right of rural women “to have access to adequate health care facilities, including information, counselling and services in family planning,” and 16 (e), which refers to the fact that women have “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights”.

Information on the status of women's access to family planning information and contraception could be placed under Article 12. At the same time, information in relation to what the government has done to ensure that women are able to negotiate

with their partners on the number and spacing of children might be mentioned under Article 16, since access to family planning information and contraception is critical to the exercise of that right.<sup>6</sup> It might also be important to highlight the unequal power relationships between women and men that would prevent women from exercising their rights to negotiate sex with their husbands or partners as well as traditional and cultural norms that would place a premium on women's fertility and create barriers to her accessing contraceptives or information regarding birth control and family planning.

Women's access to family planning information is also important in fulfilling their rights under Articles 10, dealing with women's rights to have access to education and in particular, under 10 (h), which is specific to information and education on family planning. A state's failure to ensure women's access to family planning information could lead to early or unplanned pregnancies, which could have a debilitating impact on a woman's future, including lost educational opportunities and in some cases, poor levels of sexual and reproductive health. Thus, information on the status of women's right to family planning information could appear in the parts of a shadow or alternative report that address Articles 10 and/or 12.

Wherever the information is finally located, it is critical to highlight the interrelationship between rights. In the last example, the shadow or alternative report should highlight how a state's failure to end discrimination against women and provide full and equal access to family planning information and education for women jeopardises their health status, educational and employment prospects, and ability to fulfil their capacities and capabilities as full and equal human beings.

**2.3 The Contents of the Report**

**General vs. Specific Information**

The type of information included in a shadow or alternative report will vary with respect to Articles 1-5, as compared with Articles 6-16.<sup>7</sup> This is because Articles 1-5 of CEDAW impose general obligations on a state to secure women's rights to equality and non-discrimination and Articles 6-16 focus on rights in specific areas.

For example, Article 2 requires states parties to, among other things, adopt laws to eliminate discrimination. Article 5 requires states parties to adopt measures to address stereotypes. Thus, for Articles 2 and 5, information in a shadow or alternative report could assess the status of the government's efforts to adopt laws prohibiting

discrimination and violence against women or implementing public awareness or public education campaigns to educate people on the harm caused by negative stereotypes of masculine men and feminine women. In contrast, Article 12 addresses the women's specific rights to equal access to health care.

A shadow or alternative report regarding the most important issues related to women's health would focus on both general and specific women's rights and state obligations. For example, with respect to specific rights, the report would include an assessment of existing health services in both public and private sectors, as well as the role played by the government to ensure women's access to appropriate, affordable and accessible healthcare services including for sexual and reproductive health and with respect for informed choice. As a general matter, such a report would also include an assessment of laws and policies that create an environment which is conducive for women to exercise informed choice. This could include laws related to Articles 2 and 5 that, for example, prohibit violence against women including sexual harassment, and/or that prohibit gender-based stereotyping of women and men in textbooks, for example or in the media.<sup>8</sup>

**2.4 The State Report's Role in Shaping the Shadow Report**

In the preparation of a shadow report, it is important to obtain and read the report that has been submitted by the state. The specific content of the shadow report will depend, at least in part, on what the government has said about the status of women's rights with regard to women's health rights, and in particular with regard to their sexual and reproductive health and rights. The shadow report will present additional information to supplement the state report and also provide a basis for its critique.



3. METHODOLOGY

In describing a methodology for preparing information on women's reproductive and health rights for a shadow or alternative report to the CEDAW Committee, it is important to acknowledge the work of other organisations that have developed similar methodologies.

These Guidelines draw on those efforts, in particular, the work of International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific), which has spent many years refining guidance for advocates submitting information to the CEDAW Committee.

These Guidelines should be viewed as complementary to the IWRAP Asia Pacific's Shadow Report Guidelines.<sup>9</sup> (refer to Box 8).

The International Gay and Lesbian Human Rights Commission has also prepared its own guidelines for reporting to CEDAW.<sup>10</sup>

**Box 8: IWRAP Asia Pacific Shadow Report Guidelines list of questions with respect to Articles 6-16 of CEDAW**

Among other things, with respect to Articles 6-16 of CEDAW, IWRAP Asia Pacific Shadow Report Guidelines set out the following list of questions and areas of inquiry, which are designed to help an advocate start thinking about the type of information she should prepare for a shadow or alternative report: (1) the status of women's rights under a particular article of CEDAW; (2) obstacles preventing women from enjoying their rights; (3) the impact of the denial of rights; (4) whether the government recognizes the denial of rights and if and how the government has indicated how it has or will or address the issue; (5) whether the advocate considers the government's characterization of the issue accurate and whether the government's actions or proposals to address the issue are appropriate, effective and are monitored; (6) if the advocate believes the government's action are not effective, factors contributing to the ineffectiveness; (7) recommendations for government action to address the issue; and (8) how the girl child is impacted by the issue. IWRAP Asia Pacific Shadow Report Guidelines at 14-15. The IWRAP Asia Pacific Shadow Report Guidelines also list the authorities and documents that should be consulted in framing the content of the information under each article, including CEDAW, the state party report, the Committee's Concluding Observations for the advocate's country, the Committee's general recommendations, reports of other UN human rights bodies, such as special rapporteurs, concluding observations of other treaty bodies and the summary records from the Committee's last review of the advocate's country. IWRAP Asia Pacific Shadow Report Guidelines at 8-9.

Source:  
[http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf)

The methodology proposed in the Guidelines is intended to assist advocates in: (1) understanding how CEDAW and the ICPD PoA can be used to promote women's sexual and reproductive health and rights, (2) analysing the status of women's sexual and reproductive health rights in their country and identifying the government's failures to respect, protect, and promote those health and rights, and (3) preparing information on the status of such rights in a particular country for a shadow or alternative report.

**Box 9: Overview of Methodology**

Step 1:	Gain substantive knowledge of CEDAW and the ICPD PoA by reviewing the Guidance Note and reading the text of CEDAW and relevant General Recommendations. For those focusing on issues of women's sexual and reproductive health and rights, General Recommendation No. 24, and Chapters 2, 4, 7, 8, 13, 15 and 16 of the ICPD PoA may be particularly useful.
Step 2:	Identify the issues that will be analysed under CEDAW and the ICPD PoA.
Step 3:	Collect all available information on the status of women's ability to enjoy their rights under the selected CEDAW article/s and the recommendations in the ICPD PoA.
Step 4:	If preparing a shadow report, determine what the state has said about the issue, assess the accuracy and completeness of the information provided by the state to the CEDAW Committee, and identify whether additional information is available.
Step 5:	Determine whether the Committee has issued recommendations to the state party through Concluding Observations issued following the last review. If the Committee has issued recommendations, assess the state's progress in implementing them.
Step 6:	Undertake a fresh analysis of the issue looking at the framework provided by CEDAW. Identify the provisions in the ICPD PoA that are relevant to the issue being analysed. Decide whether the provisions repeat what is already provided in CEDAW or if they make a unique contribution to the analysis either by supplementing CEDAW or adding detail to a provision that CEDAW addresses generally.
Step 7:	Using the analysis prepared in Step 6, develop information and recommendations on the issue for the shadow or alternative report.

3.1 Gaining an understanding of CEDAW and ICPD PoA

Steps 1 and 2: Study CEDAW and ICPD PoA and Select Issues for Analysis

Before, or in conjunction with preparing information for a shadow or alternative report on the status of women's sexual and reproductive health and rights, an advocate must become familiar with CEDAW and the ICPD PoA. An advocate should review the companion volume to this publication, the "Guidance Note", which provides an overview of CEDAW and of the ICPD PoA and keep this overview in mind

when working through the steps detailed in this methodology.

The Committee's General Recommendations Nos. 18, 19, 21, 24, 26, 27, and 28 should be read in their entirety as they are relevant to a range of women's sexual and reproductive health and rights issues. General Recommendation No. 24 should be considered both for the general guidance it provides on the issue of women's health, as well as the particular issues it directly addresses. The shadow or alternative report should refer to General Recommendation No. 24 as it is the Committee's most comprehensive interpretation of Article 12 and of women's right to health to date.

CEDAW should be understood not simply as a list of directives that describe what a state party must do to protect women's rights to equality and non-discrimination, but as a framework for bringing about equality for women in all aspects of life. This is why an advocate must gain some understanding of the key principles of CEDAW: substantive equality, non-discrimination, and state obligation, all of which are described in detail in the Guidance Note.

The ICPD PoA provides specific "actions" or recommendations for improving the sexual and reproductive health and rights of women, especially in Chapters 7 and 8. These "actions" or recommendations agreed upon by the countries present at the adoption of the ICPD PoA in 1994 should be understood in the context of the larger principles and background that inform the ICPD PoA.

With regard to Step 2, see information above under the section "Preparing Information".

3.2 Evidence Generation and Data Gathering

Steps 3, 4 and 5: Gather Data and Review State Report, Concluding Observations, and General Recommendations

Gathering the data that forms the basis of the information in a shadow or alternative report is an extremely important process. Any information that is included in a shadow or alternative report must be from reliable sources. Ideally, the information from one source should be cross-checked against information on the same topic from other sources. Information could be gathered from national databases and from databases on the particular country maintained by United Nations agencies as well as by other international agencies working in and on the country. The process for collecting information will vary from one country to the next, but the gathering of accurate data and information on women's rights to sexual and reproductive health in a



particular country can be one of the most significant outcomes of a shadow or alternative report writing process from the point of national advocacy on these issues.

### *Importance of State Report in Preparing a Shadow Report*

Because the shadow report is designed to supplement and critique a state report, an advocate preparing information for the CEDAW Committee should carefully read and review the state report to identify gaps in information as well as issues on which alternative information should be provided. The state report should be reviewed with the following questions in mind:

- What, if anything, does the state report say about the issue I am interested in?
- If the state has addressed the issue, is the information on the status of women accurate and complete?
- Is there adequate information to assess this status? This is a critical question because the Committee cannot assess the status of women without adequate data.
- If the information is not complete, what additional information is required before the Committee can fully understand the issue and call on the government to meet its obligations to respect, protect, and fulfil women's rights under the article?
- Has the state fairly and accurately described the measures it has adopted to address the issue? What has the government said about what it has done to respect, protect and fulfil women's rights under the article?
- Has the government properly analysed and identified its obligations and/or is there more that it should be doing to meet its responsibilities under CEDAW?

### *Information for an Alternative Report*

In the case of a state that has not submitted a report to, but will be reviewed by the CEDAW Committee advocates preparing information for an alternative report will not have a state party report to critique. However, almost all governments have prepared information and data on women's health, education and other status, for example, in a report on the state's progress in reaching the Millennium Development Goals (MDGs).

Such information may be referred to in the alternative report, if it fairly represents the government's position or the status of their actions with respect to issues that affect women's capacity to enjoy their rights freely and equally, including their sexual and reproductive health and rights.

Nevertheless, it is important to keep in mind that the reason an alternative report is prepared is because of the lack of response from the state with regard to its obligations under CEDAW. Therefore, an advocate should not feel compelled to spend too much time researching what the state maintains as its official position on the status of women under CEDAW. Indeed, the most accurate and complete information available may be the original research by the advocate, which should form the basis of the alternative report.

The following questions could guide advocates in preparing basic information on the status of women under the article/s of CEDAW selected for closer focus by those involved in creating an alternative report:

- What is the status of women with respect to the rights protected by the particular article/s? Are they being protected? If not, what is the impact?
- Is there adequate information to assess this status? This is a critical question because the state cannot assess the status of women without adequate data.
- Where information is available, what has the government done to respect, protect, and fulfil women's rights under the article? Has the government properly analysed and identified its obligations or is there more that it should be doing to meet its responsibilities under CEDAW?
- Have the government's efforts been sufficient? If not, what else must the government do to ensure women enjoy their rights?
- What are the barriers precluding women's enjoyment of their rights under the selected article/s?

### *Concluding Observations from Immediately Preceding Review*

The Committee's last set of Concluding Observations for the state party will identify areas of concern identified by the Committee during the last review. If the Committee's Concluding Observations address the issue that has been selected by national women's groups as a priority, then it is important that the shadow or alternative report note the state party's progress or failure in implementing the Committee's recommendations and the reasons for success or failure (if known). Such an assessment brings the Committee up-to-date on the status of the issue, as well provides the basis for refining and/or expanding the recommendation, if necessary.

## 3.3 Analysis using CEDAW and ICPD frameworks

### *Step 6: Analyse Issues under CEDAW Framework and the ICPD PoA*

Following the steps above, at this point an advocate would have:

- Identified the issue or issues that she needs to analyse under CEDAW and the ICPD PoA;
- Collected background information on the extent to which women enjoy their rights under the CEDAW article/s that have been selected and the relevant recommendations in the ICPD PoA;
- Determined, in the case of a shadow report, what the state has said about the issue and assessed the accuracy and completeness of the information provided by the state to the Committee and whether additional information is required;
- Reviewed whether the Committee issued concluding observations on the issue or issues during its last review of the state party;
- Undertaken an assessment of the state party's progress in implementing the Committee's concluding observations; and
- Developed a general understanding of what CEDAW, General Recommendation No. 24 and the ICPD PoA say about the selected issue or issues.

The next step is to undertake a fresh analysis of the issue or issues. The analysis will be fresh in the sense that it will not be limited either by what the state has said about the issue in its state report or by what the Committee has recommended in its last Concluding Observations to the state. It will rely on CEDAW, the ICPD PoA and the relevant general recommendations, especially General Recommendation No. 24, and, of course, on the priority concerns identified by diverse groups of women activists in the country.

The analysis should be comprehensive in the sense that it should draw on the ways in which women in the country under review can or cannot enjoy the rights framed by CEDAW, in the light of CEDAW's principles of substantive equality, non-discrimination, and state obligation.

However, in some cases, it may not be possible to analyse the status of women with reference to all of these principles, because data may not be available. This points to the important role that a shadow or alternative report can play in identifying data that must be collected and assessed before a state party can evaluate the status of women in light of CEDAW's requirements.

### *Identifying Relevant Provisions of the ICPD PoA*

The analysis should also refer to the relevant provisions of the ICPD PoA, including, where appropriate, the fifteen guiding principles and the basis of action, objectives, and the actions.

One of the ICPD PoA's primary strengths is that it is intended to provide guidance to governments in developing public policy on matters relating to population and development. Thus, its scope includes consideration of sexual and reproductive health rights issues and exceeds consideration of these matters from a purely gendered perspective.

Thus, the ICPD PoA can provide a basis on which the CEDAW Committee can call on governments under review to facilitate women's enjoyment of their rights under CEDAW by honouring the commitments made by them in evolution of the consensus on population and development in Cairo in 1994. Therefore, to strengthen the rationale for promoting and protecting women's rights in a country, including their sexual and reproductive health and rights, an advocate should identify provisions in the relevant chapters of the ICPD PoA regarding each issue that is being analysed in a shadow or alternative report.

The articulation of population and development objectives set out in the preamble of the ICPD PoA identifies the importance of girl's education, gender equity and equality, the reduction of maternal mortality, and the provision of universal access to reproductive health services, including family planning and sexual health.<sup>11</sup>

Principle 4 of the ICPD PoA states "advancing gender equality and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development related programmes".<sup>12</sup> Principle 8 affirms that "all couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education, and means to do so", while Principle 9 focuses on the family, affirming that "in different cultural, political, and social systems, various forms of the family exist".

Chapter 3 of the ICPD PoA focuses on inter-relationship between population, sustained economic growth, and sustainable development. Paragraph 3.16 identifies the elimination of social, cultural, political, and economic discrimination against women as a prerequisite for eradicating poverty. Paragraph 3.18 points to the need to eliminate existing barriers to women in employment and to strengthen their access to inheritance, and to productive resources including land.

Chapter 4 of the ICPD PoA focuses entirely on gender equality, equity, and the empowerment of women, referring to “the power relations that impede women’s attainment of healthy and fulfilling lives”.<sup>13</sup> One section of Chapter 4 emphasises male responsibility and participation in bringing about equality.

Chapter 5, on the family, its role, rights, composition and structure, affirms the existing diversity of family forms and calls on government and employers to facilitate compatibility between labour force participation and parental responsibilities.<sup>14</sup>

Chapter 7, on reproductive rights and reproductive health, defines reproductive health as the ability “to have a satisfying and safe sex life” including “the capability to reproduce and the freedom to decide if, when and how often to do so”. Sexual health is defined as leading to “the enhancement of life and personal relations”.<sup>15</sup> Chapter 7 also includes consideration of family planning, sexually transmitted diseases and prevention of HIV, human sexuality and gender relations, and adolescents.

Chapter 8, on health, morbidity and mortality, includes consideration of women’s health and safe motherhood, and HIV and AIDS.

In several chapters, the ICPD PoA refers to the specific concerns around reproductive and sexual health services for indigenous people, people with disabilities, migrant and refugees, and internally displaced persons.

#### *Analysis under CEDAW Framework Regarding Non-discrimination*

With respect to non-discrimination,<sup>16</sup> an advocate should ask the following:

- What do the current laws, policies, and programmes provide with respect to the rights of women under Article 12? For example, if the issue is women’s access to family planning information and contraception, do the laws, policies, and programmes of the state guarantee women such access on the same basis as men?
- If there is no direct discrimination against women (i.e. men and women are treated the same or no distinction is made with respect to their access), has the state recognised that a gender neutral policy has the effect of discriminating against women?

For example, even if women and men have equal access to family planning information and contraception,<sup>17</sup> do social and cultural factors (e.g. the need to obtain permission from a husband to use contraception, pressures from the family to not use contraception) prevent a women from actually using

contraception and to negotiate with their partner for contraceptive use?

For example, with respect to child marriage, does the law provide that males and females can only marry once they reach the age of 18 or does the law provide different ages based on gender?

- With respect to intersectionality, how is the discrimination faced by women in accessing reproductive and sexual healthcare services, for example, linked to the discrimination those women experience as a result of a specific identity or status?

For example, do women lack access because of their religion, culture, ethnicity, age, marital status, sexual orientation, gender identity, economic status, HIV positive status or other identity/status? For example, are unmarried women unable to access contraceptives because of social and cultural factors stigmatise sexual activity outside marriage?

For example, are disabled women who require treatment for sexually transmitted diseases less likely to seek medical services because of an attitude among healthcare providers that disabled persons should not or cannot have sex?

What must the state do to address the additional barriers that these women face because the particular conditions of their status/identity are not known by healthcare providers or are stigmatised due to tradition, customary practice, and culture?

#### *Regarding Substantive Equality*

With respect to substantive equality, an advocate should ask:

- Even if the law, policy, or programme provides for equality between men and women or does not explicitly discriminate against women (de jure equality), in practice, are women enjoying de facto equality with men with respect to the right under the article?

For example, in the case of a marriage law providing that males and females can only marry when they reach the age of 18, females are enjoying *de jure* equality, but may not be enjoying *de facto* equality if girl children are, as a matter of custom, routinely married before they reach the legal age of marriage.

For example, where a woman has the legal right to chose who she will marry (and therefore, she enjoys *de jure* equality), does family pressure and social conditioning result in her parents deciding who she will marry and thus, prevent her from enjoying *de facto* equality?

Under such circumstances, an advocate must ask what has the state done to bridge the gap between

*de jure* and *de facto* discrimination. Has the state met its obligations under Article 5 to adopt measures designed to eliminate traditional practices, beliefs and stereotypes that contribute to the cultural and social patterns that create a stereotype that young females should marry at an earlier age than young males?

#### *Regarding State Obligation*

With respect to state obligation, an advocate should ask:

- What is the state doing to respect, protect, and promote women’s rights to sexual and reproductive health care?
- How have these efforts fallen short of the state’s obligations under CEDAW? CEDAW, General Recommendation No. 24 and the ICPD PoA<sup>18</sup> will be essential in analysing and assessing whether the state has met its obligations.
- To respect women’s rights under Article 12, states must not obstruct women’s pursuit of their health goals and in particular, may not limit women’s access to health services or condition such access on authorisation from family members or health authorities. For example, has the state provided adequate services to enable unmarried women to access family planning information and contraceptive services?
- To protect rights, the state must take action where the state or private parties such as family members, community leaders, or organisations that oppose access to contraception violate women’s rights. For example, what is the state’s record of taking action against or supporting a woman’s claim against a community leader who has declared that women from the community should not attend family planning clinics?
- To fulfil rights, the state must ensure that all healthcare providers who provide sexual and reproductive healthcare services, whether public or private, are doing so consistent with CEDAW’s requirements. For example, is the state or a private party providing the services that women require in a manner that respects their right to non-discrimination? Is the state ensuring that quality family planning information and contraceptive services are available to all communities of women in their country including those who are non-citizens or who are marginalised because of their identity or status?
- How has the state’s failure to protect the women’s rights to health, including sexual and reproductive health, impacted on women’s ability to exercise other rights, such as their rights to education, employment and access to other health services?

#### *Step 7: Use Analysis to Develop Information for a Shadow or Alternative Report*

The analysis developed through Step 6 can be used in preparing information for a shadow or alternative report, especially in critiquing the state’s failure to meet its obligations under CEDAW. In addition, the analysis can be used as the basis for an alternative report where the state has failed to produce a report. Finally, the analysis will play an important role in providing additional or supplementary information about the status of women’s rights that is not reflected in the state report.



## 4. ILLUSTRATION OF THE METHODOLOGY THROUGH CASE STUDIES

The following cases are designed to illustrate the kind of information that can be developed for a shadow or alternative report through the use of the methodology. The factual background for these cases and the analysis of the issues under CEDAW and the ICPD can be found in Section 1-Guidance Note.

For each case, the following exemplary information for a shadow or alternative report is provided: (1) under the heading “State Report”, a review of what the state has said about the issue or issues in its report; (2) under the heading “Concluding Observations”, a summary of the Committee’s Concluding Observations regarding the issue or issues; (3) under the heading “Providing Information” (a) a critique of the state report, (b) supplementary information and (c) recommendations.

### 4.1 Case 1: Sexual Harassment in Thailand

#### State Report

In Thailand’s 2004 report<sup>19</sup> to the CEDAW Committee, the government explained, “sexual harassment against women both physical and verbal also continues in offices, factories, public places, and among domestic workers, most of whom have not been treated fairly by employers”.<sup>20</sup> Regarding its efforts to implement Article 11 of CEDAW, the government noted that its laws “clearly prohibit employers who are chiefs, controllers, or inspectors from sexually harassing female or child workers” and that those violating the law are subject to a fine of not more than 20,000 baht.<sup>21</sup> The report goes on to note, however, that the state party cannot fully enforce the law because perpetrators of sexual harassment threaten their victims so that the victims do not report the violations.<sup>22</sup>

#### Concluding Observations

The Concluding Observations from 2006 do not address sexual harassment, although they do note concern regarding the prevalence of violence against women and persistent stereotypes about the roles and responsibilities of men and women in family and society.<sup>23</sup>

## Providing Information

### Critique of State Report

A study conducted by the Southeast Asian Consortium on Gender, Sexuality and Health in 2009, revealed that sexual harassment is a widespread problem in Thailand, rooted in the country’s patriarchal culture. As noted above, the Thai government acknowledged that sexual harassment against women both physical and verbal continues. Despite this, however, the government failed to include any statistics on the number of incidents of sexual harassment in any setting (and did not say why such statistics are not available), which would help define the scope of the problem.

The collection and analysis of statistical information on women’s status, including their right to be free of sexual harassment, is a basic obligation of Thailand under CEDAW and a critical recommendation for governments who are party to the ICPD PoA. Without gathering information on sexual harassment, the Thai government lacks the basis for understanding the scope, nature, and factors contributing to the problem and cannot develop a comprehensive plan for tackling the issue.

With respect to Article 11 of CEDAW, Thai laws “clearly prohibit employers who are chiefs, controllers, or inspectors from sexually harassing female or child workers” and subject those violating the law to a fine of not more than 20,000 baht.<sup>24</sup> The state party claims it cannot “fully” enforce the law because persons committing sexual harassment threaten victims so that the victims do not report the violation.<sup>25</sup>

This suggests that the government has “partially” enforced the law, in which case it should have included information on how many cases it has pursued under the law, the results of the cases, punishment imposed, and the redress provided to the victim, if any. Furthermore, the government should report on what it is planning to do to ensure full enforcement.

Finally, the Thai government cannot use the failure of the victims of sexual harassment to report violations to escape from its obligations under CEDAW. Instead, the government must develop policies aimed on assisting those who want to report such violations, but are under threat if they do.

Full compliance with CEDAW would require that the Thai government address the underlying issues that prevent victims from coming forward with claims of sexual harassment, including the victim’s lack of knowledge of her rights and the absence of a supportive environment that protects victims

against retaliation and further violations once sexual harassment is reported.

The government must report on what actions it is taking to educate employers and employees about their obligations and rights and to change the underlying cultural values contributing to the persistence of sexual harassment. More generally, the Thai government must adopt public education campaigns addressing the patriarchal culture that supports and perpetuates sexual harassment.

Although it did not specifically mention sexual harassment, in its 2006 Concluding Observations on Thailand’s State Report, the Committee expressed concern about violence against women in Thailand. As described in more detail below, such violence, especially sexual harassment, continues to exist, as do the stereotypes that permit the society to condone the practice as harmless.

## Supplementary Information

### Regarding Inadequacies in Existing Laws

Thailand’s existing laws on sexual harassment are inadequate and inconsistently enforced. Under CEDAW, Thailand has an obligation to protect women against sexual harassment, including violations by private actors. Thailand must fulfil women’s rights to be free from sexual harassment by adopting laws, policies, and programs addressing the problem.

While the Thai Protection Law deems sexual harassment illegal, the law applies in limited settings, such as large factories and enterprises. Thus, the law does not extend to the informal sector, such as domestic work, where many violations occur. Furthermore, existing laws are not consistently enforced. The Thai Labour Standard recommends that private enterprises establish policies and systems to prevent sexual harassment and provide redress for its victims, but only a few enterprises have done so. The existence of some laws addressing sexual harassment (*de jure* equality) does not translate into *de facto* equality where those laws are inadequate and not consistently enforced. The Thai government has failed to bring about substantive equality for women with respect to right to be free from sexual harassment.

### Regarding Obligation to Adopt Comprehensive Legal and Policy Framework

The inadequacies in existing laws point to the need for a specific law defining sexual harassment comprehensively and applying sanctions for violators in all employment settings. Specifically, the Thai government must enact a legal framework to

effectively address sexual harassment as a form of sex discrimination and violence against women. Its failure to do so constitutes a violation of CEDAW and a failure to follow the ICPD PoA’s recommendation to protect women from sexual harassment and eliminate all forms of violence, including harassment, against women.

### Regarding Obligation to Address Culture Perpetuating Sexual Harassment

The patriarchal nature of Thai culture and society has enabled the perpetuation of an attitude that sexual harassment is often a consensual arrangement between two adults; it is therefore considered inconsequential, and with no potential for causing harm. Thus, the silence of Thailand’s 2004 State Report on state action to address the values that tolerate and support discrimination and violence against women, including sexual harassment, contradicts its obligation to implement CEDAW.

In its report, the Thai government acknowledged<sup>26</sup> the impact of stereotypes on Thai girls and women and described the measures it had adopted to generally address those stereotypes and specifically educate the society about violence against women. However, it failed to note any educational or public awareness programs directed towards eradicating sexual harassment. Thus, one could argue that the Thai government is failing to meet its obligations under Article 5 of CEDAW to address the underlying societal values that allow discrimination against women to persist.

### Regarding Impact of Sexual Harassment on Enjoyment of Other Rights

CEDAW and the ICPD PoA have defined violence against women, including sexual harassment, as a factor that jeopardises a woman’s enjoyment of her other human rights including her rights to education and health. Harassment in an educational setting or the workplace can prevent women from pursuing their educational and employment goals, and lead to mental and physical illnesses, which may, in turn, undermine her right to the highest standard of health.

### Recommendations

Women in Thailand are a long way from enjoying their right to be free from sexual harassment, a form of violence against women that is pervasive and perpetuated by deep-seated stereotypes about women and men.

The Thai government has failed in its obligations to respect, protect, and fulfil women’s rights in this area by failing to collect and analyze statistics on the frequency and nature of sexual harassment



in Thai society, enforce existing laws on sexual harassment and adopt and enforce more stringent and comprehensive laws, policies, and programs that recognise sexual harassment as discrimination and violence against women.

1. In reporting to CEDAW, the Thai government should collect, analyse, and maintain data on incidences and effects of sexual harassment. In particular, it should study how sexual harassment affects productivity at work, women's pursuit of educational and employment goals and the overall mental and physical well-being of women. Such information could be used to design programs to support victims of sexual harassment and provide them justice and redress, including access to legal and health services they need.
2. A new law must contain a clear, standard definition of sexual harassment, extend protections to victims in all workplaces, provide protection against retaliation when victims report violations and educate all employees and supervisors about the rights of victims and the nature of sexual harassment as a form of discrimination and violence against women. To ensure that the seriousness of the problem is fully understood and addressed by the whole of Thai society, the law should also apply fully to all government agencies and workplaces, including all branches of government. The law must also require that the Thai government monitor its implementation and collect data on reports of sexual harassment and prosecutions under the law. The law must provide adequate budget to accomplish its objectives. The new law must also include measures for public awareness campaigns to educate society about the nature of sexual harassment, and to build public awareness that it is a crime.
3. In the spirit of the ICPD PoA recommendations, all policies and programs adopted to implement the law should consider how men can be drawn into the effort to change the values that contribute to sexual harassment in Thai society.
4. Furthermore, the ICPD PoA recommendations on the girl child, which emphasise the importance of education (in schools, through the media, and in social institutions) and encourage society to place equal value on male and female children, should be considered in designing public awareness campaigns about sexual harassment including of girls, in schools and educational institutions, as a part of discrimination and violence against women.

## 4.2 Case 2: Reproductive Health Services in Pakistan State Report

In its combined initial, second, and third periodic reports to the CEDAW Committee, Pakistan reported extensively on its efforts to provide family planning information and services.<sup>27</sup> The information on abortion, however, was more limited.<sup>28</sup>

With respect to educational information and advice on family planning, Pakistan reported that it has initiated efforts to incorporate population welfare education in syllabi developed by women experts. The Ministry of Education, in partnership with UN agencies and NGOs, is implementing a special project on population and welfare and UNFPA is raising awareness and advocating on family life education by disseminating information and providing technical assistance.

Pakistan also noted that one focus of its 2001 National Health Policy ("Health Policy") is on health needs of women and girls. The Health Policy included several goals related to family planning, including addressing inadequacies in primary/secondary health care facilities. One measure integrated Lady Health Workers ("LHWs") and village based family planning workers into the National Programme for Family Planning and Primary Health Care, which seeks to deliver basic health services to the "underprivileged" in rural areas and urban slums. The team of 71,000 family health care workers deliver services, including family planning; the "scope of LHWs has been enlarged to include the wider concept of Reproductive Health".<sup>29</sup> Pakistan reported that the National Programme reached 50% of the country's population. By 2005, Pakistan estimated that an increase of LHWs to 100,000 would allow coverage of 90% of the target population.

Pakistan has also developed a "National Population Policy"<sup>30</sup> which has the goals of promoting "family planning as an entitlement based on informed and voluntary choice", reducing fertility by improving access to and quality of reproductive health services and reducing "population momentum through a delay in the first birth, changing spacing patterns and reduction in the family size desires".<sup>31</sup> The Population Policy has a number of short and long-term goals, including a reduction in the population growth rate, reduction in fertility rates through "enhanced voluntary contraception", and provision of "universal access to safe family planning methods by 2010".<sup>32</sup>

The government reported that women accessing family planning and other services at government facilities registered an average 95% satisfaction rating (98% satisfied in urban areas and 93%

satisfied in rural areas). Distance of facilities, unavailability of staff, high charges, no female staff, irregular supply of contraceptives of choice and "others" were listed as reasons for dissatisfaction with the services. The government reported that about 89% of women had family planning facilities within between 0-20 kilometres of their homes, but that 10% of women only had access to facilities located more than 20 kilometres from their homes. The level of access to such facilities within 0-5 kilometres of a woman's home varied considerably depending upon the province or federal territory in which she resided.

The government reported that between 1998-1999 and 2001-2002, rates of knowledge about contraception and past and current use rates did not change significantly. Between urban and rural women, the rates diverged considerably: in 2001-2002, 95% of rural women (versus 99% of urban) knew about contraception, 21% (versus 40% of urban women) had used contraception and 14% (versus 31% of urban women) were currently using contraception.

The government reported that its efforts in the area of family planning "are not insignificant"<sup>33</sup> in light of the conservative culture of Pakistan, distances, lack of development, illiteracy, and poverty. The government noted declining fertility rates, increased rates of contraceptive use, an increasing government budget for population activities and increased rates of couples becoming aware of and using contraceptives.

Nevertheless, the government admitted that one-quarter to one-third of married women report an unmet need for contraception and this figure has not changed in the past three decades. The government identified six factors that impacted on contraceptive use: "the strength of the motivation to avoid pregnancy; knowledge about contraception; costs of practicing contraception, specifically perceptions of the social, cultural, and religious acceptability of contraception; perceptions of the husband's opposition to family planning; health concerns about contraception; and access to family planning of acceptable quality".<sup>34</sup>

With respect to abortion, the government reported that it is illegal in Pakistan, except to save the mother's life. Violations of the law can result in imprisonment for up to seven years and a fine. The government further reported that "[m]edically advised abortions take place in government hospitals".<sup>35</sup> According to a United Nations Population Division of the Department of Economic and Social Affairs, however, the law actually provides for abortion to save the women's life and to provide "necessary treatment".<sup>36</sup> The phrase "necessary treatment" has not been defined, but the United Nations has

interpreted it to mean that abortion is permitted to protect the women's physical or mental health.<sup>37</sup>

## Concluding Observations

In 2007, the Committee issued the following observations and recommendations to Pakistan regarding women's sexual and reproductive health services:<sup>38</sup>

40. The Committee is concerned about women's lack of access to health care, in particular to sexual and reproductive health services, especially in rural areas, and the link between the rate of abortion and low contraceptive use. Clandestine abortions being a major cause of maternal mortality, the Committee is deeply concerned that abortion is a punishable offence under Pakistani law, which may lead women to seek unsafe, illegal abortions, with consequent risks to their life and health.
41. The Committee calls on the State party to take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee's General Recommendation 24 on women and health. It requests the State party to take measures aimed at the prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives and family planning methods more widely available and affordable, without any restrictions, and by increasing knowledge and awareness about family planning among women and men. The Committee also calls on the State party to reduce maternal mortality rates by identifying and addressing causes of maternal death. It further calls on the State party to take measures to ensure that women do not seek unsafe medical procedures, such as illegal abortion, because of lack of appropriate services in regard to fertility control. The Committee recommends that the State party review the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion, providing them with access to quality services for the management of complications arising from unsafe abortion and reducing maternal mortality rates, in accordance with the Committee's general recommendation 24 on women and health and the Beijing Declaration and Platform for Action. Noting the improvement in the indicators of women's health where the Lady Health Worker programme is being implemented, the Committee recommends that steps be taken to expand this programme to the rural and other areas where they are most needed. The Committee encourages the State party to seek international

assistance from the specialized agencies of the United Nations system, including the United Nations Development Programme, the United Nations Population Fund and the World Health Organization, in order to implement measures to enhance women's access to health care.

## Providing Information

### *Critique of State Report*

The information in Pakistan's 2005 State Report regarding the level of satisfaction among the users of services at government health care facilities sharply contrasts with the data collected by Shirkat Gah in 2009. While the government reports a 93% level of satisfaction with the family planning and other services, the Shirkat Gah study reveals that users were very disenchanted with their options that they sought sterilisation and abortion as methods of birth control. Resorting to sterilisation and abortion is a desperate measure that would be unnecessary if 93% of users were truly satisfied with the level of family planning services and quality of contraceptives provided at the government facility.

While Pakistan's 2005 State Report and the Shirkat Gah study listed some of the same reasons for dissatisfaction (e.g. understaffing and unavailability of staff, irregular supply and poor supply of medicine), other factors, such as charging fees for services that should have been free or low-cost, poor attitude of staff, poor equipment and poor quality of medicine, were not identified by the government.

The government reported a large gap between the rates of knowledge about and actual use of contraceptives, including a significant gap between the number of rural women who had used contraception (21%) versus the number of urban women (40%) and the number of rural women who were currently using contraception (14%) versus the number of urban women (31%). The government must examine these statistics and determine what accounts for the urban-rural gap. One obvious cause may be the specific discrimination experienced by rural women who are geographically isolated, suffer higher rates of poverty and live among communities more tied to traditional ideas about the roles of men and women.

Although the government explained six factors that impacted whether contraception was used,<sup>39</sup> it has failed to explain what it was doing to address these obstacles.

For example, the government has not explained how it is attempting to overcome the very low rates of use, why these rates did not change significantly between 1998-2002, and why one-quarter to one-third of all married women reported an unmet need

for contraception, which were figures that had not changed for three decades. The Committee has noted that significant numbers of couples wanting to limit family size, but lacking access to or not using contraception, could signify a breach of a state party's obligation to ensure women's access to healthcare.<sup>40</sup> Many of the barriers (i.e., knowledge about contraception, health concerns about contraception and access to family planning of acceptable quality, costs of practicing contraception) could be overcome if the government improved the quality of its educational program and the contraceptive products it provided and ensured that the users did not incur a charge for them.

Addressing the social, cultural, and religious values that perpetuate women's subordination are at the core of the government's obligations under Article 5 of CEDAW. Pakistan must take measures to educate its public about how the values of the society (including the husband's ability to override his wife's decisions) undermine a women's right to choose, including if and when she has children. These education programmes must demonstrate how depriving a woman of her rights relating to healthcare could have an impact on her ability to exercise other rights she holds, including those of pursuing education and employment. Without this shift in the society's thinking, even the highest quality of family planning information and contraceptive products will not alter the low contraceptive usage rate because women will continue to feel pressure to follow the dictates of their religion or culture and/or commands of their husbands and families with respect to family planning.

The state report failed to account the number of abortions that are being performed in Pakistan, and the deaths and complications related to them, as well as the number of enforcement actions taken against women who procure abortions. Without this information, the government cannot assess what it needs to do to meet the recommendations in the ICPD PoA and the Committee's General Recommendations Nos. 19 (on violence against women) and 24 (on health). In particular, the information collected by Shirkat Gah indicates that women are resorting to abortion because of the government's failure to provide appropriate family planning and contraceptive products. Thus, Pakistan has disregarded its responsibility to take actions "to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control".<sup>41</sup> In addition, Pakistan must report on what it is doing to ensure that women who have had abortions (even where abortion is illegal) are provided quality services for the management of complications, as recommended in paragraph 8.25 of the ICPD PoA. Without data on the rates of abortion and deaths and complications arising from

the procedure, Pakistan cannot develop a program to ensure women are receiving the post-abortion services they require.

### *Supplementary Information*

The government has failed to collect accurate information on the level of dissatisfaction with the family planning and contraceptive services provided by government facilities, at least with respect to the facilities serving the villages covered by Shirkat Gah's study. While it may not be possible to draw overall conclusions from the study since it only assessed two villages, it does point to the need to ensure that the government's methods of data collection are adequate in revealing the kind of information they are designed to uncover.

With respect to the rural villages in the Shirkat Gah study, Pakistan is fundamentally failing to meet its obligations to respect, protect, and fulfil women's right to quality family planning and contraceptive services. The fact that the government health facility provided poor quality services and supplies, which led men to purchase condoms at a pharmacy and women to throw away pills supplied by the government health facility and to resort to sterilisation and abortions, signifies Pakistan's failure to secure women's basic rights under Article 12 of CEDAW to access healthcare services, including family planning services.

Although it is clear that Pakistan has a program in place to provide family planning services, in practice Pakistan is failing to guarantee substantive equality because in the absence of adequate information or means to use alternative methods of birth control, women are forced to resort to sterilisation or abortion. In particular, the Shirkat Gah study finding that women are turning to sterilisation as a form of birth control reveals that they are not receiving full information on birth control methods and options including potential adverse effects by properly trained personnel as required by General Recommendation No.24, paragraph 20.

The poor quality of the services also reflects Pakistan's failure to follow the recommendations in the ICPD PoA on improving the quality of family planning services. The Shirkat Gah study revealed that, in providing family planning services, the personnel at the government health facility failed to provide complete and accurate information about family planning methods, including information on the widest possible range of methods (hence women resorting to sterilisation and abortion), high-quality contraceptives (as evidenced by women throwing away pills and men purchasing condoms at a local pharmacy), and adequate follow-up care including treatment for side-effects of using contraceptives (which resulted failure to use or discontinuing use

of the contraceptives). The health facility also failed to establish an adequate evaluation and survey system that could provide feedback from users on the quality of the services.<sup>42</sup> It also appears that the healthcare workers did not receive proper training in interpersonal communications and counselling, as the study participants reported that the staff's attitudes toward the users need be improved.<sup>43</sup>

The fact that the government health facility charged fees where services should have been free represents Pakistan's failure to meet its obligation under CEDAW to remove barriers that prevent women from accessing healthcare.<sup>44</sup> In addition, Pakistan appears to be falling short of the ICPD PoA recommendation that its leaders and legislators allocate adequate budget and human and administrative resources to meet the family planning needs of those who cannot pay the full costs of services.<sup>45</sup>

The fact that the attitudes of healthcare facility staff need to be improved may impact on women more significantly than men since it may translate into lack of respect for confidentiality, which may make women less willing to seek certain services related to sexual and reproductive health.<sup>46</sup>

The Shirkat Gah study echoes the government report regarding social and cultural patterns and stereotypes presenting barriers to women who want to access family planning services and contraception. For example, the Shirkat Gah study found that men, particularly those from Christian communities, had the lowest level of knowledge about family planning and believed that abortion was a sin, while the use of contraceptive methods was a common practice among women. Thus, as noted earlier, Pakistan must do more to meet its responsibility to adopt measures to eliminate the social and cultural values limiting women's ability to access information about family planning and contraception.

In addition, the low levels of knowledge among men on family planning suggests that Pakistan is falling short of the ICPD PoA recommendation for governments to create an environment promoting and legitimising the use of family planning services.<sup>47</sup> The low level of knowledge also suggests that Pakistan is not doing enough to increase male participation in and sharing of responsibility for family planning, which is one of the overall objectives of the ICPD PoA's recommendations on family planning.<sup>48</sup>

The Shirkat Gah study also reveals that intersectional discrimination is creating a barrier to accessing safe abortion services, with poor women receiving unsafe abortion services that lead to complications or death, while wealthy women have the means to seek abortion services from qualified



doctors. Unmarried women face an extra barrier, as they have to pay more for abortion services than married women. Pakistan has an obligation under CEDAW to address the barriers facing all women, especially those who experience intersecting forms of discrimination because they are unmarried and/or poor.

### Recommendations

1. Because most of the services will be provided to women, the conduct of trainings or workshops should raise awareness on Pakistan's obligations under CEDAW to ensure respect for women's rights and for the formal and substantive equality of women.
2. Pakistan needs to improve the quality of its family planning services so that women are fully and accurately informed of their options and the benefits, risks, and side effects (including how to treat side effects) associated with the various methods of birth control.
3. The role of men and methods of birth control for men should be highlighted and emphasised as a critical part of family planning.
4. The quality of the contraceptive products provided at the health facilities must be improved so that users have confidence that the birth control method will work as intended.
5. The government officials responsible for budgeting must allocate sufficient funds to improve the quality of contraceptive products. They should also ensure that funds are available to provide services and products, including the cost of treating the side effects of using birth control, at no cost to the users.
6. The fact that women are using abortion to terminate unwanted pregnancies must be addressed as an urgent concern. The government must do more to ensure that women have other means to avoid pregnancies. Where abortions are procured, the government must ensure that women have access to services for complications that arise from abortion. The government should also explore the extent to which unmarried and/or poor women are less able to access such services and should take steps to address this issue so that the effects of intersectional discrimination are fully understood and addressed.
7. The methods for hiring persons to serve as healthcare workers should be evaluated to ensure that those hired have the proper attitude and interpersonal skills when serving the users of the government facilities. The healthcare

workers must also be trained to provide adequate follow-up services to deal with the problems that users may encounter in using contraceptives and practicing birth control.

8. The government must establish or improve on its existing evaluations and survey system designed to provide feedback from users on the quality of the services.
9. The government must also carefully study the impact of women's lack of access to quality family planning services on the ability of women to exercise other rights, such as the right to education and employment.

The government of Pakistan must adopt an educational program designed to transform the way that Pakistani society thinks about women's equality and gender relations, including respect for women's rights to choice in all areas of sexual and reproductive health. In addition, the right of women to pursue educational and employment pursuits and the impact of family planning on exercising that right must also be understood.

## 4.3 Case 3: Legal Age of Marriage in India

### State Report

In 2005, India submitted its combined second and third periodic reports of States parties to the Committee.<sup>49</sup> In that report, India explained that the government had committed to making marriage registration compulsory and intended to eliminate child marriages by 2010.<sup>50</sup> The government expressed its intent to address child marriage, which reflected “gender disparity and prejudices”, through legislation.<sup>51</sup>

The government reported on a program called “Balika Samriddhi Yojana”, which provided a deposit of Rs.500 in the bank for girl children born to families below the poverty line.<sup>52</sup> Each year, scholarship money is deposited in the account for each level of education and these amounts are available to the girl child once she reaches 18 years of age and remains unmarried.<sup>53</sup> Although the program was designed to help ensure the birth and survival of girl children, enhance their access to education, and prevent child marriage, and has covered 3.5 million girls, the government reported that success has been limited.<sup>54</sup> Another program, called the Mahila Samakhya Programme, facilitates the creation of women's groups, called sanghas, in all States in the country. These groups address a range of issues specific to women, including child marriages.<sup>55</sup>

The government explained that the country followed a plural system of law based on religion.<sup>56</sup> The government noted that different religious communities follow their own laws related to family matters and that women are not treated equally with men under these laws.<sup>57</sup> Acknowledging that practices like child marriage have negative impacts on the development and empowerment of women, the government admitted that the laws designed to prohibit them have not been effective, as the practices “are associated with social values, cultural practices, poverty and lack of awareness”.<sup>58</sup>

Although all the personal laws of the religious communities (with the exception of the Mohammedan Law) and the 1978 Child Marriage Restraint Act establish the age of marriage for females at 18 and males at 21, the government noted that “marriage of minors continues to take place in many parts of India, which has its roots in tradition and culture, as is seen in infant marriages in Rajasthan”.<sup>59</sup> The government further stated that the 1978 Child Marriage Restraint Act imposes penalties on violators, but does not void the marriage. The government explained that, “social acceptability of early marriages has negated the implementation of the law”.<sup>60</sup>

While Indian law requires consent for a marriage to be valid, “in practice women have hardly any say as regards choice of her partner, when she wants to marry and whether or not she wants to marry”.<sup>61</sup> Furthermore, although both partners have equal rights in marriage, custom dictates that the man heads the household and makes decisions.

The 2001 National Empowerment Policy for Women “would aim to encourage changes in personal laws such as those related to marriage, divorce, maintenance, and guardianship so as to eliminate discrimination against women. Thus the demand for change must emanate from the community itself”.<sup>62</sup>

### Concluding Observations

After reviewing India's 2005 State Report, the Committee issued the following Concluding Observations regarding child marriages:

56. The Committee is concerned about the State party's assertion that the social acceptability of early marriages has negated the implementation of the Child Marriage Restraint Act. In addition, it is concerned that this Act penalizes the offender but does not render the marriage void, purportedly to avoid illegitimacy of any offspring of such union, which stands in contradiction to the purpose of the Act and is a violation of the rights of the married child.

57. The Committee urges the State party to take

proactive measures to effectively implement the Child Marriage Restraint Act with a view to eradicating child marriages. It recommends that the State party take comprehensive, effective and stringent measures aimed at deterrence of those engaged in child marriages, the elimination of such practices and the protection of the human rights of the girl child.

## Providing Information

### Critique of State Report

**Failure to eliminate discriminatory law.** India is failing to meet one of its most basic duties under CEDAW: to repeal laws that directly discriminate against girls and women. Although the Committee recommends that the legal age of marriage be at least 18 years of age and the existing personal laws (with the exception of the Mohammedan Law) and 1978 Child Marriage Restraint Act meet this guideline, CEDAW does not tolerate *de jure* discrimination against women. India has an obligation to ensure that all laws in the country meet the threshold of 18 years for the age of marriage for both males and females.

**Failure to enforce existing law.** Girls and women in India are facing *de facto* discrimination because more than a majority of women (58%) are marrying before they turn 18 years old. About 27% of Indian women are marrying before the age of 15 years. This is the community most vulnerable to health complications arising from early pregnancies and most likely to face significant obstacles in obtaining an education and/or employment.

In its Concluding Observations on India's 2005 State Report, the Committee noted that India had failed to enforce the 1978 Child Marriage Restraint Act and that the law should be amended so that marriages entered in violation of the law are void.

**Reliance on laws alone will not end child marriage.** In India's 2005 State Report, the government indicated that it would address child marriage through legislation and planned to enact a law to require compulsory registration of marriage. But as the government essentially admitted, reliance on laws alone will not bring an end to child marriage. Even if the registration of marriages was compulsory and the government enforced its laws on the minimum age of marriage and the requirement of consent, violations would continue because social values, tradition, and cultural practices tolerate and support the practice of child marriage. The government also noted that the practice stems from poverty and lack of awareness, environments in which women typically have no choice but to consent to marriage. The government explained that, “social



acceptability of early marriages has negated the implementation of the Child Marriage Restraint Act, 1978”.<sup>63</sup> India's 2005 State Report also refers to the 2001 National Empowerment Policy for Women.

The idea that demand for change in personal laws come from within communities that practice early marriage does not excuse the government of India from its obligations under CEDAW. The government cannot sit idly by while private actors violate the rights of girls and women. State parties to CEDAW have a due diligence obligation to restrain private actors from violating women's rights. India must develop other laws, policies and programs to stop child marriage and address its underlying causes.

**Failure to address child marriage through public awareness and other programs.** The government programs to address child marriage have been inadequate. The government acknowledged the limited success of the Balika Samridhi Yojana's program, but failed to explain the barriers that the program was unable to overcome. The government's report on the Mahila Samakhyas Programme provided no details on how the program has functioned or whether it has been successful in stopping child marriages. Although India's 2005 State Report provided information on the government's measures to address its obligations under Article 5 regarding the elimination of cultural and social patterns that contribute to stereotypes, none are specifically directed towards eradicating child marriage.

While the government acknowledged that traditional and cultural practices, as well as poverty and lack of awareness, are at the root of child marriage, India has failed to describe what it is doing to address these factors. As noted above, India has abdicated its responsibility in this regard to the very communities that are perpetuating the discriminatory ideas and practices that lead to child marriage, leaving it up to them to decide if and when change will occur. CEDAW does not permit the government to escape its obligations in this manner.

#### *Supplementary Information*

Despite the law criminalising the marriage of females below the age of 18 and males below the age of 21, young adolescents continue to marry before they reach the legal ages. According to the National Family Health Survey for 2005-06, more than one-quarter (27 percent) of Indian women aged between 20-49 married before age 15; over half (58 percent) married before the legal minimum marriage age of 18, and three-quarters (74 percent) married before reaching age 20.<sup>64</sup> While trends over time show a gradual decline in the proportion of girls and women married by ages 15, 18, and 20 years from the oldest to the youngest age groups, increases in the median age at first marriage are proceeding at a very slow

pace and a considerable proportion of women still marry below the legal minimum age. The national mean age at marriage for women in the age group 25-49 is 17.4.<sup>65</sup>

Feudal and patriarchal cultural norms and institutions contribute to child marriage in India. Marriage at a very young age carries grave health consequences for both the girl and her children. Adolescent mothers are more likely to experience complications such as obstetric fistula. Women who were married as children were significantly more likely to have three or more childbirths, a repeat childbirth in less than 24 months, multiple unwanted pregnancies, pregnancy termination, and sterilisation. One consequence of sterilisation is the reduced use of condoms among couples, which heightens the risk of HIV and other sexually transmitted infections. Child marriage has enormous implications for a girl's ability to exercise her other rights, including right to health, education and employment, because she subsequently becomes subject to the control of her husband. In other words, girls subject to child marriage suffer from poor health and significantly reduced opportunities for education, employment and economic independence.

#### *Recommendations*

1. India must begin enforcing its laws prescribing the legal age of marriage and requiring the consent of both parties for a valid marriage.
2. The 1978 Child Marriage Restraint Act must be amended so that the legal age of marriage is the same for males and females. It should also follow the Committee's recommendation that the law be amended so that marriages entered in violation of its provisions are void.
3. India must abandon its unilateral focus on legislation as the means for ending child marriage. Although appropriate and adequate legislation must be in place and enforced, it cannot be the only approach the government pursues.
4. Article 5 of CEDAW requires the government to adopt measures to change the social and cultural patterns that lead to child marriage. India must invest in further study on the causes, frequency, and impacts of child marriage, especially the impact on the ability of girls and women to exercise other rights. There is strong evidence that girls forced into early marriage suffer serious limitations on their rights to health, education, and employment (and the economic independence employment allows). Aside from tradition and culture, India must also examine the other causes of child marriage, including poverty and the perception that girl children are less valuable than boys.
5. India should carefully review the ICPD PoA recommendations on combating the

circumstances that lead to “the practice of prenatal sex selection, higher rates of mortality among very young girls, and lower rates of school enrolment for girls as compared with boys”. Such a program should focus on girl children and their needs.

6. In addition to enforcing laws on consent and minimum age for marriage, the government should work to change the way that families and society value girl children so that they are seen as more than potential childbearers and caretakers. India must ensure that girls and boys are treated equally with respect to their educational, health, social, economic, political, and inheritance rights.<sup>66</sup>
7. India's leaders must speak out and act against gender discrimination against women and girls and schools, the media and social institutions must eliminate stereotypes in communication and educational materials.<sup>67</sup> Furthermore, India must “develop an integrated approach to the special nutritional, general and reproductive health, education and social needs of girls and young women,” as these can compensate for earlier inadequacies girls and adolescent women suffered in nutrition and health care.

## 5. OTHER CONSIDERATIONS

The preparation of information for a CEDAW shadow or alternative report is an important first step in promoting women's sexual and reproductive health and rights, and can play a key role in ensuring a higher level of public awareness of the issues and changes in attitude that will enhance women's rights including in the areas of sexual and reproductive health.

### 5.1 Standalone Reports

In general, women's groups in a country should work together to prepare one report documenting the challenges facing women and the government's progress in implementing CEDAW. As explained earlier, this is because a collaborative report reflecting the concerns of a substantial number of women will demonstrate the depth and breadth of the problems.<sup>68</sup> Nevertheless, there may be times when it is not possible to prepare one report or where circumstances call for a separate report.

The IRAW Asia Pacific Shadow Report Guidelines<sup>69</sup> outline circumstances when it may be important for advocates to prepare a standalone report on a particular issue.

The most obvious situation necessitating a separate report is where advocates cannot reach a consensus on one or more issues.<sup>70</sup> Other situations may also call for separate reports, where, for example, it is necessary to highlight the situation of women within a minority group that are facing marginalisation or geographic areas in a country where a conflict is causing specific instances of violence or oppression of women and girls.<sup>71</sup>

There is no page limit on a separate report, but where one is prepared, it should not exceed 10 pages. This is because the Committee has limited time to review the numerous reports it receives for each state party's review. In addition to the state reports, NGO reports, and the states' responses to the Committee's lists of issues, United Nations specialised bodies, such as the International Labour Organization, also submit reports on different aspects of the state party's progress in implementing CEDAW. Therefore, the information presented in a separate shadow or alternative report should be precise and brief.

## 5.2 Reports by National or Regional Coalitions of NGOs

Usually, a local or national NGO based in a reporting state party undertakes the preparation and submission of a shadow report to the CEDAW Committee. However, during the Committee's 39th Session in 2007, NGOs from the Philippines submitted a shadow report during the CEDAW review of Singapore to highlight the circumstances of Filipino domestic workers in that country.

The Committee's willingness to accept shadow or alternative reports from NGOs operating outside the state party under review presents opportunities for creative advocacy. For example, a regional NGO that has collected data on trends across countries in South and Southeast Asia regarding the ability of women to access their sexual and reproductive health and rights could provide this information to the Committee.

While every country is different, it is also often the case that women in the same geographic regions face similar barriers in their individual countries. Information indicating that women are suffering similar violations in other countries in the region could expand the Committee's understanding of the underlying cultural and societal barriers that are contributing to the problem. The Committee could also use such information in reviewing the state party to develop questions that provide comparative examples of the barriers other states parties in the region have faced and how they have overcome these barriers.

For example, in looking at women's sexual and reproductive health and rights in countries with minority or religious communities that restrict women's equality, a shadow or alternative report must address the religious, cultural, and social barriers that preclude specific groups of women from fully enjoying their rights to information and access to choices and resources on family planning. While affirming the right of all communities to have their customs and traditions valued and respected, adherence to the frameworks of rights provided by CEDAW and the ICPD PoA calls on women's groups and networks to prioritise state commitments and obligations to achieve equality between women and men and provide women with the full range of rights and choices that would enable them to enjoy both formal and substantive equality in every aspect of their lives.

If one country in the region has made strides in overcoming barriers to a woman's full enjoyment of her rights, a regional NGO could describe this situation in a shadow report to the review of another country and propose that certain approaches

adopted in one country be considered as guidance for dealing with the same issue in another country.

Another potential example of a common issue that a regional coalition may identify is a state's interpretation of the grounds on which a woman has a right to an abortion. For example, as noted above, in its 2005 State Report to the Committee, the Pakistani government stated that Pakistani law permits abortion to save a woman's life, but failed to mention the exception for "necessary treatment". Other governments have interpreted similar exceptions to allow for abortions to preserve a woman's physical and mental health. A shadow report prepared by a regional coalition could highlight the way in which some countries interpret their exceptions to bans on abortion more broadly, while others restrictively construe such exceptions in violation of women's rights.

Furthermore, where national NGOs working on sexual and reproductive rights exchange information on the status of women's rights in their country, coalitions of these groups could work together to prepare shadow or alternative reports reflecting trends among the countries.

## 5.3 Shadow or Alternative Report for Advocacy in Other UN Forums<sup>72</sup>

The IWRAW Asia Pacific Shadow Report Guidelines encourage advocates to submit their shadow or alternative reports to other United Nations committees and explain how the information in the CEDAW report may be shaped so that it addresses the rights protected by other United Nations treaties, such as the Convention on the Rights of the Child and the Convention on the Elimination of Racial Discrimination.<sup>73</sup> For example, if a CEDAW shadow or alternative report is drafted so that it contains a separate section on teenage pregnancy and problems female adolescents face in accessing information on birth control, such information could also be submitted to the Committee on the Rights of Child.

Because the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right of women, on an equal basis with men, to "the highest attainable standard of physical and mental health",<sup>74</sup> a CEDAW shadow or alternative report documenting the status of women's sexual and reproductive health rights is especially relevant when a state party is reviewed by the Committee on Economic, Social and Cultural Rights.

In 2010, IWRAW Asia Pacific collaborated with the International Network for Economic, Social and Cultural Rights to develop *Participation in*

*the ICESCR and CEDAW Reporting Processes: Guidelines for Writing on Women's Economic, Social and Cultural Rights in Shadow or Alternative Reports.*<sup>75</sup> Although these guidelines do not focus on women's sexual and reproductive health rights alone, they contain helpful advice on how to prepare information for a shadow or alternative report that highlights the importance of economic, social, and cultural rights to achieving gender equality.<sup>76</sup> In addition, they contain "guiding questions" on preparing information for a shadow or alternative report on each of the ICESCR articles, including Articles 10 and 13, both of which are directly relevant to women's sexual and reproductive health rights.

Finally, the International Gay and Lesbian Human Rights Commission, in collaboration with IWRAW Asia Pacific, has prepared *Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW: A Handbook for Writing Shadow or Alternative Reports for CEDAW Incorporating Human Rights Issues Related to Sexual Orientation, Gender Identity, and Gender Expression.*<sup>77</sup> This comprehensive publication provides information on conceptualising sexual rights important to lesbian, bisexual, and transgendered women using the CEDAW framework, as well as practical guidance on preparing a shadow or alternative report for the Committee, including information on health, domestic violence, forced marriage, and discrimination in marriage.<sup>78</sup>

## 6. CONCLUSION TO THE GUIDELINES

These Guidelines provide background and guidance on using CEDAW and the ICPD PoA in analysing issues related to women's rights to sexual and reproductive health rights and preparing information on these issues for a shadow or alternative report to the Committee.

The three case studies provide ideas on how to critically assess a state's report on women's sexual and reproductive health rights from the perspective of the frameworks provided by CEDAW and the ICPD PoA and use the process of developing a shadow or alternative report to raise critical issues related to women's equality and empowerment so that the CEDAW Committee may take these into consideration during the review of the country concerned.



## ENDNOTES

- 1 These Guidelines are not intended as training materials, although they could form the basis for the development of such. They are designed as a reference for use in preparing information for a shadow or alternative report for the Committee.
- 2 IRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 2.
- 3 The fact that an issue affects a large number of women does not mean that it will be identified as a priority. For example, the status of rural women, who constitute the vast majority of women in Southeast Asian countries, cannot be properly assessed because of the lack of data. The CEDAW Committee has repeatedly commented on states parties' failure to collect even rudimentary data on rural women, who are often extremely vulnerable to rights violations because of their poverty, geographical isolation, and compared to urban communities, likelihood to embrace stereotypes and cultural traditions that undermine the equal status of women.
- 4 Prioritising issues is, by its very nature, a political process, and therefore, it is difficult to provide guidance on the criteria one should use to undertake such an analysis. In sum, however, advocates should recall that CEDAW gives special consideration to minority women facing intersectional discrimination and these are often the women least able to protect and promote their rights.
- 5 This explains that the Committee reviews the state report article by article and thus, it is best to use the same approach in organizing a shadow or alternative report. IRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 7.
- 6 The fulfillment of women's rights under Article 16, however, is not limited to access to family planning education, and contraception. Even with such access, barriers erected by a husband, partner, or family members may preclude a woman from exercising her rights. Thus, information in a shadow or alternative report related to Article 16 would include an assessment of what the government has done to empower women so they have a voice in family planning that is respected by the private actors who can influence her choices (e.g., husband, father, and mother-in-law).
- 7 IRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 8.
- 8 Law reform efforts and policies to address stereotypes, which are the obligations addressed by CEDAW Articles 2 and 5, will be relevant in assessing a government's fulfillment of the specific women's right protected by Articles 6-16. Thus, the parts of a shadow or alternative report covering Articles 2 and 5 would not be the only places where law reform or efforts to combat stereotypes would be addressed.
- 9 IRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), pp. 8-9.
- 10 Equal and Indivisible: Crafting Inclusive Shadow Reports for CEDAW: IGLHRC
- 11 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.24.
- 12 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.
- 13 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.1.
- 14 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 5.3.
- 15 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.2.
- 16 Explicit discrimination against women continues to exist, whether in law or because stereotypes and traditional ideas about the roles of men and women prevail in society. Even where current discrimination is absent, historical discrimination continues to impact the status of women. It is rare for a state party to dispute that discrimination against women, whether historical or current, is a significant cause of the diminished health status of women. Nevertheless, it is important to demonstrate that, in comparison to men, women do not have the same status with respect to health. Without expressly acknowledging discrimination against women, state parties, NGOs and the Committee have reasonably drawn the implicit conclusion that discrimination is at least one factor that accounts for the gap in health status.
- 17 The fact that women have a greater burden to assume responsibility for contraceptive use is reflected in total rates of fertility, wanted fertility rates, rates of male contraception, especially condom use, rates of male versus female sterilization, rates of abortion and number of female versus male contraception methods. For information on male conception rates as a percentage of total contraception, see Chapter 3, Part I.iv of ARROW's publication, "Reclaiming & Redefining Rights ICPD+15: Status of Sexual and Reproductive Health and Rights in Asia".
- 18 Although the ICPD PoA is not a binding authority on the nature of state obligation under CEDAW, it provides important detail on how governments can meet their obligations to protect women's sexual and reproductive health rights under CEDAW.
- 19 These Guidelines refer to Thailand's 2004 Combined Fourth and Fifth Periodic Reports, but an advocate preparing a shadow report would need to review Thailand's sixth (or later) periodic report, which was not available at the time these Guidelines were developed.
- 20 Consideration of reports submitted by states parties under article 198 of CEDAW, combined fourth and fifth periodic report of states parties, Thailand (24 June 2004), CEDAW/C/THA/4-5, paragraph 60(4).
- 21 Thailand 2004 State Report, paragraph 202.
- 22 Thailand 2004 State Report, paragraph 202.
- 23 Concluding comments of the Committee on the Elimination of Discrimination Against Women: Thailand, 3 February 2006, paragraphs 23-26 (34th Session (16 January-3 February 2006)), CEDAW/C/THA/CO/5.
- 24 Thailand's 2004 State Report.
- 25 Thailand's 2004 State Report.
- 26 Thailand's 2004 State Report, paragraphs 47-54, 67.
- 27 Combined initial, second and third period reports of States parties, Pakistan, paragraphs 243, 310, 317, 323, 340-349 (3 August 2005), CEDAW/C/PAK/1-3 ("Pakistan's 2005 State Report").
- 28 Pakistan's 2005 State Report, paragraphs 350-351.
- 29 Pakistan's 2005 State Report, paragraph 317.
- 30 Pakistan's 2005 State Report, paragraph 342.
- 31 Pakistan's 2005 State Report, paragraph 342.
- 32 Pakistan's 2005 State Report, paragraph 343.
- 33 Pakistan's 2005 State Report, paragraph 349.
- 34 Pakistan's 2005 State Report, paragraph 349.
- 35 Pakistan's 2005 State Report, paragraph 351.
- 36 United Nations Population Division of the Department of Economic and Social Affairs. (2002). Abortion Policies: A Global Review. Available: [www.un.org/esa/population/publications/abortion/doc/pakistan.doc](http://www.un.org/esa/population/publications/abortion/doc/pakistan.doc).
- 37 United Nations Population Division of the Department of Economic and Social Affairs. (2002). "World Abortion Policies 2011 Wall Chart." Abortion Policies: A Global Review. Available: [www.un.org/esa/population/publications/abortion/doc/pakistan.doc](http://www.un.org/esa/population/publications/abortion/doc/pakistan.doc).
- 38 Concluding Comments of the Committee on Elimination of Discrimination Against Women: Pakistan, 38th Session (14 May-1 June 2007), CEDAW/C/PAK/CO/3 (11 June 2007), paragraphs 40-41.
- 39 Pakistan's 2005 State Report, paragraph 349. Some of these factors were similar to those identified by Shirkat Gah (e.g., cost of contraception, side effects of contraception, and lack of money to treat them).
- 40 CEDAW General Recommendation No 24, paragraph 81.
- 41 Committee on the Elimination of Discrimination against Women. 1992. General Recommendation No. 19, 11th Session: Violence against Women. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Paragraph 24(m).
- 42 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.23(b), (e), (g).
- 43 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.23(d).
- 44 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 21.
- 45 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.21.
- 46 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation No. 24, 20th Session: Women and health. Available: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>. Paragraph 12(d).
- 47 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.21.
- 48 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 7.14(e).
- 49 Combined second and third periodic reports of states parties, India (19 October 2005), CEDAW/C/IND/2-3.
- 50 India's 2005 State Report, paragraph 9.
- 51 India's 2005 State Report, paragraph 131.
- 52 India's 2005 State Report, paragraph 197.
- 53 India's 2005 State Report, paragraph 197.
- 54 India's 2005 State Report, paragraph 197.
- 55 India's 2005 State Report, paragraph 312.
- 56 India's 2005 State Report, paragraph 328.
- 57 India's 2005 State Report, paragraph 328.
- 58 India's 2005 State Report, paragraph 328.
- 59 India's 2005 State Report, paragraph 329.
- 60 India's 2005 State Report, paragraph 329.
- 61 India's 2005 State Report, paragraph 330.
- 62 India's 2005 State Report, paragraph 328.
- 63 India's 2005 State Report, paragraph 329.
- 64 International Institute for Population Sciences (IIPS) and Macro International. (2007). National Family Health Survey (NFHS-3), 2005-06: India: Volume I. Mumbai: IIPS.
- 65 International Institute for Population Sciences (IIPS) and Macro International. (2007). National Family Health Survey (NFHS-3), 2005-06: India: Volume I. Mumbai: IIPS. The mean age of marriage varies in different states of India.
- 66 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraph 4.17.
- 67 United Nations Population Fund. 1994. International Conference on Population and Development Programme of Action. Available: <http://www.un.org/popin/icpd/conference/offeng/poa.html>. Paragraphs 4.17 and 4.19.



- 68 *A collaborative report improves the effectiveness of advocacy because it reflects “the voices of large numbers of women, as well as enhance the credibility of the report.” IWRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 9.*
- 69 *IWRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf).*
- 70 *IWRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 9.*
- 71 *IWRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 9.*
- 72 *For NGO guidelines on reporting to other treaty bodies, see the following: (1) Convention Against Torture, authored by the Association for the Prevention of Torture, 2004. Available: [http://www.ap.t.ch/index.php?option=com\\_docman&task=cat\\_view&gid=88&Itemid=250&lang=en](http://www.ap.t.ch/index.php?option=com_docman&task=cat_view&gid=88&Itemid=250&lang=en); (2) Convention on the Elimination of Racial Discrimination, authored by the International Human Rights Law Group. Available: [http://www.hrlawgroup.org/resources/content/IHRLG\\_CERDShado\\_Guidelines.pdf](http://www.hrlawgroup.org/resources/content/IHRLG_CERDShado_Guidelines.pdf); (3) International Covenant on Civil and Political Rights, authored by the Centre for Civil and Political Rights. Available: [http://www.ccprcentre.org/doc/CCPR/Handbook/CCPR\\_Guidelines%20for%20NGOs\\_en.pdf](http://www.ccprcentre.org/doc/CCPR/Handbook/CCPR_Guidelines%20for%20NGOs_en.pdf); and (4) Convention on the Rights of the Child, authored by the NGO group for the convention on the rights of the child. Available: <http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>.*
- 73 *IWRAW Asia Pacific. 2010. Guidelines on How to Write a Shadow/Alternative Report. Available: [http://www.iwraw-ap.org/using\\_cedaw/sr\\_guidelines.htm](http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm). PDF version: [http://www.iwraw-ap.org/resources/pdf/NGO\\_Participation\\_in\\_CEDAW\\_Part\\_1\\_and\\_2\\_Feb\\_2010.pdf](http://www.iwraw-ap.org/resources/pdf/NGO_Participation_in_CEDAW_Part_1_and_2_Feb_2010.pdf), p. 10.*
- 74 *International Covenant on Economic, Social and Cultural Rights, Articles 3 and 12. In addition, Article 10(2) addresses special protections for women during and after childbirth, maternity leave, and social benefits.*
- 75 *These guidelines are available at [http://www.escr-net.org/usr\\_doc/CEDAW\\_CESCR\\_reporting\\_guidelines\\_FINAL\\_Oct\\_6\\_2010.pdf](http://www.escr-net.org/usr_doc/CEDAW_CESCR_reporting_guidelines_FINAL_Oct_6_2010.pdf).*
- 76 *Participation in the ICESCR and CEDAW Reporting Processes: Guidelines for Writing on Women’s Economic, Social and Cultural Rights in Shadow/Alternative Reports at 3-4.*
- 77 *This handbook is available at <http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/945.html>.*
- 78 *Handbook at 22, 26, and 31.*

*ARROW is committed to promoting  
and protecting women's health rights  
and needs, particularly in the area of  
women's sexuality and reproductive health.*

*We believe that good health and  
well-being and access to comprehensive  
and affordable gender-sensitive health  
services are fundamental human rights.*

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