

REPRODUCTIVE HEALTH AND CEDAW

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The Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) was adopted by the United Nations General Assembly on December 18, 1979, and entered into force on September 3, 1981. By June 1994, 133 countries had ratified it. The Convention defines discrimination as any distinction, exclusion, or restriction that prevents the equal exercise or enjoyment by women of human rights and fundamental freedoms "in the political, economic, social, cultural, civil or any other field."¹ It is a comprehensive statement of the right to nondiscrimination on the basis of gender. By identifying specific areas of discrimination of special concern to women, the Convention supplements the antidiscrimination provisions in the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

Under Article 2 of the Convention, "States Parties condemn discrimination against women in all its forms" and "agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women by any person, organization or enterprise."² Articles 2 to 4 set out the kind of measures—legal, administrative, and otherwise—to be taken by States. These include affirmative action and the modification of social and cultural patterns of conduct. The remainder of the first sixteen articles cover specific areas of discrimination, including: traffic in women; political and public life; international representation; nationality; education;

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1. Women's Convention, *infra doc. biblio.*, art. 2.
2. Women's Convention, *infra doc. biblio.*, art. 2.

employment; *health care*; economic and social life; rural women; equality in law; marriage; and family.

The Convention establishes the Committee on the Elimination of Discrimination Against Women (CEDAW), a body of twenty-three experts elected by the States Parties to serve in their personal capacity. CEDAW is, therefore, one of the supervisory bodies consisting of independent experts charged with monitoring the implementation of U.N. human rights treaties. The Committee has been established for the purpose of considering the progress made in the implementation of the Convention. States Parties have undertaken to submit written reports to the Secretary-General of the United Nations, for consideration by CEDAW, on the measures that the States Parties have adopted to give effect to the Convention. These reports must be submitted within a year after the Convention enters into effect for the State concerned. Thereafter the reports must be submitted at least every four years and "further whenever the Committee so requests."³ Currently seventy-two initial, forty-two second, and twelve third reports of States Parties have been considered by CEDAW.

The Committee reports annually on its activities to the General Assembly through the Economic and Social Council, and it makes suggestions and general recommendations based on its examination of reports and information received from States Parties. By the end of the thirteenth session, twenty-one recommendations had been made, many of which contain relevant comments on women's reproductive rights.

THE WOMEN'S CONVENTION AND WOMEN'S HEALTH

States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women commit themselves to take all appropriate measures to implement the Convention in all fields, including particularly the political, social, economic, and cultural fields.⁴ These measures include legislation ensuring the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Consequently, some articles of the Convention deal with women's right to health and, specifically, with reproductive rights.

Article 10(h) of the Convention states that women have the right to "specific educational information to help to ensure the health and

3. Women's Convention, *infra doc. biblio.*, art. 18(b).

4. Women's Convention, *infra doc. biblio.*, art. 3.

well-being of families, including information and advice on family planning.”⁵

Article 12 of the Convention specifically concerns women’s health. It obliges States Parties: (1) to “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”; and (2) to “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.”⁶

In Article 14, which deals with rural-women’s rights, States Parties commit themselves to ensure to such women the right “[t]o have access to adequate health care facilities, including information, counselling and services in family planning.”⁷

In the field of employment, States must ensure, on a basis of equality between men and women, “[t]he right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”⁸ In order to prevent discrimination against women on the grounds of maternity, and to ensure their effective right to work, Article 11 requires States to take appropriate measures: (1) “[t]o prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave”; (2) “[t]o introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowances”; (3) “to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life”; and (4) “[t]o provide special protection to women during pregnancy in types of work harmful to them.”⁹

Article 16 of the Convention provides that, in order to eliminate discrimination against women in all matters relating to marriage and family, States Parties shall take all appropriate measures to ensure for women “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the

5. Women’s Convention, *infra doc. biblio.*, art. 10(h).

6. Women’s Convention, *infra doc. biblio.*, art. 12.

7. Women’s Convention, *infra doc. biblio.*, art. 14(2)(b).

8. Women’s Convention, *infra doc. biblio.*, art. 11(1)(f).

9. Women’s Convention, *infra doc. biblio.*, art. 11(2)(a)-(d).

information, education and means to enable them to exercise these rights."¹⁰

CEDAW'S GENERAL RECOMMENDATIONS AND WOMEN'S REPRODUCTIVE RIGHTS

CEDAW's General Recommendation Number 14, concerning female circumcision, recommends that States Parties take appropriate and effective measures to eradicate "the practice of female circumcision," as well as other traditional practices harmful to the health of women, and to include in their reports to CEDAW, under Article 12 of the Women's Convention, information about those measures.¹¹ CEDAW, furthermore, recommends, *inter alia*, that States Parties:

- (a) implement in their national health policies specific strategies, including the special responsibility of health personnel, in particular traditional birth attendants, "to explain the harmful effects of female circumcision";
- (b) invite assistance, information and advice from "the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices";
- (c) collect and disseminate basic data about such traditional practices through universities, medical or nursing associations, national women's organizations, or other bodies;
- (d) "support women's organizations at the national and local levels, working for the elimination of [female] circumcision and other practices harmful to women";
- (e) encourage politicians, "professionals, religious and community leaders at all levels including the media and the arts to co-operate in influencing attitudes towards the eradication of female circumcision"; and
- (f) introduce "appropriate educational and training programs and seminars based on research findings about the problems arising from female circumcision."¹²

General Recommendation Number 15, dealing with the "[a]voidance of discrimination against women in national strategies for the prevention and control of AIDS," requests that States Parties design programs to combat AIDS with special attention to both the rights and needs of women and the factors relating to the reproductive role of women and their subordinate position, which make

10. Women's Convention, *infra doc. biblio.*, art. 16.

11. *General Recommendation No. 14: Female Circumcision*, in *Report of the Committee on the Elimination of Discrimination Against Women*, 9th Sess., U.N. Doc. A/45/38 (1990).

12. *Id.*

them especially vulnerable to HIV infection.¹³ CEDAW also recommends ensuring the active participation of women in primary health care, and enhancing their role as care providers, health workers, and educators in the prevention of infection with HIV.

General Recommendation Number 19 highlights how violence against women "includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."¹⁴ These acts put women's health at risk and impair their ability to participate in family and public life on the basis of equality. In some States, there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. Such practices include: dietary restrictions for pregnant women, a preference for male children, and female circumcision and genital mutilation.

Compulsory sterilization and abortion are other practices that adversely affect women's physical and mental health, and infringe the right of women to decide on the number and spacing of their children. States Parties should prevent coercion in regard to fertility and reproduction, and should ensure that women are not forced to seek unsafe medical procedures, such as illegal abortions, because of a lack of appropriate fertility-control services. Effective legal measures, including penal sanctions, civil remedies, and compensatory provisions, should be implemented to protect women against all kinds of violence. Preventive measures, including public information and education programs to change attitudes concerning the roles and status of men and women, are also recommended by CEDAW.

In the last CEDAW General Recommendation, Number 21, regarding "equality in marriage and family relations," CEDAW addresses how the responsibilities of women in raising children affect their right of access to education, employment, and other activities related to their personal development. These responsibilities also impose inequitable burdens of work on women. The number and spacing of children have a similar impact. This influence also affects women's physical and mental health, as well as that of their children. For these reasons, women should be entitled to decide on the number and spacing of their children. Decisions to have children or

13. *General Recommendation No. 15: Avoidance of Discrimination Against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS)*, in *Report of the Committee on the Elimination of Discrimination Against Women*, 9th Sess., U.N. Doc. A/45/38 (1990).

14. *General Recommendation No. 19*, in *Report of the Committee on the Elimination of Discrimination Against Women*, 11th Sess., U.N. Doc. A/47/38 (1992).

not, "while preferably made in consultation with spouse or partner, must not be limited by spouse, parent, partner, or government."¹⁵

According to CEDAW, freely available appropriate measures for the voluntary regulation of fertility improve the health, development, and well-being of all members of the family. Such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment, while achieving sustainable economic and social development.

CONCLUSION

Through the ratification of the Women's Convention, States Parties have committed themselves to take all appropriate measures in order to guarantee women's reproductive health. States must ensure: women's rights to decide freely on the number and spacing of their children; women's access to information and advice on family planning, as well as access to health care services, including those services related to family planning and pregnancy, confinement, and the post-natal period; and women's rights to protection of health and safety in working conditions, including safeguarding the function of reproduction. The Convention also states that the role of women in procreation should not be a basis for discrimination, as the upbringing of children requires a sharing between men and women and society as a whole. Some of the General Recommendations adopted by CEDAW also ask States Parties to eradicate the practice of female circumcision and genital mutilation. Moreover, the Convention calls upon States to prevent coercion and ensure voluntary regulation regarding fertility and reproduction.

It would, nevertheless, be very useful if CEDAW would elaborate a General Recommendation on women's right to health, including women's reproductive rights, in order to clarify the scope of this concept and to recommend the implementation of more concrete and appropriate measures. For this purpose, CEDAW should take account of the Programme of Action of the United Nations International Conference on Population and Development, and, in particular, Chapter IV on "Gender Equality, Equity and Empowerment of Women," and Chapter VII on "Reproductive Rights and Reproductive Health."¹⁶

15. *General Recommendation No. 21, in Report of the Committee on the Elimination of Discrimination Against Women*, 13th Sess., U.N. Doc. A/49/38 (1994).

16. ICPD Programme of Action, *infra doc. biblio.*, at 25, 43.

In any case, CEDAW has, for two central reasons, experienced difficulties in attempting to deal efficiently with all of the women's rights included in the Convention. First, lack of time is hampering efforts to ensure compliance with the provisions of the Convention. Three weeks per year, which is the length of CEDAW's annual meeting, is not enough time to examine the reports of eleven or more States Parties in as much depth as is desirable and as the Committee usually is required to do. The Convention has sixteen articles referring to specific women's rights; each of these, because of their complexity, demands that both States Parties' reports and experts' questions deal with a wide array of matters. In particular, five of the Convention's articles require consideration of reproductive health. Second, lack of information affects enforcement. Due to the diverse subject matter of the Convention's sixteen articles, it is not easy for CEDAW's members to evaluate the information provided by the States Parties' reports. Some complementary reports from the U.N. Specialized Agencies or from NGOs have been very useful, but these are not always available and often do not deal with reproductive rights. Greater efforts could be made to publicize the Women's Convention and CEDAW's General Recommendations, and to encourage the involvement of NGOs in the Committee's work.

CEDAW's procedures have already been improved to some degree, and they can be further improved in the near future in order to resolve remaining challenges. Nevertheless, the protection of women's rights would require, as has been urged by the International Conference on Human Rights, the integration of these procedures into the work of the United Nations' human rights mechanisms. All of the treaty bodies and Special Rapporteurs, therefore, should regularly and systematically include in their reports available information on human rights violations affecting women, and ask the governments to include gender-disaggregated data in the information they provide.

The adoption of an Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women, which would establish a procedure under which individual women and groups or organizations could complain about rights violations, would also be very useful to protect efficiently women's rights to health. The United Nations must be aware, however, that if a Protocol were added to the Women's Convention, however, the workload of CEDAW would increase and the Committee would need more resources.

APPENDIX

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

adopted by the Expert Group Meeting on the Adoption
of an Optional Protocol to the Convention on the
Elimination of All Forms of Discrimination Against Women

sponsored by the
Women in the Law Project, International Human Rights Group
and the Maastricht Centre for Human Rights
29 September - 1 October 1994

The 1993 World Conference on Human Rights acknowledged the need for new procedures to strengthen implementation of women's human rights and it directed that:

the Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

At its 1994 session the Committee on the Elimination of Discrimination Against Women (CEDAW), the expert body which monitors implementation of the Convention, called for an expert meeting to begin drafting the protocol. Although the Commission on the Status of Women did not authorize such a meeting, at its 1995 session it will discuss the feasibility of introducing the right of petition under the Convention.

The Fourth World Conference on Women, to be held in Beijing in September 1995, will provide an opportunity to secure a commitment from governments to establish an optional complaints procedure. To advance this effort, the Women in the Law Project of the International Human Rights Law Group and the Maastricht Centre for Human Rights convened an independent expert meeting to prepare a draft optional protocol. This meeting, attended by members of CEDAW,

the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and international experts on women's human rights, adopted a text which is intended to serve as a basis for governmental deliberations.

The procedures set forth in the expert draft protocol would:

- * promote more effective implementation of the Convention;
- * allow redress of individual grievances;
- * further the interpretation and practical application of the Convention;
- * create broader public awareness of international guarantees of women's human rights; and
- * place the Convention on an equal footing with other international human rights treaties that have complaints procedures.

THE PROVISIONS OF THE DRAFT OPTIONAL PROTOCOL

The draft optional protocol adopted by the expert meeting would establish:

- I. an *individual and group complaints procedure*, giving CEDAW authority to review claims that a government has violated rights set forth in the Convention, or has not carried out its obligations under the Convention;
- II. an *inquiry procedure*, giving CEDAW authority to examine allegations concerning serious or systematic violations of the Convention *on its own initiative*.

Both procedures would apply to *all* rights set forth in the Convention. Both procedures would apply to violations of the Convention carried out by *private persons, groups or organizations*, because the Convention itself prohibits such private discrimination.

The protocol would be optional—applicable only to those States Parties that agree to it by ratification. It would come into force after ratification by five states. No reservations would be permitted. States ratifying the protocol must accept both the individual and group complaint procedure and the inquiry procedure.

I. Under the *individual and group complaints procedure*, individuals, groups, and organizations would have standing to submit communications if she or they:

- * claim to have *suffered detriment* as a result of a violation of any of the rights in the Convention

—this draft provision would confer standing on victims of violations, such as a woman who cannot administer property because women as a group are denied legal capacity or a woman who has been arrested or convicted under penal laws that discriminate against women;

* claim to be *directly affected* by a government's failure to carry out its obligations under the Convention

—this draft provision would confer standing on individuals or groups who have not suffered victimization but have been directly affected by government action or inaction, such as a family planning organization wishing to challenge restrictions on access to contraceptives or the family members of a woman murdered by her husband who wish to challenge the government's failure to take adequate measures against domestic violence;

* claim that a State party has violated rights in the Convention or failed to carry out its obligations under the Convention with respect to a person or group other than the author, who has in CEDAW's opinion a *sufficient interest* in the matter

—this draft provision would confer standing on individuals or groups who wish to challenge systemic violations, or who may be better placed to bring claims because they do not face the dangers of reprisal or resource constraints that may deter those individuals or groups who are victimized or directly affected from pursuing claims, such as an association of lawyers wishing to challenge the failure to criminalize marital rape or an international organization active in promoting the right to education wishing to challenge the failure to implement literacy programs for rural women.

Although claimants would be required to exhaust domestic remedies before submitting a complaint, CEDAW should be expected to follow the established practice of other human rights bodies and waive this requirement where domestic remedies are unreasonably prolonged, are unlikely to bring effective relief, or do not include due process protections, or where access to those remedies has been denied.

In examining a complaint, CEDAW would have authority to adopt those procedures best suited to ascertaining the facts and assessing the extent to which the government has fulfilled its obligations under the Convention. Such procedures could include taking written or oral evidence and, with the government's consent, on-site visits. CEDAW could also take urgent measures in response to emergency situations while a complaint is under review, and request interim action by the government to prevent irreparable harm or preserve the status quo. It could consider information from outside sources (such as U.N. or NGO reports), in addition to information provided by the author(s) of the complaint and the State Party concerned.

After examining a complaint, CEDAW would: (1) adopt "views" on the merits of the complaint; and/or (2) make recommendations

concerning specific measures to remedy any violation or failure by the government to perform its obligations under the Convention. The government would be obligated to take all steps necessary to remedy the violation, or the failure to perform its obligations. It would be obligated to ensure that the victim receives adequate reparation or other appropriate remedy, and/or to implement any recommendations made by CEDAW. The government would be required to report to CEDAW on the measures it has taken to ensure such remedies or carry out CEDAW's recommendations.

The draft protocol also provides that CEDAW would be at the disposal of the author(s) of the complaint and the government to facilitate a settlement that would be consistent with the provisions of the Convention. In cases where a settlement is reached (and CEDAW therefore does not adopt views or make recommendations), CEDAW would report on the facts of the case and the settlement reached.

II. Under the *inquiry procedure*, CEDAW could initiate a confidential inquiry in response to information that appears to it to indicate a *serious or systematic violation* of the Convention, or a *serious or systematic failure by a State party to perform its obligations* under the Convention. That inquiry would be based on reliable information received from various sources, including other UN bodies, NGOs or press sources. The inquiry procedure could be triggered by a single serious violation, such as a campaign of gender-based persecution against women political leaders or writers, or by a pattern of violations, such as trafficking in women or sexual assault of women in armed conflict.

CEDAW would seek the cooperation of the government(s) concerned but would continue to investigate even if the government does not cooperate. Following its investigation, which could include an on-site visit with the government's consent, CEDAW would transmit its findings and recommendations to the government. Although the inquiry proceedings would be confidential, CEDAW could decide to publish a report after conclusion of its inquiry. The government would be obligated to respond to CEDAW's findings and recommendations and CEDAW could request follow-up reporting by the government on the steps taken in response to its findings and recommendations.

