

# **DAY OF GENERAL DISCUSSION ON THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH**

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## **Panel 4: Women's rights and a General Comment on the Right to Sexual and Reproductive Health**

### *Introductory remarks*

It is my great honor and privilege to participate in this Day of General Discussion on the Right to Sexual and Reproductive Health organized by the Committee on Economic Social and Cultural Rights as a member of its sister treaty body, the Committee on the Elimination of Discrimination against Women. I will speak in my individual capacity as a CEDAW Committee member and will try to bring in today's discussion the CEDAW Committee's gendered perspective of the right to sexual and reproductive health as provided by the Convention on the Elimination of all forms of Discrimination against Women ratified by 186 State Parties.

At the outset I would like to point out that harmonization of work and cooperation between UN Human Rights Treaty Bodies is essential not only with respect to their working methods but more importantly with respect to the their recommendations including General recommendations on human rights covered by more than one treaty.

In this respect I would like to mention the decision of the Committee on the Rights of the Child and the CEDAW Committee to establish a Joint working group for the elaboration of the Joint General Recommendation on Harmful Practices that will focus on FGM and some other harmful practices that violate both Conventions. The main idea is to provide State Parties with a Joint General recommendation that will interlink protection and obligation from both treaties in order to strengthen their implementation at the national level in an integrated manner.

### *Gender perspective*

Is of utmost importance that the CESCR new General recommendation includes a strong gender perspective on the right to sexual and reproductive health.

We could ask the pertinent question: WHY is gender perspective and focus on women's right important for the right to sexual and reproductive health.

The short answer on the question WHY is summarized in reaffirmation of human rights of women and the girl child as "an inalienable, integral and indivisible part of universal human rights" by the Vienna World Conference on Human Rights.

The longer answer is provided by the CEDAW Convention adopted more than 30 years ago and is clearly connected with the nature of those rights whose denial affects women predominantly.

The CEDAW Convention as the Vienna Declaration and Plan of Action also **contains recognition of women's rights as human rights**. The Preamble of the CEDAW Convention recalls the International Covenants on Human Rights and

obligation of States to ensure equal right of women and men to enjoy all economic, social, cultural, civil and political rights, but also expresses concern that despite these various instruments extensive discrimination against women continues to exist. This led to the adoption of a gender specific treaty, namely the CEDAW Convention, which aims to eliminate discrimination against women in all fields of life. As such the CEDAW Convention provides **a gender perspective for all human right covered by other human right treaties**. The CEDAW Convention focuses on the elimination of different forms of discrimination against women and girls including discrimination with respect to the right to sexual and reproductive health.

With respect to the today's topic **the right to sexual and reproductive health** we could observe that both the International Covenant on Economic Social and Cultural Rights and the CEDAW Convention protect the right to health. The ICESCR as a gender neutral instrument establishes the right to health and applies to both women and men equally. The scope of application of CEDAW is only women. It recognizes the right to non-discrimination of women in the field of health and protects some specific rights of women related to reproduction, pregnancy and maternity.

### ***CEDAW and the right to sexual and reproductive health***

In order to elaborate the gender perspective of the right to sexual and reproductive health I will focus of women's right to health including the sexual and reproductive health under the relevant provisions of the CEDAW Convention and the CEDAW Committee's General Recommendations or Concluding observations. In conclusion I will give an example using a case filed under the Optional Protocol dealing with reproductive rights.

As already pointed out, the CEDAW Convention is a gender specific instrument that protects women throughout their lifecycle and implicitly includes girls. Although it is gender specific its goal is the recognition and achievement of the *de jure* and *de facto* equality of women and men or **substantive equality**, which is to be achieved by a policy of elimination of all forms of discrimination against women. The Convention contains several articles that call for specific actions against discrimination directly related to the right to sexual and reproductive health. Some of them are further elaborated in the Committee's General recommendations.

The Convention in its Article 2, on which the Committee recently adopted the new General recommendation No. 28 on the Core Obligations of States Parties, calls for the elimination of discrimination and the equality of women and men across all rights, The new **General recommendation 28 on the Core Obligations of States Parties under the Article 2** states: “the *Convention is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender*“.

The CEDAW Committee has adopted up to now 28 General Recommendations. Some of them are especially relevant for the right to sexual and reproductive health:

- General Recommendation No. 24 on Women and health;
- General recommendation No. 19 on Violence against women;
- General recommendation No. 21 on Equality in marriage and family relations;
- General recommendation No. 28 on the Core Obligations of States Parties under Article 2.

***CEDAW and special measures for protection of maternity and reproduction:  
Articles 4 and 11***

Article 4 of the Convention specifies that „*Adoption by States Parties of **special measures**, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*”

Article 11 on the elimination of discrimination against women in the field of employment provides for **such special measures**: (f) the right to protection of health and to safety in working conditions, including the safeguarding of the **function of reproduction**. This article also aims to prevent discrimination against women on the grounds of marriage or **maternity** and to ensure their effective right to work. It calls States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, **dismissal on the grounds of pregnancy or of maternity leave** and discrimination in dismissals on the basis of marital status;
- (b) **To introduce maternity leave** with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (d) To provide **special protection to women during pregnancy in types of work proved to be harmful to them**.

***CEDAW and health: Article 12, General recommendation No. 24 on Women and Health***

The Convention in Article 12 (1) addresses women’s health in general and requires States to eliminate discrimination against women in their access to health care services. Under the Article 12 (1) States Parties agree to **ensure equality in access to healthcare and family planning**.

Under the CEDAW Article 12(2) States Parties agree to ensure **to women appropriate services in connection with the pregnancy**, confinement and the post-natal period granting free services where necessary. Those are health care services that only women need and as already mentioned under Article 4 such special measures aimed at protecting maternity shall not be considered discriminatory.

The CEDAW Committee also monitors the implementation of the Beijing Declaration and Platform for Action that is closely interlinked with and complements the CEDAW Convention. With respect to the right to health the Beijing Platform for Action provides definition of **reproductive health** and **reproductive health care**. It defines **reproductive health** as *“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so“*.

It also defines **reproductive health care** *as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes **sexual health**, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.*

The Committees General Recommendation No. 24 on Women and Health explains that women’s right to the enjoyment of the highest standard of health must be secured throughout the whole life cycle in equality with men. It elaborates that the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment.

It also explains that it is **discriminatory** for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

This General recommendation calls State parties to “*Prioritize 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 criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion*”.

It further explains that the States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. States parties should not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment as these violate women's rights to informed consent and dignity.

### ***Concluding observations on maternal mortality***

In its Concluding observations the CEDAW has repeatedly expressed concern over high rates of **maternal mortality**. It has linked high rates of maternal

mortality to lack of access to and insufficient availability of comprehensive **reproductive health services** and lack to quality post-abortion care for complications resulting from unsafe abortion. It has made the connection between insufficient contraceptive access and high rates of abortion. Where abortion is illegal and criminalized the CEDAW Committee has recommended to State parties to remove punitive provisions imposed on women who undergo abortion.

The Committee has also recommended that States increase access to reproductive health services and contraceptives, ensure that births are attended by trained professionals, take measures to avoid women's reliance on abortion as a means of birth control and take measures to protect women from unsafe abortion.

The Committee has also in its Concluding observations expressed concern regarding sex-selective abortions and recommended adoption of national legislation prohibiting sex-selective abortion and monitoring of its implementation. It also calls for the implementation of comprehensive strategies to overcome traditional stereotypes regarding men's role in society which result in son preferences.

### **CEDAW and the right to family planning: Article 16 and General recommendation No. 21 and General recommendation No. 19**

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

The CEDAW is the only international human rights treaty with a specific article on equality in marriage and family relations that among other rights also affirms

women's reproductive rights. Article 16 on equality in marriage and family life explicitly establish in subparagraph (e) *the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights*

Article 16 recognizes the basic right of all individuals to decide on the number and spacing of their children and to have access to the information, education and means to do so. This right includes the right to make decisions concerning reproduction free of discrimination, coercion and violence.

In its General recommendation 19 on Violence against women the CEDAW Committee recommends that State parties take measures to prevent coercion with regards to fertility and reproduction. In the Concluding observations the Committee has expressed concern over laws that require a husband's authorization in order for his wife to access family planning methods, such as sterilization.

### **CEDAW and Sexual education: Article 10**

Under the Article 10 (h) States Parties agree to **ensure equality in access to specific educational information and advice on family planning.**

General Recommendation 24 on Women and Health calls State parties to prioritize the **prevention of unwanted pregnancy** through family planning and **sex education** and to reduce maternal mortality rates through safe motherhood services and prenatal assistance.

In its Concluding observations the Committee has encouraged State parties to provide sexuality education in schools. The Committee has linked sexual

education to prevention of HIV/AIDS, unwanted pregnancies, abortions and maternal mortality. The Committee has also addressed the content of sex education programs recommending that they include information on reproductive rights, responsible sexual behavior, prevention of teenage pregnancies and family planning.

General Recommendation 28 on the Core obligations under article 2 calls States Parties to pay attention to the specific needs of (adolescent) girls by providing education on sexual and reproductive health and by carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.

### **Views under the Optional Protocol: case of violation of women's reproductive rights and right to health**

The Optional Protocol to the Convention, under which the Committee considers communications submitted by or on behalf of individuals or groups of individuals who claim to be victims of a violation of rights in the Convention and inquires into grave or systematic violations of the Convention's provisions, now has 100 States parties.

In the Communication No. 4/ 2004 A.S v Hungary the CEDAW Committee addressed reproductive rights of a woman and held a state responsible for failing to provide a woman with necessary information and failure to obtain full consent for reproductive health procedures. This decision establishes that obligations to ensure women's human rights require that women must be provided with acceptable reproductive health services, specifically requiring free and informed consent to a sterilization procedure.

In this case upon going into labor, Ms. A.S., a member of the Roma community, needed an emergency Caesarian section. Immediately before the surgery, a

doctor asked Ms. A.S. to sign consent forms on which the doctor had hand-written a statement that Ms. A.S. consented to a sterilization procedure. Ms. A.S. did not understand the statement or that she had been sterilized until after the operation took place. Her claim of civil rights violations and negligent sterilization was rejected at the local level.

The Committee held that Ms. A.S.'s rights were violated when a doctor in a public hospital performed a forced sterilization procedure without providing adequate information regarding the sterilization procedure. The doctor failed to obtain Ms. A.S.'s free and informed consent and violated her right to decide the number and spacing of children as well as the right to access sexual and reproductive health education and family planning information.

Hungary was found to have violated Ms. A.S.'s rights under the CEDAW Convention:

- article 16 paragraph (e) on the right 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;
- under Articles 10(h), on the access to information and advice on family planning;
- under Article 12 on the fully informed consent to medical procedures, right to information on family planning and the right to appropriate services in connection with pregnancy and the post-natal period;

The Committee recommended that Hungary compensate Ms. A.S. and take measures to make sure health officials give information to patients and obtain informed consent. In 2008, Hungary amended the Public Health Act to ensure that women received proper information regarding sterilization procedures. Finally, the compensation has been paid to Ms. A.S.

