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Estudios en Homenaje a
Cecilia Medina Quiroga

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LA LUCHA POR LOS DERECHOS HUMANOS HOY
Estudios en Homenaje a Cecilia Medina Quiroga

Integrating women's rights into the work of the Human Rights Committee

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This paper describes the work of the Human Rights Committee¹ in the 1990s, in particular between 1995 and 2000, when it was integrating wider aspects of women's rights into its work. The paper describes how information was provided by NGOs to the Committee about violations of women's rights under the Covenant, and how the Committee made use of that material in its consideration of States' reports and in drafting its Concluding Observations. These Observations became the foundation of a new General Comment in 2000 on Equality of Rights between Men and Women. During this process, issues were raised which had been given little attention before, many involving threats to women's right to life and to personal security such as violence against women, sexual abuse and access to safe abortion.

Cecilia Medina-Quiroga was a member of the Committee from 1995 to 2002. She drafted the General Comment, and chaired the Committee in 1999 and 2000 when the Committee was discussing it. The first author was a member of the Committee from 1993 to 2000, and had previously been a member and Chair of the Committee on the Elimination of Discrimination Against Women. The second author was co-founder and President of Equality Now, an NGO which provided relevant material to the Committee. The authors, who both played a role in the developments described, have written this paper in tribute to Cecilia Medina to commemorate the cata-

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¹ The Human Rights Committee is established under the International Covenant on Civil and Political Rights and monitors the compliance by States parties of their obligations under the Covenant.

lytic role she played in the integration of women's rights into the Committee's work, and more specifically in the General Comment.

I. WOMEN'S RIGHTS ARE HUMAN RIGHTS

The founding principles of the United Nations include respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion². This principle was enshrined in the Universal Declaration of Human Rights³, and was carried forward into the Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (ICESCR). Women's rights are further elaborated in the Convention on the Elimination of all forms of Discrimination Against Women (the Women's Convention)⁴.

A. *The call for integration of women's rights in the UN system*

In the 1990s, the women's movement was calling for the human rights violations suffered by women to be dealt with more effectively by the UN human rights system. The Vienna Declaration of 1993⁵ and the Beijing Declaration and Program of Action of 1995⁶ called on human rights treaty bodies to better integrate the human rights of women in their work.

The essence of women's claim was that the mainstream human rights bodies had given little attention to such issues as gender based violence, sexual harassment, exploitation and trafficking in women, gender bias in the administration of justice and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism⁷. Women argued that the concept of human rights should include these issues, which were central to their personal integrity, rights and freedoms.

² Charter of the United Nations, article 1 (3).

³ GA Res 217 A (III) 10 december 1948, article 2.

⁴ GA Res 34/ 180, 18 December 1979; entry into force 3 september 1981.

⁵ The Vienna Declaration and Programme of Action, World Conference on Human Rights, 25 June 1993, A/CONF.157/23 (referred to as "Vienna") paras 42, 18, and 38.

⁶ Beijing Declaration and Programme of Action, Fourth World Conference on Women, 15 september 1995, (A/Conf. 177/20) para 325.

⁷ Vienna, para 38.

B. Response of UN Human Rights bodies

These calls had been responded to by the adoption of the Declaration on the Elimination of all Forms of Violence against Women in 1993⁸, and the appointment by the Commission on Human Rights of a Special Rapporteur on Violence against Women in 1994⁹.

The Committee on the Elimination of Discrimination Against Women (CEDAW), the monitoring body for the Women's Convention, adopted a General Recommendation on Violence against Women in 1992¹⁰. This defined gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, as discrimination under the Convention.

II. WOMEN'S RIGHTS UNDER THE COVENANT ON CIVIL AND POLITICAL RIGHTS

Up to the period described, the Human Rights Committee (the Committee), the monitoring body for the ICCPR, had given little attention to gender based violence or to the other issues mentioned. It dealt with women's rights mainly in the context of discrimination and equal enjoyment of rights, under articles 2 (1), 3 and 26 of the ICCPR¹¹. Article 3 provides that:

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

The practice of the Committee is to adopt General Comments on particular provisions of the Covenant. These Comments assist States to pre-

⁸ GA Res. 48/104, 20 december 1993.

⁹ Resolution 1994/45, 4 march 1994.

¹⁰ CEDAW, General Recommendation No 19, 11th Session 1992, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.3, 1997 ("Compilation of General Comments 1997"), p. 128.

¹¹ Several communications dealt with discrimination against women in the fields of social security and citizenship: *Broeks v. Netherlands*, 172/1984, views of 9 April 1987, A/42/40 p. 139; 182/84, *Zwaan de Vries v. the Netherlands*, 182/1984 views of 9 April 1987 A/42/40 p. 160; 218/1986, *Vos v. the Netherlands*, 218/1986, views of 29 March 1989, A/44/40 p. 232; *Aumeeruddy-Cziffra et al. v. Mauritius*, 35/1978, views of 9 April 1981, A/36/40 p. 134.

pare their reports to the Committee by outlining the issues and information relating to particular articles that should be included¹². They provide an opportunity for the Committee to express its views about the scope of States' obligations under each Covenant provision.

In 1981, the Human Rights Committee adopted a General Comment on article 3¹³. This Comment pointed out that both measures of protection against discrimination *and* affirmative action were necessary to ensure the positive enjoyment of rights by women. States were asked to review any laws which draw a distinction between men and women, in so far as those laws adversely affect Covenant rights.

In 1989 the Committee adopted a General Comment on Non-discrimination¹⁴, which defines discrimination as:

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms¹⁵.

In this General Comment, the Committee reaffirmed its views that article 26 provides an independent autonomous right to be protected from discrimination "in any field regulated and protected by public authorities"¹⁶, and that States may be required to take affirmative action to correct endemic discrimination, even by preferential treatment (para 10).

A. *HRC decides to revisit article 3*

In 1995, following the Vienna Conference, the Human Rights Committee amended its Guidelines for State reports to ask States for information about "factors affecting... the equal enjoyment by women of [each] right"¹⁷.

¹² General Comments are made under article 40 (4) of the ICCPR; for their purpose see HRI/GEN/1/Rev.3, 1997 p. 2.

¹³ General Comment No. 4 on article 3, 13th session, 1981, HRI/GEN/1/Rev.3, 1997 p. 5.

¹⁴ General Comment No 18, Non-Discrimination, articles 2 (1), 3 and 26 of the Covenant (37th Session, 1989) para 12, HRI/GEN/1/Rev.3, 1997 p. 26.

¹⁵ General Comment no 18, (cited above), para 7. This definition is based on similar definitions in CERD and the Women's Convention.

¹⁶ See cases cited in Note 11 above.

¹⁷ 53rd Session, April 1995 A/40/40 para 44.

In september 1995 the Chairpersons of Human Rights treaty bodies recommended that the treaty bodies introduce gender perspectives into their work¹⁸. In 1996 the Human Rights Committee, prompted by the developments outlined above, decided to prepare a new General Comment on article 3 of the Covenant¹⁹. Recent changes in the membership of the Committee made it more receptive to a new approach to gender issues.

The first author had joined the Committee in 1993 after eight years as a member of CEDAW and was familiar with gender issues. A chance meeting in Geneva in July 1994 between the authors of this paper led to a new initiative which would advance the Committee's work on integrating women's rights into its work. Following this meeting, the second author, the co-founder of Equality Now, provided information on an informal basis to the first author about Nepal, a State due for consideration by the Committee at its October 1994 session. This information revealed that in Nepal, women who had had an abortion were prosecuted and imprisoned. The law criminalizing abortion had no exceptions, even for rape or where the mother's life was in danger. The issue was raised with the State and led to a Concluding Observation regretting "the high proportion of women prisoners sentenced for offences resulting from unwanted pregnancies"²⁰. This was the beginning.

For the next five years, from 1995 to 1999 inclusive, Equality Now made regular formal submissions to the Human Rights Committee, which were distributed to all members. These submissions, covering 35 countries in all, dealt with issues of importance to women in one or more States whose reports were listed for consideration at the Committee's next session. Changes in procedure and practice in the early 1990s made the Committee more willing to receive and make use of material provided by NGOs.

Another important change in the Committee was the arrival in 1995 of Cecilia Medina-Quiroga as a newly elected member. She brought with her a strong jurisprudential background, an extensive knowledge of human rights and a commitment to women's rights. Her arrival coincided with the first submissions by Equality Now, and her influence on the Committee enabled women's issues to be given greater prominence. Her partnership with the first author in raising these issues generated momentum that grad-

¹⁸ Report of 6th Meeting of Chairpersons of Human Rights Treaty bodies, september 1995, A/50/505, para 34 (a) & (c).

¹⁹ HRC 56th Session, march 1996, A/51/40, p. 53, §366.

²⁰ HRC Concluding Observations on Nepal, A/50/40 (1995), para 67.

ually spread through the Committee and had a significant impact on the integration of women's issues.

B. Equality Now and its work

As an organization working to broaden the scope of the human rights bodies' coverage of women's rights, Equality Now chose the Human Rights Committee rather than CEDAW as the focus of its work. In making this choice, it was relying on the expertise of CEDAW's former Chair, the first author, to interpret the provisions of the Covenant on Civil and Political Rights to address the issues of concern to women and to Equality Now that had hitherto been absent from the work of the human rights bodies, including the Human Rights Committee. Among these issues were rape, domestic violence, female genital mutilation, and reproductive rights.

In preparing its submissions to the Committee, Equality Now would reach out to NGOs in the countries coming up for review. Often they were not aware of the Human Rights Committee and its agenda, as their work mostly had focused on CEDAW to the extent that they had engagement with the United Nations. Equality Now provided the NGOs with copies of their governments' reports to the Committee and helped them prepare their own reports, which Equality Now submitted to the Human Rights Committee together with a summary of concerns. Equality Now ensured that there was adequate research to back up the issues raised and suggested how these issues related to provisions of the Covenant. To the extent possible, Equality Now and the NGOs in the countries concerned sent representatives to attend the Committee's Sessions, to have a chance to speak informally with the members of the Committee and to observe the dialogue with their government officials. NGOs also had an important role to play in publicizing the issues raised in the dialogue with the State party and the Concluding Observations of the Committee, which otherwise might not have been given much attention in the countries concerned.

C. Impact on the Committee and its concluding observations

The submissions of Equality Now were provided to all members of the Committee. This enabled them to ask questions of the States' representatives on women's issues, and to include their concerns about those issues in their Concluding Observations. While the first author and Cecilia Medina-Quiroga often took the lead in asking questions based on the Equality

Now material, other members began to appreciate its quality and to make use of it.

The first State to be considered under this approach was Yemen, in March 1995. Equality Now's submission to the Committee highlighted several issues, including female genital mutilation and the wife obedience law²¹. The first author raised both these issues, as did Cecilia Medina Quiroga²². Two other members asked about the first of those issues²³. Both issues are covered in the Committee's Concluding Observations²⁴.

By March 1996, when the Committee was putting questions to Zambia about its Report, four members referred directly to the submissions which Equality Now had prepared in consultation with the Zambia Association for Research and Development (ZARD) and Women in Law and Development in Africa (WiLDAF)²⁵. Several other members raised concerns based on that submission²⁶. Several key issues raised in the submission, including violence against women, prejudicial attitudes and the continued application of discriminatory customary laws to matters of personal status were covered by the Committee's Concluding Observations²⁷.

III. THE NEW GENERAL COMMENT ON ARTICLE 3

By 1998, when Cecilia Medina-Quiroga began to draft the new General Comment on article 3, the Committee had adopted numerous Concluding Observations dealing with gender issues. The great majority of these had emanated from the period beginning with 1995. Where the Committee had expressed its views on certain issues in its Concluding Observations it was easier to get agreement on the text of the General Comment. In

²¹ Art 40 of the Yemen Personal Status Act No. 20 of 1992, A/50/40, p. 51, para 255.

²² Summary Records of the HRC, 30 March 1995, CCPR/C/SR.1403, paras. 25, 26, 36.

²³ CCPR/C/SR.1403, Mr Francis, para. 30, Mr Bhagwati, para 44.

²⁴ HRC Concluding Observations on Yemen, A/50/40 p. 49. See further, sections VII.1 and XI.3 below.

²⁵ CCPR/C/SR1488, 27 March 1996, Mr Kretzmer, para 19, Mr Bhagwati para 25, Mr Mavrommatis para 27, Mr Francis para. 34.

²⁶ CCPR/C/SR1489, 27 March 1996, Mrs Medina-Quiroga para. 32, Mr Buergenthal para. 44, Ms Chanet para 49, Mr Lallah para. 52 and Mr Prado Vallejo para. 60.

²⁷ HRC Concluding Observations on Zambia, CCPR A/51/40 (1996) paras. 195, 207.

some cases the Committee was able to make a clear normative statement on an issue²⁸, as distinct from asking States to report what action they had taken in respect of that issue²⁹. The early drafts of the General Comment included references to the Committee's Concluding Observations. Those references are not part of the final text, but are included in *this* paper where relevant³⁰.

A preliminary draft of the General Comment was prepared by Cecilia Medina-Quiroga and circulated to the Committee for written comment. In 1999 Cecilia Medina-Quiroga became Chair of the Committee. Discussions began at the 65th Session in March 1999³¹ and continued at the 67th Session in October 1999³². A final text was discussed at the 68th Session in March 2000³³, and the General Comment was adopted on 27 March 2000.

A. *Scope of the General Comment*

The General Comment opens by calling on States to ensure to men and women equally the enjoyment of all rights provided for in the Covenant. (§2) One of its important aims is to identify factors which impede or affect the equal enjoyment by women of their rights and freedoms (§6). It outlines actions which States should take to ensure the equal enjoyment of these rights, including the removal of obstacles, education of populations and officials, adjustment of legislation, measures of protection and other positive measures. States are asked to provide necessary information to enable the Committee to assess progress and to identify what further measures are needed, and what difficulties are being encountered (§3).

²⁸ As for example that "Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment", §31.

²⁹ For a discussion on paragraph 20 (privacy) and on the purpose of General Comments, see CCPR/C/SR 1790, 21 October, paras. 10-23; Mme Chanet, para. 10, Mr Henkin 13 and Mr Scheinin 19 took a broad view; Mr Kretzmer 15 and Mr Lallah 17 took a more limited view.

³⁰ CCPR/C/SR 1831, 27 March 2000 para. 148.

³¹ CCPR/C/SR 1736 26 March, 1739 and 1740, 30 March 1999 (NEW York).

³² CCPR/C/SR 1790 21 October, 1793 25 October, 1795 and 1796 26 October 1999 (Geneva).

³³ CCPR/C/SR 1812 13 March, 1815 14 March, 1816 and 1817 15 March, 1819 17 March, 1821 20 March, 1822 22 March and 1831 27 March 2000.

The Comment stresses throughout, the importance of adopting protective measures in respect of the violations outlined, and, above all, of the need to have effective legal remedies where rights are violated (eg, §11).

Reinforcing its earlier General Comments on the scope of Covenant protection against discrimination³⁴, the new Comment reaffirms that States are mandated "to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of right" (§4).

B. Scope of this paper

The General Comment considers each article of the Covenant in turn from a gender viewpoint. Some violations of women's rights fall under more than one article of the Covenant, in addition to article 3. For example, violence against women may involve articles 7 or 9; denial of abortion may come under articles 6, 7 or 17. This paper highlights some significant issues, such as those relating to violence and reproductive rights, in order to show how the Committee linked these violations of women's rights to particular articles of the Covenant. There are many other issues covered in the General Comment which could not be mentioned in this paper, including women prisoners, minority rights, women and poverty, equality before the courts and equality in the conduct of public affairs.

IV. VIOLENCE AGAINST WOMEN

One of the most insidious, widespread and persistent violations of women's rights is violence against women. Its effect on the personal security and even the lives of women is now recognized as an international concern and a human rights issue.

Under the Covenant, States have an obligation to protect rights not just against violations by the State or its agencies, but also against acts committed by private persons or entities that might impair those rights³⁵. However,

³⁴ General Comment No 18, cited above, paras. 7 and 12.

³⁵ General Comments No 16 on article 17 (32nd Session, 1988) HRI/GEN/1/Rev.3, 1997 p. 21, paras. 1 and 9; No 20 on Article 7 (44th Session, 1992) HRI/GEN/1/Rev.3, 1997, paras. 2 and 13; No 31 on The Nature of the General Legal Obligation

until the 1990s the Committee had not dealt with violence against women as a right to life issue, or as "inhuman or degrading treatment or punishment..." under article 7³⁶. Gender based violence was not mentioned in the Committee's General Comments³⁷.

Submissions from Equality Now provided much information about the scope and effects of family violence. For example, Equality Now's submissions on Zambia, in 1996, and Colombia, in March 1997, both refer to violence against women as a major risk to the right to life. The Committee accepted that it was a threat to the right to life, and called for more effective measures³⁸. An Equality Now submission in 1997 concerning Lithuania highlighted the fact that 30 women had died in the first half of 1996 (34.5% of all murders) as a result of domestic disputes, and that surveys indicated that one-third of women reported having been beaten at least once. The Committee recommended additional measures to prevent, investigate and prosecute violence against women, including domestic violence, and abuse of children, including sexual abuse, and to promote their right to personal security³⁹.

Many of the Committee's Concluding Observations from that time include comments on violence against women⁴⁰ and rape in marriage⁴¹. The Committee has usually dealt with these under article 7, as inhuman or de-

Imposed on States Parties to the Covenant (80th Session 2004) A/49/50, vol I, p. 175 para. 8. *Sarna v. Sri Lanka*, Comm. No. 950/2000, views of 31 July 2003, A48/50, vol II, p. 248 para. 9.2.

³⁶ The Committee had taken up some specific issues, eg, it raised dowry violence with India in 1984, A/39/40 paras 254, 281. It was considered under article 3.

³⁷ It is not mentioned in General Comment on article 6 (16th Session, 1982) HRI/GEN/1/Rev.3, 1997 p. 6, or in General Comment No 20 on article 7 (44th Session 1992) HRI/GEN/1/Rev.3, 1997 p. 31.

³⁸ Concluding Observations on Zambia, A/51/40 (1996) vol I, para 195: The Committee regretted the lack of measures to adequately address this problem. Concluding Observations on Colombia, A/52/40 (1997) vol. I paras 287 and 300.

³⁹ Concluding Observations on Lithuania A/53/40 (1998) vol I, para 168. [the submission from the Women's Association cited CCPR article 26 and equal protection of the law.

⁴⁰ HRC Concluding Observations: Norway 1994 A/49/40 vol I, p. 21, Slovenia 1994 A/49/40 vol I, p. 56; Ukraine 1995 A/50/40 vol I, p. 57; Zambia 1996 A/51/40 vol I p. 39, Colombia 1997 A/52/40 vol I, p. 44; Lithuania, 1998 A/53/40 vol. I (1998) p. 30 at para 168; Poland 1999 A/54/40 (1999) para 347.

⁴¹ HRC Concluding Observations: Zimbabwe 1998 A/53/40 para 216; India 1997 A/52/40 vol I, para 431.

grading treatment. Sometimes it is considered as a violation of the right to personal security under article 9⁴², or as a threat to the right to life under article 6⁴³.

A. "Honour" crimes

In some countries a family member who murders a woman who is seen to have transgressed the behavior code may be exonerated or given a lesser sentence⁴⁴. This issue was raised in an Equality Now submission on Lebanon in March 1997. A question was put to Lebanon about this⁴⁵, but it was not included in the Committee's Concluding Observations.

The General Comment states that:

the commission of so-called "honour crimes" which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6 (right to life), 14 (equal access to justice) and 26 (non-discrimination) (§31).

B. Dowry death

The Committee received information from Equality Now and one of its Indian NGO partners, KARMIKA, about the continuing prevalence of dowry related deaths of women, following threats and violence from the husband and his family to demand additional dowry payments. Equality Now noted that 4,811 dowry deaths were reported in 1995, that the new Dowry Prohibition Act had been little used, that the police had been uncooperative and that gender bias had been encountered from the judiciary in one case. The Committee expressed its grave concern that the legislative measures to outlaw dowry-related violence had not been sufficient and that measures must be taken to change attitudes, "to overcome those problems and to protect women from all discriminatory practices, including violence"⁴⁶.

The General Comment deals with dowry violence as a right to life issue: "States parties should also report on measures to protect women from practices that violate their right to life, such as dowry killings" (§10).

⁴² Concluding Observations Poland 1999 A/54/40 para. 347.

⁴³ Concluding Observations Colombia 1997 A/52/40 vol. I, para. 287.

⁴⁴ Kuwait, 2000 A/55/40 vol I, para 458 (toleration of so-called crimes of honour).

⁴⁵ CCPR /C/SR.1579, 7 April 1997, para 7, Mme Chanet (Chair).

⁴⁶ India 1997 A/52/40 vol I, para 431. See IV. above.

V. RAPE AND SEXUAL ABUSE

The General Comment deals with rape under article 7, and asks States to report on the measures they have taken to protect women and the legal remedies available to women who have been subjected to rape or other forms of violence⁴⁷ (§11).

The Committee encountered States which made penalties for rape depend on the marital status or sexual life of the woman⁴⁸. The General Comment makes it clear that it is an interference with the right to privacy "where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections in respect of rape". (§20)

In 1996, Equality Now, working with Flora Tristan, a Peruvian NGO, raised among other issues, Article 178 of the Penal Code, which exempts a rapist from penalty if he marries the "offended." This was seen as a failure to afford women equal protection of the law. In its Concluding Observations, the Committee expressed concern about the law, which could involve possible violations of articles 3 and 7. It recommended to Peru that it ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection⁴⁹.

The General Comment recognizes that "a woman's free and full consent to marriage may... be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the victim". It asks States parties to indicate "whether marrying the victim extinguishes or mitigates criminal responsibility and, in the case in which the victim is a minor, whether the rape reduces the marriageable age of the victim, particularly in societies where rape victims have to endure marginalization from society" (§24).

A. *Rape and abuse of women in armed conflict*

When considering the report of Yugoslavia (Serbia and Montenegro) in 1992 and 1993, the Committee had expressed its concern about rape and other human rights violations abuses committed during the conflict⁵⁰. Equality Now raised similar issues with regard to Algeria in 1998. The Com-

⁴⁷ The Committee has also dealt with rape under article 9 as a matter of personal security.

⁴⁸ Concluding Observations Paraguay 1995 A/50/40 vol I, para. 207.

⁴⁹ Concluding Observations Peru 1997 A/52/40 vol I, para. 160, 167.

⁵⁰ Concluding Observations 1993 A/48/40 vol I, para. 371.

mittee expressed its serious concern at reports of abduction rape and violence against women in widespread terrorist attacks, and called on the Government to adopt effective measures to prevent attacks, to defend the population, and to bring offenders to justice⁵¹.

The General Comment asks States to report on the protection of women during a state of emergency, declared under article 4 (§7). It also asks States to provide information on measures taken "to protect women from rape, abduction and other forms of gender based violence" in any internal or international armed conflicts (§8)⁵².

VI. SEX TRAFFICKING, PROSTITUTION AND PORNOGRAPHY

A. Sex Trafficking and prostitution

From the mid-1990s the Committee raised issues relating to trafficking in women and girls for the sex trade with several States⁵³. In 1997, working with the Centre for Feminist Legal Research, the Women's Centre, KARMIKA, and the Centre for Social Research, Equality Now pointed out that although the Indian government had been silent on this issue in its report, it was estimated that there were more than 100,000 prostituted women in Bombay alone, 90% of whom were indentured slaves and 20% of whom were under the age of 18, some as young as nine years old. It drew attention to the impact of the Immoral Trafficking Prevention Act. The Committee responded to several issues in its Concluding Observations⁵⁴:

The Committee deplores the high incidence of child prostitution and trafficking of women and girls into forced prostitution, and it regrets the lack of effective measures to prevent such practices and to protect and rehabilitate the victims. The Committee also regrets that women who have been forced into prostitution are criminalized by the Immoral Trafficking Prevention Act and, further, that article 20 of the Act puts the burden of proof on a woman to prove that she is not a prostitute, which is incompatible with the presumption of innocence. The Committee recommends that the application of that law to women in the situation described be repealed and that

⁵¹ Concluding Observations, 1998, A/53/40 vol I, para. 354. (CPR/C/79/Add.95).

⁵² Discussion CCPR/C/SR.1739, 30 March 1999. Approved, CCPR/C/SR.1831, 27 March 2000 §17.

⁵³ Concluding Observations: Nepal, 1995 A/50/40 vol I paras. 66, 73; Portugal (Macau) 1997 A/52/40 paras 321, 327; India 1997 A/52/40 para 446; Israel 1998 para 312; Italy 1998 A/53/40 vol I, para. 333; Finland 1998 para. 557.

⁵⁴ India CCPR A/52/40 (1997), para. 446.

measures be taken to protect and rehabilitate women and children whose rights have been violated in this way.

The General Comment deals with these issues under article 8 of the Covenant, which prohibits slavery, servitude and forced labour. It asks States about "measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution... [and about]... measures taken to protect women and children, including foreign women and children, from slavery, disguised, *inter alia*, as domestic or other kinds of personal service." It asks information on measures taken by States in which women and children are recruited and those where they are received as workers to prevent the violations of women's and children's rights (§12).

The Comment also asks State parties to "report on whether certain categories of women are denied the enjoyment of the presumption of innocence under article 14, paragraph 2, and on the measures which have been taken to put an end to this situation" (§18).

B. Pornography

In 1998, Equality Now in consultation with the HELP Asian Women's Shelter, and End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes, submitted that the prevalence of pornography contributed to violence against women and to the high number of women and girls trafficked into and exploited in prostitution in Japan, which was one of the world's largest producers and distributors of commercial pornography. Japanese laws did not effectively address pornography, even child pornography, and the submission suggested that the dehumanization of women and the hostility towards them promoted by pornography, resulted in increased violence against women, and adversely affected public health, public order and public morals. Equality Now urged the Committee to invoke the restrictions on speech envisioned by Article 19 as applicable to pornography in Japan.

In its Concluding Observations on Japan, the Committee noted with concern that there was insufficient protection in the law for women subject to trafficking and slavery-like practices and that planned new legislation against child prostitution and pornography might not protect children under the age of 18, when the age of sexual consent was as low as 13⁵⁵. The

⁵⁵ 1999 A/54/40 vol. I, para. 171.

Committee also expressed grave concern over the high incidence of violence against women, in particular domestic violence and rape, but did not expressly link this to the role of pornography. The question of child pornography was later taken up by the Committee with other States parties⁵⁶.

The first draft of the General Comment did not refer to these issues. During discussions, the Committee was asked to consider whether States should restrict freedom of expression to limit the distribution or publication of pornographic material which may depict women as victims of violence or degrading treatment⁵⁷. A paragraph was added to the General Comment stating that

As the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls, States parties should provide information about legal measures to restrict the publication or dissemination of such material (§22).

This appears to be the first time the Committee had dealt with this issue⁵⁸, or had called for limits on freedom of expression to restrict pornography.

VII. CULTURAL PRACTICES HARMFUL TO WOMEN

Women have long called for the elimination of certain customary or cultural practices that involve danger to the life or health of women⁵⁹.

A. *Female genital mutilation, §11, art 7*

Equality Now had raised the issue of female genital mutilation in 1995 in regard to Yemen. The Committee called on Yemen to "formulate specific plans to eradicate the practice"⁶⁰.

⁵⁶ Concluding Observations Belgium 1999 A/54/40 vol. I paras. 77, 93; Mexico 1999 A/54/40 vol. I, para. 327.

⁵⁷ CCPR/C/SR 1821, 20 March 2000 (Spanish) §116, the first author (acting Chair).

⁵⁸ Eg, CEDAW, General Recommendation No 19, cited above, §12.

⁵⁹ Eg, Beijing, paras 113 (a), 118, 124 (i). See also CEDAW, General Recommendation No 19 cited above, §§11 and 20. CEDAW, General Recommendation on Female Circumcision, No 14 (9th Session, 1990) HRI/GEN/1/Rev.3, 1997 p. 124, calls for its eradication.

⁶⁰ The Committee expressed its concern, 1995 A/50/40 paras 255 and 261.

In 1998 Equality Now made a more detailed submission on this issue in relation to Sudan. It described the high incidence of the practice, the lack of penal legislation and the tacit approval of the government. The Committee expressed its concern about the high maternal mortality rate in the Sudan, which may be the consequence of early marriage, clandestine abortions and female genital mutilation. It was deeply concerned that female genital mutilation was practiced on female minors, who may suffer the consequences throughout their lives. The practice was said to constitute cruel, inhuman and degrading treatment, violating articles 7 and 24 of the Covenant. Sudan was recommended to make the practice a discrete criminal offence, and to pursue social and educational campaigns to eliminate the practice⁶¹.

Equality Now raised similar issues in regard to Tanzania in 1998, and Cameroon in 1999. The Committee referred to the issue of female genital mutilation in its Concluding Observations on these countries, welcoming the new law criminalizing the practice in Tanzania and expressing concern over the absence of such a law in Cameroon⁶².

The General Comment deals with this issue under article 7. It asks States parties where the practice of genital mutilation exists to provide "information on its extent and on measures to eliminate it" (§11).

B. Cultural attitudes and practices and subordination of women

The General Comment acknowledges that the inequality of women is "deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female foetuses" (§5).

The General Comment asks States to ensure that traditional, historical, religious or cultural attitudes or practices are not used to justify violations of women's right to equality and to equal enjoyment of all Covenant rights. Information is sought about the measures taken to overcome such attitudes and cultural practices which may jeopardize women's rights. (§5)

⁶¹ Sudan, 1998 A/53/40 vol. I, para. 121.

⁶² Tanzania 1998 A/53/40 vol I, para. 395; Cameroon 2000 A/55/40 vol I, para. 197. See also Nigeria 1996 A/51/40 vol I, para. 296; Senegal 1998 A/53/40 vol. I, para. 61; Zimbabwe, 1998 A/53/40 vol I, para. 214.

States are also asked to eradicate "all cultural or religious practices which jeopardize the freedom and well-being of female children" (§28).

The Committee raised the issues of foeticide and infanticide of females with India in 1997⁶³. It had also expressed its concern to India about dowry murders and *sati* (self-immolation of widows)⁶⁴. It had received a submission from Equality Now on these matters. The Committee did not consider that legislative measures were sufficient and it recommended measures to change the attitudes which allow such practices.

The General Comment asks States to "report on measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings"⁶⁵ (§10).

VIII. REPRODUCTIVE RIGHTS, STERILIZATION, ABORTION

A. *Risks of clandestine abortion*

In 1997, Equality Now, in consultation with Servicio Colombiano de Comunicación, Profamilia, and Consejo Nacional de Mujeres de Colombia, described the discriminatory impact on women of the Colombian criminal abortion law. The Committee was concerned over the "high mortality rate of women resulting from clandestine abortions" and recommended that "priority should be given to protecting women's right to life by... ensuring access to safe contraception"⁶⁶.

The Committee also expressed concern about restrictive abortion laws, which put women's lives at risk by their resort to illegal, clandestine and unsafe abortion, in its Concluding Observations on Ecuador, Tanzania, Cameroon and Morocco⁶⁷.

⁶³ India 1997 A/52/40 vol I, para. 431.

⁶⁴ Ibid. See CEDAW General Recommendation No 19, para. 11.

⁶⁵ Discussion CCPR/C/SR.1739, 30 March 1999 §64 ff. The proposal to include infanticide was made by Mr Scheinin. Approved, CCPR/C/SR 1831, 27 March 2000 §18.

⁶⁶ Concluding Observations, Colombia, 1997 A/52/40 vol. I, para. 300.

⁶⁷ Ecuador 1998 A/53/40 vol. I, para. 284; Tanzania (Zanzibar) 1998 A/53/40 vol. I, para. 399; Cameroon 2000 A/55/40 vol I, paras. 199, 200; Morocco 2004 A/60/40 vol. I, para. 84(29). Equality Now also made submissions in respect of Zambia 1996 A/51/40 vol I, para. 195; Peru U. N. Doc. CCPR/C/PER/CO/5 (2013) para. 14; Colombia 1997 A/52/40 vol. I, para. 300; Other States were Bolivia 1997

The General Comment deals with this as a right to life issue. It asks States parties for information on maternal and infant mortality, and "on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions"⁶⁸ (§10).

B. Abortion after rape

The Committee has criticized States that deny abortion to women who have become pregnant after rape⁶⁹. It regards this as a violation of the right not to be subjected to inhuman or degrading treatment (article 7).

The General Comment asks States whether they give "access to safe abortion to women who have become pregnant as a result of rape." And it seeks information on legal remedies for women whose rights under article 7 have been violated⁷⁰ (§11).

C. Abortion and compulsory reporting by health personnel

Some States which prohibit abortion require health personnel to report cases where a woman has undergone an abortion. The Committee has made it clear to States that this may deter those women from seeking medical treatment, thereby endangering their lives⁷¹.

The General Comment regards it as a failure to respect a woman's privacy "where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake." States are asked to report on measures taken to eliminate such interference (§20).

A/52/40 vol. I, para. 212; Lesotho 1999 A/54/40 vol. I, para. 254; Chile 1999 A/54/40 vol. I, para. 211; Costa Rica 1999 A/54/40 vol. I, para. 280.

⁶⁸ Discussion CCPR/C/SR.1739, 30 March 1999 §64 ff. Approved, CCPR/C/SR.1831, 27 March 2000 §18.

⁶⁹ Peru 1997 A/52/40 vol. I, paras. 160 and 167; Ecuador 1998 A/53/40 vol. I, para. 284.

⁷⁰ For discussions, see CCPR/C/SR.1739, 30 March 1999 §73 ff.

⁷¹ Chile 1999 A/54/40 vol. I, para. 211; Venezuela 2001 A/56/40 vol. I, para. 77(19); the right to life was also seen as threatened in both.

D. Forced abortion or sterilization, article 7

In response to information about the forced sterilization of Peruvian indigenous women, the Committee recommended Peru "to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely"⁷².

In the Committee's discussions of the General Comment there was debate as to whether forced sterilization was a matter of privacy or of violence, under article 7⁷³. The General Comment deals with it under article 7, and asks States to provide "information on measures to prevent forced abortion or forced sterilization". It also requests information on measures of protection and legal remedies (§11)⁷⁴.

E. Privacy

The General Comment continues "Women's privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman." States are asked to report on measures to eliminate such interference (§20).

IX. EXPULSION AND CLAIMS FOR ASYLUM

Under article 13 of the Covenant, aliens lawfully within a State, including asylum seekers, are entitled to submit reasons against their expulsion⁷⁵. The General Comment states that alien women in that situation "should be entitled to submit arguments based on gender-specific violations of the Covenant such as those mentioned in paragraphs 10 and 11 above"⁷⁶ (§17).

⁷² Peru, 2000 A/56/40 vol. I, para. 76 (21). Japan, forced sterilization of disabled women, 1999 A/54/40 vol. I, para. 173.

⁷³ CCPR/C/SR.1739. 30 March 1999 §73 ff; proposal by Mr. Scheinin, para. 74.

⁷⁴ For discussions, see CCPR/C/SR.1739. 30 March 1999 §73 ff. CCPR/C/SR 1790, 21 October §9 ff. another part of the original text included: "preventing women from having access to contraceptives".

⁷⁵ General Comment No 15, (27th Session, 1986) paras 9 and 10, HRI/GEN/1/Rev.3, 1997 p. 19. See Beijing paras. 136, 147.h.

⁷⁶ Specific issues mentioned in paragraphs 10 and 11 include widow burning, dowry killings, rape, forced abortion, forced sterilization, female genital mutilation. The Committee decided not mention the specific examples of violations but to cover

X. PERSONAL PRIVACY AND CLOTHING REGULATION, ARTICLES 26, 7, 9, 12, 17, 18, 19 OR 27

In 1998 the Committee expressed its concern at the enforcement of strict dress requirements for women in public places by Sudan, under the guise of public order and morality, and at the inhuman punishment imposed for breaches of such requirements⁷⁷. These issues were raised under articles 3, 9 and 12.

During Committee discussions on the General Comment the question was raised whether strictly regulated dress requirements for women in public places should be considered under article 12, as affecting women's freedom of movement, or under article 9⁷⁸. Later, it was suggested that the issue could relate also to article 17⁷⁹. During further discussion other articles were also considered relevant. The General Comment calls for information on "any specific regulation of clothing to be worn by women in public", and observes that it might involve the violation of one or more articles:

Article 26, on non-discrimination; article 7, if corporal punishment is imposed in order to enforce such a regulation; article 9, when failure to comply with the regulation is punished by arrest; article 12, if liberty of movement is subject to such a constraint; article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim. (§13)

In 2000, the Committee upheld the freedom of women to wear distinctive clothing or head coverings as a manifestation of religion⁸⁰.

A. Rights in regard to marriage and family

Discrimination against women in regard to marriage and family persists in many countries where religious personal laws or customary laws govern

them with a general reference. Discussions, CCPR/C/SR.1740 30 March 1999, paras. 6-27; CCPR/C/SR.1821 20 March 2000 [Spanish] paras. 26-46.

⁷⁷ Concluding Observations Sudan, 1998 A/53/40, vol I, para. 133.

⁷⁸ CCPR/C/SR.1739. 30 March 1999, Mr. Scheinin §100.

⁷⁹ CCPR/C/SR.1819 [Spanish] 17 March 2000 3 pm, Mme. Chanet para. 94.

⁸⁰ *Hudoyberganova v Uzbekistan*, 931/2000, 2004, CCPR/C/82/D/931/2000; citing General Comment No 22, Article 18 (48th Session 1993) §4.

ing personal status are recognized or enshrined in law⁸¹. The standard of "equality of rights and responsibilities of spouses"⁸² is seldom met in full.

B. Free consent to marriage, minimum age of marriage

The tolerance of child marriage in some countries completely negates the "free and full consent to marriage" required by article 23 (3). In 1995, Equality Now brought to the Committee's attention the legal status of child brides in Sri Lanka; the Committee recommended measures to ensure protection of children, "with particular attention to the act permitting marriage of girls at the age of 12"⁸³. The Committee also took up the issue of child marriage with India, Morocco and Zimbabwe⁸⁴. The Committee encountered countries that had differing ages for marriage or no minimum age at all⁸⁵.

In drafting the General Comment, there were differing views in the Committee about the need for a uniform minimum age for males and females⁸⁶. The Comment provides that the marriageable age "should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women's capacity to make an informed and uncoerced decision."

A woman's free consent to marriage is also negated if she is denied legal capacity to consent to marriage. Equality Now's submission on Algeria in 1998 showed that a woman's marriage contract was subject to the approval of her matrimonial guardian —*wali*— who must be male. Equality Now raised the same issue with regard to Sudan, where the Personal Status of Muslims Act of 1991 defined women as legal minors regardless of their age, and provided for the approval of marriage by a male guardian. The Committee recommended to both States that they bring their legislation into line with women's equality and free choice in marriage⁸⁷.

⁸¹ Eg, the practice of devdasi in India, 1997 A/52/40 vol I, para 447. See Concluding Observations Zambia 1996 A/51/40 vol I, paras. 195, 207, mentioned earlier.

⁸² ICCPR, article 23 (4).

⁸³ Press Release HR/CT/429, 1 Aug 1995. Concluding Observations Sri Lanka, 1995 A/50/40 vol I, para. 473.

⁸⁴ India 1997 A/52/40 vol I, para 432; Also Morocco, 1982 A/37/40 vol I, para. 150; Zimbabwe, 1998 A/53/40 vol I, para. 214 (early marriage).

⁸⁵ eg, Peru 1997 A/52/40 vol I, para 159; Israel 1998 A/53/40 vol. I, para. 325.

⁸⁶ CCPR/C/SR.1793, 25 October, §18 ff.

⁸⁷ Algeria, 1998 A/53/40 vol I, para 361; Sudan, 1998 A/53/40 vol. I, para. 122; see also Morocco 1982 A/37/40 vol I, para 150.

The General Comment observes that women may be prevented from making the decision to marry freely where “either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice” (§ 23). States are asked to provide information on such laws and practices and on the measures taken to abolish the laws and eradicate the practices (§24).

The Comment makes a clear statement about the need to recognize the full legal capacity of women, under article 16:

This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family⁸⁸ (§19).

States must provide information on measures taken to eradicate laws or practices that allow such treatment.

C. Discriminatory religious personal laws

Some States which apply religious personal laws, or which recognize their application, have made reservations to the Women’s Convention in order to preserve personal laws which do not accord equality to women. Some of those States are parties to the Covenant without *any* reservations and are therefore bound by its equality provisions.

In its Concluding Observations on Morocco in 1995, the Committee observed that “although several reservations were made by Morocco in acceding to the Convention on the Elimination of All Forms of Discrimination against Women, Morocco remains bound to the fullest extent by the provisions of articles 2, 3, 23 and 26 of the Covenant”⁸⁹. There was, however, continuing discrimination in regard to personal laws, marriage and divorce, and limitations on inter-religious marriage to prevent Muslim women from marrying non-Muslims which impaired the right of a woman to choose her spouse⁹⁰.

⁸⁸ Mr. Amor had suggested adding a reference to the inheritance of women after the death of their spouse. CCPR/C/SR.1793. 25 October 1999 §82 ff.

⁸⁹ Morocco, 1995 A/50/40 vol I, para. 118.

⁹⁰ Morocco 1995 A/50/40 vol I, paras. 107, 112. CCPR A/55/40 (2000) 98. Algeria CCPR A/53/40 (1998) 361.

The Committee has made similar observations on other States where the application of religious law to determine matters of personal status results in inequality between men and women⁹¹. In the case of Israel, the Committee said that such laws effectively denied some persons the right to marry and resulted in inequality between men and women⁹².

The General Comment makes it clear that States should not "justify discrimination against women by reference to freedom of thought, conscience and religion" under article 18. States are asked to indicate what steps they have taken or intend to take to protect women's right not to be discriminated against on that basis. (§ 21) This implies that limitations on religious manifestation may be justified in some circumstances, to preserve women's equality rights:

The General Comment calls for the abolition of legal restrictions preventing women marrying outside their religion⁹³ or imposing restrictions on remarriage by women which do not apply to men under article 24 (§24)⁹⁴.

Following strong expressions of opinion by members about polygamy⁹⁵, the General Comment declares that "Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, *it should be definitely abolished* wherever it continues to exist" (§ 24).

D. Discriminatory cultural practices relating to marriage and relationships

In 1998, Equality Now, in conjunction with WiLDAF and fifteen other Zimbabwean women's organizations raised concerns with the Human Rights Committee about discrimination against women under customary law, including in property inheritance, the practice of early marriage, *ngozi* (the use of marriage to remedy criminal offenses), *chiramu* (sexual rights to unmarried sisters-in-law), *kuzvarita* (pledging of girls for economic gain),

⁹¹ India ICCPR, A/52/40 vol. I (1997) 67 at para. 432; CCPR/C/42/Add.14, para. 9; Morocco ICCPR, A/55/40 vol. I (2000) 24 at para. 98.

⁹² Israel ICCPR, A/53/40 vol. I (1998) 45 at paras. 324 and 325.

⁹³ Morocco CCPR A/50/40 (1995) 112, and 2000 A/55/40 vol I, para. 98. Also Algeria 1998 A/53/40 vol I, para. 361.

⁹⁴ Summary Record, CCPR/C/SR.1793. 25 October, para. 18 ff; the point was introduced by the first author at para. 33.

⁹⁵ CCPR/C/SR.1822, 22 March 2000, para. 45; CCPR/C/SR.1831. 27 March 2000 para. 29 ff, Mr. Amor had raised this issue.

and *lobola* (bride price). The Committee expressed concern about the duality of statutory and customary law, noting the potential for unequal treatment, particularly in the area of marriage and customary and inheritance laws. It recommended that the practices outlined above be prohibited by legislation⁹⁶.

The General Comment does not refer directly to these specific abuses/practices, but has a more general description of cultural practices which should be eradicated⁹⁷ (§§ 5 and 28).

E. Limits on women's personal freedoms imposed by family members

Women's right to liberty and to freedom of movement under articles 9 or 12 may be violated where the law places them under the control of fathers or husbands. Their right to privacy and to equality may also be prejudiced⁹⁸.

In 1995, Equality Now brought to the attention of the Human Rights Committee its concerns about the wife obedience law of Yemen (Art 40 of the Personal Status Act No. 20 of 1992) which requires "that wives must obey their husbands' orders and may not leave their homes except in limited situations". The Committee concluded that "the requirements of this Act... contradict articles 3 and 23 of the Covenant"⁹⁹. Equality Now also made a submission about the Sudanese Personal Status of Muslims Act 1991, which provides that a woman could only leave her house with the permission of her male guardian. The Committee called on Sudan to make its laws compatible with the Covenant¹⁰⁰.

The General Comment deals with these issues as a restriction on personal liberty under article 9. It asks States for "information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house" (§14).

Equality Now highlighted the Sudanese practice of requiring a woman to be accompanied by or to have the permission of her guardian to leave the country. A woman travelling alone had to clearly specify her reasons

⁹⁶ Concluding Observations, Zimbabwe, 1998 A/53/40 vol I, para. 214.

⁹⁷ CCPR/C/SR.1793, 25 October 1999 §82 ff. See I.2 above.

⁹⁸ CCPR/C/SR.1831, 27 March 2000 para. 102 ff.

⁹⁹ Yemen 1995 A/50/40 vol I, para. 255.

¹⁰⁰ Sudan 1998 A/53/40 vol. I, para. 133.

for travelling and provide supporting documentation. The Committee regarded these practices as restrictions on freedom of movement which were incompatible with the Covenant¹⁰¹. The Committee had the same reaction to similar laws in Jordan, Lebanon and Libya¹⁰².

The General Comment approaches these issues under article 12. It asks States for information on "any legal provision or any practice which restricts women's right to freedom of movement, for example the exercise of marital powers over the wife or of parental powers over adult daughters". It also asks for information on "legal or de facto requirements which prevent women from travelling, such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman" (§ 16).

In October 1999 the Committee adopted a General Comment on article 12¹⁰³. Although there had been a difference in the Committee as to whether General Comments should make normative statements or be limited to asking for information¹⁰⁴, that Comment is even more emphatic that any such laws or practices are incompatible with or in violation of article 12.

Dealing with another limitation on women's freedoms, the General Comment regards it as an interference with the right to privacy "where there is a requirement for the husband's authorization to make a decision in regard to sterilization"¹⁰⁵ (§20).

XI. GENERAL CONCLUSIONS

In adopting this General Comment, the Committee identified many specific gender based violations of women's human rights, some involving threats to or violations of women's right to life or the right not to be subjected to cruel, inhuman or degrading treatment. The Committee has

¹⁰¹ Sudan 1998 A/53/40 vol. I, para. 125.

¹⁰² Jordan 1994 A/49/40, para. 232; Lebanon 1997 A/52/40 vol. I, para. 348; Libya 1999 A/54/40 vol. I, para. 137.

¹⁰³ General Comment No. 27, (67th Session 1999) A/55/40, p. 128 paras. 6 and 18.

¹⁰⁴ CCPR/C/SR.1739. 30 March 1999. Mr Amor, §105 proposed stating that a woman was entitled to have a passport in her own right. Mr. Ando, §107, said that a General Comment was not the place to make such a statement.

¹⁰⁵ Legal requirements imposed as a condition for sterilization of women, such as having a certain number of children or being of a certain age, are dealt with in the same way, (§20).

clearly asserted that denial of contraception and access to safe abortion is a potential violation of these rights. Female genital mutilation comes within the same ambit, as do the many forms of violence against women. Until the 1990s these serious issues that threatened the life and health of millions of women had not been dealt with under articles 6, 7 or 9.

To deal with these threats, State parties are asked to adopt not only measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women. (§3) The Covenant requirement for effective and enforceable remedies for any violation of any rights or freedoms of women is reinforced in the General Comment¹⁰⁶:

The Committee has stated clearly that traditional, historical or cultural attitudes or practices or religious beliefs should not be used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights¹⁰⁷. The Committee has chosen to stand by the individual rights of women when these are threatened by such attitudes, practices or beliefs.

The groundwork for this General Comment is to be found in the Concluding Observations of the Committee on State parties reports under the Covenant. Those Concluding Observations, in turn, are founded to a great extent on material provided to the Committee by NGOs, and in particular by Equality Now. Equality Now obtained this material directly from women's NGOs in the relevant countries. It was backed up with data and references, so that it could be relied on with confidence. Committee members raised many questions based on this material in the reporting process. Thus, there were many contributors to the content of the General Comment, not least of which were the women whose rights had been violated and whose experience fed into the process through their local NGOs.

This particular General Comment revisits some articles of the Covenant that had been studied earlier, but from a new perspective, one not previously developed in any of the Committee's General Comments. It is not a final statement on the issues it explores, but it has created a starting point for further interpretation of the Covenant as new situations arise. The authors wish to acknowledge and highlight the critical role played by Cecilia Medina-Quiroga in the development of the Committee's jurisprudence along these lines and in the adoption of the General Comment.

¹⁰⁶ Paragraphs 11, 16 and 31, dealing with articles 7, 12 and 26.

¹⁰⁷ Compare the Women's Convention, articles 2 (f) and 5.