

**TO THE U.N. COMMITTEE ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN**

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

**(COMMUNICATION NO. 22/2009)**

**L.C.**

**VICTIM**

**PERU**

**STATE PARTY CONCERNED**

**WRITTEN COMMENTS BY:**

**THE HEALTH EQUITY AND LAW CLINIC  
INTERNATIONAL REPRODUCTIVE AND SEXUAL HEALTH LAW PROGRAMME  
FACULTY OF LAW, UNIVERSITY OF TORONTO**

**09 JUNE 2011**

**Joanna N. Erdman**

Programme Director and Adjunct Professor  
Faculty of Law, University of Toronto  
joanna.erdman@utoronto.ca

**Insiya Essajee & Alanna Courtright**

Research Assistants with

**International Reproductive and Sexual Health Law Programme**

Faculty of Law, University of Toronto

84 Queen's Park Crescent

Toronto, Ontario Canada M5S 2C5

Tel: 416-978-1751, Fax: 416-978-7899

<http://www.law.utoronto.ca/programs/reprohealth.html>

## **TABLE OF CONTENTS**

	<b>Paragraphs</b>
<b>I. Introduction</b>	1-3
<b>II. Organization of the Comments</b>	9
<b>III. The Concept of Multiple Discrimination</b>	
A. The Types of Multiple Discrimination	10-12
B. The Relationship between Multiple Discrimination and Substantive Equality	13-16
C. The Effect of Multiple Discrimination Analysis on States Parties' Obligations	17-19
<b>IV. The Components of a Multiple Discrimination Analysis</b>	20-22
A. The Circumstances of Multiple Discrimination: Grounds and Factors	23-26
Adolescent Women and Sexual Violence	27-31
B. The Forms and Manifestations of Multiple Discrimination	32-35
Adolescent Women and Access to Reproductive and Other Health Services	36-39
C. The Harms and Consequences of Multiple Discrimination	40
Adolescent Women and Sexual Violence	41-46
Adolescent Women and Denial of Access to Reproductive Health Services	47-48
D. Remedies to Multiple Discrimination	49
Collection and Dissemination of Disaggregated Data	50-51
Primary Prevention: Sexual Violence	52-55
Secondary Prevention: Access to Reproductive and Other Health Services	56-59
<b>V. Conclusion</b>	60-67

## I. INTRODUCTION

1. The *Health Equity and Law Clinic* of the *International Reproductive and Sexual Health Law Programme* (“the Programme”) at the *Faculty of Law, University of Toronto* is an academic organization dedicated to improving the legal protection of reproductive and sexual health. The *Programme* has expertise in equality and non-discrimination rights in health services regulation, and has collaborated with government, international agencies, and civil society organizations on the subject. The *Programme* has acted as a third-party intervener in constitutional and human rights cases before domestic, regional and international tribunals.
2. We respectfully submit these *written comments* to the *Committee on the Elimination of Discrimination against Women* (“the Committee”) in *Communication 22/2009* (“the Communication”), pursuant to the request of the authors, the *Center for Reproductive Rights* and *Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos*.
3. These comments address *the concept and analysis of multiple discrimination* under the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Affirmed by the *Committee*, discrimination against women based on sex and gender<sup>1</sup> is inextricably linked with other grounds and factors, affecting certain groups of women primarily, or to a different degree or in different ways than men.<sup>2</sup>
4. This *Communication* concerns *the human rights of young women living in poverty* to be free from sexual violence and to access related reproductive and other health services, and thus warrants an analysis of discrimination based on the *multiple factors of sex, age and poverty*. The presumed victim is a young adolescent woman from a poor community who became pregnant as a result of sexual violence and who attempted suicide as a consequence. She suffered a severe spinal injury requiring surgical intervention, but was denied care for reason of her pregnancy. She subsequently requested but was denied a therapeutic abortion to protect her physical and mental health. The authorization process resulted in significant delay and did not allow for appeal. She received surgical care following a miscarriage, but suffered continuing physical and mental health impairment.
5. A systematic methodology to assess multiple discrimination has yet to be adopted by most international human rights institutions.<sup>3</sup> In current analytical practice, multiple grounds tend to be assessed independently, leaving discrimination based on the interaction of grounds and factors undetected and thus unaddressed.<sup>4</sup>
6. Given attention paid to the issue in *General Recommendations* and *Concluding Observations*, the *Committee* is well positioned to develop a multiple discrimination methodology. Communications are an especially appropriate procedure for this undertaking because the concrete experience of an individual woman renders the complexity of multiple discrimination manageable. Through the experience of an individual woman, the conceptual and analytical components of multiple discrimination can be elaborated.

7. These comments restate in a single framework the general ***conceptual and methodological components of a multiple discrimination analysis*** as articulated in international human rights law. The restatement draws on and reflects the authoritative interpretive work of the U.N. human rights system, namely General Comments and Recommendations of treaty monitoring bodies or committees (“the jurisprudence”). This collective work is considered a type of jurisprudence, intended to guide the interpretation and application of human rights provisions, and to address thematic issues and methods of work.<sup>5</sup> Given non-discrimination as a fundamental principle of international human rights law,<sup>6</sup> multiple discrimination is widely addressed in the jurisprudence.
8. These comments are submitted in recognition that *CEDAW* is “a dynamic instrument that accommodates the development of international law” and in recognition of the role of the *Committee* in contributing “to the clarification and understanding of the substantive content of the Convention’s articles, [and] the specific nature of discrimination against women.”<sup>7</sup>

The comments are thus intended to assist the *Committee* to develop and apply a multiple discrimination analysis in its communication procedure and other work.<sup>8</sup> We respectfully request the *Committee* consider these comments in this *Communication*, and specifically in the interpretation of Articles 1, 2(e) and (f), 5(a) and 12 of *CEDAW*.

## **II. ORGANIZATION OF THE COMMENTS**

9. The comments are organized in two parts and address the following matters.

### ***The Concept of Multiple Discrimination*** (Section III, Paragraphs 10 to 19):

- Defines multiple discrimination and identifies its different types (compounded and intersectional) based on the literature and jurisprudence;
- Describes the relationship between multiple discrimination and substantive equality;
- Explains the effect of a multiple discrimination analysis on States Parties’ obligations to eliminate all forms of discrimination against women.

### ***The Components of a Multiple Discrimination Analysis*** (Section IV, Paragraphs 20 to 59):

- Identifies the components of a multiple discrimination analysis:
  - A. Circumstances: Grounds and Factors
  - B. Forms and Manifestations: Direct and Indirect, Law and Practice
  - C. Harms and Consequences
  - D. Effective Remedies
- Demonstrates the application of these analytical components:
  - to the experiences of adolescent women living in poverty,
  - in the context of sexual violence,<sup>9</sup> and
  - in the context of access to related reproductive and other health services

### III. THE CONCEPT OF MULTIPLE DISCRIMINATION

#### A. The Types of Multiple Discrimination

10. The term “multiple discrimination” broadly refers to discrimination based on the interaction of multiple grounds or factors.<sup>10</sup> Two distinct types of multiple discrimination are compounded and intersectional discrimination.
11. ***Compounded discrimination*** refers to the layering of analytically separable grounds or factors to *aggravate* or *add* to the risks or burdens of discrimination (i.e. double or triple discrimination).<sup>11</sup> Compounded discrimination is described, for example, as “the imposition of one burden that intersects with pre-existing vulnerabilities to create yet another.”<sup>12</sup> Compounded discrimination is thus associated with degrees or magnitude, captured in the jurisprudence by phrases such as “disproportionate degree.”<sup>13</sup>

Adolescent women may be doubly burdened, for example, in their access to health services. They may encounter barriers to a health service based first on sex (e.g. limited availability of abortion services) and second on age (e.g. limitations based on age of consent). The barriers are additive to restrict access to services to a greater degree than would be encountered by an adult woman or an adolescent man.

12. ***Intersectional discrimination*** refers to multiple grounds or factors interacting to create a *unique* or *distinct* risk or burden of discrimination.<sup>14</sup> Intersectionality is associated with two features. First, the grounds or factors are analytically inseparable such that the experience of discrimination cannot be disaggregated into distinct grounds. The experience is transformed by the interaction.<sup>15</sup> Second, intersectionality is associated with a qualitatively different experience, “creat[ing] consequences for those affected in ways which are *different* from consequences suffered by those who are subject to one form of discrimination only.”<sup>16</sup> Intersectional discrimination is captured in the jurisprudence by phrases such as, “unique and specific impact,”<sup>17</sup> or affecting in “a particular or different way.”<sup>18</sup>

The vulnerability of adolescent women to sexual violence, for example, may relate to unique beliefs about sexual submissiveness to male authority, based on the intersection between age and gender, and thus common to neither adult women nor adolescent men.

#### B. The Relationship between Multiple Discrimination and Substantive Equality

13. The object and purpose of *CEDAW* is to achieve women’s ***substantive equality*** with men. “Substantive equality is concerned ... with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.”<sup>19</sup> The achievement of substantive equality thus requires an analysis capable of capturing the *experience of discrimination*, “the actual life situation of women, including the conditions and influences which shape their lives and opportunities.”<sup>20</sup>

14. A multiple discrimination analysis – attentive to the diversity of real-life experiences that characterize discrimination against women – is essential to achieving substantive equality from both an individual and system perspective.
15. From an individual perspective, a multiple discrimination analysis ensures that the experiences, concerns and interests of sub-groups of women are not subordinated within the single unitary category of women. The danger averted is one of both over- and under-inclusion.<sup>21</sup> Adolescent women, for example, may have interests attributed to them that are neither relevant nor appropriate, or youth-specific interests may be claimed as women-specific interests (over-inclusion). Alternatively, adolescent women’s interests and lived realities may be minimized, distorted, or neglected because they do accord with those of women from the dominant group (under-inclusion). A single-ground discrimination analysis “marginalizes those who are multiply burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination.”<sup>22</sup> A multiple discrimination analysis, in contrast, recognizes and reflects diversity and difference among women, giving voice and thus protection to women who may otherwise be invisible as “women.”
16. From a system perspective, failure to capture the diversity of sex discrimination undermines not only substantive equality, but also remedial efforts to achieve it.<sup>23</sup> While generalizations render complex phenomena manageable within legal analysis, *all* forms of discrimination against women will not be eliminated if abstract categories are substituted for the real-life experiences of women. “[E]fforts to remedy the condition or abuse in question are likely to be as incomplete as is the analysis upon which the intervention is grounded.”<sup>24</sup> Effective remedial action requires an analysis attentive to the complexity of multiple discrimination.<sup>25</sup>

### **C. The Effect of Multiple Discrimination Analysis on States Parties’ Obligations**

17. Multiple discrimination is a basic concept for understanding the scope of the general legal obligations under Article 2 of *CEDAW*.<sup>26</sup> States Parties are called upon to eliminate and protect against discrimination “in all its forms,” a phrase which “anticipates the emergence of new forms of discrimination.”<sup>27</sup> New forms include those resulting from the compounding or intersection of established grounds and factors.<sup>28</sup>
18. The general legal obligations include specific undertakings to adopt and implement appropriate measures to eliminate discrimination against women by any person, and to modify laws, regulations and practices that constitute discrimination against women.<sup>29</sup> While States Parties enjoy discretion in determining the measures adopted, this discretion is not absolute. “Each State party must be able to justify the appropriateness of the particular means it has chosen and to demonstrate whether it will achieve the intended effect and result.”<sup>30</sup>
19. A multiple discrimination analysis can assist States Parties to formulate appropriate and effective measures to address *all* forms of discrimination, including discrimination compounded by or at the intersection of multiple grounds and factors. A multiple discrimination analysis can better “ascertain what measures ... have been or should be taken to give effect to ... [States Parties’] obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.”<sup>31</sup>

#### **IV. THE COMPONENTS OF A MULTIPLE DISCRIMINATION ANALYSIS**

20. The components of a multiple discrimination analysis derive from and reflect the definition of “discrimination against women” in Article 1 of *CEDAW*:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Many international human rights treaties share the basic components of this definition.<sup>32</sup>

**21. The four basic components of a multiple discrimination analysis are:**<sup>33</sup>

- Circumstances: Grounds and Factors
- Forms and Manifestations: Direct and Indirect, Law and Practice
- Harms and Consequences
- Effective Remedies

22. This section presents these components as a single analytical framework or methodology, and examines how they have been applied in the jurisprudence:

- to the experiences of adolescent women living in poverty,
- in the context of sexual violence, and
- in the context of access to related reproductive and other health services

#### **A. The Circumstances of Multiple Discrimination: Grounds and Factors**

23. Discrimination as defined in Article 1 of *CEDAW* concerns inequality in the enjoyment and exercise of rights “on the basis of sex.” While formally referring to only one ground, discrimination against women cannot be understood nor addressed solely based on sex. Discrimination against women is inextricably linked with other grounds and factors.<sup>34</sup>

24. ***Prohibited grounds*** of discrimination in international human rights law include: race, caste, colour, sex, religion or belief, political and other opinion, national or social origin, property, birth, or *other status*, such as age, ethnicity, gender identity and sexual orientation, disability, language, health, marital, refugee or migrant status.<sup>35</sup> Prohibited grounds are open-ended, as suggested by the phrase “other status,” and added on a case-by-case basis.<sup>36</sup> Grounds tend to reflect individual traits or characteristics and group memberships. A multiple grounds analysis recognizes that individuals have multifaceted identities and may be members of more than one social group at the same time.

25. Inequality based on a prohibited ground, such as sex in the case of *CEDAW*, is necessary to substantiate a claim of discrimination. The circumstances of discrimination, however, extend beyond prohibited grounds. Circumstances also encompass the interaction between grounds and **factors of the environment** – the historical, political, and socio-economic context – in which an individual lives.<sup>37</sup> Sexual violence, for example, is “influenced by a wide range of factors, from the personal characteristics of the victim and perpetrator to their cultural and physical environments.”<sup>38</sup> Concerned with social location or position, multiple discrimination is a contextualized approach.<sup>39</sup> It is attentive to the “forces [that] ... shape the background in a manner that places women in a position where they are then impacted by some other system of subordination.”<sup>40</sup>
26. Grounds and factors combine in various ways to affect the circumstances of discrimination. Multiple factors may increase or compound the vulnerability of an individual or group. Adolescents experiencing poverty and other forms of social instability, for example, are identified as “particularly vulnerable.”<sup>41</sup> The addition of each new factor compounds their vulnerability. Alternatively, grounds may intersect with the social and material realities of women’s lives to produce unique vulnerabilities.<sup>42</sup>

### Adolescent Women and Sexual Violence

27. No single factor explains why some groups are at higher risk of sexual violence than others. An interaction among individual and environmental factors influences vulnerability.<sup>43</sup> Three factors are identified in the literature and jurisprudence: age, gender and poverty.
28. **Age:** Adolescent women are recognized to be more vulnerable to sexual violence.<sup>44</sup> A multi-country research set confirmed that young women are generally at greater risk of rape than older women, with one-third to two-thirds of all victims of sexual assault aged 15 years or younger.<sup>45</sup> Up to one-third of adolescent women report their first sexual experience as being unwanted or forced.<sup>46</sup> These figures translate into an estimated 150 million adolescent women having experienced forced sexual intercourse or other sexual violence every year.<sup>47</sup>
29. The age-based vulnerability of adolescent women to sexual violence cannot be understood apart from “the environment in which they live”.<sup>48</sup> A multiple discrimination analysis can reveal how age intersects with environmental factors such as poverty and gender norms to produce greater or unique vulnerability.
30. **Poverty:** Poverty and deprivation are identified as factors that may have a particular impact on the lives of women,<sup>49</sup> and associated vulnerability related to work or employment. Poor adolescent women may be at greater risk of sexual violence, for example, when required to work or carry out domestic tasks in support of their families and communities. Walking longer distances and working in markets may render adolescent women in rural communities more vulnerable to sexual violence.<sup>50</sup>



31. ***Gender and related Sexual Norms:*** “Both girls and boys are at risk of all forms of violence, but violence often has a gender component.”<sup>51</sup> Deeply entrenched norms of adult-dominance and male-dominance may intersect to create a unique vulnerability to sexual violence for adolescent women.<sup>52</sup> How families and communities react to sexual violence is informed by prevailing social attitudes toward female sexuality.<sup>53</sup> Adolescent women may be reluctant to report to or seek protection from adults within their family or community because of the stigma of sexual violence.<sup>54</sup> It is not uncommon for women to be blamed for the act and for bringing dishonour onto themselves and their families.<sup>55</sup> Families may further dissuade adolescent women from reporting violence to authorities or from seeking health and social services for fear of community judgment or retribution. Whether real or perceived, such responses create a culture of silence around sexual violence, leading to its acceptance as something inevitable or normal.<sup>56</sup>

## **B. The Forms and Manifestations of Multiple Discrimination**

32. Discrimination as defined in Article 1 of *CEDAW* concerns inequality in the enjoyment and exercise of rights “in effect or purpose”. This phrase renders the definition inclusive of both *direct* and *indirect* discrimination.<sup>57</sup>

33. ***Direct or Formal discrimination (de jure or in law)*** refers to a distinction, exclusion or restriction in law or practice explicitly based on a prohibited ground, and resulting in inequality in the enjoyment and exercise of rights.<sup>58</sup> Such inequality is a foreseeable effect if not the intended purpose.

34. ***Indirect or Substantive discrimination (de facto or in fact)*** refers to a formally neutral law or practice that disparately impacts or disadvantages individuals or groups, and in effect results in inequality in the enjoyment and exercise of human rights.<sup>59</sup> Differences in identities and social locations – inequalities pre-existing the law or practice – account for the disparate impact across individuals and groups.<sup>60</sup> Applying a neutral law may leave these inequalities in place or may exacerbate them.<sup>61</sup>

35. Indirect discrimination often assumes the form of ***structural discrimination***, whereby systematic or entrenched institutional practices intersect with prohibited grounds to create vulnerability or disadvantage.<sup>62</sup> Structural discrimination addresses not specific acts of discrimination, but discrimination in routine and structure. It is thus both more pervasive and persistent. States Parties are obligated to “refrain from making ... administrative procedures and institutional structures that ... indirectly” discriminate.<sup>63</sup>

## **Adolescent Women and Access to Reproductive and Other Health Services**

36. Third-party authorization requirements and procedures for access to lawful abortion provide examples of both direct and indirect (structural) discrimination.

37. Parental authorization required by law for all adolescent women aged 18 years or younger is a form of direct discrimination.<sup>64</sup> The age-based restriction is explicit in the law. Such restriction is often justified as a measure to protect the best interests of minors, but denies evolving capacities of adolescent women in health decision-making.<sup>65</sup>
38. Structural (indirect) discrimination against adolescent and poor women can be seen in the impact of burdensome procedures for the medical authorization of therapeutic abortion (i.e. a hospital committee to certify the abortion as necessary to avert a risk to life or health).<sup>66</sup> Procedures such as appeal processes may impose a disproportionate burden on adolescent and poor women who do not have the resources (e.g. education or finances) to claim and defend their legal rights. Similar structural discrimination is evident in police or judicial authorization requirements for women seeking lawful abortion services where pregnancy results from sexual violence.
39. Health services “must be accessible to all, especially the most vulnerable or marginalized sections of the population, *in law and in fact*, without discrimination.”<sup>67</sup> Restriction of access to health services “on the ground that women do not have the authorization of ... parents or health authorities” constitutes discrimination against women.<sup>68</sup>

### **C. The Harms and Consequences of Multiple Discrimination**

40. Discrimination as defined in Article 1 of *CEDAW* concerns the *effect* (impairment or nullification) of a law, policy or practice on the recognition, enjoyment and exercise of women’s human rights. These are the harms and consequences of discrimination.

#### **Adolescent Women and Sexual Violence**

41. Sexual violence endangers the lives and health of women,<sup>69</sup> but may do so in different ways among different groups of women. Sexual violence impacts the physical health, mental health and social well-being of adolescents in distinct or unique ways.<sup>70</sup>
42. ***Physical health harms:*** Complications related to forced sex include vaginal bleeding, fistulas and injured sexual organs, as well as higher risk of contracting sexually transmitted infections (STIs).<sup>71</sup> These complications may be greater or more likely for adolescent women, who may be physiologically underdeveloped for safe sexual intercourse regardless of whether physical force is used. Sexual intercourse that occurs when the reproductive tract is immature, especially with an adult male, can be painful because of the small diameter, short length, inelasticity, and lack of lubrication of the vagina.<sup>72</sup> The maturation and protective lubrication of the cervix and vagina occurs gradually with the buildup of estrogen over time after menstruation begins. This may also render adolescent girls more susceptible to acquiring a STI such as HIV.<sup>73</sup> In addition to the greater risk of abrasion or tearing from forced penetration, their vaginal mucous membranes may not have developed sufficiently to provide a barrier to the entry of infection as with adult women.<sup>74</sup> Biological differences based not only on sex, but also age and physiological maturation, may thus render women more likely to be exposed to STIs than men.<sup>75</sup>

43. **Mental health harms:** Physical force is not necessarily used in rape, and physical injuries may not follow sexual violence.<sup>76</sup> The impact of sexual violence on psychological integrity (mental health, emotional and social well-being) can be as serious as physical harm.<sup>77</sup> Women are identified as disproportionately susceptible to mental health risks because of gender discrimination and violence.<sup>78</sup> Specific mental health and emotional consequences of violence against children include anxiety and depressive disorders, feelings of rejection, fear, anxiety, insecurity and shattered self-esteem.<sup>79</sup>
44. Sexual violence is a predictive factor of health risk behaviours in adolescence, including **suicidal thoughts and attempts**.<sup>80</sup> Deaths from suicide reflect only a part of the tragic consequences of sexual violence. Many more adolescents survive attempts to take their own lives, requiring serious medical intervention and resulting in severe life-long disability.<sup>81</sup> Other survivors for reason of stigma or criminal sanctions against suicide never seek health services or other social support for their physical injuries or on-going emotional suffering.
45. The consequences of sexual violence on adolescent women's feelings of self-worth can have long-lasting affects on their **social well-being**, adversely impacting their participation in education, in the family, and in other forms of public life. For this reason, "[v]iolence against women is not only a manifestation of unequal power relations between men and women, it is a mechanism for perpetuating inequality."<sup>82</sup> Sexual violence may prevent adolescent women from enjoying human rights and fundamental freedoms throughout their lives.
46. **Reproductive harms:** Sexual violence for adolescent women is associated with reproductive harms of unwanted pregnancy and early childbirth.<sup>83</sup> "Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child."<sup>84</sup> Adolescent suicide related to unwanted pregnancy, whether or not the consequence of sexual violence, is of documented concern.<sup>85</sup> Further health-related risks are discussed in Paragraphs 47 and 48 in relationship to denied access to abortion services.

#### Adolescent Women and Denial of Access to Reproductive Health Services

47. **Harms of Pregnancy and Childbirth:** Early pregnancy is identified as a health factor for adolescent women.<sup>86</sup> Postponement of pregnancy in young adolescents may be medically indicated for reasons of physiological development, namely to allow for the growth of the pelvic bone and birth canal and the maturation of the cervix.<sup>87</sup> Early pregnancy places adolescent women at heightened risk of obstetric complications such as pregnancy-induced hypertension, obstructed and prolonged labor, vaginal tearing, obstetric fistula, and postpartum hemorrhage and infection.<sup>88</sup> Adolescent women aged 15 to 19 are twice as likely to die in childbirth as women aged 20 to 29. For those under 15, the risk of death in childbirth is five times greater.<sup>89</sup> In addition to physical health, pregnancy in adolescence may adversely affect mental health. In cases of fetal malformation, for example, maternal "psychological consequences [e.g. depression] may be exacerbated by status as a minor."<sup>90</sup>
48. **Harms of Unsafe Abortion:** Many adolescent women denied access to lawful services resort to unsafe abortion.<sup>91</sup> Unsafe abortion is a leading cause of maternal death and disability among adolescent women in developing countries.<sup>92</sup>

## **D. Remedies to Multiple Discrimination**

49. The general legal obligations under Article 2 of *CEDAW* are both negative and positive. The latter obligations specifically require States Parties to adopt legislative and other appropriate measures to eliminate discrimination against women.

### Collection and Dissemination of Disaggregated Data

50. Statistical information and other data are necessary to identify, assess and take effective measures to remedy discrimination against women.<sup>93</sup> It is acknowledged that measures to address sexual violence against adolescents are currently limited by a “lack of knowledge, data and understanding of violence ... and its root causes.”<sup>94</sup>

51. To remedy discrimination against women based on multiple grounds, State Parties “should adopt data-collection mechanisms that allow desegregation by sex, age, origin and socio-economic status so that the situation of different groups can be followed.”<sup>95</sup> States Parties have a legal obligation “to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.”<sup>96</sup>

### Primary Prevention: Sexual Violence

52. Primary prevention in sexual violence refers to measures that seek to prevent sexual violence from occurring in the first instance.<sup>97</sup> While international human rights law is not a substitute for domestic criminal law, sexual violence will not be eliminated unless protection is afforded against both state and private actors.<sup>98</sup> Positive obligations under Article 2 of *CEDAW* extend to appropriate measures to prevent sexual violence perpetrated by private persons.<sup>99</sup> The term ‘appropriate’ refers to measures cutting across all government sectors that can be used to prevent violence.<sup>100</sup> In the same way environmental factors can increase vulnerability to violence, there are factors that may reduce the likelihood of violence.<sup>101</sup>

53. Economic and social measures may address environmental vulnerability factors.<sup>102</sup> High levels of social cohesion, for example, have been shown to have a protective effect against violence in the community.<sup>103</sup> Social protection programs, for example, may help mitigate poverty-related risk factors for adolescent women.<sup>104</sup>

54. Measures may also address underlying factors or root causes of vulnerability. Pursuant to Article 5(a) of *CEDAW*, “States Parties shall take all appropriate measures ... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of ... all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>105</sup>

55. Education programs can impact social attitudes or values that perpetuate sexual violence against adolescent women.<sup>106</sup> Early promotion of non-sexist educational materials in schools may bring about greater equality in gender relations.<sup>107</sup> Sexual health education for adolescents may also be implemented as a measure of empowerment,<sup>108</sup> challenging dominant gender and sexual norms of superiority and entitlement, or subjugation and inferiority underlying sexual violence.

#### Secondary Prevention: Access to Reproductive and Other Health Services

56. Secondary prevention of sexual violence refers to measures post-incident designed to minimize health-related harms and other consequences. Health care services are essential to secondary prevention. Pursuant to Article 12 of *CEDAW*, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care.”

57. Health services as secondary prevention should be specific to the circumstances of the case, sensitive to the rights and particular needs of the individual woman.<sup>109</sup> Comprehensive health services related to sexual violence generally include:<sup>110</sup>

- prophylactic measures to prevent pregnancy or sexually transmitted infections (e.g. emergency contraception or post-exposure prophylaxis in the case of HIV);
- medical interventions to treat injuries, such as surgery, and longer-term rehabilitation services;<sup>111</sup>
- mental health services, such as counselling, therapy and support groups to address depression, emotional suffering and to protect against self-inflicted harm, e.g. suicide;<sup>112</sup>
- reproductive health services such as therapeutic abortion, which States Parties cannot refuse to legally provide in the health system.<sup>113</sup>

Abortion services for women who become pregnant as a result of rape may be considered by definition health services and thus lawfully required. Many countries thus allow for lawful abortion in cases of rape as an explicit indication in the criminal law.<sup>114</sup> In other cases, abortion services may be therapeutically indicated to protect against the physical or mental health risks of sexual violence, and permitted under a general health indication in the criminal law.<sup>115</sup> Access to safe abortion services when lawfully permitted is a means by which States Parties meet their legal obligations to reduce maternal mortality related to early pregnancy and unsafe abortion.<sup>116</sup>

58. Acceptable care, sensitive to gender and life-cycle requirements (“youth friendly care”), is an essential component to protect against secondary victimization.<sup>117</sup> Physical and psychological recovery from sexual violence should be undertaken in an environment that fosters health, self-respect and dignity.<sup>118</sup> State Parties are obligated to provide adolescent women with the opportunity to participate in decisions affecting their health,<sup>119</sup> and to access services and support in exercise of this right.<sup>120</sup>

59. States Parties are further obligated to address secondary victimization through structural discrimination in the health system.<sup>121</sup> Measures may include:

- Education and training programs to encourage health providers to change their attitudes and behaviour in relation to adolescent women seeking reproductive health services.<sup>122</sup> States Parties are obligated to ensure health care staff is trained to recognize and respond to specific health needs related to sexual violence.<sup>123</sup> All actors involved in administration or service delivery, for example, should be informed of the law on abortion and the rights of adolescent women legally entitled to services.
- Guidelines or protocols to ensure health services are available and accessible in public facilities.<sup>124</sup>
- Accessible appeal and hearing procedures to protect against health providers and hospital committees wrongly denying access to health services, specifically lawful abortion.<sup>125</sup> These procedures “should be appropriately adapted so as to take account of the special vulnerability of certain categories of person” such as poor adolescent women.<sup>126</sup>

## V. CONCLUSION

60. These comments restate in a single framework the general conceptual and methodological components of a multiple discrimination analysis as articulated in international human rights law. The comments are submitted to assist the *Committee* to develop and apply a **multiple discrimination analysis** in its communication procedure and other work.

61. **Multiple Discrimination** refers to discrimination based on the interaction of multiple grounds or factors. *Compounded discrimination* refers to a layering of grounds or factors to *aggravate* the risks or burdens of discrimination. *Intersectional discrimination* refers to multiple grounds or factors interacting to create a *unique* or *distinct* risk or burden (Paras 10-12).

62. A multiple discrimination analysis is essential to achieve **substantive equality**, and to ensure that complex experiences of discrimination are recognized. A multiple discrimination analysis elaborates the scope of **general legal obligations under Article 2**, and assists States Parties to formulate measures to address *all* forms of discrimination (Paras 13-19).

63. The four basic components of a multiple discrimination analysis derive from and reflect the definition of “discrimination against women” in Article 1 (Paras 20-22).

64. **Discrimination against women is inextricably linked with other grounds and factors.** A multiple grounds analysis recognizes that individuals have multifaceted identities and may be members of more than one social group. A multiple discrimination analysis also accounts for the interaction between grounds and factors of the environment in which an individual lives. Age, gender and poverty all influence vulnerability to sexual violence (Paras 23-31).

65. Multiple discrimination can be **direct and indirect** in form or manifestation. Indirect multiple discrimination often assumes the form of **structural discrimination**, whereby systematic or entrenched practices create vulnerability or disadvantage. Third-party authorization for lawful abortion provides an example of both direct and structural discrimination against adolescent women (Paras 32-39).
66. The **harms and consequences of sexual violence and denied access to reproductive health services** differ among women. Physical health complications related to forced sex may be greater or more likely for adolescent women. Adolescents may also suffer from specific mental health and emotional consequences of sexual violence. Unwanted pregnancy, early childbirth and unsafe abortion may present greater or unique health risks (Paras 40-48).
67. **To remedy discrimination against women based on multiple grounds**, State Parties should adopt appropriate measures, including:
- a. Data-collection mechanisms that allow desegregation by sex as well as other relevant grounds and factors (Paras 50-51);
  - b. Primary prevention to prevent sexual violence from occurring in the first instance, such as economic and social measures as well as education programs (Paras 52-55);
  - c. Secondary prevention to minimize health-related harms and other consequences of sexual violence. Health services are essential to secondary prevention, including: prophylactic measures to prevent pregnancy or STIs, interventions to treat injuries, mental health and reproductive health including abortion services (Paras 56-59).

---

<sup>1</sup> Comm. on the Elimination of Discrimination against Women (CEDAW). *General Recommendation No. 28*. The Core Obligations of States Parties under Article 2. UN Doc. C/GC/28 (2010) at ¶5 [hereinafter CEDAW Gen Rec. 28] (“Although the Convention only refers to sex-based discrimination ... the Convention covers gender-based discrimination against women. The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women”). See also: Comm. on Economic, Social and Cultural Rights (CESCR). *General Comment No. 20. Non-discrimination in economic, social and cultural rights (Art. 2, Para. 2)* UN Doc. E/C.12/GC/20 (2009) at ¶20 [hereinafter CESCR Gen Cmmt. 20] (“the notion of the prohibited ground “sex” has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles”).

<sup>2</sup> CEDAW Gen Rec. 28, *ibid.* at ¶12. See also: CEDAW. *General Recommendation No. 25. Article 4, paragraph 1, of the Convention (Temporary Special Measures)*. UN Doc. C/2004/I/WP.1/Rev.1 (2004) at ¶12 [hereinafter CEDAW Gen Rec. 25]; CEDAW. *General Recommendation No. 26 on women migrant workers*. UN Doc. C/2009/WP.1/R (2008) at ¶14; CEDAW. *General Recommendation No. 27 on older women and protection of their human rights*. UN Doc. C/2010/47/GC.1 (2010) at ¶13 [hereinafter CEDAW Gen Rec. 27]; CEDAW Gen Rec. 28, *supra* note 1 at ¶18.

<sup>3</sup> The Committee on the Elimination of Racial Discrimination (CERD) is an exception. See the methodology described in CERD *General Recommendation No. 25. Gender related dimensions of racial discrimination*. UN Doc. A/55/18 (2000) at ¶5 [hereinafter CERD Gen Rec. 25]. The methodology was developed on the belief that CERD “would benefit from developing, ... a more systematic and consistent approach to evaluating and monitoring racial discrimination against women.” *Ibid.* at ¶4. The need for and importance of a multiple discrimination framework is

documented in the U.N. system and scholarship, see: UN. Division on Advancement of Women (DAW). *Gender and racial Discrimination: Report of the Expert Group Meeting 21 – 24 November 2000* (2000) at, 170 [hereinafter UN. DAW Report 2000]; UN. Commission on Human Rights. *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*. UN. Doc. E/CN.4/2004/66 (2003) at para. 73(f); C.I. Ravnbøl. “The Human Rights of Minority Women: Romani Women’s Rights from a Perspective on International Human Rights Law and Politics” (2010) 17(12) *Intl. J. Minority and Group Rts.* 1–45, at 26 (“Recent state reviews in the CEDAW Committee show a growing attention to multiple discrimination of ... However, so far no larger steps have been made to redress the problem of multiple discrimination, neither in the form of developing new legal standards or jurisprudence, nor in form of elaborating a General Recommendation.”)

<sup>4</sup> See e.g.: UN. DAW Report 2000, *supra* note 3 (“methodology should be designed to uncover ways in which various structures of subordination converge to the disadvantage of women and girls”); UN. Special Rapporteur on Violence against Women. *Violence against women, on the subject of race, gender and violence against women*. UN Doc. A/CONF.189/PC.3/5 (2001) at ¶11 [hereinafter Sp. Rapp. VAW Report 2001] (“[G]ender and other forms of discrimination ... have been considered in parallel. However, interlinked and mutually reinforcing trends ... have increased the demand for a more comprehensive analysis of the dynamics of discrimination against women, including the intersection of the various different forms of such discrimination.”)

<sup>5</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶3.

<sup>6</sup> HRC. *General Comment No. 18. Non-discrimination*. UN. Doc. HRI/GEN/1/Rev.6 (1989) at ¶1 [hereinafter HRC Gen Cmnt. 18]; CERD. *General Recommendation No. 14. Definition of Racial Discrimination*. UN Doc. A/48/18 (1994) at ¶1 [hereinafter CERD Gen Rec. 14]; CDESCR Gen Cmnt. 20 at ¶2.

<sup>7</sup> CEDAW Gen Rec. 28, *supra* note 2 at ¶1.

<sup>8</sup> Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶172 (“While no additional articulation of basic principles is necessary to create rights and protections against intersectional discrimination, it would be useful to develop interpretive protocols to break existing interpretations and practices”); UN. DAW Report 2000, *supra* note 3 at ¶208 (“develop new methodologies ... to identify and address the effects of multiple forms of discrimination”).

<sup>9</sup> Sexual violence is recognized as gender-based violence and thus discrimination against women in CEDAW. *General Recommendation No. 19. Violence against Women*. UN Doc. A/47/38 (1992) at ¶6 [hereinafter CEDAW Gen Rec. 19].

<sup>10</sup> See e.g. CEDAW Gen Rec. 28, *supra* note 1 at ¶18; CDESCR Gen Cmnt. 20, *supra* note 1 at ¶17. The concept of multiple discrimination came into widespread use through American critical race feminist scholarship in the late 1980s/early 1990s. The work of Kimberlé Crenshaw on intersectional discrimination is foundational, see: K. Crenshaw. “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color.” (1989) 43(6) *Stanford L.R.* 1241–1299; K. Crenshaw. *Background Paper for the Expert Meeting on the Gender-Related Aspects of Race Discrimination* (2000). For multiple, compounded and intersectional discrimination differentiation, see: T. Makkonen. *Multiple, Compound and Intersectional Discrimination: Bringing the experiences of the most marginalized to the fore* (2002). For historical reviews and theoretical debates on how intersectionality is defined, see e.g. L. McCall. “The Complexity of Intersectionality.” (2005) 30(3) *Signs: Journal of Women in Culture & Society* 1771–1800. For a discussion of intersectionality in legal and political practices, see e.g. E. Lombardo, P. Meier & M. Verloo. *The discursive politics of gender equality: Stretching, bending and policy-making* (2009).

<sup>11</sup> See e.g. Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶2.

<sup>12</sup> Crenshaw 1991, *supra* note 10 at 1249.

<sup>13</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶12; CEDAW Gen Rec. 27, *supra* note 2 at ¶13; CERD Gen Rec. 25, *supra* note 3 at ¶1.

<sup>14</sup> See e.g. Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶23.

<sup>15</sup> Crenshaw 1991, *supra* note 10 at 1243.

<sup>16</sup> Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶20.

<sup>17</sup> CDESCR Gen Cmnt. 20, *supra* note 1 at ¶17.

<sup>18</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶12; CEDAW Gen Rec. 27, *supra* note 2 at ¶11; CERD Gen Rec. 25, *supra* note 3 at ¶1; HRC. *General Comment No. 28. Equality of Rights Between Men and Women (Article 3)*. UN Doc. CCPR/C/21/Rev.1/Add.10 (2000) at ¶30 [hereinafter HRC Gen Cmnt. 28].

<sup>19</sup> CDESCR. *General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3)*. UN Doc. E/C.12/2005/4 (2005) at ¶7 [hereinafter CDESCR Gen Cmnt. 16].

<sup>20</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶28.

<sup>21</sup> Crenshaw 2000, *supra* note 10.



- <sup>22</sup> Crenshaw, K. 1989. “Demarginalising the intersection of race and sex: a Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics”, *University of Chicago Legal Forum*, p. 150. Crenshaw, K., “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics”, (1989) at 57 in K.T. Bartlett and R. Kennedy (eds.), *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991). See also: Crenshaw, 1991: 1242. See also DAW Report 2000 (the problems of different groups of women can obscure or deny human rights protection due to all women; A problem or condition that disproportionately affects a subset of women may be framed solely as a women's problem). U.N. Sp Rpp Report VAW 2001 at 19. “There is growing recognition that the failure to address the various “differences” that characterize the problems of different groups of women can obscure or deny human rights protection due to all women.” CERD General Comment 25: Gender Dimensions at 1.
- <sup>23</sup> UN. DAW Report 2000, *supra* note 3 (“Without explicit recognition and focused monitoring of the different life experiences of women ... other forms of discrimination could escape detection and, therefore, appropriate remedy.”)
- <sup>24</sup> Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶21. See also: Crenshaw 2000, *supra* note 10; UN. DAW Report 2000, *supra* note 3.
- <sup>25</sup> Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶11 (“[W]ithout explicit recognition and focused monitoring of the different life experiences of women ... other forms of discrimination could escape detection and, therefore, appropriate remedy.”)
- <sup>26</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶18.
- <sup>27</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶8.
- <sup>28</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶18.
- <sup>29</sup> Article 2 of CEDAW, specifically ss. (e) and (f).
- <sup>30</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶23; CESCR. *General Comment No. 3. The nature of States’ parties obligations*. UN Doc. E/1991/23 (1990) at ¶4 [hereinafter CESCR Gen Cmmt. 3].
- <sup>31</sup> HRC Gen Cmmt. 28, *supra* note 18 at ¶3. See also: HRC. *General Comment No. 4. Equality between the sexes Article 3*. UN. Doc. HRI/GEN/1/Rev.6 (1981) at ¶2 [hereinafter HRC Gen Cmmt. 4].
- <sup>32</sup> See e.g. Article 1 of the *International Convention on the Elimination of All Forms Racial Discrimination*.
- <sup>33</sup> These four components are consistent with the methodology adopted by CERD for analysis of gender-related dimensions of racial discrimination, which gives particular consideration to: (a) The form and manifestation of racial discrimination; (b) The circumstances in which racial discrimination occurs; (c) The consequences of racial discrimination; and (d) The availability and accessibility of remedies and complaint mechanisms for racial discrimination. CERD Gen Rec. 25, *supra* note 3 at ¶5.
- <sup>34</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶18. See other *General Recommendations* at Footnote 2.
- <sup>35</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶18; CEDAW Gen Rec. 25, *supra* note 2 at ¶12; CESCR Gen Cmmt. 16, *supra* note 19 at ¶10; HRC Gen Cmmt. 28, *supra* note 18 at ¶30.
- <sup>36</sup> CESCR Gen Cmmt. 20, *supra* note 1 at ¶27 (“[A]dditional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.”)
- <sup>37</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶5 (“This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community”); CEDAW. *General Recommendation No. 24. Article 12: Women and Health*. UN Doc. A/54/38/Rev.1 (1999) at ¶6 and 12(b) [hereinafter CEDAW Gen Rec. 24] (“[S]ocietal factors which are determinative of the health status of women and men and which can vary among women themselves,” “Socio-economic factors ... vary for women in general and some groups of women in particular.”); HRC Gen Cmmt. 28, *supra* note 18 at ¶5-6 (identifies ‘factors’ affecting the equal enjoyment by women of their human rights); CRC. *General Comment No. 4. Adolescent health and development in the context of the Convention on the Rights of the Child*. UN Doc. CRC/GC/2003/4 (2003) at ¶34 [hereinafter CRC Gen Cmmt. 4] (“In ensuring respect for the right of adolescents to health and development, both *individual behaviours and environmental factors* which increase their vulnerability and risk should be taken into consideration.”)
- <sup>38</sup> UN. Independent Expert for the Secretary-General Study on Violence against Children. *Rights of the Child*. UN Doc. A/61/299 (2006) at 25; CRC Gen Cmmt. 4, *supra* note 37 at ¶23 [hereinafter Ind. Expert. Report Sec-Gen 2006] (“[V]iolence results from a complex interplay of individual, family, community and societal factors”).
- <sup>39</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶10. (“The lives of women and men must be considered in a contextual way”).
- <sup>40</sup> Crenshaw 2000, *supra* note 10.
- <sup>41</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶38; Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶93(e).
- <sup>42</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶12; CEDAW Gen Rec. 27, *supra* note 2 at ¶13.

- 
- <sup>43</sup> World Health Organization (WHO). “Sexual Violence” in *World report on violence and health* 149-181, 157 (2002) [hereinafter WHO Sexual Violence 2002].
- <sup>44</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶12(b); CEDAW Gen Rec. 28, *supra* note 1 at ¶21; Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶69.
- <sup>45</sup> WHO Sexual Violence 2002, *supra* note 43 at 157.
- <sup>46</sup> *Ibid.* at 149, 152.
- <sup>47</sup> Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶69.
- <sup>48</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶14 and 38.
- <sup>49</sup> HRC Gen Cmmt. 28, *supra* note 18 at ¶10; CRC. *General Comment No. 13. The right of the child to freedom from all forms of violence (Article 19)*. UN Doc. CRC/C/GC/13 (2011) at ¶72(f) [hereinafter CRC Gen Cmmt. 13]
- <sup>50</sup> WHO Sexual Violence 2002, *supra* note 43 at 158; Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶70.
- <sup>51</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶19.
- <sup>52</sup> CEDAW Gen Rec. 19, *supra* note 9 at ¶21; CEDAW Gen Rec. 24, *supra* note 9 at ¶18; WHO Sexual Violence 2002, *supra* note 43 at 161-162; N. Taefi. “The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child.” (2009) 17 *Intl. J. Children’s Rights* 345-376, at 350.
- <sup>53</sup> HRC Gen Cmmt. 28, *supra* note 18 at ¶24; WHO Sexual Violence 2002, *supra* note 43 at 163.
- <sup>54</sup> Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶25 (“Fear is closely related to the stigma frequently attached to reporting violence ... In particular, rape or other forms of sexual violence can lead to ostracism, further violence, or death.”)
- <sup>55</sup> WHO Sexual Violence 2002, *supra* note 43 at 160; WHO/London School of Hygiene and Tropical Medicine. *Preventing intimate partner and sexual violence against women: taking action and generating evidence* (2010) at 29-30 [hereinafter WHO/LSHTM Preventing Sexual Violence 2010]
- <sup>56</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶12; Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶25.
- <sup>57</sup> See e.g. CEDAW Gen Rec. 25, *supra* note 2 at ¶4; CESC Gen Cmmt. 16, *supra* note 19 at ¶7; CESC Gen Cmmt. 20, *supra* note 1 at ¶8; HRC Gen Cmmt. 18, *supra* note 6 at ¶9.
- <sup>58</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶16; CESC Gen Cmmt. 16, *supra* note 19 at ¶7; CESC Gen Cmmt. 20, *supra* note 1 at ¶10; CERD Gen Rec. 25, *supra* note 3 at ¶2.
- <sup>59</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶5 and 16; CEDAW Gen Rec. 24, *supra* note 9 at ¶7; CESC Gen Cmmt. 20, *supra* note 1 at ¶10; CESC Gen Cmmt. 16, *supra* note 19 at ¶5, 7-8; CERD Gen Rec. 14, *supra* note 6 at ¶2; CERD Gen Rec. 25, *supra* note 3 at ¶2.
- <sup>60</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶5.
- <sup>61</sup> CESC Gen Cmmt. 16, *supra* note 19 at ¶13.
- <sup>62</sup> CEDAW Gen Rec. 25, *supra* note 2 at ¶7 (“States parties’ obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures”); CESC Gen Cmmt. 20, *supra* note 1 at ¶12; Sp. Rapp. VAW Report 2001, *supra* note 4 at ¶31.
- <sup>63</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶9
- <sup>64</sup> CESC Gen Cmmt. 20, *supra* note 1 at ¶29. (“Age is a prohibited ground of discrimination in several contexts ... In relation to young persons, unequal access by adolescents to sexual and reproductive health information and services amounts to discrimination.”) See also: WHO. *Adolescent pregnancy - unmet needs and undone deeds: a review of literature and programmes* (2007), at viii [hereinafter WHO Adolescent Pregnancy 2007].
- <sup>65</sup> Article 5 of the *Convention on the Rights of the Child*; CRC Gen Cmmt. 4, *supra* note 37 at ¶9 and 32.
- <sup>66</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶21; *L.M.R. v. Argentina*, Comm. No. 1608/2007: Argentina. U.N. Doc. CCPR/C/101/D/1608/2007 (2011) (Human Rights Committee) at ¶9.2.
- <sup>67</sup> CESC. *General Comment No. 14. The Right to the Highest Attainable Standard of Health*. UN Doc. E/C.12/2000/4 (2000) ¶12(b) [hereinafter CESC Gen Cmmt. 14].
- <sup>68</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶14.
- <sup>69</sup> CEDAW Gen Rec. 19, *supra* note 9 at ¶19.
- <sup>70</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶12(b); CRC Gen Cmmt. 4, *supra* note 37 at ¶37; CRC Gen Cmmt. 13, *supra* note 49 at ¶15(a).
- <sup>71</sup> WHO Sexual Violence 2002, *supra* note 43 at 162.
- <sup>72</sup> R. Dixon-Mueller. “How Young is ‘Too Young’? Comparative Perspectives on Adolescent Sexual, Marital, and Reproductive Transitions” (2008) 39(4) *Studies in Family Planning* 247-262 at 248.
- <sup>73</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶15(a).

- 
- <sup>74</sup> Dixon-Mueller, *supra* note 72 at 248; L. Corey et al. "Sexually transmitted diseases in victims of rape" (1990) 322(11) *New England Journal of Medicine* 713–716.
- <sup>75</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶12(a).
- <sup>76</sup> WHO Sexual Violence 2002, *supra* note 43 at 162.
- <sup>77</sup> *Ibid.* at 149.
- <sup>78</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶25.
- <sup>79</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶15(a).
- <sup>80</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶4, 22; CRC Gen Cmmt. 13, *ibid.* at ¶28; WHO Sexual Violence 2002, *supra* note 43 at 163 (“In Ethiopia, 6% of raped schoolgirls reported having attempted suicide ... A study of adolescents in Brazil found prior sexual abuse to be a leading factor predicting several health risk behaviours, including suicidal thoughts and attempts.”)
- <sup>81</sup> WHO. “Self-Directed Violence” in *World report on violence and health* 185-212, 185 (2002).
- <sup>82</sup> WHO. *Preventing Violence: A guide to implementing the recommendations of the World report on violence and health* (2002) at 52 [hereinafter WHO Preventing Violence 2002].
- <sup>83</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶28; WHO Sexual Violence 2002, *supra* note 43 at 162 (“A study of adolescents in Ethiopia found that among those who reported being raped, 17% became pregnant after the rape. A study of factors associated with teenage pregnancy in Cape Town, South Africa, found that forced sexual initiation was the third most strongly related factor”).
- <sup>84</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶31.
- <sup>85</sup> See e.g. HRC Concluding Observations: *Ecuador, 18 August 1998, CCPR/C/79/Add.92.* para 11.
- <sup>86</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶20.
- <sup>87</sup> Dixon-Mueller, *supra* note 72 at 248; WHO Adolescent Pregnancy 2007, *supra* note 64 at 20.
- <sup>88</sup> Dixon-Mueller, *ibid.* at 254; WHO Adolescent Pregnancy 2007, *ibid.* at 21.
- <sup>89</sup> WHO Adolescent Pregnancy 2007, *ibid.* at p. viii
- <sup>90</sup> *K.L. v. Peru*, Comm. No. 1153/2003: Peru. U.N. Doc. CCPR/C/85/D/1153/2003 (2005) (Human Rights Committee) at para 6.2. See also: *L.M.R. v. Argentina*, *supra* note 66 at ¶9.2 (describing more serious effect of denied access to lawful abortion on physical and moral suffering because “it was a young woman with a disability.”)
- <sup>91</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶37.
- <sup>92</sup> WHO Adolescent Pregnancy 2007, *supra* note 64 at 1.
- <sup>93</sup> CEDAW. *General Recommendation No. 9. Statistical data concerning the situation of women.* UN Doc. A/44/38 (1989) at ¶1.
- <sup>94</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶12. See also: CEDAW Gen Rec. 19, *supra* note 9 at ¶24.
- <sup>95</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶13. See also: CRC. *General Comment No. 5. General measures of implementation of the Convention on the Rights of the Child.* UN Doc. CRC/GC/2003/5 (2003) at ¶48; CEDAW Gen Rec. 27, *supra* note 2 at ¶2.
- <sup>96</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶10.
- <sup>97</sup> WHO Preventing Violence 2002, *supra* note 82 at 6.
- <sup>98</sup> HRC. *General Comment No. 31. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.* UN. Doc. CCPR/C/21/Rev.1/Add.13 (2004) at ¶10 [hereinafter HRC Gen Cmmt. 31].
- <sup>99</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶13 and 19; CEDAW Gen Rec. 19, *supra* note 9 at ¶19 and 24(a); CRC Gen Cmmt. 4, *supra* note 37 at ¶12; CRC Gen Cmmt. 13, *supra* note 49 at ¶3(g).
- <sup>100</sup> CRC Gen Cmmt. 13, *ibid.* at ¶39.
- <sup>101</sup> Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶33.
- <sup>102</sup> HRC. *General Comment No. 17. Rights of the Child (Article 24)* UN. Doc. HRI/GEN/1/Rev.6 (1989) at ¶3.
- <sup>103</sup> Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶34.
- <sup>104</sup> WHO Preventing Violence 2002, *supra* note 82 at 50.
- <sup>105</sup> See also: CEDAW Gen Rec. 28, *supra* note 1 at ¶9; CESCRC Gen Cmmt. 16, *supra* note 19 at ¶19.
- <sup>106</sup> CEDAW Gen Rec. 19, *supra* note 9 at ¶24; CRC Gen Cmmt. 13, *supra* note 49 at ¶47(a)(i).
- <sup>107</sup> HRC Gen Cmmt. 28, *supra* note 18 at ¶28.
- <sup>108</sup> CRC Gen Cmmt. 13, *supra* note 49 at ¶44.(B) and 47(b)(ii); CESCRC. *General Comment No. 13. The Right to Education.* UN Doc. E/C.12/1999/10 (1999) at ¶1.
- <sup>109</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶12; *K.L. v. Peru*, *supra* note 90 at ¶6.5; CRC Gen Cmmt. 4, *supra* note 37 at ¶31.
- <sup>110</sup> See e.g. recommendations for health services as secondary prevention in Ind. Expert. Report Sec-Gen 2006, *supra* note 38 at ¶114 (d).

---

<sup>111</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶29.

<sup>112</sup> CEDAW Gen Rec. 19, *supra* note 9 at ¶24(k); CESCR Gen Cmmt. 14, *supra* note 67 at ¶22; CRC Gen Cmmt. 4, *supra* note 37 at ¶39; WHO Sexual Violence 2002, *supra* note 43 at 165; WHO Preventing Violence 2002, *supra* note 82 at 50.

<sup>113</sup> CEDAW, Article 12(2); CEDAW Gen Rec. 24, *supra* note 9 at ¶11; CESCR Gen Cmmt. 14, *supra* note 67 at ¶21 and 34; CESCR Gen Cmmt. 16, *supra* note 19 at ¶29.

<sup>114</sup> HRC Gen Cmmt. 28, *supra* note 18 at ¶11 (“whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.”)

<sup>115</sup> Mental health risks may include anguish and suffering with continuation of pregnancy or childbirth. *K.L. v. Peru*, *supra* note 90 at ¶6.3.

<sup>116</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶31; HRC Gen Cmmt. 28, *supra* note 18 at ¶31.

<sup>117</sup> CESCR Gen Cmmt. 14, *supra* note 67 at ¶12(c) and 23; WHO Preventing Violence 2002, *supra* note 82 at 61.

<sup>118</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶37; CRC Gen Cmmt. 13, *supra* note 49 at ¶3(b) and 59.

<sup>119</sup> CESCR Gen Cmmt. 14, *supra* note 67 at ¶23; CRC Gen Cmmt. 4, *supra* note 37 at ¶8; *K.L. v. Peru*, *supra* note 90 at ¶6.4 (“the refusal to act in accordance with the author's decision to terminate her pregnancy was not justified.”); *L.M.R. v. Argentina*, *supra* note 66 at ¶9.3 (The unlawful interference of the state in an issue to be resolved between the patient and her doctor is a violation of the woman's privacy rights).

<sup>120</sup> CRC Gen Cmmt. 4, *supra* note 37 at ¶39(c); CESCR Gen Cmmt. 14, *supra* note 67 at ¶23.

<sup>121</sup> CEDAW Gen Rec. 28, *supra* note 1 at ¶13.

<sup>122</sup> WHO Sexual Violence 2002, *supra* note 43 at 166; WHO Adolescent Pregnancy, *supra* note 64 at 43.

<sup>123</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶15(b); CESCR Gen Cmmt. 14, *supra* note 67 at ¶37.

<sup>124</sup> CEDAW Gen Rec. 24, *supra* note 9 at ¶15(a) (“The enactment ... and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services”).

<sup>125</sup> *K.L. v. Peru*, *supra* note 90 at ¶6.6; *L.M.R. v. Argentina*, *supra* note 66 at ¶9.4 (“... to reach that outcome [termination of pregnancy] the author had to go through three courts, the period of pregnancy lasted several weeks, with resulting consequences for the [woman's] health ... [with the abortion] finally coming to fruition in a clandestine manner. For these reasons, the Committee considers that the author did not have an effective remedy.”).

<sup>126</sup> HRC Gen Cmmt. 31, *supra* note 98 at ¶15.