

## Chapter 3

# Combating Violence Against Women and Girls: the Commitment of the CEDAW Committee

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### Objectives

This chapter aims to introduce readers to the work of the CEDAW Committee and its commitment to ending violence against women. Its work also demonstrates how States parties may be held accountable (including the judiciary as a state organ) at international level by the CEDAW Committee. CEDAW also provides extremely useful recommendations to States parties.

CEDAW has been described as a ‘Bill of Rights for Women’ and as such it occupies a special position in respect of combating violence against women and girls. This chapter provides an overview of the CEDAW Committee’s commitment to assist States parties in fulfilling their obligations, as well as holding them accountable where they fail in fulfilling their obligations. The committee assists States parties through concluding observations on reports submitted to it and by adopting general recommendations on key themes and issues such as violence against women. The committee holds States parties accountable through individual communications (individual complaints against states) and holding inquiries into alleged grave and systematic violations of rights under CEDAW.

The four targeted countries – Cambodia, India, Pakistan and Thailand – are parties to CEDAW and are required to submit periodic reports to the CEDAW Committee. In line with their obligations under Article 18 of CEDAW, Cambodia, India, Pakistan and Thailand have submitted reports to the committee. Concluding observations of the committee on these countries provides a very helpful overview of the current state of play in respect of violence against women and women’s human rights in general. These observations are reproduced in section 3.2.

This chapter consists of four main sections. Section 3.1 focuses on general recommendations whereas section 3.2 focuses on concluding observations by the CEDAW Committee on States parties’ reports. Section 3.3 deals with

individual communication and section 3.4 focuses on the inquiry procedure under CEDAW-OP. This is followed by a short conclusion section.

### **3.1 General recommendations**

The committee has adopted several general recommendations to CEDAW on issues such as women and HIV/AIDS, violence against women, disabled women, and reservations. General Recommendation No. 19 1992 specifically deals with violence against women, clarifying issues such as the definition of VAW and the obligations of States parties. It spells out the contents of various rights and lists recommendations on actions that States parties may take to fulfil their obligations.

#### **3.1.1 General Recommendation No. 19**

The committee's comments on the definition of VAW are cited in Chapter 2 but its comment on specific articles of CEDAW, in General Recommendation No. 19, are reproduced below:

##### **Articles 2 and 3**

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

##### **Articles 2(f), 5 and 10(c)**

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.
12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

**Article 6**

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.
14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.
15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.
16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

**Article 11**

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.
18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

**Article 12**

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

#### Article 14

21. Rural women are at risk of gender-based violence because of traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

#### Article 16 (and article 5)

22. Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.
23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.<sup>1</sup>

In light of the above comments, the committee at paragraph 24 recommended the following:

- (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

- (c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) Effective measures should be taken to ensure that the media respect and promote respect for women;
- (e) States parties in their reports should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that result. They should report on the measures that they have undertaken to overcome violence and the effect of those measures;
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality (recommendation No. 3, 1987);
- (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
- (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
- (i) Effective complaints procedures and remedies, including compensation, should be provided;
- (j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;
- (k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;
- (l) States parties should take measures to overcome such practices and should take account of the committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;
- (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;

- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;
- (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;
- (r) Measures that are necessary to overcome family violence should include:
  - i. Criminal penalties where necessary and civil remedies in cases of domestic violence;
  - ii. Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
  - iii. Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
  - iv. Rehabilitation programmes for perpetrators of domestic violence;
  - v. Support services for families where incest or sexual abuse has occurred;
- (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;
- (t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:
  - i. Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;
  - ii. Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
  - iii. Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

- (u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;
- (v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.<sup>2</sup>

The committee elaborated States parties' obligations to ensure equality in marriage and family relations. It expressly stated that women must have equal rights with men in respect of the right to freely choose a spouse and enter into marriage only with their free and full consent, which is particularly relevant for addressing forced marriage.<sup>3</sup> It requires States to give equal rights to women 'to enter into and conclude contracts and to administer property',<sup>4</sup> to 'grant women equal rights with men to acquire, change or retain their nationality' and 'to pass nationality onto the children'.<sup>5</sup>

### **3.1.2 States parties' obligations under Article 2 and General Recommendation No. 28**

Article 2 of CEDAW lists obligations of States parties:

- States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
  - (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
  - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
  - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

In General Recommendation No. 28, the CEDAW Committee commented on **obligations of States parties** as follows:

15. The first obligation of States parties referred to in the chapeau of article 2 is the obligation to “condemn discrimination against women in all its forms”. States parties have an immediate and continuous obligation to condemn discrimination. They are obliged to proclaim their total opposition to all forms of discrimination against women to all levels and branches of Government, to their population and to the international community, and their determination to bring about the elimination of discrimination against women. The term “discrimination in all its forms” clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging.
16. States parties are under an obligation to respect, protect and fulfil the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of de jure and de facto or substantive equality with men. States parties shall ensure that there is neither direct, nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.
17. States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by

sanctions and remedies, where appropriate. States parties should ensure that all government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness programmes are set up and carried out in this respect.

[...].

20. The obligation to fulfil encompasses the obligation of States parties to facilitate access to and to provide for the full realization of women's rights. Human rights of women shall be fulfilled by the promotion of de facto or substantive equality through all appropriate means, including through concrete and effective policies and programmes aimed at improving the position of women and achieving de facto or substantive equality, including where appropriate, the adoption of temporary special measures in accordance with article 4 (1) and General Recommendation No. 25.
21. States parties in particular are obliged to promote the equal rights of girls since girls are within the larger community of women and are more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence. All these situations of discrimination are aggravated when the victims are adolescents. Therefore, States shall pay attention to the specific needs of (adolescent) girls by providing education on sexual and reproductive health and by carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.  
[...].
23. States parties also agree to "pursue by all appropriate means" a policy of eliminating discrimination against women. This obligation of means or conduct gives a State party a great deal of flexibility for devising a policy that will be appropriate for its particular legal, political, economic, administrative and institutional framework and that can respond to the particular obstacles and resistance to the elimination of discrimination against women existing in that State party.
24. The main element of the introductory phrase of article 2 is the obligation of States parties to pursue a policy of eliminating discrimination against women. This requirement is an essential and critical component of a State party's general legal obligation to implement the Convention. This means that the State party must immediately assess the de jure and de facto situation of women and take concrete steps to formulate and implement a policy that is

targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women's substantive equality with men.<sup>6</sup>

The CEDAW Committee has further elaborated specific obligations under Article 2 in the following way:

30. Article 2 expresses the obligation of States parties to implement the Convention in a general way. Its substantive requirements provide the framework for the implementation of the specific obligations identified in paragraphs 2 (a)-(f) and all other substantive articles of the Convention.
31. Paragraph 2 (a), 2 (f) and 2 (g) establish the obligation of States parties to provide legal protection and to abolish or amend discriminatory laws and regulations as part of the policy of eliminating discrimination against women. States parties must ensure that, through constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status. They must also enact legislation that prohibits discrimination in all fields of women's lives under the Convention and throughout their lifespan. States parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Certain groups of women, including women deprived of their liberty, refugees, asylum-seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices. By ratifying the Convention or acceding to it, States parties undertake to incorporate the Convention in their domestic legal systems or to give it otherwise appropriate legal effect within their domestic legal orders in order to secure the enforceability of its provisions at the national level. The question of direct applicability of the provisions of the Convention at the national level is a question of constitutional law and depends on the status of treaties within the domestic legal order. The committee takes the view, however, that the rights to non-discrimination and equality in all fields of women's lives throughout their lifespan, as enshrined in the Convention, may receive enhanced protection in those States where the Convention is automatically or through specific incorporation part of the domestic legal order. The committee

urges those States parties in which the Convention does not form part of the domestic legal order to consider incorporation of the Convention to render it part of domestic law, for example through a General Law on Equality, in order to facilitate the full realization of Convention rights as required by article 2.

32. Paragraph 2 (b) contains the obligation of States parties to ensure that legislation prohibiting discrimination and promoting equality of women and men provides appropriate remedies for women who are subjected to discrimination contrary to the Convention. This obligation requires that States parties provide reparations to women whose rights under the Convention have been violated. Without reparations the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation, and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.
33. According to paragraph 2 (c), States parties must ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under the Convention. However, where it is not possible to do so, courts should draw any inconsistency between national law, including national religious and customary laws, and the State party's obligations under the Convention to the attention of the appropriate authorities since domestic laws may never be used as justifications for failures by States parties to carry out their international obligations.
34. States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal where appropriate. Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, to bring the perpetrator(s) to trial and to impose appropriate penal

sanctions. States parties should financially support independent women's legal resource associations and centres in their work to educate women about their rights to equality and to assist them in pursuing remedies for discrimination.

35. Paragraph 2 (d) establishes an obligation of States parties to abstain from engaging in any act or practice of direct or indirect discrimination against women. States parties must ensure that State institutions, agents, laws and policies, do not directly or explicitly discriminate against women. They must also ensure that any laws, policies or actions that have the effect or result of generating discrimination are abolished.
36. Paragraph 2 (e) establishes an obligation of States parties to eliminate discrimination by any public or private actor. The types of measures that might be considered appropriate in this respect are not limited to constitutional or legislative measures. States parties should also adopt measures that ensure the practical realization of the elimination of discrimination against women and women's equality with men. This includes measures that: ensure that women are able to make complaints about violations of their rights under the Convention and to have access to effective remedies; enable women to be actively involved in the formulation and implementation of measures; ensure governmental accountability domestically; promote education and support for the goals of the Convention throughout the education system and in the community; encourage the work of human rights and women's non-governmental organizations, establish the necessary national human rights institutions or other machineries; and provide adequate administrative and financial support to ensure that the measures adopted make a real difference in women's lives in practice. The obligations of States parties requiring them to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, also extend to acts of national corporations operating extraterritorially.<sup>7</sup>

On **reservation** to Article 2, the committee has said:

41. The committee considers article 2 to be the very essence of the obligations of States parties under the Convention. The committee therefore considers reservations to article 2 or to subparagraphs

of article 2 to be, in principle, incompatible with the object and purpose of the Convention and thus impermissible in accordance with article 28, paragraph 2. States parties that have entered reservations to article 2 or to subparagraphs of article 2 should explain the practical effect of those reservations on the implementation of the Convention and should indicate the steps taken to keep the reservations under review, with the goal of withdrawing them as soon as possible.<sup>8</sup>

## 3.2 Concluding observations

As the four target countries are required to submit periodic reports, the CEDAW has the opportunity to look at all reports and make comprehensive concluding observations. So far, with the exception of Cambodia, this is the only mechanism the committee can rely on to assess compliance of the target countries with CEDAW's obligations.

### 3.2.1 Cambodia

Cambodia submitted its third and fourth periodic reports to the committee, which considered them on 28 October 2013. The CEDAW Committee appreciated some of the positive steps taken by Cambodia, e.g. introduction of laws on suppression of trafficking, domestic violence, etc., but expressed its concerns in respect of violence against women:

20. The committee acknowledges the steps taken by the State party to develop a second national action plan for the prevention of violence against women, which builds on the lessons learned from the first such plan, which covers the period 2009–2012. The committee regrets, however, the limited progress made in the prevention and elimination of violence against women during the reporting period. The committee remains concerned that the lack of public trust in the justice system and the negative attitudes of judicial officers and law enforcement personnel towards women victims of violence continue to impede the effective prosecution of cases. The committee, while noting the explanations provided by the State party regarding its practice of disposing of cases of violence against women through mediation, is concerned that this may discourage women from taking legal action against perpetrators, even when such action is warranted. The committee is also concerned at the lack of data on the number of protection orders issued during the reporting period and on shelters available for women who are victims of violence.

21. [...] the committee urges the State party:
  - (a) To intensify efforts to train judicial and law enforcement officers on the strict application of the Law on the Prevention of Domestic Violence and Protection of Victims to ensure that cases of violence against women, including domestic and sexual violence, are effectively prosecuted and not systematically diverted to mediation;
  - (b) To encourage women to lodge formal complaints about domestic and sexual violence, by destigmatizing victims and raising awareness about the criminal nature of such acts;
  - (c) To continue public awareness-raising campaigns on all forms of violence against women, in particular in rural areas;
  - (d) To provide information in the next periodic report on the number of protection orders issued during the reporting period and the number of shelters available for women victims of violence.
22. The committee notes the State party's efforts to introduce measures for all forensic examinations of rape victims to be exempt from charges. It remains concerned, however, at continued reports of corruption in the administration of justice and the high cost of medical certificates for rape and sexual assault, which continue to impede women's access to justice and prosecutions of sexual violence against women.
23. The committee recommends that the State party step up efforts aimed at raising awareness among medical practitioners regarding how to handle cases of violence against women. It should also raise awareness of the Government's policy whereby all forensic examinations of victims of rape and sexual assault are exempt from charges.<sup>9</sup>

### 3.2.2 India

India submitted its fourth and fifth periodic reports to the committee, which considered them on 2 July 2014. The committee appreciated certain steps taken by India, e.g. introduction of women-specific laws, but expressed concerns in respect of the following areas:

#### Violence against women

10. The committee notes the State party's efforts to enact a legal framework to prevent and respond to violence against women, including women from the marginalized castes and communities, such as Dalit and Adivasi women, and the establishment in 2013

of the Justice Verma Committee on Amendments to Criminal Law to review existing normative gaps. The committee is concerned, however, about the:

- (a) Stark increase in violent crimes against women, especially rape and abduction, and the high number of cases of rape reported by the National Crime Records Bureau in 2012, indicating an increase by 902.1 per cent since 1971, and continuing impunity for such acts;
  - (b) Retention in the Penal Code of an exemption from punishment when a rape is committed by the victim's husband if the wife is above 15 years of age;
  - (c) Escalation of caste-based violence, including rape, against women and girls and the downplaying by key State officials of the grave criminal nature of sexual violence against women and girls;
  - (d) Poor implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the impunity of perpetrators of serious crimes against women;
  - (e) High number of dowry-related deaths since 2008;
  - (f) Persistence of so-called "honour crimes" perpetrated by family members against women and girls;
  - (g) Declining girl child sex ratio from 962 per 1,000 in 1981 to 914 per 1,000 in 2011;
  - (h) Criminalization of same-sex relationships, as referred to in the ruling of the Supreme Court (*Suresh Kumar Koushal and another v NAZ Foundation*, 2013);
  - (i) Increasing number of acid attacks against women since 2002, the underreporting of such crimes notwithstanding.
11. The committee urges the State party:
- (a) To implement the recommendations of the Justice Verma Committee regarding violence against women;
  - (b) To promptly enact the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill and to ensure that it provides for a comprehensive system of reparations for victims and for gender-sensitive, victim-centred procedural and evidentiary rules;
  - (c) To amend the Criminal Law (Amendment) Act, ensuring that marital rape is defined as a criminal offence, as requested by the committee in its previous concluding observations

(CEDAW/C/IND/CO/3, para. 23), expanding the scope of protection of the law to cover all prohibited grounds of discrimination and defining gang rape as constituting an aggravating factor meriting a more severe punishment;

- (d) To enact specific legislation to introduce heavier sentences for perpetrators of acid attacks, to regulate the sale and distribution of acid substances and to conduct large-scale campaigns to raise public awareness of the criminal nature of such attacks;
- (e) To strengthen the efficiency of the police, to ensure that police officers fulfil their duty to protect women and girls against violence and are held accountable, to adopt standard procedures for the police in each state on gender-sensitive investigations and treatment of victims and of witnesses and to ensure that first information reports are duly filed;
- (f) To establish, without delay, one-stop crisis centres providing women and girls who are victims of violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelters and other support services;
- (g) To provide systematic training on women's rights to all law enforcement personnel, medical staff and judicial officials;
- (h) To put in place an effective system to monitor and evaluate the implementation, effectiveness and impact of legislation to combat sexual violence;
- (i) To make efforts to eliminate any criminalization of same-sex relations by studying the possibility, as accepted by the State party during its universal periodic review (see A/HRC/21/10/Add.1), and to take note of the ruling of the Supreme Court (Suresh Kumar Koushal and another v NAZ Foundation, 2013) in this regard;
- (j) To take urgent measures to adopt a national plan of action for improving the girl child sex ratio;
- (k) To allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time-bound manner.

#### Violence against women in border areas and conflict zones

12. The committee is deeply concerned about the reported high level of violence, including rape and other forms of sexual

violence, enforced disappearance, killings and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the north-east, Chhattisgarh, Odisha and Andhra Pradesh). It is particularly concerned about the:

- (a) Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces;
  - (b) Significant number of displaced women and girls, in particular in the north-east, including as a result of sporadic communal violence, their precarious living conditions and exposure to serious human rights violations and the lack of gender-sensitive interventions at all stages of the displacement cycle;
  - (c) Continued marginalization and poverty of the women and girls who survived the Gujarat riots and are living in the relief colonies and their precarious living conditions with limited access to education, health care, employment and security and poor infrastructure in terms of sanitation, water, transportation and housing;
  - (d) Lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas;
  - (e) Limited regulation of the arms trade and the proliferation of small arms and light weapons and their impact on the security of women;
  - (f) Restrictions imposed on women human rights defenders, in particular those operating in conflict areas, including restrictions on international funding and the surveillance under which they are placed;
  - (g) Absence of women in peace negotiations in the north-eastern states.
13. The committee calls upon the State party:
- (a) To, in accordance with the recommendations of the Justice Verma Committee, promptly review the continued application of the Armed Forces (Special Powers) Act and related legal protocols and to enforce special powers protocols in conflict areas and assess the appropriateness of their application in those areas;

- (b) To amend and/or repeal the Armed Forces (Special Powers) Act so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases;
- (c) To amend section 19 of the Protection of Human Rights Act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women;
- (d) To ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights;
- (e) To ensure the full and effective implementation of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, as soon as it has been enacted;
- (f) To adopt an integrated policy to enhance the living conditions of women and girls who survived the Gujarat riots, including by adopting appropriate economic recovery measures, allocating below-poverty-line cards and providing other benefits under government schemes, and to step up witness protection and security measures, especially for women and girls living in relief colonies;
- (g) To ensure that women in the north-eastern states participate in peace negotiations and in the prevention, management and resolution of conflicts in line with Security Council resolution 1325 (2000) and the committee's general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations;
- (h) To remove restrictions on the work of human rights defenders, such as restrictions on their funding and by not placing them under surveillance.

### 3.2.3 Pakistan

Pakistan submitted its fourth periodic report to the committee, which considered it on 12 February 2013. The committee appreciated positive steps taken, e.g. enactment and revision of laws aiming at the elimination of discrimination against women. The committee also recognised the difficulties faced by Pakistan, especially violence and terrorism. The committee, however, expressed concerns at certain areas:

#### Stereotypes, harmful practices and violence against women

21. The committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society, all of which have recently been exacerbated by the influence of non-State actors in the State party. It expresses serious concern about the persistence, among others, of child and forced marriages, "karo-kari", stove burning and acid throwing, marriage to the Koran, polygamy and honour killing. It is concerned that despite the provisions in the Criminal Law (Amendment) Act of 2004 that criminalize offenses in the name of so-called honour, the Qisas and Diyat ordinances continue to be applied in these cases, resulting in perpetrators being given legal concessions and/or being pardoned and not being prosecuted and punished. The committee expresses its concern at the high prevalence of domestic violence and marital rape and at the absence of clear legislation criminalizing such acts. It is also concerned about the paucity of information about the implementation of the standard operating procedures on the treatment of women victims of violence and at the scarce number of shelters for victims. It is further concerned at the inconsistencies in the collection of data on violence against women and about reports on the wide circulation of small arms and its impact on women's security.

The committee also called upon Pakistan:

- (a) To ensure the proper implementation of the Prevention of Anti-Women Practices Act of 2011 and other relevant legislation [...];
- (b) [...];
- (c) To strengthen support services for victims of violence, such as counselling and rehabilitation services, both medical and psychological; increase the number of shelters to ensure the

- implementation of the standard operating procedures for the treatment of victims in all provinces;
- (d) To adopt a comprehensive strategy to eliminate all harmful practices and stereotypes, in conformity with article 2, and specifically 2 (f), and article 5 (a) of the Convention, which includes awareness-raising efforts targeting the general public and the media, religious and community leaders, in collaboration with civil society and women's organizations;
  - (e) To ensure a robust and effective regulation of the arms trade as well as appropriate control over the circulation of existing and often illicit arms, in order to enhance the security of women and girls; [and]
  - (f) To take appropriate measures to ensure the collection of disaggregated data on all forms of violence against women, including domestic violence, by the Gender Crime Cell.

### 3.2.4 Thailand

Thailand submitted its combined sixth and seventh periodic report to the committee on 27 May 2015 but so far no concluding observations have been adopted. The combined report, however, presents helpful developments in terms of laws and national policies. The 2006 concluding observations provide an overview of the issues facing women and girls in Thailand. The committee expressed concerns regarding violence against women:

23. The committee continues to be concerned about the prevalence of violence against women and girls. While welcoming the “draft Act on the Prevention and Resolution of Domestic Violence”, the committee is concerned about the inadequacy of the punishment for perpetrators set out therein. The committee also notes with concern that the “draft Act” focuses on reconciliation and family unity to the detriment of the right of women to live free from violence. The committee is furthermore concerned that the definition of rape in section 276 of the Penal Code is limited to sexual intercourse between a man and a woman who is not his wife, thus allowing a husband to rape his wife with impunity.
24. The committee urges the State party to accord priority attention to the adoption of comprehensive measures to address violence against women and girls in accordance with its general recommendation No. 19 on violence against women and the United Nations Declaration on Violence against Women. The committee encourages the State party to proceed expeditiously

with the completion and enactment of the “draft Act on the Prevention and Resolution of Domestic Violence” and to ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are effectively prosecuted and punished. The committee also calls upon the State party to amend the definition of rape in the Penal Code by deleting the exemption for marital rape so as to make it a criminal offence. The committee recommends gender-sensitivity training for law enforcement personnel, the judiciary, health service providers and teachers to ensure that they are sensitized to all forms of violence against women and can respond adequately to it. The committee also calls on the State party to take measures towards modifying those social, cultural and traditional attitudes that are permissive of violence against women.<sup>10</sup>

Some of the concerns raised in the 2006 concluding observations seem to be addressed as is reflected in Thailand’s May 2015 report to the CEDAW Committee:

*The Parliament passed anti-discrimination and gender equality-related legislation, such as Domestic Violence Victims Protection Act B.E. 2550 (2007), the revision of Penal Code criminalizing marital rape, legal amendments concerning the right to choose one’s title and family name, among others.<sup>11</sup>*

### Violence against women

On violence against women the 2015 report states:

32. The Constitution provides for rights and protection against violence in Articles 4, 40 (6), 52 and 81. Specifically, Article 81 (2) and (5) stipulates that in pursuing directive principles of State policies in terms of legislation and administration of justice for the protection of rights and liberties of persons, the State shall provide support to the operation of private organizations in the private sector providing legal aids to the public, in particular to those affected by domestic violence. (Annex A).
33. The Protection of Victims of Domestic Violence Act B.E. 2550 (2007), aims to provide protection for persons from all forms of domestic violence on the basis of human rights and strengthening family institution. The Act emphasizes rehabilitation of victims and offenders, opting for behavioural change instead of punitive approach, to prevent repeating offences and to maintain relationships within families. The Act also provides for temporary measures to protect victims and requires the involvement of

government multidisciplinary team, the public and the media in enforcing the law and providing protection for victims at every stage of legal proceedings from filing a complaint to conducting court proceedings, mediation and victim-sensitive media reporting.

34. The Act requires any person who witnesses an act of domestic violence to notify the authority. This helps create awareness that domestic violence is a social problem and everyone has to be concerned. Procedures for rehabilitation by multidisciplinary team are set under the Act. Victims are also provided psychological care and protection against repeated act of violence. In addition, the Act provides for the application of temporary protection orders to protect victims living in violent situations during investigation or court proceedings.

[...].

38. Changing traditional attitudes and norms is a long-term challenge which requires consistent efforts. Thailand has given importance to campaign to end violence against children and women to send out the message that “violence against women and girls is not a private issue, but a public one”. Annual activities are organized in November, designated as a campaign month to end violence against children and women. In addition, the government also announced 2010 as the “End of Violence against Children, Women and Domestic Violence Year”.

### 3.3 Individual communication

The 2000 Optional Protocol to CEDAW ‘recognises the competence of the committee ... to receive and consider communications’<sup>12</sup> ‘by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party’.<sup>13</sup> This means that those who feel aggrieved may invoke the jurisdiction of the CEDAW Committee to consider a complaint against their own country. A complaint to the CEDAW Committee will be admissible only when the admissibility criteria are complied with. Article 4 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women states:

1. The committee shall not consider a communication unless it has ascertained that all available domestic remedies have been

exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The committee shall declare a communication inadmissible where:
  - (a) The same matter has already been examined by the committee or has been or is being examined under another procedure of international investigation or settlement;
  - (b) It is incompatible with the provisions of the Convention;
  - (c) It is manifestly ill-founded or not sufficiently substantiated;
  - (d) It is an abuse of the right to submit a communication;
  - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

### **3.3.1 CEDAW and the target countries**

Cambodia acceded to the Optional Protocol (OP) in 2010 and individuals may take cases against it to the CEDAW Committee. So far there is no case decided by or pending against Cambodia before the committee.

India has acceded to CEDAW and has signed the OP but has not acceded to it so far. Hence, this mechanism is not available to Indians until India accedes to the OP. India is encouraged to accede to the OP.

Pakistan has acceded to CEDAW and has neither signed nor acceded to the Optional Protocol. This mechanism is therefore not available to Pakistanis until Pakistan accedes to the OP. Pakistan is encouraged to accede to the OP.

Thailand has signed and acceded to the Optional Protocol in 2000. The people of Thailand may invoke this mechanism against Thailand. So far there is no case decided by or pending against Thailand before the committee.

The committee has received and considered a number of communications by individuals or on their behalf against various States parties. There are no complaints against Cambodia or Thailand and, obviously, against India or Pakistan as they have not acceded to the Optional Protocol yet, but a number of cases are discussed below as they provide helpful insights into the working of and interpretation by the committee of various women's rights contained in CEDAW.

### 3.3.2 Selected cases

#### Karen Tayag Vertido v Philippines 2010

##### Key points:

- Rape and gender stereotypes
- Gender-based myths and misperceptions, e.g. ‘ideal rape victim’

The author of the communication, dated 29 November 2007, is Karen Tayag Vertido, a Filipino national who claims to be a victim of discrimination against women within the meaning of article 1 of the Convention in relation to general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women. She also claims that her rights under articles 2 (c), (d), (f) and 5 (a) of CEDAW were violated by the State party.

She was raped on 29 March 1996. The matter was reported to the police within 48 hours. The case was initially dismissed for lack of probable cause by a panel of public prosecutors, which conducted a preliminary investigation. The author filed an appeal regarding the dismissal of her complaint with the Secretary of the Department of Justice, which reversed the dismissal and, on 24 October 1996, ordered that the accused be charged with rape. The alleged rapist, J. B. C., subsequently filed a motion for reconsideration, which was denied by the Secretary of Justice. The information was filed in court on 7 November 1996 and the Court issued an arrest warrant for J. B. C. that same day. He was arrested more than 80 days later, after the chief of the Philippine National Police issued an order on national television directing the police to make the arrest within 72 hours. On 26 April 2005 the Regional Court of Davao City acquitted J. B. C.<sup>14</sup>

#### Case 3.1 Karen Tayag Vertido v Philippines

Karen Vertido complained to the CEDAW Committee claiming that:

- 3.1 [...] by acquitting the perpetrator, the State party violated her right to non-discrimination and failed in its legal obligation to respect, protect, promote and fulfil that right. She further claims that the State party failed in its obligation to ensure that women are protected against discrimination by public authorities, including the judiciary. She submits that this shows the State party's failure to comply with its obligation to address **gender-based stereotypes** that affect women, in particular those working in the legal system and in legal institutions. She further submits that the acquittal is also evidence of the failure of the State party to exercise **due diligence** in punishing acts of violence against women, in particular, rape.

The committee's discussion on merits of the complaint is very insightful:

- 8.5 [...]. With regard to the alleged gender-based myth and stereotypes spread throughout the judgement and classified by the author (see paras. 3.5.1–3.5.8 above), the committee, after

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a careful examination of the main points that determined the judgement, notes the following issues. First of all, the judgement refers to principles such as that physical resistance is not an element to establish a case of rape, that people react differently under emotional stress, that the failure of the victim to try to escape does not negate the existence of the rape as well as to the fact that "in any case, the law does not impose upon a rape victim the burden of proving resistance". The decision shows, however, that the judge did not apply these principles in evaluating the author's credibility against expectations about how the author should have reacted before, during and after the rape owing to the circumstances and her character and personality. The judgement reveals that the judge came to the conclusion that the author had a contradictory attitude by reacting both with resistance at one time and submission at another time, and saw this as being a problem. The committee notes that the Court did not apply the principle that "the failure of the victim to try and escape does not negate the existence of rape" and instead expected a certain behaviour from the author, who was perceived by the court as being not "a timid woman who could easily be cowed". It is clear from the judgement that the assessment of the credibility of the author's version of events was influenced by a number of stereotypes, the author in this situation not having followed what was expected from a rational and "ideal victim" or what the judge considered to be the rational and ideal response [...].

Although there exists a legal precedent established by the Supreme Court of the Philippines that it is not necessary to establish that the accused had overcome the victim's physical resistance in order to prove lack of consent, the committee finds that to expect the author to have resisted in the situation at stake reinforces in a particular manner the myth that women must physically resist the sexual assault. In this regard, the committee stresses that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.

- 8.6 Further misconceptions are to be found in the decision of the Court, which contains several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the credibility of the victim. In this regard, the committee views with concern the findings of the judge according to which it is unbelievable that a man in his sixties would be able to proceed to ejaculation with the author resisting the sexual attack. Other factors taken into account in the judgement, such as the weight given to the fact that the author and the accused knew each other, constitute a further example of "gender-based myths and misconceptions".
- 8.7 With regard to the definition of rape, the committee notes that the lack of consent is not an essential element of the definition of rape in the Philippines Revised Penal Code.<sup>15</sup> It recalls its general recommendation No. 19 of 29 January 1992 on violence against women, where it made clear, in paragraph 24 (b), that "States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity". Through its consideration of States parties' reports, the committee has clarified time and again that rape constitutes a violation of women's right to personal security and bodily integrity, and that its essential element was lack of consent.
- 8.8 The committee finally would like to recognize that the author of the communication has suffered moral and social damage and prejudices, in particular by the excessive duration of the trial proceedings and by the revictimization through the stereotypes and gender-based myths relied upon in the judgement. The author has also suffered pecuniary damages due to the loss of her job.
- 8.9 [...] the committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (c) and (f), and article 5 (a) read in conjunction with article 1 of the Convention and general recommendation No. 19 of the committee.<sup>16</sup>

## R. B. P. v Philippines 2014

### Key points:

- Rape myths
- Sex and gender discrimination
- Free interpretation and fair trial
- States parties' obligations for judicial decisions

The author of this communication is R. P. B., a Filipina national born in 1989. She claims to be the victim of a violation by the State party of article 1 and article 2 (c), (d) and (f) of CEDAW. She is deaf and mute (impaired speech). She was raped by her 19-year-old neighbour when she was a minor. The accused had known about the complainant's physical state at the time of the commission of the crime. The Regional Trial Court acquitted the accused in 2011 according to stereotypical notions about the conduct of a rape victim, regardless of her special circumstances being a deaf-mute minor.<sup>17</sup>

The Court doubted the credibility of the testimony and found that she failed to prove that the sexual intercourse was not consensual. The author, after exhausting domestic remedies, complained to the committee claiming that:

The State party has failed to protect her from gender-based discrimination, in particular by not providing her with accessibility, on an equal basis with other victims, to the court, as a woman who is also deaf and mute. The author's specific allegations on this account relate in particular to the use by the trial court of gender-based myths and stereotypes about rape and rape victims, which led to the acquittal of the alleged perpetrator; the court's failure to consider her vulnerability as a deaf girl and to provide reasonable accommodation on this basis, such as sign language interpreting; and the court's failure to conduct the proceedings without undue delay.<sup>18</sup>

### Case 3.2 R. B. P. v Philippines

The CEDAW Committee concluded that the State party failed to fulfil its obligations and violated the rights of the author under Article 2(c), (d) and (f) in relation to Article 1 of the Convention and General Recommendations Nos. 18 and 19. The reasoning of the committee is illuminating:

- 8.3 With regard to the author's claim in relation to article 2 (c) of the Convention, the committee recalls that the right to effective protection, which also includes the right to an effective remedy, is inherent in the Convention.<sup>19</sup> It falls within the ambit of article 2 (c), whereby States parties are required "to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination", in conjunction with paragraph 24 (b) and (i) of general recommendation No. 19, whereby States parties should "ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and

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respect their integrity and dignity” and provide “effective complaints procedures and remedies, including compensation” to overcome all forms of gender-based violence. The committee also recalls that, for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner.<sup>20</sup> It further recalls its general recommendation No. 18, where it observed that “disabled women are considered as a vulnerable group”, “who suffer from a double discrimination linked to their special living conditions”. In this context, the committee emphasizes that it is crucial to ensure that women with disabilities enjoy effective protection against **sex and gender-based discrimination** by States parties and have access to effective remedies.

- 8.4 Having regard to the above, the committee notes the undisputed fact that the author’s case, in which only the author, her mother and the accused were heard in court, remained at the trial court level from 2006 to 2011. It also notes that the State party has not refuted the author’s contention that the lack of adequate planning by the trial court, in addition to its lengthy correspondence with the Philippine Deaf Resource Centre providing interpretation to her, contributed significantly to the undue delay in the proceedings.
- 8.5 The committee observes that the **free assistance of an interpreter** in cases where the parties concerned, such as the accused or the witnesses, cannot understand or speak the language used in court, **is a fundamental fair trial guarantee** enshrined in human rights treaties<sup>21</sup> and further developed in the jurisprudence of treaty bodies.<sup>22</sup> It notes that, in the present case, the author, a young deaf woman, understood only written English and was unable to hear, whereas the proceedings, including the court hearings, were conducted both in spoken and written Filipino and English.
- 8.6 The committee further notes the author’s claim that sign language interpreting was not provided to her in the course of the investigation and in some of the court hearings, including during the pronouncement of the acquittal of the accused [...].
- 8.7 [...] The committee considers that, in the circumstances of the present case, the provision of sign language interpretation was essential to ensure the author’s full and equal participation in the proceedings, in compliance with the principle of equality of arms and hence to guarantee her the enjoyment of the effective protection against discrimination within the meaning of article 2 (c) and (d) of the Convention, read in conjunction with the committee’s general recommendation No. 19.<sup>23</sup>
- 8.8 With regard to the author’s claim under article 2 (f) of the Convention, the committee recalls that the Convention places obligations on all State authorities and that **States parties are responsible for judicial decisions that violate the provisions of the Convention**. It notes that, under this provision of the Convention, the State party is to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women. In this regard, the committee stresses that stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim.<sup>24</sup> In the particular case, the compliance of the State party’s obligation to banish gender stereotypes on the grounds of article 2 (f) needs to be assessed in the light of the level of gender, age and disability sensitivity applied in the judicial handling of the author’s case.
- 8.9 The committee notes that, under the doctrine of stare decisis, the court referred to guiding principles derived from judicial precedents in applying the provisions of rape in the Revised Penal Code of 1930 and in deciding cases of rape with similar patterns. At the outset of the

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judgement, the committee notes a reference in the judgement to three general guiding principles used in reviewing rape cases. With regard to the alleged gender-based myths and stereotypes spread throughout the judgement,<sup>25</sup> the committee, after a careful examination of the main points that determined the judgement, notes that, first, the trial court expected a certain type of behaviour from the author that an ordinary Filipina female rape victim had to demonstrate in the circumstances, i.e. to "summon every ounce of her strength and courage to thwart any attempt to besmirch her honour and blemish her purity". Second, the court assessed the author's behaviour against this standard and found that her "demeanour was inconsistent with that of an ordinary Filipina" and the "reasonable standard of human conduct" because she had not sought to escape or resist the offender, in particular by making noise or using force. The court stated that "her failure to even attempt to escape [...] or at least to shout for help despite opportunities to do so casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe". The committee finds that those findings in themselves reveal the existence of strong gender stereotyping resulting in sex and gender-based discrimination and disregard for the individual circumstances of the case, such as the author's disability and age.

- 8.10 The committee further notes that the gender stereotypes and misconceptions employed by the trial court included, in particular, lack of resistance and consent on behalf of the rape victim and the use of force and intimidation by the perpetrator. It recalls its jurisprudence that to expect the author to have resisted in the situation at stake reinforces in a particular manner the myth that women must physically resist the sexual assault. It reiterates that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.<sup>26</sup> It also reiterates that lack of consent is an essential element of the crime of rape, which constitutes a violation of women's right to personal security, autonomy and bodily integrity.<sup>27</sup> In this regard, the committee notes that, notwithstanding the specific recommendation to the State party to integrate the element of "lack of consent" into the definition of rape in the Revised Penal Code of 1930,<sup>28</sup> the State party has not reviewed its legislation.
- 8.11 The committee further recognizes that the author has suffered material and moral damage and prejudice, in particular by the excessive duration of the trial proceedings, by the court's failure to provide her with the free assistance of sign language interpreters and by the use of the stereotypes and gender-based myths and disregard for her specific situation as a mute and deaf girl in the judgement.
9. [...] the committee is of the view that **the State party has failed to fulfil its obligations** and has thereby violated the rights of the author under article 2 (c), (d) and (f), read in conjunction with article 1 of the Convention and general recommendations Nos. 18 and 19 of the committee.

Regarding the author, the committee recommended that the State party:

- (i) Provide reparation, including monetary compensation, commensurate with the gravity of the violations of the rights of the author;
- (ii) Provide free-of-charge psychological counselling and therapy for the author and her affected family members; [and]
- (iii) Provide barrier-free education with interpreting.

### A.T. v Hungary 2005

#### Key points:

- Domestic violence

The author of this communication, Ms A. T., is a Hungarian national born on 10 October 1968. The author states that for four years she has been subjected to regular severe **domestic violence** and serious threats by her common law husband, L. F. Her husband moved out of the jointly owned house and returned when the court allowed him back in. Eventually, he moved out with another partner.<sup>29</sup>

The author alleges that she is a victim of violations by Hungary of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women for its failure to provide effective protection from her former common law husband. She claims that the State party passively neglected its “positive” obligations under the Convention and supported the continuation of a situation of domestic violence against her.<sup>30</sup>

#### Case 3.3 A.T. v Hungary

The CEDAW Committee received and heard representations from both parties and reached the following decision on merits:

- 9.2 The committee recalls its general recommendation No. 19 on violence against women, which states that “... [T]he definition of discrimination includes gender-based violence” and that “[G]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”. Furthermore, the general recommendation addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that “... discrimination under the Convention is not restricted to action by or on behalf of Governments ...” and “[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”. Against this backdrop, the immediate issue facing the committee is whether the author of the communication is the victim of a violation of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention because, as she alleges, for the past four years the State party has failed in its duty to provide her with effective protection from the serious risk to her physical integrity, physical and mental health and her life from her former common law husband.
- 9.3 With regard to article 2 (a), (b), and (e), the committee notes that the State party has admitted that the remedies pursued by the author were not capable of providing immediate protection to her against ill-treatment by her former partner and, furthermore, that legal and institutional arrangements in the State party are not yet ready to ensure the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence. While appreciating the State party’s efforts at instituting a comprehensive action programme against domestic violence and the legal and other measures envisioned, the committee believes that these have yet to benefit the author and address her persistent situation of insecurity. The committee further notes the State party’s general assessment that domestic violence cases as such do not

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enjoy high priority in court proceedings. The committee is of the opinion that the description provided of the proceedings resorted to in the present case, both the civil and criminal proceedings, coincides with this general assessment. Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy. The committee also takes note that the State party does not offer information as to the existence of alternative avenues that the author might have pursued that would have provided sufficient protection or security from the danger of continued violence. In this connection, the committee recalls its concluding comments from August 2002 on the State party's combined fourth and fifth periodic report, which state "... [T]he committee is concerned about the prevalence of violence against women and girls, including domestic violence. It is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of domestic violence". Bearing this in mind, the committee concludes that the obligations of the State party set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of and protection from violence against women, which obligations in the present case, remain unfulfilled and constitute a violation of the author's human rights and fundamental freedoms, particularly her right to security of person.

- 9.4 The committee addressed articles 5 and 16 together in its general recommendation No. 19 in dealing with family violence. In its general recommendation No. 21, the committee stressed that "the provisions of general recommendation 19 ... concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men". It has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. The committee recognized those very attitudes when it considered the combined fourth and fifth periodic report of Hungary in 2002. At that time, it was concerned about the "persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family ...". In respect of the case now before the committee, the facts of the communication reveal aspects of the relationships between the sexes and attitudes towards women that the committee recognized vis-à-vis the country as a whole. For four years and continuing to the present day, the author has felt threatened by her former common law husband, the father of her two children. The author has been battered by this same man, her former common law husband. She has been unsuccessful, either through civil or criminal proceedings, to temporarily or permanently bar L. F. from the apartment where she and her children have continued to reside. The author could not have asked for a restraining or protection order since neither option currently exists in the State party. She has been unable to flee to a shelter because none are equipped to accept her together with her children, one of whom is fully disabled. None of these facts have been disputed by the State party and, considered together, they indicate that the rights of the author under articles 5 (a) and 16 of the Convention have been violated.
- 9.5 The committee also notes that the lack of effective legal and other measures prevented the State party from dealing in a satisfactory manner with the committee's request for interim measures.
- 9.6 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (a), (b) and (e) and article 5 (a) in conjunction with article 16 of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>31</sup>

The CEDAW committee recommended that the State party:

- (a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family; [and]
- (b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights.

### Sahide Goekce v Austria 2007

#### Key points:

- Domestic violence

Brief facts as presented by the authors to the CEDAW Committee are Mrs Goekce (deceased) is a victim of violence at the hands of her husband. The first violent attack against Şahide Goekce by her husband ... took place on 2 December 1999 ... when [he] choked Şahide Goekce and threatened to kill her. Şahide Goekce spent the night with a friend of hers and reported the incident to the police. The next violent attack happened on 21 and 22 August 2000. When the police arrived at the Goekce's apartment, Mustafa Goekce was grabbing Şahide Goekce by her hair and was pressing her face to the floor. The police issued three restraining orders against Mr Goekce. On 23 October 2002, the Vienna District Court of Hernals issued an interim injunction for a period of three months against Mustafa Goekce. The authors indicate that the police knew from other sources that Mustafa Goekce was dangerous and owned a handgun. The police did not check whether Mustafa Goekce had a handgun even though a weapons prohibition was in effect against him. On 5 December 2002, the Vienna Public Prosecutor stopped the prosecution of Mustafa Goekce for causing bodily harm and making a criminal, dangerous threat on grounds that there was insufficient reason to prosecute him. On 7 December 2002, Mustafa Goekce shot Şahide Goekce with a handgun in their apartment in front of their two daughters. The police report reads that no officer went to the apartment to settle the dispute between Mustafa Goekce and Şahide Goekce prior to the shooting. Two-and-a-half hours after the commission of the crime, Mustafa Goekce surrendered to the police. He is reportedly currently serving sentence of life imprisonment in an institution for mentally disturbed offenders.<sup>32</sup>

#### Case 3.4 Sahide Goekce v Austria

The CEDAW Committee received representations and heard both parties and reached the following conclusions on merits:

- 12.1.1 As to the alleged violation of the State party's obligation to eliminate violence against women in all its forms in relation to Şahide Goekce in articles 2 (a) and (c) through (f), and article 3 of the Convention, the committee recalls its general recommendation 19 on violence against women. This general recommendation addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that "...discrimination under the Convention is not restricted to action by or on behalf of Governments..." and that "[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

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- 12.1.2 The committee notes that the State party has established a comprehensive model to address domestic violence that includes legislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators. However, in order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party's due diligence obligations.
- 12.1.3 In the instant case, the committee notes that during the three-year period starting with the violent episode that was reported to the police on 3 December 1999 and ending with the shooting of Şahide Goekce on 7 December 2002, the frequency of calls to the police about disturbances and disputes and/or battering increased; the police issued prohibition to return orders on three separate occasions and twice requested the Public Prosecutor to order that Mustafa Goekce be detained; and a three-month interim injunction was in effect at the time of her death that prohibited Mustafa Goekce from returning to the family apartment and its immediate environs and from contacting Şahide Goekce or the children. The committee notes that Mustafa Goekce shot Şahide Goekce dead with a handgun that he had purchased three weeks earlier, despite a valid weapons prohibition against him as well as the uncontested contention by the authors that the police had received information about the weapon from the brother of Mustafa Goekce. In addition, the committee notes the unchallenged fact that Şahide Goekce called the emergency call service a few hours before she was killed, yet no patrol car was sent to the scene of the crime.
- 12.1.4 The committee considers that given this combination of factors, the police knew or should have known that Şahide Goekce was in serious danger; they should have treated the last call from her as an emergency, in particular because Mustafa Goekce had shown that he had the potential to be a very dangerous and violent criminal. The committee considers that in light of the long record of earlier disturbances and battering, by not responding to the call immediately, the police are accountable for failing to exercise due diligence to protect Şahide Goekce.
- 12.1.5 Although, the State party rightly maintains that, it is necessary in each case to determine whether detention would amount to a disproportionate interference in the basic rights and fundamental freedoms of a perpetrator of domestic violence, such as the right to freedom of movement and to a fair trial, the committee is of the view, as expressed in its views on another communication on domestic violence, that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.<sup>33</sup> In the present case, the committee considers that the behaviour (threats, intimidation and battering) of Mustafa Goekce crossed a high threshold of violence of which the Public Prosecutor was aware and as such the Public Prosecutor should not have denied the requests of the police to arrest Mustafa Goekce and detain him in connection with the incidents of August 2000 and October 2002.
- 12.1.6 While noting that Mustafa Goekce was prosecuted to the full extent of the law for killing Şahide Goekce, the committee still concludes that the State party violated its obligations under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the committee and the corresponding rights of the deceased Şahide Goekce to life and physical and mental integrity.
- 12.2 The committee notes that the authors also made claims that articles 1 and 5 of the Convention were violated by the State party. The committee has stated in its general

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recommendation 19 that the definition of discrimination in article 1 of the Convention includes gender-based violence. It has also recognized that there are linkages between traditional attitudes by which women are regarded as subordinate to men and domestic violence. At the same time, the committee is of the view that the submissions of the authors of the communication and the State party do not warrant further findings.

- 12.3 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the committee on the Elimination of Discrimination against Women is of the view that the facts before it reveal a violation of the rights of the deceased Şahide Goekce to life and physical and mental integrity under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the committee.<sup>34</sup>

### V. K. v Bulgaria 2011

#### Key points:

- Domestic violence

The author of this communication is V. K., a Bulgarian citizen. The author claims that for years she has been a victim of domestic violence perpetrated by her husband. At first, she was subjected to psychological, emotional and economic abuse and also, in 2006 and 2007, to physical violence. On 12 April and 22 May 2007, the author filed an application with the Warsaw District Court, asking for protective measures as well as for an order for financial maintenance from her husband to ensure that basic family needs would be met. On 27 September 2007, the Plovdiv District Court issued an order for immediate protection based on article 18 of the Law on Protection against Domestic Violence. With immediate effect, the Court ordered the author's husband to restrain himself from exercising domestic violence against the author and from approaching the dwelling of the author and her children, as well as places of social contact and recreation, until the end of the proceedings. The Court also decided that the children's temporary residence would be with the author.<sup>35</sup>

By its decision of 18 December 2007, the Plovdiv District Court rejected the author's application for a permanent protection order under article 5, paragraph 1, and items 1, 3 and 4, of the Law on Protection against Domestic Violence. It applied article 10, paragraph 1, of the Law, which provides that a request for a protection order must be submitted within one month of the date on which the act of domestic violence occurred, and found that no domestic violence had been perpetrated against the author by her husband on 21 September 2007, nor at any other time during the relevant one-month period prior to her application for a protection order (27 August to 27 September 2007). It also found no immediate danger to the life and health of the author and her children. The author appealed to regional court and the appeal was also rejected.<sup>36</sup>

### Case 3.5 V. K. v Bulgaria

The author complained to committee with a long list of grounds but the gist of all grounds is contained in paragraph 3.6:

- 3.6 For the author, the following omissions by the State party further reflect her lack of protection from domestic violence: (a) the failure to criminalize domestic violence, including the failure to detain perpetrators of domestic violence and criminalize non-compliance with protection orders; (b) the lack of effective implementation of the Law on Protection against Domestic Violence and the lack of clarity in the Law as to the burden of proof in domestic violence proceedings; (c) the lack of coordination among law enforcement organs and the judiciary; (d) the lack of funding for shelters and crisis centers; (e) the lack of prevention and protection programmes for victims, as well as of resocialization programmes for perpetrators; (f) the failure to train law enforcement officials and judges on domestic violence; and (g) the failure to collect statistical data on domestic violence.

Given the gravity of the situation, the committee asked the State party for interim measures:

- 5.1 In favour of the author and her children as may be required to avoid irreparable damage to them while their communication is under consideration by the committee. The committee also requested the State party to ensure the protection and physical integrity of the author and her children at all times, including when the author's husband exercises his visitation rights at the author's residence. It further invited the State party to provide information on the measures taken to give effect to the committee's request by 13 April 2009 at the latest.<sup>37</sup>

The CEDAW Committee received representations from and heard both parties and reached the following conclusions on merits:

- 9.2 The committee considers that at the heart of the present communication lies the author's allegation that the State party has failed to provide her with effective protection against domestic violence, in violation of article 2 (c) and (e)-(g), read in conjunction with article 1, and articles 5 (a) and 16 of the Convention.

[...].

- 9.9 The committee concludes that the Plovdiv District Court, when deciding on a permanent protection order under article 5, paragraph 1, items 1, 3 and 4, of the Law on Protection against Domestic Violence on 18 December 2007, as well as the Plovdiv Regional Court in its appeal decision of 7 April 2008, applied an overly restrictive definition of domestic violence that was not warranted by the Law and was inconsistent with the obligations of the State party under article 2 (c) and (d) of the Convention, which forms part of the legal order of, and is directly applicable in, the State party. Both courts focused exclusively on the issue of direct and immediate threat to the life or health of the author and on her physical integrity, while neglecting her emotional and psychological suffering. Moreover, both courts unnecessarily deprived themselves of an opportunity to take cognizance of the past history of domestic violence described by the author by interpreting the purely procedural requirement in article 10 of the Law on Protection against Domestic Violence, i.e., that a request for a protection order must be submitted within one month of the date on which the act of domestic violence has occurred, to preclude consideration of past incidents having occurred prior to the relevant one-month period. The courts also applied a very high standard of proof by requiring that the act of domestic violence must be proved beyond reasonable doubt, thereby placing the burden of proof entirely on

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the author, and concluded that no specific act of domestic violence had been made out on the basis of the collected evidence. The committee observes that such a standard of proof is excessively high and not in line with the Convention, nor with current anti-discrimination standards which ease the burden of proof of the victim in civil proceedings relating to domestic violence complaints.

[...].

- 9.12 The committee considers that the interpretation of the Plovdiv District and Regional Courts that the rationale behind the one-month period within which a victim needs to apply for a protection order (article 10, paragraph 1, of the Law on Protection against Domestic Violence) is to provide for urgent court interventions rather than to police the cohabitation of partners, lacks gender sensitivity in that it reflects the preconceived notion that domestic violence is to a large extent a private matter falling within the private sphere, which, in principle, should not be subject to State control. Similarly, as stated above, the exclusive focus of the Plovdiv courts on physical violence and on an immediate threat to the life or health of the victim reflects a stereotyped and overly narrow concept of what constitutes domestic violence. Such stereotyped interpretation of domestic violence is, for example, reflected in the reasoning of the Plovdiv Regional Court that "Striking at someone, you can exercise violence, but only after breaking certain limits of abuse, and, as is the case, the statement of V.K. does not make it clear how exactly she was struck at, namely on the procedure date, neither how her inviolability was affected." Traditional stereotypes of women's roles in marriage can also be found in the divorce judgement dated 8 May 2009 of the Plovdiv District Court which refers to the author's use of "insolent language" with regard to her husband and orders her to assume her maiden name upon dissolution of the marriage. The committee concludes that the refusal of the Plovdiv courts to issue a permanent protection order against the author's husband was based on stereotyped, preconceived and thus discriminatory notions of what constitutes domestic violence.
- 9.13 The committee also considers that the unavailability of shelters claimed by the author and not contested by the State party, where she and her children could have stayed following their return to Bulgaria in September 2007, constitutes a violation of the State party's obligation under article 2 (c) and (e) of the Convention to provide for the immediate protection of women from violence, including domestic violence. In this regard, the committee recalls its general recommendation No. 19 (1992) on violence against women.
- 9.14 Lastly, the committee would like to recognize that the author of the communication has suffered moral and pecuniary damage and prejudice. Even assuming that she was not directly subjected to physical domestic violence following the final rejection, with costs, of her application for a permanent protection order on 7 April 2008, she nevertheless suffered from considerable fear and anguish after the end of the court proceedings relating to the protection order, when she and her children were left without State protection, as well as from revictimization through the gender-based stereotypes relied upon in the court decisions.
- 9.15 [...] The committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author's rights under article 2 (c), (d), (e) and (f), in conjunction with article 1, and article 5 (a), in conjunction with article 16, paragraph 1, of the Convention, as well as general recommendation No. 19 of the committee.
- 9.16 Regarding the author, the committee recommended to 'provide adequate financial compensation to the author commensurate with the gravity of the violations of her rights'.

### 3.4 Inquiry

Article 8 of the First Optional Protocol provides for an inquiry procedure that allows the committee to initiate an investigation where it has received reliable information of grave or systematic violations by a State party. India, Pakistan and Thailand have not acceded to the Optional Protocol yet but Cambodia has acceded to it and the CEDAW Committee is competent to conduct an inquiry in Cambodia should the need arise. The CEDAW Committee has conducted several confidential inquiries in other countries so far. The recent inquiry in the Philippines is discussed as an example.

#### 3.4.1 Philippines Inquiry April 2015

On 2 June 2008, the committee received a joint submission from three non-governmental organisations<sup>38</sup> asking it to conduct an inquiry under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women into alleged systematic and grave violations of rights guaranteed under the Convention resulting from the implementation of Executive Order No. 003, issued by the former Mayor of Manila on 29 February 2000, which governed the provision of sexual and reproductive health rights, services and commodities in Manila.<sup>39</sup>

According to the information received by the non-governmental organisations, while the executive order did not expressly prohibit the use of modern contraceptives, its continued implementation in practice severely limited women's access to sexual and reproductive health services and effectively resulted in a ban on modern contraceptives in Manila. The non-governmental organisations further submitted that the executive order continued to be implemented under the subsequent mayor, Alfredo Lim, elected in 2007, who had issued a new executive order (No. 030), which allegedly had imposed a funding ban on modern contraception.<sup>40</sup>

The committee made the following legal findings against the State party:

21. Under international law of State responsibility, all acts of State organs are attributable to the State.<sup>41</sup> Furthermore, the accountability of States parties for the implementation of their obligations under the Convention is engaged through the acts or omissions of all branches of government (see general recommendation No. 28, para. 39). The committee therefore recalls that the actions of a mayor, his or her office and all other municipal officers, in their official capacity, are attributable to the State party, given that they are State organs and that the State party is responsible for ensuring compliance with the standards of the Convention by all its organs, including local governments, to which powers have been devolved.

22. The committee therefore observes that the acts and omissions of the executive power of the local government of Manila, namely the issuance and implementation of Executive Orders Nos. 003 and 030 and associated policies, are attributable to the State party [...].<sup>42</sup>
26. The committee finds that the State party has failed to address the effects of the implementation of Executive Orders Nos. 003 and 030 and that, between 2004 and 2010, at times either supported or condoned the policies of the City of Manila. In those circumstances, the committee finds that the State party bears responsibility for the violations set out below.

The committee also found violation of most Articles of CEDAW but its findings on the grave and systematic nature of the violation of women's rights are given below:

46. [...] the committee finds that the State party has failed to fulfil its obligations under the Convention and is thereby responsible for the following violations, which it considers to be both grave and systematic:
  - (a) The violations of the rights under article 12, read alone;
  - (b) The violations of the rights under article 12, read in conjunction with articles 2 (c), (d) and (f), 5 and 10 (h); [and]
  - (c) The violations of the rights under article 16 (1) (e), read alone.
47. The committee's determination regarding the gravity of the violations takes into account, notably, the scale, prevalence, nature and impact of the violations found. The number of persons affected by the policies set out in the executive orders is significantly high, given that thousands of women of childbearing age continue to have inadequate access to sexual and reproductive health services in Manila, bearing in mind that teenage girls begin having children at a young age. The implementation of Executive Orders Nos. 003 and 030 has led to higher rates of unwanted pregnancies and unsafe abortions, increased maternal morbidity and mortality and increased exposure to sexually transmitted diseases and HIV. The committee also takes note of the potentially life-threatening consequences of resorting to unsafe abortion as a method of contraception and recalls that there is a direct link between high maternal mortality rates resulting from unsafe abortion and lack of access to modern methods of contraception. In addition, the committee stresses that each of the violations established reaches the required threshold of gravity given the significant consequences, as detailed in the findings, for women's health,

personal development and economic security, in particular for economically disadvantaged women. The denial of access to affordable sexual and reproductive health services, including the full range of methods of contraception, had severe consequences for the lives and health of many women and also affected their enjoyment of several rights set forth in the Convention in areas such as employment and education. By limiting women's rights to freely choose the number and spacing of their children, women and girls were effectively undermined in gaining access to and pursuing the same education and employment opportunities as enjoyed by men and thereby driven further into or maintained in poverty.

48. The committee considers that the systematic denial of equal rights for women can take place either deliberately, namely with the State party's intent of committing those acts, or as a result of discriminatory laws or policies, with or without such purpose. The systematic nature of violations can also be assessed in the light of the presence of a significant and persistent pattern of acts that do not result from a random occurrence. The committee holds the view that the systematic character of each of the violations found is evident from the prevalent pattern of violations that occurred as a result of policies disproportionately affecting women and discriminating against them. The committee takes note that, while the lack of access to contraception is generally problematic throughout the State party, the situation in Manila is particularly egregious as a result of an official and deliberate policy that places a certain ideology above the well-being of women and that was designed and implemented by the local government to deny access to the full range of modern contraceptive methods, information and services. The committee believes that the violations are not isolated cases, given that the continued implementation of Executive Order No. 003 over a decade resulted in the health system's incapacity to deliver sexual and reproductive health services other than so-called "natural family planning" and caused women to continuously face significant barriers to gaining access to affordable sexual and reproductive health services, commodities and information. The above factual findings demonstrate that the State party condoned a situation that lasted for more than 12 years, during the successive terms of two different mayors.

The committee made a number of recommendations in respect of sexual and reproductive health rights and services for women.

### 3.5 Conclusion

CEDAW is rightly considered as a Bill of Rights for women. The primary focus of CEDAW is at national implementation. This is why for any complaint to be admissible, the applicant must have exhausted domestic remedies first. National implementation is monitored by the CEDAW Committee through periodic reports submitted by states after every four-year period. Through its Concluding Observations, the committee assists States parties by appreciating the positive steps that they have taken in implementing CEDAW at national level and by making helpful recommendations where implementation is lacking or needs strengthening. This is the only mechanism for monitoring and for holding states accountable in the case of those States parties that have not acceded to the First Optional Protocol. In this chapter we have discussed concluding observations on the target states reflecting work of the committee through this mechanism. For those states that have acceded to the Optional Protocol, individuals within those states may take their complaints to the CEDAW Committee after exhausting domestic remedies. The facts in each individual communication are specific but the committee tends to give recommendations to states which, as we have seen above, have wide-ranging implications for all women. Only Cambodia has acceded to the Optional Protocol but India, Pakistan and Thailand are encouraged to accede to the Optional Protocol. The CEDAW Committee also performs a crucial function by conducting inquiries where grave and systematic violations of women's rights are reported. The recommendations are country-specific but have wide-ranging implications for all women. The Philippines Inquiry provides an example as to how states may be held accountable through this mechanism. The CEDAW Committee assists States parties by formulating general recommendations. These usually explain various aspects of states' obligations or contents of a particular right. The CEDAW Committee displays its commitment to women's human rights at two levels: it assists States parties with national implementation, and holds them accountable at international level.

### Notes

- 1 CEDAW Committee, General Recommendation No. 19, 1992.
- 2 Ibid.
- 3 CEDAW Committee, General Recommendation No. 21, 1994, section 16.
- 4 Ibid, section 25.
- 5 See Article 9 of CEDAW.
- 6 CEDAW Committee, General Recommendation No. 28, 2010.
- 7 Ibid.
- 8 Ibid.
- 9 Concluding observations of the CEDAW Committee (CEDAW/C/KHM/Q/4-5).
- 10 Concluding observations of the CEDAW Committee, 2006 (CEDAW/C/THA/Q/4-5).

- 11 Sixth and seventh periodic reports of Thailand, 27 May 2015, CEDAW/C/THA/6-7.
- 12 See Article 1 OP CEDAW.
- 13 Ibid, Article 2.
- 14 See Communication No. 18/2008, *Karen Tayag Vertido v Philippines*, view adopted on 16 July 2008, paras 2.1–3.17.
- 15 Article 266-A of the Revised Penal Code of the Philippines. ‘Rape: When and How Committed’.
- Rape is committed:
1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
    - (a) Through force, threat, or intimidation;
    - (b) When the offended party is deprived of reason or otherwise unconscious;
    - (c) By means of fraudulent machination or grave abuse of authority; and
    - (d) When the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
  2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.’
- 16 See Communication No. 18/2008, *Karen Tayag Vertido v Philippines*, view adopted on 16 July 2008.
- 17 Communication No. 34/2011, *R. P. B. v the Philippines*, views adopted on 21 February 2014, paras 1 and 2.1.
- 18 Ibid para 8.2.
- 19 *Vertido v Philippines*, para 8.4. NB: footnotes number 19 to 28 are as they appear in the decisions of the committee.
- 20 Ibid, para 8.3.
- 21 See, for example, article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights (ratified by the Philippines in 1986); article 40, paragraph 2 (vi), of the Convention on the Rights of the Child (ratified by the Philippines in 1990); and article 18, paragraph 3 (f), of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified by the Philippines in 1995). Article 21 (b) of the Convention on the Rights of Persons with Disabilities, ratified by the Philippines in 2008, requires that the States parties accept and facilitate ‘the use of sign languages [...] by persons with disabilities in official interactions’.
- 22 For example, the jurisprudence of the Human Rights Committee shows that there is no right under article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights to have court proceedings conducted in the language of one’s choice (see, for example, communications Nos. 221/1987 and 323/1988, *Yves Cadoret and Hervé Le Bihan v France*, views adopted on 11 April 1991, para. 5.7; and communication No. 327/1988, *Hervé Barzig v France*, views adopted on 11 April 1991, para. 5.6). Only if the accused or the witnesses have difficulties in understanding, or in expressing themselves in the court language, is it obligatory that the services of an interpreter be made available (see, for example, communication No. 327/1988, para. 5.5). Article 14, paragraph 3 (f), provides for the right to an interpreter during the court hearing only (see, for example, communications Nos. 273/1988, *B. d. B. et al. v The Netherlands*, decision of 30 March 1989; 221/1987, *Yves Cadoret v France*, decision of 11 April 1991; and 323/1988, *Hervé Le Bihan v France*, decision of 9 November 1989). However, the Committee found that a confession that took place in the sole presence of the two investigating officers, one of whom typed the statement and the other provided interpretation into the author’s language, deprived the latter of a fair trial under article 14, paragraph 1, of the International Covenant on Civil and Political Rights (see, for example, communication No. 1033/2001, *Nallaratnam Singarasa v Sri Lanka*, views adopted on 21 July 2004 para. 7.2).
- 23 See para. 8.3 above.
- 24 *Vertido v the Philippines*, para. 8.4.

- 25 See paras. 3.3–3.6 above.
- 26 See *Vertido v the Philippines*, para 8.5.
- 27 *Ibid*, para 8.7.
- 28 *Ibid*, para 8.9 (a.i). Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353 of 1997, reads ‘Rape: When and How Committed. Rape is committed:
1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
    - (a) Through force, threat, or intimidation;
    - (b) When the offended party is deprived of reason or otherwise unconscious;
    - (c) By means of fraudulent machination or grave abuse of authority; and
    - (d) When the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present.
  2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.’
- 29 Communication No. 2/2003, *A. T. v Hungary*, views adopted on 26 January 2005, para 2.1–2.7.
- 30 *Ibid*, para 3.1–3.3.
- 31 *Ibid*.
- 32 Communication No. 05/2005, *Sahide Goekce v Austria*, views adopted on 6 August 2007.
- 33 See *A.T. v Hungary*, para 9.
- 34 Communication No. 05/2005, *Sahide Goekce v Austria*, views adopted on 6 August 2007.
- 35 Communication No. 20/2008, *V. K. v Bulgaria*, views adopted on 25 July 2011.
- 36 *Ibid*.
- 37 *Ibid*.
- 38 The Philippines-based Task Force CEDAW Inquiry, the Centre for Reproductive Rights and International Women’s Rights Action Network Asia-Pacific.
- 39 CEDAW Committee Inquiry in Philippines, CEDAW/C/OP.8/PHL/1, para 1.
- 40 *Ibid*, para 3.
- 41 Paragraph 4 of general comment No. 31 of the Human Rights Committee states that ‘all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party’. The International Law Commission, in article 4 of its articles on responsibility of States for internationally wrongful acts, states that ‘the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State’. It goes on to say that ‘an organ includes any person or entity which has that status in accordance with the internal law of the State’. In its commentary, the Commission has clarified that mayors have been held to be State organs because they are carrying out public functions or exercising public power.
- 42 Section 2 of the Local Government Code states that ‘the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources’.