

Step-by-Step Guide

Using the UN Treaty Monitoring Bodies to Promote Reproductive Rights

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This guide provides a five-step strategy for using the UN human rights treaty monitoring system to promote women's reproductive and sexual health and rights. Advocates, whether non-governmental organizations (NGOs) or government personnel, can employ the following steps to give international human rights standards practical effect and ensure their realization through concrete measures on the national level.

Advocates are persons who "defend or maintain a cause or proposal," ranging from members of NGOs and professional associations, community leaders and academics, to government and law enforcement personnel. People from all of these sectors can be both advocates and activists.

Step 1: Bind States to International Standards

A. ADVOCATE FOR TREATY RATIFICATION

Treaty ratification is the first step towards binding states to international human rights standards. Committees can only monitor and review states that have ratified and are party to the treaty under their responsibility. Several human rights treaties include optional protocols or clauses that must also be ratified, or acknowledged, in order for individuals to present claims of human rights violations directly to UN treaty monitoring committees.

Advocacy Point:

- If your country has not ratified a particular human rights treaty or optional protocol, advocate for ratification. This is particularly important if your state is a signatory, but has been delaying ratification.

To find if a country has ratified a particular treaty or optional protocol, visit the UN's human rights web site at <http://www.unhcr.ch/pdf/report.pdf>.

B. TRANSLATE INTERNATIONAL NORMS INTO LOCAL CONTEXTS

Some states ratify a treaty but do little to translate their international commitments into domestic realities. States may need to “domesticate” a treaty, or make it locally applicable, by passing or modifying national legislation to incorporate human rights standards established by the treaty.

Advocacy Points:

- Remind governments that international treaty obligations require that domestic laws not conflict with international standards but, rather, actively incorporate these standards.
- NGOs and professional associations of lawyers, judges and law professors can advise governments on how to bring national laws and judicial interpretations in line (“harmonize”) with international standards.

C. REMOVE RESERVATIONS

A state party may issue a “reservation” about certain provisions of a treaty. A reservation is a unilateral statement by a state to exclude or to modify the legal effect of certain treaty provisions as they pertain to that state.¹ If a state issues a reservation, the party is only exempt from the specific provision to which its reservation refers. All other treaty provisions do apply.

A state may also make “declarations” or “statements of understanding” to specific treaty provisions. Such statements or declarations reflect the state’s interpretation of a provision but may not rise to the level of a formal reservation. However, declarations and understandings act as reservations when they change or limit the states parties’ obligation under the accepted interpretation of the provision in question.² In such situations, they may be regarded as reservations and the state challenged to remove or modify them.

Advocacy Points:

- Work to remove or clarify reservations made by a state.
- Identify the concerns that underpin a reservation and propose alternatives to government officials that address the concern without requiring a formal reservation to the treaty.
- Draw attention to reservations, especially when governments inflate their record on women’s rights.
- Many states have made reservations related to religious or cultural traditions. Advocates should point out that such reservations can often lead to a continuation of discriminatory practices against women. These practices range from harmful practices such as female circumcision/female genital mutilation (FC/FGM) and domestic violence to a lack of rights in marriage and divorce.

- The CEDAW Committee has explicitly directed states parties to review and reconsider reservations that are “incompatible with the object and purpose” of CEDAW.³

To find out if a country has reservations, declarations or understanding to any provision of a treaty, visit the UN's human rights web site at <http://www.unhchr.ch/tbs/doc.nsf>.

Step 2: Impact Committee Reviews

All six human rights committees welcome supplementary information from advocates, including NGOs. This provides an invaluable opportunity for advocates to contribute to the committees' understanding and interpretation of treaty provisions related to reproductive and sexual health and rights.

A. CONTRIBUTE TO COUNTRY REPORTS

Once a state ratifies a treaty, officials must submit periodic reports that outline legislative, judicial and policy measures taken toward the fulfillment of the rights guaranteed by the treaty. Advocates can help pressure a government to comply with these reporting requirements, as well as help provide the information needed to draft the report.

Advocacy Points:

- Urge governments to file their reports for treaty monitoring committees in a timely fashion.
- Help governments prepare a report that complies with committee requirements. A UN guide on how to prepare an official country report can be found at http://www.unhchr.ch/pdf/manual_hrr.pdf.
- Ensure that the state prepares a thorough report:
 - ▲ Offer technical support, especially to ministries with limited resources and staff.
 - ▲ Provide information to the ministry or agency preparing the report. Examples of useful information include the following:
 - information about the implementation of existing laws and policies on reproductive health as cited in judicial decisions and official statements;
 - availability, accessibility and quality of reproductive and sexual health services disaggregated by sex and age; and
 - statistics disaggregated by sex and age on maternal mortality, the incidence of sexually transmissible infections (STIs), including HIV/AIDS, and the impact of health sector reform.

- ▲ Act as a consultant or advisor to the ministry/agency during the preparation of the report.
- Publicize a state's failure to submit a report by mobilizing coalitions to pressure the government to comply with its reporting requirements.
- Submit an independent report on a country under review. The Human Rights Committee (HRC), for example, will still review a country even if it fails to submit a report or show up for its scheduled review.⁴ For more details, see below for tips on preparing reports that “shadow” governments' official country reports.

To find out if a country is scheduled for review by a committee and will be required to submit a report, visit <http://www.unhcr.ch/tbs/doc.nsf> and select the treaty and country.

B.SUBMIT INDEPENDENT INFORMATION

Governments often provide only minimal information about their efforts to implement their human rights obligations. Committees are aware of this tendency and all six therefore welcome and appreciate supplementary information and statements from NGOs who help provide a more complete picture of the sexual and reproductive rights situation in the country under review.⁵ Several committees, including the Committee on Economic, Social and Cultural Rights (CESCR), Committee against Torture (CAT) and the Committee on the Rights of the Child (CRC), formally invite NGOs with consultative status with the UN Economic and Social Council to submit “information, documentation and written statements on issues of relevance to the committee's work.”⁶

Supplementary information and statements can take various forms, such as:

- full-length shadow reports that cover a broad array of issues;
- briefer shadow letters that give a short summary or cover limited issues;
- studies and research on a relevant reproductive health concern;
- written statements prepared for the committees' sessions with NGOs and the government;
- suggested questions for the committee members to pose to the government representative appearing before the committee.

Information submitted to the committees may be shared with the government. In sensitive cases, it is important to specify whether the information contained in a supplementary document should remain confidential.

Tips for Drafting Supplementary Reports for UN Treaty Monitoring Bodies

Advocates should consider the following tips when preparing reports and statements that are meant to influence the work of the UN treaty monitoring bodies, or committees.

1. KNOW THE COMMITTEE'S POSITION ON REPRODUCTIVE AND SEXUAL HEALTH

- Identify the specific treaty provisions, general comments and concluding observations relevant to the reproductive or sexual issue of concern.
- Identify existing general comments that pertain to sexual and reproductive rights and ensure that committees draw on their past work when formulating specific country observations.
- The general comments and recommendations issued by committees provide an overview of information relevant for "shadow reports."
- For an extensive analysis of all six committees' work on reproductive and sexual rights, along with specific citations for all countries that have come under review, see *Bringing Rights to Bear: An Analysis of the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (2002), produced by the Center for Reproductive Rights and the University of Toronto International Programme on Reproductive and Sexual Health Law, available at www.reproductiverights.org/publications.html.

2. CRITIQUE AND SUPPLEMENT THE OFFICIAL GOVERNMENT REPORT

- **Obtain a copy of the government report.**
Government reports are submitted in advance and are available on the UN Human Rights Treaty Bodies Database at www.unhchr.ch/tbs/doc.nsf or by contacting the committee secretariats directly. See *Bringing Rights to Bear* briefing paper on the individual committees for the secretariat's complete contact details.
- **Refer to the government report.**
Committees rely on the government report when asking questions and making comments. Supplementary information that addresses the contents of a country report, specifically by paragraph number, is most directly useful for committee members trying to formulate questions and requests for follow-up materials from government representatives.
- **Highlight gaps in country reports.**
Link the supplementary information you provide to issues that the government failed to substantively cover, omitted or underplayed in its report. For example, some governments may avoid discussing the impact of health sector reform on the availability of reproductive and health services. Others with restrictive abortion laws may neglect to account for high maternal mortality and health complications from unsafe abortion rates in their countries.

- **Call attention to inconsistencies within government reports.**

For instance, governments may cite differing contraceptive prevalence rates in various parts of a report. They may also claim that no discriminatory laws exist in one section of the report yet, in another, discuss a restrictive law on abortion, which effectively discriminates against women because it disproportionately affects them.

- **Provide updated statistics and documentation.**

In most cases, committees do not get around to reviewing reports until a couple of years after they have been filed. You can update data from the original report to reflect current realities for women.

- **Provide disaggregated statistics and information.**

Governments often neglect to separate data by sex, age, race or ethnicity. As a result, their reports fail to reflect the disparate experiences of women in their country. For example, a government's positive record on overall access to family planning services for women may be in stark contrast to independent statistics on access to family planning services by indigenous women or adolescents. The prevalence of certain methods of contraception, such as sterilization, among minority populations can also reveal problems concerning access to health services and treatment. Furthermore, police statistics for victims of violent crime are often not separated by gender.

- **Make connections between issues.**

Explain the link between subtle and explicit gender discrimination on the one hand, and continuing reproductive and sexual rights violations on the other. For example, displaced women, refugees, indigenous groups and sex workers often suffer multiple abuses because of their legal and socioeconomic status.

- **Provide accurate and reliable information on reproductive health and rights.**

Each of the six committees has requested and utilized information on the following issues:

- The existence of discriminatory or punitive laws. Examples include laws that criminalize abortion and statutes that establish different minimum ages for marriage based on gender.
- The implementation of existing laws and policies.
- Absence of laws needed to protect reproductive and sexual rights (e.g., trafficking).
- National-level judicial decisions on reproductive and sexual rights issues.
- Traditional practices affecting reproductive and sexual health rights (e.g., FC/FGM, child and forced marriage).
- Access to reproductive health and family planning services disaggregated by sex and age (including availability, accessibility and quality).
- Evidence-based data on systematic violations.

3. FORMAT

- **Organize topics by treaty provisions.** For example, your discussion of high maternal mortality rates may fall under a section that discusses the "right to life" treaty provisions. See appendices for sample shadow report and shadow letter formats.
 - Unlike the other committees' preference for an article-by-article approach, CRC favors reports that are organized according to themes set out in its General Guidelines regarding the Form and the Content of Initial Reports. The guidelines are available at <http://www.unhchr.ch/html/menu6/2/fs10.htm>.
- **Explicitly state which treaty provisions are being violated and how.**
- **Cite specific paragraph numbers, if possible, when referencing the government report.**
- **Provide suggestions for questions and requests** for supplementary information that can be directed towards government representatives during pre-session and formal session meetings.

4. LANGUAGE

- **Submit reports in English, if possible.**
Supplementary information should be in the working language of committees. English, French and Spanish are the most common languages but English is often preferable. The committees do not have the resources to translate documents submitted by NGOs.

5. TIMING

- **Submit materials early for maximum effectiveness.**
Committees hold "pre-sessions" in which they review government reports and decide what follow-up or supplementary information they will request from the government prior to the review session itself. Having independent information from NGOs is particularly critical at this point. Information received by committees at the last minute may not receive proper attention due to time constraints. Committees generally accept NGO materials up to one week before the beginning of the session. See the committee sections for schedule information.
- Reports should be sent to the secretariat of the applicable committee for distribution to committee members. See the committee sections for contact details for each committee.

6. ENDORSEMENT

- Reports and letters signed or endorsed by a coalition of reproductive health and rights organizations, community groups, professionals and scholars often receive greater attention.

C. PROVIDE INFORMAL INPUT

The following informal channels provide alternative outlets for influencing committees:

- Attend committee sessions in Geneva or New York where NGO input is often solicited during organized sessions. Advocates can also arrange a separate meeting or lunchtime briefing with committee members during session meetings.
- Organize meetings and workshops with committee members to sensitize them on particular issues.
- Offer your expertise as a specialist on reproductive and sexual health and rights should the committee members or the committee's secretariats have a question.
- Join forces with existing coalitions or create new coalitions of NGOs to inform committees on reproductive and sexual health and rights issues.
- Arrange private meetings with the committee member from your country or region to discuss how reproductive health and rights relate to the mandate of the committee and the situation of women in your country.

Authoritative Standards

The general comments and concluding observations articulated by committees during individual country reviews constitute an instructive and persuasive body of international standards that are applicable to all states.

In fact, states parties with policies similar to those that have been criticized by a committee will often receive similar critiques from committee members.

Concluding observations establish "precedents" for evaluating acceptable or unacceptable government action. This bears some resemblance to the jurisprudential precedence established by court rulings and case law in many countries, although concluding observations lack the same binding authority of a national court on its government.

***Step 3: Help Implement
Outcome of Country Reviews***

Comments and concluding observations issued by the committees constitute part of an evolving body of international law. Because of the power of committee statements, NGOs should use them to press for legal and policy changes at the national level. The following are a series of actions that advocates can employ to maximize impact of the country review process in advancing women's sexual and reproductive rights.

A. ENGAGE THE GOVERNMENT

- Organize a briefing or brainstorming session(s) with a cross-section of interested civil society actors and government officials, with the aim of making the government aware of the committees' critiques and to make plans to address them.

**B. PUBLICIZE THE COMMITTEES' WORK ON
REPRODUCTIVE AND SEXUAL RIGHTS**

The first step in holding governments accountable for their treaty obligations to protect reproductive and sexual rights is to publicize the

committees' work. Through media and political campaigns, activists can gain widespread recognition and respect for reproductive and sexual rights using their country's treaty obligations and the committees' pronouncements to help strengthen their messages.

- Translate concluding observations and general comments into local languages.
- Create simplified, user-friendly versions of the committees' work on reproductive and sexual rights.
- Publicize and disseminate concluding observations (or simplified versions) to the following:
 - ↳ local media (print, radio, television, online);
 - ↳ international press (print, radio, television, online);
 - ↳ relevant government ministries and agencies (e.g., ministries of health, law, women's affairs, population office);
 - ↳ government agencies charged with implementing laws and policies on reproductive and sexual health;
 - ↳ law makers (especially allies in the parliament);
 - ↳ judges/magistrates/decision-makers;
 - ↳ activists;
 - ↳ academics and students;
 - ↳ community leaders and groups;
 - ↳ religious leaders and groups;
 - ↳ broad-based NGOs, organizations, or coalitions that do not deal specifically with reproductive rights to gain wider support;
 - ↳ professional associations (e.g., lawyers, health providers and educators);
 - ↳ health and social services providers; and
 - ↳ local offices of UN agencies such as the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM) and the United Nations Population Fund (UNFPA).

C. WORK IN COALITIONS

Coalitions help create the "critical mass" needed to raise awareness and impact policies and laws. Diverse networks and coalitions illustrate to both the public and decision-makers that reproductive and sexual health and rights require attention because they are of great concern to large segments of the population.

- Use the latest concluding observations on reproductive or sexual health (especially if they are specific to your country) to galvanize or re-energize support for reproductive rights on the national level. For example, advocates can create a

distribution list for the latest concluding observations on reproductive rights.

- Form or join national, regional, and/or international coalitions to promote international standards on reproductive and sexual rights.
- Draw on coalition members or other sources to publicize innovative programs that address reproductive and sexual rights as specified by the treaties and the committee statements.
 - ▲ Disseminate examples of how other countries and regions were able to successfully protect and realize reproductive rights. These examples can also be used as an advocacy tool to persuade reluctant governments that countries with similar levels of income and infrastructure have been able to improve the reproductive health status of their people.
- Broaden the network: Invite actors not traditionally involved in the reproductive and sexual rights field, such as human rights advocates, professional associations, academics and community leaders to join reproductive health and rights networks and initiatives.

D. CAMPAIGN FOR REPRODUCTIVE RIGHTS

Use recent concluding observations issued for your country to conduct broad-based mainstream campaigns on reproductive rights to gain popular support.

- Place reproductive rights in the context of broader efforts to empower women and promote their rights under UN human rights treaties.
- Frame the reproductive rights debate in terms of equality and social equity to gain wider support.
- Educate women about their reproductive rights to gain a wide base of support at the grassroots level.
- Maximize involvement by all sectors of society:
 - ▲ Politicians, religious leaders, community leaders, health professionals, law enforcement personnel, and other groups.
 - ▲ National institutions, professional associations, teachers, health and legal professionals through broad-based civil society and community participation.
- Lobby lawmakers to change national and local legislation to reflect commitments to treaty obligations.

E. TRAIN AND INFORM

- Develop training curricula to inform and sensitize the greater human rights and development community, government members (including policymakers, ministries, civil service employees), and professional associations (including lawyers, health providers and educators) on international standards for reproductive and

sexual rights.

- Train judges, magistrates, prosecutors and law enforcement personnel on pending or reformed laws and policies on reproductive and sexual rights and suggest strategies for how they should be enforced.
- Create education programs at every level, dealing with the social justice dimensions of reproductive rights.

F. RESEARCH AND ANALYZE

- Conduct additional research into areas, such as unsafe abortion and harmful practices, identified by committees as barriers to the enjoyment of reproductive rights.
- Conduct a gender analysis of existing laws, policies and guidelines with an emphasis on reproductive and sexual rights based on the committees' specific recommendations. Identify gaps and encourage the passage of new laws where appropriate. Both national and municipal or local laws should be targeted.

G. INVOLVE UN AGENCIES

- Request secretariats to the committees to assist in ensuring that government officials and local advocates receive copies of the concluding observations, usually available in English, French and Spanish. Copies are also available online at the web site for the UN High Commissioner for Human Rights, at <http://www.unhchr.ch/tbs/doc.nsf>.
- Contact country offices of UN agencies and bodies that may be able to provide technical assistance in implementing concluding observations on the national level.
- Contact country offices of UN agencies and bodies that may be in a good position to monitor national-level implementation and inform the committees of the government's progress.

Step 4: Legislate and Litigate

Activists can use general comments and concluding observations to illustrate international consensus, emerging trends or persistent problems related to reproductive and sexual health and rights. The committees' work constitutes a baseline to inform national-level legislative and judicial strategies. Thus, advocates in one country can argue for reform based on a committee's comments to another country that is similarly situated.

To illustrate a regional or international trend in the field of reproductive and sexual health and rights, refer to the compilation of concluding observations on a particular

issue in *Bringing Rights to Bear: An Analysis of the Work of the UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (2002), which was produced by the Center for Reproductive Rights and the University of Toronto International Programme on Reproductive and Sexual Health Law, available at www.reproductiverights.org/publications.html.

A. REFORM LAWS AND POLICIES

Committees often instruct states parties to revise specific laws and policies or adopt new ones that comply with a given treaty. Civil society actors, especially NGOs with an expertise in reproductive and sexual rights, play an invaluable role in advising, consulting and monitoring government officials charged with reforming the law.

- **Advocate for a system-wide review of conflicting laws.**
 - ▲ Committee recommendations for reforming specific laws can substantiate the need for a broader review of all laws, policies, regulations and guidelines that fail to conform to reproductive and sexual rights.
 - ▲ Committee recommendations often identify gaps in laws that allow for reproductive rights violations; these recommendations also encourage states to pass new, and better, laws.
- **Coordinate efforts to reform and create laws.**
 - ▲ Encourage the government to form a national-level body, such as a commission, council or committee, to oversee the implementation and monitoring of the treaty and committees' concluding observations.
 - ▲ Advocates can also press the government to:
 - establish an inter-agency body within the government and/or a task force of various stakeholders (see below);
 - ensure the agency receives the power and resources it needs to carry out its mission;
 - advise and train agency members on how to address reproductive and sexual health when reforming or initiating new laws and policies that conform to a treaty and its interpretation by the committees; and
 - urge the agency to conduct a gender analysis of existing laws and identify gaps in the laws that violate reproductive rights standards as interpreted by the committees.
 - ▲ Establish a task force composed of multiple stakeholders to supplement and critique law reform and advocacy efforts. Stakeholders can include government officials, UN representatives (e.g., UNFPA country officers), national and international NGOs, community-based groups, professionals and providers in the women's rights and health fields.
 - ▲ If you are unable to establish a new agency or task force for legal reform, coordinate with an existing government agency such as the women's min-

istry, a human rights commission or an ombudsperson. You can also join efforts with a private group such as a lawyers association or gender and health NGOs.

B. PARTNER WITH GOVERNMENT ACTORS

To ensure that the government is responsive to a committee's recommendations, work with policymakers, relevant ministries charged with implementing laws, other executive branch offices (e.g., office under the purview of the president or prime minister), and law enforcement (e.g., judges, magistrates and the police).

• **Work with law makers (legislative branch)**

- ▲ Advocate for changes in national laws to make them consistent with treaty obligations and the general comments and concluding observations made by committees.
- ▲ Ask the legislature to mandate specific regulations and guidelines to accompany reformed and new laws to ensure they are interpreted and enforced in accordance with treaty obligations and committees' general comments and concluding observations.
- ▲ Encourage lawmakers to prohibit practices that violate international standards on reproductive and sexual rights as specified by the treaty and the general comments and concluding observations of the treaty monitoring bodies.

• **Work with law implementers (executive branch)**

- ▲ Stress enforcement of existing laws and policies that observe and promote international standards on sexual and reproductive rights.
- ▲ Call for health sector reform that is consistent with treaty obligations and the committees' general comments and concluding observations.
- ▲ Assist in reforming the justice system to ensure that it addresses issues consistent with international standards on reproductive and sexual rights as specified by the treaty, and by the general comments and concluding observations of the committees.
- ▲ Propose guidelines and regulations that reflect international standards and aid in the interpretation of existing laws and policies on reproductive and sexual health and rights.
- ▲ Advocate for allocation of resources and personnel to oversee reform, implementation, monitoring and enforcement of treaty obligations.

• **Work with law enforcers (judiciary and law enforcement branch)**

- ▲ Train judges, magistrates, prosecutors and law enforcement personnel on

pending or reformed laws and policies on reproductive and sexual rights and suggest strategies for how they should be enforced.

- ▲ Call for interpretations of existing legislation that are in line with treaty obligations.
- ▲ Monitor court decisions, prosecution and conviction rates, and severity of sentences for crimes that constitute violations of reproductive and sexual rights as articulated by the committees.
- ▲ Publicize and disseminate court decisions to draw attention to the obligation of the state to enforce the protection of these rights.

C. ESTABLISH FOLLOW-UP PROCEDURES

To ensure ongoing implementation, monitoring and compliance with revised and new laws, work to create a formal procedure for monitoring and enforcement that will hold government actors accountable to their obligation to uphold reproductive and sexual rights.

D. LEGAL STRATEGIES

• Domestic litigation

Because they create the international standards that bind all states parties, general comments and concluding observations can be used to impact national jurisprudence (or case law) on reproductive and sexual rights.

- ▲ Lawyers can highlight the relevance of treaty-derived international standards on reproductive and sexual rights in oral and written legal arguments to the court.
- ▲ Committees' concluding observations and comments can be persuasive evidence of the interpretation of the reproductive or sexual right that is the subject of a case.
 - For example, in *Vishaka v. State of Rajasthan*, the Supreme Court of India adopted the CEDAW Committee's General Recommendation 19 on Violence against Women to set guidelines and requirements for processing sexual harassment complaints by both private and public employers in India.⁷
 - Academics and human rights experts can submit supporting documents (e.g., *amicus curiae*) or provide testimony about international reproductive rights standards and norms, as established by the treaties and interpreted by the committees.
- ▲ Committees' concluding observations on a specific country can be used as indirect evidence of the government's violation of international human rights standards and its failure to carry out its obligations to its people.

• International or regional complaint mechanisms

Because general comments and concluding observations inform international

standards on reproductive and sexual health issues, states that fail to uphold these standards can be petitioned, or “sued” in an international or regional court or forum.

- ▲ Take a violation highlighted by a committee and use it to petition a government through optional protocols that allow individual complaints to be brought before a treaty monitoring body.
- ▲ Use the general comments and concluding observations to bolster arguments for reproductive rights protections in regional courts and fora.

Step 5: Follow Up and Evaluate Progress

The need to monitor and evaluate governmental progress towards the implementation of sexual and reproductive rights continues long after a state pledges to act on the concluding observations of a treaty monitoring committee. Here are a few steps for ensuring that governmental commitments are translated into grassroots realities.

A. TARGET THE GOVERNMENT

- Remind the government that it is obligated to comply with concluding observations from treaty monitoring committees.
- Offer to help implement measures recommended by a committee by offering government officials your services as an expert or advocate on reproductive rights issues.
- Work with ministries and lawmakers to bring about necessary legal and policy changes that ensure such rights as equal access to health services.
- Advocate for the creation of a national-level body, such as a commission, council or committee, to oversee the implementation and monitoring of the treaty and the concluding observations from its monitoring committee.
- Identify the offices currently responsible for implementing concluding observations within the government (e.g., women’s ministry or bureau, human rights commission or ombudsperson and local authorities).
- Inform and train government actors on how to comply with reformed or new laws and policies on sexual and reproductive health and rights.
- If appropriate, publicly “shame” the government for its failure to protect and promote the reproductive and sexual health of its people, as required by the committees’ recommendations.

B. TARGET THE COMMITTEES

- Invite a committee member or a delegation to visit your country to review the reproductive and sexual health situation.

- Request the committees to require your government to follow-up on issues that it has failed to address, such as access of adolescents to sexuality education, during its scheduled reporting on treaty obligations.
- Submit follow-up reports to treaty monitoring committees to outline how your government succeeded or failed to carry out the committees' recommendations.
- Notify the relevant treaty monitoring committee if a government fails to comply with concluding observations, in preparation for the state's next review.

C. TARGET UN AGENCIES

- Work together with UN agencies in your country to ensure that feedback information is provided to the committees, and that recommended changes are being implemented.
- UN agencies may be able to provide technical support and resources needed to implement or monitor implementation of the concluding observations.

D. TARGET REGIONAL AND INTERNATIONAL NGOS AND NETWORKS

- Work with international and regional NGOs and reproductive rights networks to ensure that they also alert the committees and other UN bodies to a government's failure to remedy reproductive and sexual rights violations.
- Join forces with regional and international NGOs working to implement and monitor implementation of the concluding observations and the provisions of the treaty related to the protection of reproductive and sexual health and rights.

ENDNOTES

- 1 See Vienna Convention on the Law of Treaties, 1155 UNT.S 331, U.S. No. 58 (1980), *reprinted in* 8 I.L.M. 679 (1969) (*entered into force* Jan. 27, 1980), art. 2(1)(d).
- 2 See LOUIS HENKIN ET AL, HUMAN RIGHTS 308 (1999).
- 3 See Committee on the Elimination of Discrimination against Women, *General Recommendation 4: Reservations* (6th Sess., 1987) and *General Recommendation 20: Reservations to the Convention* (11th Sess., 1992), *in* Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, at 203, 222, U.N. Doc. HRI/GEN/1/Rev.5 (2001).
- 4 See Press Release, United Nations High Commissioner for Human Rights, Human Rights Committee Concludes Seventy-Fifth Session (July 26, 2002), *available at* <http://www.unhchr.ch/hurricane/hurricane.nsf>.
- 5 See OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS ET AL, MANUAL ON HUMAN RIGHTS REPORTING UNDER SIX INTERNATIONAL HUMAN RIGHTS INSTRUMENTS 33 (1997), U.N. Doc. HR/PUB/91/1/Rev.1, *available at* http://www.unhchr.ch/pdf/manual_hrr.pdf.
- 6 See *Id.* at 43.
- 7 Vishaka v. State of Rajasthan (1997) 6 S.C.C. 241 (Ind.), *cited in* UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM), BRINGING EQUALITY HOME: IMPLEMENTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ch. 2 (Ilana Landsberg-Lewis ed., 1998), *available at* <http://www.unifem.undp.org/cedaw/cedawen6.htm> (last visited July 25, 2002).

APPENDIX A

Suggested Shadow Report Format for the Human Rights Committee

I. INTRODUCTION: This section describes the purpose of the report, explains the issues that are covered and places them within the framework of the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant).

II. PRINCIPAL POINTS OF CONCERN: This is an executive summary of the report, which highlights the key findings of the report. It serves as a reference for committee members as they write their concluding observations and recommendations.

III. WOMEN'S RIGHTS IN [INSERT COUNTRY NAME]: Pertinent Provisions of the Civil and Political Rights Covenant

A. Right to Reproductive Health Care, including Family Planning and Safe and Legal Abortion Services (Articles 3, 6, 23 and 26 of the Civil and Political Rights Covenant)

Introduction

The introduction relates the relevant treaty Articles 3, 6, 23 and 26 to women's access to the full range of reproductive and sexual health care services.

1. ACCESS TO COMPREHENSIVE, QUALITY REPRODUCTIVE HEALTH CARE SERVICES

Laws and Policies

Relevant local laws and policies are outlined and discussed in this section. Gaps in laws and policies on major issues of concern are also highlighted. The focus is on laws and policies with discriminatory or punitive intent or impact on women, adolescents or other target groups. The same approach should be used in each of the subsequent sections on laws and policies.

Reality

This section includes information on the extent to which laws and policies are implemented and enforced in reality. For this section, consider the following questions:

- Are comprehensive reproductive health care services available? Do all women (e.g. rural, migrant, ethnic minority, mentally or physically disabled, older, adolescent) have adequate access to maternal and infant care, contraception, information, counseling and treatment for sexually transmissible infections (STIs)? If not, what are the obstacles?

- Do women have access to trained medical providers? Do providers have adequate supplies? Are clinics open at convenient times for women? Do health providers respect the judgement, privacy and confidentiality of their women patients?
- Are there specialized medical services available?
- What has been the impact of the privatization of the health care system (where applicable)? Have there been studies to assess the effectiveness of the health care system?
- Do health providers respect patients' right to give informed consent to procedures?
- Do low-income women and girls have access to reproductive health services and family planning? Does the income level of the patient affect the quality of care she receives?
- Is information on reproductive health and family planning available and accessible to women and girls?
- Is such information available in minority or local languages? What other types of obstacles might prevent certain women from having access to this information?

2. CONTRACEPTION

Laws and Policies

Reality

- Are statistics on contraceptive use available?
- What methods are available? Is emergency contraception (EC) available? Are contraceptives accessible? Costly?
- Does the government promote one contraceptive method over others?
- Is any pressure or coercion used to increase the prevalence of contraceptive use?
- In practice, is spousal authorization required to obtain contraceptives?
- Is there evidence that the woman's consent to use contraceptives is not obtained?

3. ABORTION

Laws and Policies

Reality

- Are statistics on the prevalence of abortion available? What is the incidence of illegal or unsafe abortion and complications and maternal mortality from unsafe abortions?
- Is abortion more accessible for women who can pay for private services than for those who rely on public clinics?
- How is the procedure performed? Do women get anesthesia if needed or requested? Is the procedure covered by medical insurance or must the woman pay for it?
- Do anti-choice (anti-abortion) sentiments interfere with women's access to the procedure? Is the government supportive of women's right to choose?
- Do health care providers object to performing the procedure on the basis of "conscience?"
- Is there any evidence that doctors who decline to perform abortions in public hospitals on grounds of "conscience" will do abortions in private clinics for money?
- Is medical abortion (e.g. RU-486) available and accessible?
- Where abortion is strictly prohibited, how many women face criminal prosecution for having had abortions?
- Where abortion is prohibited, how do health care providers (both public and private) treat complications of illegal abortion? Are women who seek medical attention reported to the police? Are they treated humanely and in a medically appropriate manner?

4. STERILIZATION

Laws and Policies

Reality

- How prevalent is sterilization?
- Is informed consent always obtained? How is this regulated?
- Is spousal authorization required to undergo sterilization?
- Are there any examples of coercion in pre-sterilization counseling?
- Is post-sterilization counseling offered?
- Is there an effective referral system for sterilization services?
- Are the requirements for accessing the procedure complicated and discriminatory?

- Is there any evidence that women who have mental or physical disabilities are more vulnerable to coercive sterilization?
- Are some subgroups of the population (e.g. indigenous women, migrant women, and sex workers) targeted for the procedure?

5. HIV/AIDS AND OTHER STIS

Laws and Policies

Reality

- What is the incidence of STIs, including HIV/AIDS?
- Are there cases of discrimination against women with STIs, including HIV/AIDS, in health care, employment, housing, education or social services?
- Are there guidelines to ensure that HIV-positive women receive balanced and complete information about the risks of pregnancy and breast-feeding to their health and to the fetus?
- Is abortion an available option for HIV-positive women? Are they coerced into not having children?
- Are there social or other stigmas attached to STIs, including HIV/AIDS?
- Are there adequate medical and social services for low-income, rural and/or minority women with STIs, including HIV/AIDS?

6. ADOLESCENT REPRODUCTIVE HEALTH

Laws and Policies

Focus on laws and policies with discriminatory or punitive intent or impact on adolescent girls, based on their age, ethnicity, marital status, and sexual orientation.

Reality:

- Do adolescents face obstacles to obtaining reproductive health care services and information? Contraception? Abortion? STI testing and treatment?
- What are the barriers to access? Are medical personnel specially trained to deal with the reproductive health concerns of adolescents?

B. Sexual Violence against Women and Girls (Articles 3, 6, and 7 of the Civil and Political Rights Covenant)

Introduction

Discuss the relevance of Articles 3, 6, and 7.

1. RAPE AND OTHER SEXUAL CRIMES

Laws and Policies

Reality

- What is the prevalence of rape and sexual violence?
- What is the government doing to address sexual violence?
- Are complaints taken seriously, investigated thoroughly and prosecuted? What are the rates of prosecution and conviction? What sentences are handed down for rape and other sexual crimes? What obstacles persist to gaining such convictions?
- How do the police and judicial authorities treat women who report sexual violence and seek redress in the courts?
- Are there enough shelters and other medical and social services for survivors of violence?
- Are there rehabilitation programs for men?

2. DOMESTIC VIOLENCE

Laws and Policies

Reality

- How widespread is domestic violence?
- What is the government doing to address domestic violence?
- Are protective orders available?
- Are complaints taken seriously, investigated thoroughly and prosecuted? What are the rates of prosecution and conviction? What sentences are handed down for domestic violence? What obstacles persist?
- How do the police and judicial authorities treat women who report domestic violence and seek redress in the courts?
- Are there enough shelters and other medical and social services for survivors of violence?
- Are there rehabilitation programs for men?

3. SEXUAL HARASSMENT

Laws and Policies

Reality

- Are there any official statistics?
- What has the government done to prevent sexual harassment?
- Do existing laws protect against women employed in the in the education and security/military sectors?
- Are there any relevant court cases?

4. TRAFFICKING IN WOMEN

Laws and Policies

Reality

- What statistics are available?
- How does the government treat women who are victims of trafficking? What kind of medical and social services are available to them? Are they deported or arrested? Can they remain in the country? What alternative economic empowerment programs exist to bypass sex work or trafficking?
- Are those responsible for the procurement and trafficking of girls and women punished?

C. Family Relations (Articles 23, 24, and 26 of the Civil and Political Rights Covenant)

Introduction

Discuss Articles 23, 24, and 26.

1. MARRIAGE AND DOMESTIC PARTNERSHIP

Laws and Policies

Reality

- Are there any statistics about marriage/domestic partnership rates?
- What is the average age of first marriage?
- Is early marriage of girls a concern?
- Are there policies or practices that promote marriage or penalize domestic partnership?
- Do married women need to obtain the consent of their husbands to obtain contraceptive (including sterilization) or abortion services? Business transactions, travel, etc.?

2. DIVORCE AND CHILD CUSTODY

Laws and Policies

Reality

- What is the divorce rate? How many households are headed by women?
- Are the grounds for divorce the same for both women and men?
- Is women's unpaid housework considered part of the communal property?
- Are women awarded maintenance or alimony? Is it a gender-neutral inquiry?
- Are support awards enforced? Is it difficult to get men to pay support to former wives or children?
- Are women more often awarded custody of the children?

D. Right to Education (Articles 2, 3, 19, 24, and 26 of the Civil and Political Rights Covenant)

Introduction

Discuss the relevance of Articles 2, 3, 19, 24, and 26.

1. ACCESS TO EDUCATION

Laws and Policies

Reality

- What are the percentages of girls and female adolescents enrolled in primary, secondary and university-level education?
- What measures are taken to ensure that children from rural areas or lower-income urban areas have access to education?
- Is the pregnant adolescent's right to an education protected by the state?

2. ACCESS TO SEXUAL EDUCATION

Laws and Policies

Reality

- Are there sexual education programs in schools? Are these programs comprehensive and balanced?
- Do they reach most adolescents?
- Do they reach adolescents in rural areas? Who are out of School? In the military?

E. Women's Economic and Social Rights (Articles 3 and 26 of the Civil and Political Rights Covenant)

Introduction

Discuss the relevance of articles 3 and 26.

1. LABOR LAWS

Laws and Policies

Reality

- Are there statistics on the participation of women in the labor market?
- Do women and men receive equal pay for comparable employment?
- Are women who are of childbearing age or pregnant subject to discrimination in the workforce?
- Do maternity leave laws apply to women working in both the public and private sectors?
- Are pregnant women subjected to environmental hazards?

Shadow Reports submitted by the Center for Reproductive Rights and its partners can be accessed at www.reproductiverights.org, or contact the Center for copies.

APPENDIX B

Suggested Shadow Letter Format for the Committee on Economic, Social and Cultural Rights¹

April 22, 2002

The Committee on Economic, Social and Cultural Rights

Re: Supplementary information on Benin
Scheduled for review by the Committee on Economic, Social and Cultural Rights
on May 2-3, 2002

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Benin, which is scheduled to be reviewed by the Committee on Economic, Social and Cultural Rights during its 28th session. The Center for Reproductive Rights, an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the International Covenant on Economic, Social and Cultural Rights (Economic, Social, and Cultural Rights Covenant). This letter highlights several areas of concern related to the status of women's reproductive health and rights in Benin. Specifically, it focuses on discriminatory or inadequate laws and policies related to the reproductive rights of women in Benin. It is based primarily on two previously published documents prepared by the Center for Reproductive Rights in collaboration with the Association des Femmes Juristes du Bénin (AFJB). Copies of these documents are attached for your reference.

Because reproductive rights are fundamental to women's health and equality, states parties' commitment to ensuring them should receive serious attention. Further, reproductive health and rights receive broad protection under the Economic, Social, and Cultural Rights Covenant. Article 12(1) of the Economic, Social, and Cultural Rights Covenant recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Articles 2(2) and 3 guarantee all persons the rights set forth in the Economic, Social, and Cultural Rights Covenant without discrimination, specifically as to "sex, social origin or other status." In interpreting the right to health, this Committee, in General Comment 14, has explicitly defined this right to "include the right to control one's health and body, including sexual and reproductive freedoms." The Committee has further asserted that states parties are required to take "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning . . . emergency obstetric services and access to information, as well as to resources necessary to act on that information." General Comment 14 also specifically states that

"[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."

We wish to bring to the Committee's attention the following issues of concern, which directly affect the reproductive health and lives of women in Benin.

1. Women's Reproductive Health Rights (Articles 10, 12, and 15(1)(b) of the Economic, Social, and Cultural Rights Covenant)

Article 12 protects the right of all persons to enjoy the highest attainable standard of physical and mental health. This article is complemented by Article 15(1)(b), which grants all persons the right to benefit from the advances of scientific research and its applications. Under this provision, women are entitled to enjoy advances in research in the reproductive health field. Article 10 grants special protection to pregnant women before and after delivery, as well as to adolescents and children. These provisions require governments to make reproductive health, family planning, and safe motherhood services and information accessible to women.

The Committee defines "reproductive health" as "the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of [one's] choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth." According to the Committee, Article 12(2)(c) on the prevention, treatment, and control of disease, "requires the establishment of prevention and education programmes for . . . sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health. . . ."

A. ACCESS TO REPRODUCTIVE HEALTH CARE, INCLUDING FAMILY PLANNING AND SAFE MOTHERHOOD

Women's reproductive lives in Benin are characterized by a low rate of contraceptive prevalence and high numbers of induced illegal and clandestine abortions, resulting in an alarming maternal mortality ratio of 880 per 100,000 live births.

The French colonial law of July 31, 1920 prohibiting contraceptive propaganda and incitement to abortion remains in force in Benin. Articles 3 and 4 of this law punish "anyone who, for the purpose of contraceptive propaganda, . . . describes or divulges or offers to reveal or facilitate the use of procedures for preventing pregnancies." Offenders risk one to six months in prison and a fine of 100 to 5000 French francs (USD 13.56 to 677.84). While the law is not actively enforced, it inhibits the implementation of a com-

prehensive reproductive health policy, particularly with respect to family planning.

Knowledge of contraceptive methods varies according to age, with young women the least informed. Among married women, those between the ages of 20 and 39 are most knowledgeable of the various contraceptive methods, including modern methods (at least 79% know of any method, and at least 75% know of a modern method). Adolescents between the ages of 15 and 19 have the lowest level of knowledge of contraceptive methods (70% know of some method and 66% know of a modern method). While 16% of Beninese women use some form of contraception, only 3% of women use a modern method. Among adolescent women between the ages of 15 and 19, 61% have already given birth to at least one child, and among young women aged 20 to 24, this number rises to 89%.

B. ACCESS TO SAFE, LEGAL AND ACCESSIBLE ABORTION SERVICES

The low prevalence and imperfect use of contraceptive methods lead to an elevated rate of induced abortions. Abortion is criminalized in Article 317 of the Penal Code with significant penalties, which can be increased in the case of aggravating circumstances. While the Penal Code recognizes no exceptions to this prohibition, the Code of Medical Ethics permits physicians to perform an abortion when a woman's life is at risk. The law of July 31, 1920, as mentioned above, imposes additional penalties for "inciting" a woman to have an abortion.

In the majority of cases, abortions in Benin are practiced clandestinely, under deplorable conditions that jeopardize women's health. Among the 722 instances of induced abortion recorded in a study of three maternity facilities in Cotonou, 712 were illegal induced abortions (19.4% were for adolescents, 26.9% were for single women, and 57.2% were for married women). These abortions occurred in rural areas (31.1%), as well as in urban (28.4%) and suburban areas (33.1%). Unsafe abortion is a leading contributor to the high maternal mortality rate and can lead to serious reproductive health consequences, such as infertility.

C. HIV/AIDS

In Benin, early sexual experiences and inadequate reproductive health care services expose adolescents to the risks of HIV infection. According to estimates from the year 2000, 2.45% of all persons aged 15 to 49 are infected with the HIV virus. Young women are more vulnerable to infection than their male counterparts. The HIV prevalence rate among males aged 15-24 was .89%, whereas for females of the same age group, it was 2.24%.

2. Sexual and Physical Violence Against Women, Particularly Minors (Articles 10(3) and 12 of the Economic, Social, and Cultural Rights Covenant)

Article 10(3) requires states parties to take all appropriate steps to protect children and adolescents. This article, read with Article 12, protects women and adolescents against all forms of physical abuse and violence. Thus, when women—whether they are minors or of majority age—are victims of sexual abuse, domestic violence, or female circumcision/female genital mutilation (FC/FGM), their rights under these provisions are violated.

The Committee has noted that violence against women, both within and outside the family, has serious effects on a woman's physical and mental health. It strongly advises states parties to adopt effective measures to combat violence against women. It also has expressed its view that FC/FGM is a degrading and dangerous practice that is incompatible with women's rights, particularly their right to health.

A. PHYSICAL AND SEXUAL VIOLENCE

Domestic violence, both physical and psychological, is prevalent in Benin. While rape is penalized under the Penal Code, there is no concept of marital rape, and thus no existing law is applicable. There is a high incidence of rape in connection with forced marriage and the abduction of young girls and adolescents.

B. FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION (FC/FGM)

Traditional practices also pose a threat to women's health and lives in Benin. FC/FGM is a reality in Benin, affecting girls as young as five years old and women up to the age of 30. At least 50% of Beninese women undergo the practice.

While general Penal Code provisions relating to assault could potentially be applied to the practice of FC/FGM, the Penal Code in Benin contains no provisions specifically prohibiting the practice. Increased public health campaigns are needed to raise awareness about the harmful consequences of this practice.

We hope that the Committee will consider addressing the following questions to the government of Benin:

1. What efforts are being made to institute government-sponsored programs to allow women to access comprehensive reproductive health and family planning services, as well as information about these services?
2. What legislation and policies have been adopted to address unsafe abortion in Benin? What efforts have been made to reform the law that criminalizes abor-

tion? Has the government made provisions for post-abortion care?

3. In its report to the Committee, the government states that a project entitled "Reproductive Health and Family Planning" was implemented in 1992 with a goal "to reduce the proportion of teenage pregnancies by 50% by the year 2000" (para. 315). Given the incidence of early marriage that is a leading factor in teenage pregnancy, what measures is the government taking to counter the practice? What measures has the government undertaken to decrease the educational gap between women and men?
4. FC/FGM continues to be a pervasive practice in Benin. What educational tools has the government provided its communities about the harmful consequences of the practice? Have any public education campaigns been undertaken? What legislation and policies have been adopted to criminalize the practice?

Finally, we have included the following supporting documentation for the Committee's reference:

[Insert list of attached documents]

There remains a gap between the provisions contained in the Economic, Social, and Cultural Rights Covenant and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive and sexual health and rights of women and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful in the Committee's review of the Beninese government's compliance with the Economic, Social, and Cultural Rights Covenant. If you have any questions, or would like further information, please do not hesitate to contact me.

Very truly yours,

Center for Reproductive Rights

Endnote

¹ Sources have been omitted. References are available upon request.