

# Reproductive Rights and Women with Disabilities

## A Human Rights Framework

As the international community moves toward a more robust recognition of both the human rights of disabled persons and the reproductive rights of women, the intersection comprising the right of disabled women to reproductive freedom must be given full attention. This briefing paper proposes a human rights framework for considering the reproductive rights of women with disabilities, taking into consideration international human rights laws and instruments and global consensus documents. We recognize, and respect, that there are differences of opinion among — and within — the disabilities rights, women’s rights, and human right communities. Our objective is foremost to articulate the human rights norms against which the laws and policies of nations must be measured. Laws and policies affecting women’s reproductive rights and services, when not blatantly discriminatory, are often silent where women with disabilities are concerned. It is hoped that this paper will raise awareness and open a door to dialogue among the disabilities, women’s, and human rights advocates.<sup>2</sup>

Approximately 300 million women around the world have mental and physical disabilities.<sup>3</sup> Globally, women make up three-quarters of the disabled people in low and middle income countries, and between 65 and 70 percent of those women live in rural areas.<sup>4</sup> Women with disabilities comprise 10 percent of all women worldwide,<sup>5</sup> and yet, their reproductive health and rights are all too often neglected. Women with disabilities, like all people, enjoy the full panoply of human rights that are secured by international law and custom. The 1993 Vienna Declaration and Programme of Action is significant for its assertion that “[s]pecial attention” must be given in order to ensure “non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.”<sup>6</sup> Reproductive rights are among these fundamental freedoms, including: the right to equality and non-discrimination, the right to marry and found a family; the right to comprehensive reproductive health care including family planning and maternal health services, education, and information; the right to give informed consent to all medical procedures including sterilization and abortion; and the right to be free from sexual abuse and exploitation.

The specific needs of women with mental disabilities, including developmental disabilities and mental illness, pose particularly significant challenges in the human rights context. It is not that the rights of women with physical disabilities do not deserve attention. Rather, because states tend to equate mental disability with lack of legal capacity, mental disability requires separate examination.<sup>7</sup>

Women with mental disabilities should be involved in decision-making about their reproductive rights to the fullest extent allowed by their capacities. To the degree that a woman can give her informed consent, she is entitled to do so. At the same time, women with mental disabilities may possess particular vulnerabilities that entitle them to heightened protection from sexual abuse and other forms of exploitation. Sexual freedom must not be unduly restricted, and reproductive health services, particularly contraception, sterilization, and abortion, must not be forcibly or coercively imposed. In the course of the provision of health services for all women with disabilities, the right to receive care also includes the right to refuse it.

In extreme cases of mental disability, substituted judgment may be appropriate when a severe emotional disturbance or cognitive impairment compromises an individual's ability to give informed consent. Any restriction or denial of decision-making authority to a disabled woman should be the consequence of an objective procedure, containing proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the capability of the mentally disabled person by qualified experts, subject to periodic review and to appeal.<sup>8</sup> If it has been determined that a woman has no ability to consent, those making reproductive decisions on her behalf must respect her individual needs as paramount. Any action which limits her reproductive rights must be as minimal as possible, and not based on the convenience of others. A diagnosis of a mental disability should never be automatically accompanied by a presumption of incompetence and an assignment of decision-making authority to another party.

This briefing paper focuses on four interrelated reproductive freedoms within the international human rights framework. These are: (1) the right to equality and non-discrimination; (2) the right to marry and found a family; (3) the right to reproductive health, including family planning and maternal health services, information, and education; and (4) the right to physical integrity. These rights are protected under a number of widely ratified international human rights treaties that create binding legal obligations upon the states that are parties to them. In addition, UN conferences have resulted in international agreements concerning reproductive rights. While not binding in the same way as treaties, these consensus documents are evidence of states' acknowledgement that they must take specific measures to ensure that reproductive rights are protected, respected, and fulfilled. Similarly, there are a variety of specific international consensus documents addressing the rights of the disabled and states' commitments to realizing them. These are resolutions of the United Nations General Assembly, including: the Declaration on the Rights of Disabled Persons<sup>9</sup>, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>10</sup>, the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care,<sup>11</sup> and World Programme of Action Concerning Disabled Persons.<sup>12</sup> After establishing the international legal and normative framework, this briefing paper presents a select number of national laws, policies, and statistical trends that reflect a government's failure to ensure reproductive rights to women with disabilities.

## The Right to Equality and Non-Discrimination

### INTERNATIONAL HUMAN RIGHTS LAW AND POLICY

The right to equality and non-discrimination is among the most fundamental of all human rights.<sup>13</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “Women’s Rights Convention”) directs states to condemn “discrimination against women in all its forms,”<sup>14</sup> and as the Committee on the Elimination of Discrimination Against Women General Recommendation on Health (hereinafter “CEDAW General Recommendation on Health”) notes, “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as . . . women with physical or mental disabilities.”<sup>15</sup>

### INTERNATIONAL CONSENSUS DOCUMENTS

#### *The Fourth World Conference on Women, Beijing Declaration and Platform for Action (hereinafter “FWCW Platform for Action”)*<sup>16</sup>

##### DECLARATION

Para. 32 [We are determined to] [i]ntensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their. . . disability.

##### PLATFORM

Para. 232(p) [Governments must] [s]trengthen and encourage the implementation of the recommendations contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, paying special attention to ensure non-discrimination and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities, including their access to information and services in the field of violence against women, as well as their active participation in and economic contribution to all aspects of society.

#### *The Declaration on the Rights of Disabled Persons*

Para. 3 Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens . . . .

Para. 10 Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory . . . nature.

***The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (hereinafter “Standard Rules”)***<sup>17</sup>

Rule 5 States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society, for persons with disabilities of any kind. States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

INTRODUCTION

Para. 25 The principle of equal rights implies that the needs of each and every individual are of equal importance . . . and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.

***Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (hereinafter “The Mental Health Care Principles”)***<sup>18</sup>

Principle 1.4 There shall be no discrimination on the grounds of mental illness. “Discrimination” means any distinction, exclusion, or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory.

**NATIONAL LAWS AND POLICIES: ISSUES AND CHALLENGES**

Disabled women must shoulder the double burden of discrimination based on sex and discrimination based on disability. The concomitant economic disadvantage this group experiences only serves to compound inequities. The degree of discrimination against women with disabilities is so profound that laws and official policies often omit to address women disabilities entirely. Despite international human rights guarantees, women with disabilities still suffer from vast inequality. Some examples include:

- Disabled women in South Africa are more likely to be destitute, malnourished, illiterate, and less likely to found a family than non-disabled women. Women

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with disabilities who do have children sometimes face rejection and scorn.<sup>19</sup>

- In Bangladesh, negative cultural attitudes discourage the education of women and girls with disabilities. Additionally, 87% of the disabled population live in rural areas, while most institutions that offer education for disabled people are in urban areas and cater to the wealthy.<sup>20</sup>
- In Russia, children born to parents with mental disabilities are institutionalized, whether or not the child has any disability. Disabled parents are not provided with support services, nor is an effort made to keep such families together.<sup>21</sup>

## The Right to Marry and Found a Family

### INTERNATIONAL HUMAN RIGHTS LAW AND INSTRUMENTS

The right to marry and found a family upon the free consent of both spouses is well established in international law.<sup>22</sup> The Universal Declaration of Human Rights<sup>23</sup> and the International Covenant on Civil and Political Rights<sup>24</sup> guarantee the right to marry and found a family to men and women of majority age. The Universal Declaration of Human Rights,<sup>25</sup> the Political Rights Covenant,<sup>26</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>27</sup> further require the free consent of the spouses.

### INTERNATIONAL CONSENSUS DOCUMENTS

*Program of Action of the International Conference on Population and Development (hereinafter “ICPD Programme of Action”)*<sup>28</sup>

Principle 5.5 Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices . . . . Assistance should be provided to persons with disabilities in the exercise of their family . . . rights and responsibilities.

### *The Standard Rules*

Rule 9 States should promote the full participation of persons with

disabilities in family life. They should promote their right to personal integrity and ensure that laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood.

Rule 9.2      Persons with disabilities must not be denied the opportunity to . . . experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counseling.

#### **NATIONAL LAWS AND POLICIES: ISSUES AND CHALLENGES**

The foundational human right to marry and found a family has frequently been denied to women with disabilities. International human rights law makes clear that states may neither restrict adults from marrying nor allow marriages without the spouses' consent. Nonetheless, to the extent that a disabled woman can consent to marriage, she has the right to do so. Laws that prohibit marriage and parenthood for all mentally disabled women without regard to developmental level are overly broad and unnecessarily restrictive. Any restriction on the right of a physically disabled woman to marry and found a family is a violation of her human rights, as these examples illustrate:

- In Tanzania, consent for marriage must be given “freely and voluntarily.” However, consent is not considered valid when either party suffers from any mental disorder, based on the assumption that he or she cannot fully understand the nature of the ceremony.<sup>29</sup>
- China’s Protection of Maternal and Child Health law mandates pre-marital examination by a physician. If one partner is found to have a “serious genetic disease” the couple may only marry if they adopt long-term contraceptive measures or undergo ligation (permanent sterilization).<sup>30</sup>
- The 1989 Cambodia Act on Marriage and Family mandates that people who are “mentally ill or insane” may not marry . . . .<sup>31</sup>
- An institutionalized woman who gives birth in Uruguay faces the permanent loss of her parental rights if no family member is available to care for the child.<sup>32</sup>

## The Right to Reproductive Health, Including Family Planning and Maternal Health Services, Information, and Education

### INTERNATIONAL HUMAN RIGHTS LAW AND INSTRUMENTS

The right to reproductive health care, including family planning and maternal health services, information and education is most succinctly formulated in the Women’s Rights Convention, but also is secured in other international instruments. The Women’s Rights Convention explicitly urges states to ensure the right to family planning information, counseling, and services<sup>33</sup> and the right to determine the number and spacing of one’s children.<sup>34</sup> The Committee on the Elimination of Discrimination Against Women’s General Recommendation on Disabled Women specifically requests that states report on measures taken to ensure that disabled women have equal access to health services.<sup>35</sup> The Committee’s General Recommendation on Health instructs states to “take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.”<sup>36</sup>

### INTERNATIONAL CONSENSUS DOCUMENTS

#### *The Vienna Declaration and Programme of Action*

Para. 41           The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life-span . . . . [The Conference] reaffirms, on the basis of equality between women and men, a woman’s right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

#### *The FWCW Platform for Action*

Para. 223           [T]he Fourth World Conference on Women reaffirms that reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so . . . .

***The ICPD Programme of Action***

- Principle 8 States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health.
- Para. 6.30 Governments at all levels should consider the needs of persons with disabilities in terms of ethical and human rights dimensions. Governments should recognize needs concerning, inter alia, reproductive health, including family planning and sexual health, HIV/AIDS, information, education and communication. Governments should eliminate specific forms of discrimination that persons with disabilities may face with regard to reproductive rights [and] household and family formation . . . .
- Para. 7.16 [States should] assess the extent of national unmet need for good-quality family-planning services . . . paying particular attention to the most vulnerable and underserved groups in the population.

***World Programme of Action Concerning Disabled Persons***

- Para. 74 The needs of mentally handicapped people for personal and social relationships, including sexual partnership, are now increasingly recognized.
- Para. 151 [States should prepare] special materials to inform disabled persons and their families of the rights, benefits and services available to them and of the steps to be taken to correct failures and abuses in the system. Such materials should be available in forms that can be used and understood by people with . . . communication limitations.

***The Standard Rules***

- Rule 9.2 [S]tates should encourage the availability of appropriate counseling. Persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.



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### NATIONAL LAWS AND POLICIES: ISSUES AND CHALLENGES

Despite international human rights guarantees, states often disregard or ignore the sexuality of women with disabilities and refuse to offer the information and services to which they are entitled. This is reflected in the de jure dearth of laws and policies and the de facto exclusion of women with disabilities from reproductive health services, information, and education. For example:

- One U.S. study found that only 19% of the physically disabled women surveyed had received sexuality counseling. Women with paralysis, impaired motor function or obvious physical disability were rarely offered contraceptive methods or information.<sup>37</sup>
- In India, women with very minor physical disabilities do not receive reproductive health services because they are considered to have no marriage prospects.<sup>38</sup>
- In the U.S., women with schizophrenia not only experience higher rates of unintended pregnancy than women from the general population, but they experience higher rates of obstetric complications. These women may also be more susceptible to episodes of schizophrenia during the postpartum period. In spite of these challenges, the reproductive health needs of women with psychiatric disorders are often overlooked.<sup>39</sup>

## The Right to Physical Integrity

### INTERNATIONAL HUMAN RIGHTS LAW AND INSTRUMENTS

The right to physical integrity is a central tenet of the broad right to life, liberty, and security of person guaranteed by the Universal Declaration and the Political Rights Covenant.<sup>40</sup> Physical integrity is also guaranteed by those instruments' prohibitions against torture and cruel, inhuman, or degrading treatment or punishment.<sup>41</sup> The right to physical integrity encompasses two important reproductive freedoms: the right to make decisions concerning one's health, and the right to be free from sexual abuse and exploitation. Women and girls with disabilities must be guaranteed freedom from both types of encroachments on their physical person.<sup>42</sup> The CEDAW General Recommendation on Health prohibits coercion and non-consensual sterilization,<sup>43</sup> and requires health services to be consistent with

women's human rights, "including the rights to autonomy, privacy, confidentiality, informed consent and choice. . . ."44

Regarding sexual abuse and exploitation, the Declaration on the Elimination of Violence Against Women notes that women with disabilities are among the groups of women who are especially vulnerable to violence and calls for the adoption of measures aimed specifically at eliminating violence against such groups.<sup>45</sup>

## **INTERNATIONAL CONSENSUS DOCUMENTS**

### ***The ICPD Programme of Action***

Para. 7.17 Governments at all levels are urged to institute systems of monitoring and evaluation of user-centered services with a view to detecting, preventing and controlling abuses by family planning managers and providers . . . . Governments should secure conformity to human rights and to ethical and professional standards in the delivery of family planning and related reproductive health services aimed at ensuring responsible, voluntary and informed consent and also regarding service provision.

### ***The FWCW Platform for Action***

Para. 106(h) [Governments should] [t]ake all appropriate measures to eliminate harmful, medically unnecessary or coercive medical interventions, as well as inappropriate medication and over-medication of women, and ensure that all women are fully informed of their options, including likely benefits and potential side-effects, by properly trained personnel.

Para. 124(m) [Governments should] [e]nsure that women with disabilities have access to information and services in the field of violence against women.

Para. 126 (d) [Governments should] [t]ake special measures to eliminate violence against women, particularly those in vulnerable situations, such as . . . women with disabilities . . . including enforcing any existing legislation . . . .

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### ***The Declaration on the Rights of Disabled Persons***

Para. 296      The rights of intellectually disabled women to consent to or refuse medical treatment should be respected; similarly, the rights of intellectually disabled minors should be respected.

### ***The Standard Rules***

Rule 9.4      Persons with disabilities and their families need to be fully informed about taking precautions against sexual and other forms of abuse. Persons with disabilities are particularly vulnerable to abuse in the family, community or institutions and need to be educated on how to avoid the occurrence of abuse, recognize when abuse has occurred and report on such acts.

### ***The Mental Health Care Principles***

Principle 8.2    Every patient shall be protected from harm, including unjustified medication . . . .

Principle 9.4    The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 10.1    Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered . . . for the convenience of others.

Principle 12     Sterilization shall never be carried out as a treatment for mental illness.

## **NATIONAL LAWS AND POLICIES: ISSUES AND CHALLENGES**

Despite the international human rights guarantees, laws and policies all too often violate the right of disabled women to physical integrity. For example:

- In Russia, a law authorizes medical intervention without the patient's consent in the case of mentally disabled individuals.<sup>46</sup>
- In the Colonias (asylums) of Uruguay, patients rarely have access to birth control. Psychiatrists or physicians may prescribe oral contraceptives or order that a woman be fitted for an IUD if she "appears to have many lovers."<sup>47</sup>
- Between 1992 and 1997, 1,045 girls with disabilities under the age of 18 were forcibly sterilized in Australia. Girls as young as nine years old have been sterilized for reasons that include the elimination of menstruation and the prevention of pregnancy.<sup>48</sup>
- China's Maternal and Infant Health Care Law requires doctors to advise pregnant women to obtain an abortion when prenatal test indicate that the fetus has a "serious hereditary disease" or "serious deformity." Although the statute purports to require a woman's consent for the abortion, it states that the couple "should" follow their physician's recommendation.<sup>49</sup>
- In Japan, the controversial hogo-sha system requires the appointment of a guardian, usually a family member, to make decisions on behalf of someone with a mental disability, including decisions about health care. The far-reaching authority allows the guardian to substitute his or her consent for the consent of the individual, sometimes without procedural safeguards.<sup>50</sup>
- The British Columbia Court of Appeal ruled that a surgeon could perform a hysterectomy on a disabled ten-year-old girl with the consent of her parents because of an anticipated adverse reaction to menstruation.<sup>51</sup>

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### ENDNOTES

- 1 There is no international consensus on what constitutes a disability. Disabilities are often culturally constructed, and the prevailing terminology used in different languages is the source of much dispute. There have been, nonetheless, efforts made towards international definitions. The United Nations General Assembly Declaration on the Rights of Disabled Persons defines disabled as “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.” Declaration on the Rights of Disabled Persons, *proclaimed* Dec. 9, 1975, para. 1, G.A. Res. 3447(XXX). The World Health Organization (WHO), in order to facilitate the United Nations launching of the World Programme of Action Concerning Disabled Persons, *adopted* Dec. 3, 1982, para. 74, G.A. Res. 37/52, U.N. GAOR, distinguished between impairment, disability, and handicap. Disability is defined as “any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.” An impairment is “[a]ny loss or abnormality of psychological, physiological, or anatomical structure or function.” See LEANDRO DESPOUY, HUMAN RIGHTS AND DISABLED PERSONS, United Nations New York, at 10-11, U.N. Sales No. E.92.XIV.4 (1993).
- 2 The Center for Reproductive Law and Policy (CRLP) would like to acknowledge the assistance of Karin Raye, Director, Women’s Rights Initiative, Mental Disability Rights International (MDRI) (Washington, D.C.) and Eric Rosenthal, MDRI’s director. MDRI is an international human rights advocacy organization, interested in further documenting and acting on this issue. MDRI invites any individuals with information or interest to contact them. CRLP also thanks Professor Darja Zavirsek, University of Ljubljana, Slovenia, who also gave valuable insight. Danka Rapić and Courtney Smothers provided valuable administrative support. Emily Morales and Lara Stemple undertook primary research and drafting; Mindy Jane Roseman, Kathy Hall Martinez, and Anika Rahman supervised and edited it.
- 3 See Jennifer Kern, *Across Boundaries: The Emergence of An International Movement of Women with Disabilities*, 8 HASTINGS WOMEN’S L.J. 233, 244 (1997).
- 4 LEANDRO DESPOUY, *supra* note 1, at 19.
- 5 See LEANDRO DESPOUY, *supra* note 1, at 1 (citing the World Health Organization).
- 6 Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, Austria, 14-25 June 1993, at Art. 22, U.N. Doc. A/CONF.157/23 (1993) [hereinafter “Vienna Declaration and Programme of Action”].
- 7 Many disabilities rights advocates observe that society dehumanizes the physically disabled and denies them any sexuality. See Declaration on the Elimination of Violence Against Women, adopted Dec. 20, 1993, preamble and art. 4, para. 1, G.A. Res. 48/104.
- 8 See also the Declaration on the Rights of Disabled Persons, *supra* note 1 at para. 11. We can only mention here that the very definition of mental incapacity is subject to abuse and requires appropriate substantive and procedural protection. For a full discussion, see Susan Stefan, *Silencing the Different Voice: Competence, Feminist Theory, and Law*, 47 U. Miami L. REV 763 (1996).
- 9 Declaration on the Rights of Disabled Persons, *supra* note 1.
- 10 Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted Dec. 20, 1993, G.A. Res. 48/96, Rule 9.2, U.N. Doc. A/48/96 [hereinafter “Standard Rules”]. In the 1980s international states, led by Sweden, pushed for a Convention on the rights of the disabled; at the 44th U.N. General Assembly, however, it was felt that existing human rights documents guaranteed the rights of the disabled. *Standard Rules* at para. 9. In 1990, the Economic and Social Council did agree to elaborate on international instrument of a different order. See E.S.C. Res. 1990/26, U.N. ESCOR (1990). The end product of this process was the *Standard Rules*. Although the *Standard Rules* are not compulsory, they are an indication of internationally accepted norms and practices and can enter into international customary law.
- 11 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, adopted Dec. 17, 1991, principle 8, para. 2, G.A. Res. 46/119, U.N. Doc. A/Res/46/119 [hereinafter “Mental Health Care Principles”].
- 12 World Programme of Action Concerning Disabled Persons, *supra* note 1.
- 13 See Universal Declaration of Human Rights,

- adopted* Dec. 10, 1948, art. 16, para. 1, G.A. Res. 217A(III) [hereinafter “Universal Declaration”]; International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, art. XXIII, para. 2, 999 U.N.T.S. 171 [hereinafter “Political Rights Covenant”]; International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 10, para. 1 993 U.N.T.S. 3 [hereinafter “Economic Rights Covenant”] (among others, prohibiting discrimination on numerous grounds including “sex” and “other status”). Additionally, all signatories to the Convention on the Rights of the Child “recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 23, para. 1, G.A. Res. 44/25 [hereinafter “Children’s Rights Convention”].
- 14 Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 20, 1979, art. 2, G.A. Res. 34/180 [hereinafter “Women’s Rights Convention”].
- 15 General Recommendation No. 24, art. 12: Women and Health, *Committee on the Elimination of Discrimination Against Women*, 20th Sess., at para. 6, U.N. Doc. CEDAW/C/1991/WG.II/WP.2/Rev. [hereinafter “CEDAW General Recommendation on Health”].
- 16 Platform for Action of the Beijing Declaration, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, U.N. Doc. DPI.1766/Wom (1996) [hereinafter “FWCW Platform for Action”].
- 17 Standard Rules, *supra* note 10.
- 18 Mental Health Principles, *supra* note 11.
- 19 See *South Africa’s Integrated National Disability Strategy* (visited Aug. 10, 1999) <<http://www.independentliving.org/LibArt/SANatIDisStrat1.html>>.
- 20 See Fahmeeda Wahab, *Empowering the Rural Disabled in Asia and the Pacific: Disabled Women in Rural Areas of the Region* (visited Feb. 2, 1999) <<http://www.fao.org/waicent/faoinfo/sustdev/Ppdirect/Ppre0042.htm>>.
- 21 See MENTAL DISABILITIES RIGHTS INTERNATIONAL, *CHILDREN IN RUSSIA’S INSTITUTIONS: HUMAN RIGHTS AND OPPORTUNITIES FOR REFORM* 23 (1999).
- 22 See Women’s Rights Convention, *supra* note 14, at art. 15, para. 2 (mandating that “States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts...”).
- 23 See Universal Declaration, *supra* note 13, art. 16, para. 1.
- 24 See Political Rights Covenant, *supra* note 13 at art. 23, para. 2.
- 25 See Universal Declaration, *supra* note 13, at art. 16, para. 1.
- 26 See Political Rights Covenant, *supra* note 13 at art. 23, para. 3.
- 27 See Economic Rights Covenant, *supra* note 13 at art. 10, para. 1.
- 28 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 September 1994, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, at chapter 7, para. 3, U.N. Doc. A/CONF.171/13/Rev.1, U.N. Sales No. 95.XIII.18 (1995) [hereinafter “ICPD Programme of Action”].
- 29 CENTER FOR REPRODUCTIVE LAW AND POLICY, *WOMEN OF THE WORLD: ANGLOPHONE AFRICA* 123 (1997) (citing Marriage Act, No. 5 Para. 16 (1971)).
- 30 See China, 46 INT’L DIG. HEALTH LEGIS. 39, 40 (1995).
- 31 See Cambodia Act on Marriage and the Family of 17 January 1989, in 17 ANN. REV. POPULATION L. 386 (reprinting *Internationales Ehe-und Kindschaftsrecht*, Release No. 108, 30 June 1991, at 25).
- 32 To regain custody of the child, the woman must be released from the institution within one year of the child’s birth and navigate a host of administrative procedures or the birth records are destroyed and she permanently loses her parental rights. See MENTAL DISABILITIES RIGHTS INTERNATIONAL, *HUMAN RIGHTS AND MENTAL HEALTH: URUGUAY* 46 (1995).
- 33 See Women’s Rights Convention, *supra* note 14 at arts. 10, 12, para. 1.
- 34 See Women’s Rights Convention, *supra* note 14 at art. 16, para. 1. The General Recommendation on Health requires states to ensure, “without prejudice and discrimination, the right to sexual health information, education and services for all women and girls. . .” and includes sexual and reproductive health services as a required component of the “national strategy to promote women’s health”

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- that states should implement. CEDAW General Recommendation on Health, *supra* note 15, at para. 29. See also Economic Rights Covenant, *supra* note 13; Children's Rights Convention, *supra* note 13. The right to maternal health and protection of motherhood is specifically mentioned in the Universal Declaration, *supra* note 13, at art. 25, the Economic Rights Covenant, *supra* note 13, at arts. 10, 12, and the Women's Rights Convention, *supra* note 14 at art. 16. The CEDAW General Recommendation on Health expressly guarantees a woman's right to safe motherhood and the provision of emergency obstetric services.
- 35 See General Recommendation 18: Disabled Women, *Committee on the Elimination of Discrimination Against Women*, 10th Sess., U.N. Doc. HRI/GEN/1/REV.1 AT 83 (1994).
- 36 CEDAW General Recommendation on Health, *supra* note 15 at art. 12, para. 25.
- 37 Haefner et al., *Contraception in Women with Special Needs*, 24 COMP. THER. 238 (1998).
- 38 See Kim Best, *Disabled Have Many Needs for Contraception*, NETWORK, Winter 1999, at 16, 18 (quoting Meenu Sikand of the Canadian Association of Independent Living Centers' International Committee).
- 39 See Kim Best, *Mental Disabilities Affect Method Options*, NETWORK, Winter 1999, at 19, 20.
- 40 See Universal Declaration, *supra* note 13, at art. 3; Political Rights Covenant, *supra* note 13, at arts. 6.1, 9.1.
- 41 See Universal Declaration, *supra* note 13, at art. 5; Political Rights Covenant, *supra* note 13, at art. 7. See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46. The CEDAW General Recommendation on Violence Against Women asserts that gender-based violence violates fundamental freedoms including the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of person. General Recommendation No. 12: Violence Against Women, *Committee on the Elimination of Violence Against Women*, 8th Sess., U.N. Doc. HRI/GEN/1/REV. 1 at 78 (1994) [hereinafter "General Recommendation on Violence Against Women"]. The Children's Rights Convention states that no child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. See *supra* note 13.
- 42 See General Recommendation on Violence Against Women, *supra* note 41, at art. 6; CEDAW General Recommendation on Health, *supra* note 15 at para. 13-20.
- 43 See CEDAW General Recommendation on Health, *supra* note 15, at art. 12, para. 22.
- 44 See *id.* at art. 12, para. 31(e).
- 45 See Declaration on the Elimination of Violence Against Women, *supra* note 7, at preamble and article 4(l). See also the General Recommendation on Violence Against Women, *supra* note 41; CEDAW General Recommendation on Health, *supra* note 15. The Children's Rights Convention requires states to protect children and adolescents "from all forms of physical or mental violence, injury or abuse . . . maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." See Children's Rights Convention, *supra* note 13, at art. 19.
- 46 See Law on Fundamentals of Russian Federation Legislation on Public Health Care (Law No. 5487-1) (passed on July 23, 1993, published on August 18, 1993 in Ross. Gazeta) *translated in* JOINT PUBLICATIONS RESEARCH SERVICE, Document No. JPRS-UST-94-002, 33, item 1318, Ch. 6, art. 34.
- 47 See HUMAN RIGHTS AND MENTAL HEALTH: URUGUAY, *supra* note 32, at 45, 46.
- 48 See Elizabeth Hastings, *Burning Issues for People with Disabilities* (visited Aug. 10, 1999) <<http://www.wwda.org.au/hasting.htm>>.
- 49 See *People's Republic of China Passes "Eugenics" Law*, REPRODUCTIVE FREEDOM NEWS (CRLP, New York, N.Y.), Dec. 2, 1994, at 6, 7.
- 50 See Pamela Schwartz Cohen, *Psychiatric Commitment in Japan: International Concern and Domestic Reform*, 14 UCLA PAC. BASIN L.J. 28, 39-40 (1995).
- 51 See *in re K. v. Public Trustee* 4 W.W.W. 724 (1985).