



WOMEN'S RIGHTS ACTION  
NETWORK AUSTRALIA



THE WOMEN'S REPORT CARD  
**TURNING UN  
RHETORIC**  
INTO LOCAL ACTION



Resource Materials On CEDAW  
and the Human Rights Treaty System





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# About these materials

These materials have been prepared to help organisations use the UN Human Rights Treaty System to achieve change in their communities.

The materials have been developed with two purposes in mind. One, the materials can be used as a resource kit to “dip into” as you prepare funding proposals, advocacy reports, media releases etc. Two, the materials can be used to support staff development and training in the area of human rights.

There are three sections. The first section focuses on providing general information on the UN Human Rights Treaty System. The second section turns the spotlight on one treaty, CEDAW. The third section contains seven exercises on how to use the human rights treaty system in your work.

The first section has eleven topics. The topics provide an overview of the UN Human Rights Treaty System, steps for engaging with the system, how to integrate the UN standards and recommendations into your work, and an overview of each treaty.

The second section has eleven topics. The topics look at the political struggle to get support for CEDAW in Australia and the implementation of CEDAW in Australian law and policy, reviews the Women’s Report Card project and the steps Women’s Rights Action Network Australia (WRANA) took to prepare the NGO reports, an overview of the 2006 Recommendations from the UN and in depth material on eight issue specific concerns.

The third section contains 7 exercises you can use to strengthen your skills to integrate UN recommendations and a human rights framework into your work. The section concludes with an outline for using these materials to run a short workshop on strengthening the integration of a human rights framework in your own work.

## Acknowledgements

### Working Group

The current members of the WRANA Women’s Report Card Working Group Members are: Alexis Tindall, Anna Cody (Kingsford Community Legal Centre), Amira Rahmanovich (Multicultural Centre for Women’s Health), Caroline Lambert, Christina Ryan (ACT Council of Social Service), Erica Lewis (Women’s Electoral Lobby) and Therese Sands (People With Disability Australia).

These materials have been prepared by Caroline Lambert.

The Women’s Report Card Project has been in operation since 2002 and during that time an incredible array of women have been involved in the National Working Group: Alexis Tindall, Amira Rahmanovich, Amrita Dasvarma, Anna Cody, Annie Pettitt, Brigid Inder, Caroline Lambert, Christina Ryan, Erica Lewis, Evelyn Loh, Juli Dugdale, Kathleen Maltzahn, Ladan Rahmani, Lara Fergus, Leanne Miller, Naomi Brown, Shirley Southgate, Stephanie Cauchi and Therese Sands.

### Funders

This stage of the Women’s Report Card has been financially supported through two grants and partner organisations. We would like to thank the Multicultural Centre for Women’s Health for collaborating with us again and the Women’s Electoral Lobby for developing a new relationship with us.

The Reichstein Foundation funded an application from the Multicultural Centre for Women’s Health and WRANA. The Reichstein Foundation has been a supporter of WRANA since our inception and we are very grateful for their ongoing support of our work.

The WomenSpeak Network Small Grants Program funded an application from the Women’s Electoral Lobby to work in partnership with WRANA. WomenSpeak have supported the Report Card Project from the outset and we are grateful for their ongoing support of our work.

# Acronyms



ACRATH	Australian Catholic Religious Against Trafficking in Humans
CALD	Culturally and linguistically diverse
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
Children's Committee	The Committee on the Rights of the Child
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CROC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DDA	Disability Discrimination Act
DDRIP	Draft Declaration on the Rights of Indigenous Peoples
HREOC	Human Rights and Equal Opportunity Commission
HRTS	Human Rights Treaty System
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IVF	Invitro fertilisation
LGBTI	lesbian, gay, bi sexual, transgender and intersex
Migrant Worker's Convention	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NESB	Non-English speaking background
NGOs	Non government organisations
RDA	Racial Discrimination Act
SDA	Sex Discrimination Act
The Committee	The Committee on the Rights of Persons with Disabilities
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNIFEM	United Nations Development Fund for Women
VCOSS	Victorian Council of Social Service
WRANA	Women's Rights Action Network Australia
WWDA	Women With Disabilities Australia

# Glossary

## **Convention**

Binding agreement between states; used synonymously with TREATY and COVENANT. Conventions are stronger than DECLARATIONS because they are legally binding for governments that have signed them. When the UN GENERAL ASSEMBLY adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, MEMBER STATES can then RATIFY the convention, promising to uphold it. Governments that violate the standards set forth in a convention, can then be censured by the UN.

## **Concluding Comments/Observations**

Each HUMAN RIGHTS TREATY BODY issues a set of concluding comments or concluding observations following the meeting or CONSTRUCTIVE DIALOGUE it has with a STATE PARTY to the CONVENTION or COVENANT it is mandated to monitor. Usually concluding observations are structured in the following format: positive factors, factors and difficulties affecting the implementation of the Convention/Covenant, principal areas of concern, and recommendations.

## **Constructive Dialogue**

Once a state becomes a party to a CONVENTION, COVENANT or TREATY it is bound to submit periodic reports to the relevant TREATY BODY reporting on the progress it has made. After the periodic report is submitted it meets with the TREATY BODY face to face to orally discuss its implementation process; this is known as a constructive dialogue.

## **Declaration**

Document stating agreed upon standards, but that is not legally binding. UN conferences, like the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by Non Governmental Organisations (NGOs). The UN GENERAL ASSEMBLY often issues influential, but legally NONBINDING declarations.

## **General Comment/Recommendation**

A document issued by a HUMAN RIGHTS TREATY BODY that elaborates and interprets an article or a theme from its CONVENTION or COVENANT that it is mandated to monitor.

## **Human Rights Treaty Body**

The key human rights CONVENTIONS and COVENANTS give powers to an institution to monitor the STATE PARTIES implementation process. These institutions are known as treaty bodies or treaty committees.

## **Inalienable**

Refers to rights that belong to every person and cannot be taken from a person under any circumstances.

## **Indivisible**

Refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is 'less important' or 'nonessential'.

## **Interdependent**

Refers to the complementary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

## **International Bill of Human Rights**

The combination of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its optional protocol, and the International Covenant on Economic, Social and Cultural Rights.

## **Member States**

Countries that are members to the United Nations.

## **Nonbinding**

A document, like a DECLARATION, that carries no formal legal obligations. It may, however, carry moral obligations or attain the force of law as INTERNATIONAL CUSTOMARY LAW.

## **Protocol**

A treaty that modifies another treaty (e.g. adding additional procedures or substantive provisions).

## **Ratification, Ratify**

Process by which the legislative body of a state confirms a government's action in signing a treaty; formal procedure by which a state becomes bound to a treaty after acceptance.



### **Summary Records**

The public records of United Nations meetings. Each TREATY BODY issues a set of summary records following the public meetings it has with STATE PARTIES it is mandated to monitor.

### **Reservation**

The exceptions that STATE PARTIES make to a treaty (e.g. provisions that they do not agree to follow). Reservations, however, may not undermine the fundamental meaning of the treaty.

### **Signing, Sign**

In human rights the first step in ratification of a treaty; to sign a DECLARATION, CONVENTION, or one of the COVENANTS constitutes a promise to adhere to the principles in the document and to honour its spirit.

### **State Party(ies)**

Those countries that have RATIFIED a COVENANT or a CONVENTION and are thereby bound to conform to its provisions.

### **Treaty**

Formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with CONVENTION and COVENANT. When CONVENTIONS are adopted by the UN GENERAL ASSEMBLY, they create legally binding international obligations for the MEMBER STATES who have signed the treaty. When a national government RATIFIES a treaty, the articles of that treaty become part of its domestic legal obligations.

# Topic One:

## What is the UN Human Rights Treaty System?

Our governments have committed to the *idea* that we have human rights, but have they committed to the *reality*?

We know that they have committed to these ideas because the Australian Government, on behalf of state, territory and local governments, have signed up to a range of important United Nations (UN) human rights treaties.

These human rights treaties define our human rights and identify the types of steps governments should take to realise these human rights.

This means they have a responsibility to adopt laws, policies and programs that will contribute to the implementation of our human rights. And we have a responsibility to hold them to account when they fail to do this. But how can we do this?

In addition to setting out the rights that must be implemented, governments must also report on implementation of the human rights treaties on a regular basis. This is our chance to hold the governments accountable for *their* implementation of *our* rights.

### What are the treaties?

The treaties in the UN Human Rights Treaty System (HRTS) encompass a broad range of issues and reflect the current consensus of the international community on what we recognise as human rights.

#### *Universal Declaration of Human Rights (UDHR)*

This declaration is the most comprehensive list of human rights developed by the UN. As declarations are not legally binding a range of treaties have been adopted to enforce the rights outlined in the UDHR.

#### *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

This treaty provides protection for a broad range of rights including the right to housing, the right to a fair wage, the right to health care, the right to free primary education and the right to express your culture. Australia has signed up to this treaty.

#### *International Covenant on Civil and Political Rights (ICCPR)*

This treaty provides protection for a broad range of rights including the right to vote, freedom of thought, freedom of religion, a prohibition on slavery and a range of legal rights. Australia has signed up to this treaty.

#### *Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)*

This treaty is the international bill of rights for women. It provides a comprehensive action plan for governments to achieve substantive equality for women. Australia has signed up to this treaty.

#### *International Convention on the Elimination of All forms of Racial Discrimination (ICERD)*

This treaty prohibits race based discrimination and provides a comprehensive action plan for governments to bring an end to discrimination on the basis for race, culture and ethnicity. Australia has signed up to this treaty.



### ***Convention on the Rights of the Child (CROC)***

This treaty is the international bill of rights for children. It requires that the best interests of the child are always observed. Australia has signed up to this treaty.

### ***Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)***

This treaty works to end torture and other cruel, inhuman or degrading treatment and punishment. It has predominantly focused on those actions committed by state officials. It also prevents a country from returning anyone to a situation where they might be tortured. Australia has signed up to this treaty.

### ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families***

This treaty is the international bill of rights for migrant workers and their families. It provides a comprehensive definition of different types of migrant workers and the types of protections a state has an obligation to afford them. Australia has *not* signed up to this treaty.

### ***Convention on the Rights of Persons with Disabilities (CRPD)***

The newest treaty, adopted in 2006, this treaty is the international bill of rights for people with disability. It provides a comprehensive list of rights to be enjoyed by people with disability and the actions the state should take to realise them. Australia was one of the first governments to sign the treaty when it opened for signature in March 2007. The next step is to ratify the treaty. In Australia a parliamentary committee (the Joint Standing Committee on Treaties) considers ratification of treaties.

## **How does it all work?**

### ***First, the commitment***

Governments have to agree to be bound to a human rights treaty. This is a two stage process. First they sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with the treaty obligations. Second, they ratify the treaty, which is the legally binding action.

### ***Second, the implementation***

Having committed to a treaty, governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement treaty obligations through their laws, policies and programs. However, unless they specifically incorporate a treaty into an Act of Parliament there is no legal right to any of the rights contained in the treaty.

### ***Third, the external assessment***

The UN has a range of mechanisms to assess whether a human rights treaty is being appropriately implemented. These include by requiring governments to submit regular evaluation reports. After a review of the report the UN then makes recommendations (Concluding Comments) on how to do an even better job implementing the treaty. Alternatively, in some cases, individuals can go to the UN to allege a breach of their treaty rights. In some instances UN Committees can conduct a study into serious breaches of the treaty (possible for the torture and women's treaties) or in the case of racial discrimination they can issue an "early warning and early action" notice. This lets the Committee on the Elimination of Racial Discrimination address an issue they are worried about outside of the regular reporting cycle. In all these instances the government is not legally compelled to take the advice of the UN but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

## What are the challenges?

There are two types of challenges non government organisations (NGOs) in Australia face when using the HRTS.

### General challenges

The most significant challenge to using the HRTS is its optional nature. The treaty committees can find that a country has violated the rights but they can not force them to take action to fix the problem. The HRTS is also hampered by a lack of funding which means that the reviews are often a few years after a report has been submitted. States parties are seldom on time with their reports either, which means that the system can be an unreliable component of any domestic campaign for change. Finally, the Committee's are independent bodies. That means that they don't take direction from governments, but they also don't take direction from NGOs. Sometimes, their Concluding Comments can miss issues NGOs think are really important.

There are wide spread concerns, among the UN, governments and NGOs, that the HRTS is not as effective as it could be. The UN is considering how to improve the system, including ideas such as setting up a permanent treaty body that would receive a periodic report that addressed all of the treaty obligations in one report.

### Australia specific challenges

The Howard Coalition Government has had a particularly ambivalent relationship to the HRTS. In August 2000, the Howard Coalition Government announced that it wanted the system to be improved and that until it was improved they would limit our interaction with the system. Under previous Australian governments there was a commitment to engaging respectfully with the HRTS. The treaty bodies were recognised for their expertise and for their role in the development of international human rights standards.

In contrast, on numerous occasions the Howard Coalition Government has chosen to ignore or reject criticisms from the HRTS. Rather than acknowledging that human rights monitoring mechanisms are about achieving the best possible outcomes for everyone in society, the Australian Government has chosen to represent the process as being about "who is doing worse than us". But, the purpose of HRTS review is not to compare Australia to other countries. Rather, the review compares the Australian situation to treaty standards, and to identify ways to make sure that all people who live in Australia have the human rights guaranteed in that treaty.

There have been some changes to the Government approach. In 2003 the Government agreed that positive changes had been made at the UN. As a result, invitations from independent experts to visit Australia have been accepted, for example, the 2006 visit of the Special Rapporteur on the Right to Adequate Housing. However, while the Government was supportive of the visit, the recommendations have, for the most part, not been acted on. And in 2006, when Australia was reviewed by CEDAW no Minister was present.

Nonetheless, the HRTS provides an important opportunity to hold governments to account for human rights obligations they have voluntarily undertaken. And that can be a powerful tool.



# Topic Two:



## How do we “do” human rights in Australia?

There are four key ways in which human rights treaties can have effect in Australia:

- The Constitution
- Legislation
- Policy Measures
- Legal Interpretation

### The Constitution

There are very limited rights outlined in the Constitution. They include freedom of religion, a right to vote (though there is some question whether this is really guaranteed), a right to commerce between the states, an implied freedom of communication and an implied guarantee restricting Commonwealth powers. Section 109 gives Commonwealth laws primacy over state laws, where the laws are inconsistent, and where the Commonwealth has the power to legislate in that area. Many of Australia’s international human rights obligations are enacted into Australian law under section 51 of the Constitution, the foreign affairs power.

If we compare these to the list of rights and freedoms articulated in the Universal Declaration of Human Rights (UDHR), it becomes very clear that people in Australia do not have a strong constitutional basis for the protection of their human rights and freedoms.

### Legislation

In order for people in Australia to be able to claim the rights contained in any of the human rights treaties to which we have become party, those rights must be incorporated into domestic legislation. This is called “direct implementation.” Once this has occurred, people living in Australia can claim these rights through our own country’s legal processes.

None of the treaties that Australia has signed are fully incorporated into domestic legislation. Some elements of the treaties have been incorporated into some of our legislation, for example:

- The Racial Discrimination Act (RDA) and the Sex Discrimination Act (SDA) either adopt or adapt definitions of race and sex discrimination from the International Covenant on the Elimination of all forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
- Elements of the ICERD are incorporated in the Racial Hatred Act 1995 (Cth)
- The Disability Discrimination Act (DDA) draws on provisions of the Declaration on the Rights of Disabled Persons and Declaration on the Rights of Mentally Retarded Persons
- Elements of the International Covenant on Civil and Political Rights (ICCPR) are incorporated in the Privacy Act 1988 (Cth) and the Evidence Act 1995 (Cth)
- Elements of the Convention Against Torture (CAT) are incorporated in the Crimes (Torture) Act 1992 (Cth)

The ICCPR and Convention on the Rights of the Child (CROC) have been scheduled to the Human Rights and Equal Opportunity Commission (HREOC) Act 1986 (Cth). This means that HREOC can consider the treaty provisions in complaints it receives, and that it can conduct an inquiry if it considers that the acts or practices of the Commonwealth or Territories breach the rights contained in the treaty. CEDAW has been scheduled to the SDA, and ICERD has been scheduled to the RDA. The International Covenant on Economic, Social and Cultural Rights has not been incorporated or scheduled into any legislation.

Two states/territories have adopted Human Rights Charters: the ACT and Victoria. These legislative bills of rights provide a limited protection to civil and political rights (and provide a limited implementation of the ICCPR) but offer no protection to economic, social and cultural rights.

## Policy measures

Treaties can also be incorporated through policy measures, for example access to health through Medicare. The limitation of this approach is that if the government of the day decides to abolish a particular program, there is no mechanism for judicial review. It is also not possible for people to argue that government should continue to realise that particular human right on the basis of previous policies or programs.

## Judicial System

International human rights laws may be applied in the Australian legal system in four main ways.

### Statutory Interpretation

The definition of words and phrases in Australian laws can be interpreted according to the meanings of those words and phrases as they are found in human rights treaties. So, for example, the definition of racial discrimination in the RDA 1975 (Cth) should be interpreted in accordance with the definition contained in the ICERD and its interpretation by the Committee on the Elimination of Racial Discrimination.

### Common Law

Common law can other wise be known as judge made law. Common law acts as a guide for judges in making decisions, following the lead from previous judges' decisions. It is possible to identify fundamental rights in common law decisions, especially when dealing with individual human rights complaints procedures, and in cases involving legislation providing a remedy for violations of rights.

### Administrative Law

Human rights treaties can also establish procedural rights, including a legitimate expectation that an administrative decision maker will make decisions that are consistent with the provisions of human rights treaties.

### Constitutional Interpretation

The High Court of Australia has not yet reached the point where it is prepared to interpret the Constitution consistently with human rights treaties. High Courts in other countries have been willing to do this, though this has often occurred because of constitutional or legislative bill of human rights.

# Topic Three:



## How can NGOs use the Human Rights Treaty System to create change?

### What is the issue? What do you want to change?

As all campaigners know, the first step is to define the problem and how you can change the system to make a positive difference.

### What are the treaty obligations? What has been said about the obligations?

Talking about our rights is becoming increasingly common. The challenge is that the popular rhetoric around rights might not match the legal reality. For that reason we advocate for the use of a human rights framework firmly grounded in the legal obligations set out in the international human rights treaties. Linking an issue to a concrete treaty obligation is the best way to achieve legal and moral traction.

One of the challenges in using this type of human rights framework is knowing what the international legal obligations are and how you can find out more about them.

### Finding the treaties

You can access copies of the treaties at the website of the Office for the High Commissioner for Human Rights: <http://www.ohchr.org/english/law/index.htm>

Hard copies of the treaties can be obtained from the United Nations Information Centre, PO Box 5366, Kingston ACT 2604 or 02 6273 8200.

### Finding the Australian reports and Committee Concluding Comments

You can access copies of the Australian Government Reports to the UN Human Rights Treaty System (HRTS) as well as the Concluding Comments adopted by the relevant Committees via the Office of the High Commissioner for Human Rights website: <http://www.unhcr.ch/TBS/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=15&Expand=9#9>

Sometimes a more up to date record can be found at [www.bayefsky.com](http://www.bayefsky.com)

Alternatively, you can look at Australian Government websites. Different government departments have responsibility for submitting the Australian reports:

- The Department of Foreign Affairs and Trade has responsibility for the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD)  
— <http://www.dfat.gov.au/hr/>
- The Attorney General's Department has responsibility for the Convention on the Rights of the Child (CROC) and the Convention Against Torture (CAT), as well as for managing any individual communications  
— [http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti\\_discrimination\\_Humanrights](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti_discrimination_Humanrights)
- The Office for Women has responsibility for the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)  
— [http://www.ofw.facs.gov.au/international/womens\\_human\\_rights/index.htm](http://www.ofw.facs.gov.au/international/womens_human_rights/index.htm)

Theoretically, you should also be able to ring your local federal member and ask them to forward a hard copy.

## Learning more about what the Committees think about particular issues

In some instances, the treaty committee will have developed a more detailed understanding of a particular issue. It can help you to strengthen your argument if you refer to these documents. A list of General Recommendations/Comments is included in the annex. You can access these at <http://www.ohchr.org/english/bodies/treaty/comments.htm>

For example, CEDAW does not mention the issue of violence against women, but the CEDAW Committee have released a detailed General Recommendation on this issue, making clear linkages between the issue and CEDAW rights.

In some instances, where the treaty committee can assess individual breaches you can also look at their jurisprudence to help understand how an obligation has been interpreted. You can access these at <http://www.ohchr.org/english/bodies/complaints.htm> You can also access Australia specific information at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti\\_discrimination\\_Humanrightscommunications](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti_discrimination_Humanrightscommunications)

For example, the Human Rights Committee (which monitors the ICCPR) have considered discrimination against women in accessing welfare payments and benefits and found some countries have behaved in a discriminatory manner.

## What processes exist in human rights treaties to help you to create change?

Now that you've worked out how the human rights treaties are relevant, the next step is to work out how you can use the accountability processes to create change.

There are three key ways you can use the human rights treaties to create change. Each way is based on providing information to a group of experts at the UN to help them assess whether Australia is implementing its human rights obligations and then using the recommendations made by the experts to bring about change in local communities.

To assist in the review process, each treaty in the Human Rights Treaty System has a "Committee of Oversight" made up of independent experts. Depending on the treaty they have up to three different mechanisms for review:

- Receiving regular reports on implementation of the treaty in a particular country
- Receiving "individual" complaints alleging a violation of a treaty right
- Launching an investigation into a breach of treaty rights in a particular country

## Using the reporting process

On a semi regular basis governments are required to report to the UN on their implementation of human rights treaties in their community. Once the government has prepared the report they submit it to the UN. The relevant Committee then schedules a review session and invites the government to attend. A few months before the review session the Committee will do an "initial reading" of the report and send a list of questions to the government, raising issues on which they would like further information. On the day of the review session, the government makes an opening statement and then a "constructive dialogue" session between the experts on the Committee and the representatives of the government begins. Essentially, the experts ask questions of the government to learn more about the implementation of the treaty in that country. At the end of the meeting the Committee adopts a series of recommendations which identify the good things the government has done as well as highlighting areas which need more work.

The reports are meant to be an honest evaluation of the implementation of the treaty, but very often governments just focus on the "good news". As a result, non government organisations (NGOs) prepare their own reports, Shadow Reports, and send them to the Committees as alternative sources of information. NGOs attend the Committee to lobby them to ask questions about their areas of concern. NGOs can also lobby the Committee before the review session to influence the questions that they ask after their "initial reading."

Once the recommendations have been made the government is meant to develop a workplan, so that when they report again they can include information on how they implemented the recommendations of the preceding session.



## **Sending an “individual complaint” to the UN**

While all the treaties require the governments to report, a smaller number have established an additional mechanism for accountability. If their government has agreed to the “individual communications procedure” individuals can make a complaint to the UN that their CEDAW, CAT, ICERD and ICCPR rights have been breached. In the future, individual complaints under the Migrant Workers Convention may also be possible. You can find information on how to submit an individual claim or use the other procedures at the UN website. <http://www.ohchr.org/english/bodies/petitions/> People living in Australia can only make complaints of CAT, ICERD and ICCPR breaches. The government has refused to let women in Australia to make individual complaints of CEDAW breaches.

## **Lobbying for a Committee to launch an inquiry into a specific issue**

NGOs can also, if certain conditions have been met, lobby the CEDAW Committee and the Torture Committee to launch investigations of breaches of their treaties.

## **You’ve submitted a report/complaint, got the recommendations, so now what?**

It doesn’t matter that the UN is worried about an issue if we do nothing to bring their concerns to the attention of decision makers and influential members of our community.

## **Questions you can ask to help you to integrate recommendations**

The following steps can help you to integrate UN human rights treaty obligations and recommendations into your work on an ongoing basis.

- Can the Recommendations be used to support policy advocacy and research?
- Can the Recommendations be used to support advocacy for funding allocation/ program development/budget analysis?
- Can the Recommendations be used to build support amongst peer organisations for your issue?
- Could you use the Recommendations as the basis for a public meeting on your issue?

- Could you use the Recommendations as the basis for a strategy meeting among like minded organisations?
- Can the Recommendations be used to garner media coverage for your issue?
- Can the Recommendations be integrated into project funding proposal?

## **Knowing ‘the lay of the land’: How does your target group view human rights? How do your opponents use human rights? Do you need to counter their use?**

One of the challenges in using human rights is that they are not always popular with governments or funding agencies. This should not stop you, as the governments have voluntarily signed up to the obligations, but it may be worth evaluating how and when you use the UN recommendations in your advocacy strategy.

In addition, your opponents may also use the language of human rights in a way that you disagree with. For example, in 1999 Lisa Meldrum, a single woman, sought invitro fertilisation (IVF) treatment in Victoria to assist her to become pregnant. The Victorian *Infertility Treatment Act* restricted fertility treatments to married women or those in heterosexual de facto relationships. Lisa and her doctor, John McBain argued that the Victorian law was inconsistent with the Sex Discrimination Act (SDA). The Federal Court agreed, arguing that the SDA should be interpreted in light of CEDAW, not the CROC. In response, the Prime Minister John Howard put forward an amendment to the SDA to allow this form of discrimination arguing that

*In the opinion of the Government, it is the right of children in our society to have the reasonable expectation, other things being equal, of the affection and care of both a mother and a father.*

This statement pitted CROC rights against CEDAW rights. The issue of conflicting rights is not easily solved, but being aware of the opposition’s arguments and countering them with other obligations can be useful as a means of demonstrating the complexity of the issue and the need for multifaceted solutions.

There are a range of exercises at the end of this kit which help you to work through these questions using real life examples.

# Topic Four:

## What is CEDAW?

### What is it?

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) is the international bill of rights for women. It is a comprehensive program to eliminate discrimination against women in public and private life. It is a way of holding governments to account for the work they do to achieve equality for all women in their community.

CEDAW was adopted in 1979 after negotiations by many governments of the world. The political momentum to create a specific UN treaty on women coalesced at the First World Conference on Women (held in Mexico City in 1975). The impetus to finalise it was the Second World Conference on Women (held in Copenhagen in 1980).

### What is in it?

CEDAW establishes a series of obligations for governments to help them not only to eliminate discrimination against women but to achieve equality for women.

#### Countries must eliminate discrimination against women

CEDAW requires the governments of countries to ensure that laws, policies, customs and practices do not discriminate against women, either directly or indirectly. Where women are discriminated against the government has an obligation to ensure the person or organisation discriminating against women can be punished.

#### Countries must achieve substantive equality for women

CEDAW has two different ideas of equality in it. The first, formal equality, focuses on whether laws and policies enable people to be treated equally. For example, a formal equality analysis looks at whether there are there laws which prohibit companies from hiring women or from allowing women to drive or vote. In Australia we also talk about formal equality as equality of opportunity or direct discrimination.

But CEDAW also requires countries to achieve substantive equality for women. Substantive equality is a broader concept than formal equality. It goes further and asks whether a law, policy or practice has a discriminatory impact? For example, do funding cuts to sole parent payments have a disproportionate impact on women because there are more single mothers than single fathers?

A substantive equality framework also recognises that simply eliminating discriminatory treatment will not ensure women's equality. Steps must be taken to eliminate the long term impact of having treated women, and activities traditionally understood as 'women's work' as less worthwhile than men or 'men's work'.

Three sets of CEDAW obligations focus on achieving substantive equality.

#### *Embrace affirmative action*

CEDAW endorses the adoption of temporary special measures to address the impact of long term discrimination against women.

As an example, political parties have introduced quotas to ensure a minimum level of participation by women in politics. Similarly, engineering faculties introduced quotas to ensure that women were being trained as engineers.

#### *Support effective women's programming*

CEDAW requires that governments support the implementation of policies and programs which support women's equality.

For example, women's health programs and domestic violence shelters contribute to women achieving equality.

#### *Eliminate negative gender stereotypes and cultural attitudes*

A central component of CEDAW is the requirement that governments implement education and programs which work to overcome gender based stereotypes and reformulate gender relations to better promote equality between women and men.

For example, work by the Human Rights and Equal Opportunity Commission (HREOC) on women and men's roles in unpaid caring work seeks to remedy the idea that only women can take care of children or other family members requiring care.



## Take action in both the public and the private spheres

A fundamental element of CEDAW is the requirement that governments take steps to eliminate discrimination in both the public and private sectors. For example, CEDAW ensures that women working for a small business, or playing sport in a local sporting association, or practicing their religion are not discriminated against.

## Take action in all areas of women's lives

The rights in CEDAW broadly cover all aspects of women's lives including political participation, health, education, employment, marriage, family relations and the legal system.

## Take action for all women

The rights in CEDAW should be available to all women in our community, regardless of their age, race, sexual orientation, culture, religion, disability, income status or other factors which have an impact on how other people treat them.

## How does it work?

### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with CEDAW obligations. Second, you ratify the treaty, which is the legally binding action.

So far, one hundred and eighty five countries around the world have ratified CEDAW, that is they have agreed that they will implement the rights contained in CEDAW in their countries.

### Second, the implementation

Having committed to CEDAW governments must implement CEDAW. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement CEDAW obligations through their laws, policies and programs.

### Third, the external assessment

To assist governments in their implementation, CEDAW establishes a committee of oversight, the CEDAW Committee. The CEDAW Committee is comprised of 23 independent experts, elected by states parties to CEDAW. They meet three times a year for three weeks at a time.

The CEDAW Committee have the responsibility of assessing how well governments are implementing their CEDAW obligations. They have four different ways they can do this:

- by reviewing reports, submitted by countries, which outline how they are implementing CEDAW and challenges they have encountered (theoretically this occurs every four years)
- by adjudicating individual cases which allege a breach of CEDAW
- by instigating an inquiry into systematic or serious breaches of CEDAW in a specific country
- by adjudicating a state to state complaint (though this has never been used)

The government is not legally compelled to take the advice of the CEDAW Committee but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

### Reporting

Every four years, states parties to CEDAW are required to submit reports to the CEDAW Committee, outlining their implementation of CEDAW and identifying ongoing challenges for women. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the CEDAW Committee, NGOs have begun to prepare alternative reports and present them to the CEDAW Committee. These alternative reports help the CEDAW Committee experts to understand issues affecting the implementation of CEDAW in the country.

### Individual communications

Under a separate treaty, the Optional Protocol to CEDAW, the CEDAW Committee have been authorised to receive individual communications alleging breaches of specific CEDAW rights by individual women or groups of women. The Optional Protocol to CEDAW was adopted in 1999 but Australia has not ratified it. Therefore, women in Australia can not access this procedure.

### Inquiries procedure

The Optional Protocol to CEDAW also contains provisions for the CEDAW Committee to launch an inquiry into serious or systematic abuses of CEDAW, when it receives reliable information suggesting the existence of such abuses. Australia *has not* signed up to this treaty and as such women in Australia can not take advantage of it.

# Topic Eight:

## What is the ICERD?

### What is it?

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD) sets out the best way for governments to ensure that people in their community are not discriminated against on the basis of race, colour, descent, or national or ethnic origin. The ICERD was adopted in 1965 after negotiations by many governments of the world. It became operational in 1969.

### What is in it?

The ICERD establishes a series of obligations for governments on how to ensure that people in their community are not discriminated against on the basis of race, colour, descent, or national or ethnic origin.

### Countries must eliminate racial discrimination

ICERD requires governments of countries to ensure that laws, policies, customs and practices do not discriminate on the basis of race, either directly or indirectly.

### Provide an “effective remedy” for any breach of ICERD rights

Governments must put in place effective protections and remedies for acts of racial discrimination.

### Embrace affirmative action

ICERD endorses the adoption of temporary special measures to address the impact of long term racial discrimination.

As an example, in South Africa government departments have adopted affirmative action strategies in hiring workers or for contacting out government work.

### Sets out a framework to end discrimination in all areas of life

The ICERD sets out a range of steps governments should take to end discrimination in all areas of life. These include the adoption of legislation, implementation of policies and programs and the prohibition of certain behaviours.

The rights in ICERD broadly cover all aspects of peoples lives, including legal rights, political rights, property rights, housing rights, the right to public health, medical care, social security and social services, education and training and access to places used by the general public.

### Take action in both the public and private spheres

ICERD requires that governments take steps to eliminate discrimination in both the public and private sectors. For example, ICERD ensures that people can't be discriminated against in sporting clubs.

### End racial segregation and the promotion of ideas of racial superiority and hatred

ICERD has a special focus on different types of racial discrimination, particularly calling for an end to racial segregation and for condemnation of propaganda and organisations which are based on ideas of racial superiority and hatred.



## How does it work?

### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with ICERD obligations. Second, you ratify the treaty, which is the legally binding action.

So far, one hundred and seventy three countries around the world have ratified the ICERD, that is they have agreed that they will implement the rights contained in the ICERD in their countries.

### Second, the implementation

Having committed to the ICERD governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement ICERD obligations through their laws, policies and programs.

### Third, the external assessment

To assist governments in their implementation, the ICERD establishes a committee of oversight, the Committee for the Elimination of Racial Discrimination (CERD). The CERD is comprised of 18 independent experts, elected by states parties to the ICERD. They meet two times a year for two three weeks at a time.

The CERD have the responsibility of assessing how well governments are implementing their ICERD obligations. They have four different ways they can do this:

- by reviewing reports, submitted by countries, which outline how they are implementing ICERD and challenges they have encountered (theoretically this occurs every two years)
- by adjudicating individual cases which allege a breach of the ICERD
- by issuing an “early warning” to governments, shining the spotlight on actions which may undermine the ICERD
- by adjudicating a state to state complaint (though this has never been used)

The government is not legally compelled to take the advice of the CERD but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

### Reporting

Every two years, states parties to the ICERD are required to submit reports to the CERD, outlining their implementation of the ICERD and identifying ongoing challenges. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the CERD, non government organisations (NGOs) have begun to prepare alternative reports and present them to the CERD. These alternative reports help the CERD experts to understand issues affecting the implementation of the ICERD in the country.

### Individual communications

The Australian Government have authorised CERD to receive individual communications alleging breaches of specific ICERD rights by individuals or groups of individuals. The CERD has found Australia in breach, in particular in relation to a racially discriminatory term used in naming a sporting venue in regional Queensland.

### Early warning and urgent procedures

The CERD have developed a process to take action on issues of racial discrimination which occur between the reporting cycle. An early warning can be issued, for example, if the CERD is concerned that a government might be about to adopt discriminatory legislation. The CERD issued an early warning to Australia in 1999 when changes to native title legislation were introduced. An urgent procedure can be adopted to highlight urgent breaches of the ICERD, for example, calling for action to end the genocide in Darfur.

# Topic Five:

## What is the ICESCR?

### What is it?

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the international bill of rights for economic, social and cultural rights. It gives legal effect to half the rights in the Universal Declaration on Human Rights (UDHR). It is a comprehensive program to ensure that people have access to economic, social and cultural rights, for example, the right to housing, employment and health. It is a way of holding governments to account for the work they do to achieve these rights in their community.

The ICESCR was adopted in 1966 after negotiations by many governments of the world. It became operational in 1976. The political momentum to create the treaty resulted from the decision to adopt a non binding declaration on human rights.

Originally there was to be one implementing treaty for the UDHR but the Cold War intervened. A schism emerged at the UN: free market, liberal democracies against centrally planned, communist governments. Human rights got caught up in the fight, with economic, social and cultural rights being associated with communism and civil and political rights being associated with capitalism. As a result, two separate treaties were adopted, the ICESCR and the International Covenant on Civil and Political Rights (ICCPR).

### What is in it?

The ICESCR establishes a series of obligations for governments to help them work towards implementation of economic, social and cultural rights and to ensure there is no discrimination in the realisation of those rights.

### Allocate the maximum available resources to ensure the 'progressive realisation' of the rights

As the Cold War raged a view emerged that economic, social and cultural rights were different to civil and political rights. Implementing economic, social and cultural rights required governments to allocate resources. Civil and political rights simply required government to refrain from an action (for example, not to authorise torture) and therefore were not dependent on the availability of resources.

The end of the Cold War has brought with it a re evaluation of this idea. We now recognise that civil and political rights require resource allocation. For example, it costs money to have an election. And we recognise that some economic, social and cultural rights require the government not to act in a particular way. For example, they should not evict people from housing.

However, in the Cold War era the governments were not able to understand this! As a result, ICESCR does not require governments to ensure that all economic, social and cultural rights are available today. Instead, they simply have to

- allocate the maximum available resources and
- ensure that they are always moving towards implementation rather than taking backward steps.

### Ensure that all the rights are available without discrimination

Governments have an 'immediate obligation' to ensure that no one is discriminated against when claiming their economic, social and cultural rights. That is, they can't use the 'lack of money' excuse to explain why they didn't stop discrimination from happening. Reasons for discrimination include 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

### Recognise a broad range of economic, social and cultural rights

The ICESCR encompasses a broad range of economic, social and cultural rights.

#### *Employment and welfare rights*

Rights include the right to just and favourable conditions of work (including fair wages, equality and work life balance), the right to join a union and participate in union actions and the right to social security.



### **Family based rights**

Rights include recognition of the family as a 'fundamental group in society', paid maternity leave or benefits, protection of children from economic and social exploitation.

### **Adequate standard of living**

Rights include the right to food (including food security), clothing and housing.

### **Health**

Rights include ensuring everyone has a chance at good health and efforts to ensure health through a safe environment.

### **Education**

Rights include free and compulsory primary education and a responsibility to move towards free secondary and tertiary education.

### **Cultural rights**

Rights include the right to take part in cultural life, intellectual property rights and the conservation of culture.

## **Legally recognise economic, social and cultural rights**

In order to make economic, social and cultural rights more permanent, governments are encouraged to incorporate their commitments to the rights in legislation. This is important because the failure to provide the rights can then be challenged through domestic legal processes. Australia has not done this.

## **Contribute to the achievement of economic, social and cultural rights globally through overseas aid programs**

Countries which can afford to should support other countries to implement economic, social and cultural rights through their overseas aid budgets.

## **How does it work?**

### **First, the commitment**

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with ICESCR obligations. Second, you ratify the treaty, which is the legally binding action.

So far, one hundred and fifty four countries around the world have ratified ICESCR, that is they have agreed that they will implement the rights contained in ICSECR in their countries.

### **Second, the implementation**

Having committed to the ICESCR governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement ICESCR obligations through their laws, policies and programs.

### **Third, the external assessment**

To assist governments in their implementation, the Economic and Social Council of the UN established a committee of oversight, the Committee on Economic, Social and Cultural Rights (CESCR). The CESCR is comprised of 18 independent experts, elected by states parties to ICESCR. They meet two times a year for three weeks at a time (with an additional week before the session for preliminary work).

The CESCR have the responsibility of assessing how well governments are implementing their ICESCR obligations. They have one way of doing this, by reviewing reports, submitted by countries, which outline how they are implementing ICESCR and challenges they have encountered (theoretically this occurs every five years).

Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements. To provide an additional source of information to the CESCR, non government organisations (NGOs) have begun to prepare alternative reports and present them to the CESCR. These alternative reports help the CESCR experts to understand issues affecting the implementation of ICESCR in the country.

In contrast to the ICCPR and CEDAW, the CESCR can not hear individual cases which allege a breach of the ICESCR. This is a hang over from the Cold War days and the view that economic, social and cultural rights required funds to implement them. In this view the legal system can't assess whether an individual's economic, social and cultural rights have been breached because that would require them to direct parliament to allocate resources, and budget decisions are the sole province of parliament. This view is being challenged by a group of governments who are trying to adopt a tool that will enable individuals to allege breaches of the ICESCR.

The government is not legally compelled to take the advice of the CESCR but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

# Topic Six:

## What is the ICCPR?

### What is it?

The International Covenant on Civil and Political Rights (ICCPR) is the international bill of rights for civil and political rights. It gives legal effect to half the rights in the Universal Declaration on Human Rights (UDHR). It is a comprehensive program to ensure that people have access to civil and political rights, for example, the right to vote, freedom from torture, freedom of thought. It is a way of holding governments to account for the work they do to achieve these rights in their community.

The ICCPR was adopted in 1966 after negotiations by many governments of the world. It became operational in 1976. The political momentum to create the treaty resulted from the decision to adopt a non binding declaration on human rights. Originally there was to be one implementing treaty for the UDHR but the Cold War intervened. A schism emerged at the UN: capitalist countries and communist countries. Human rights got caught up in the split, with economic, social and cultural rights being associated with communism and civil and political rights being associated with capitalism. As a result, two separate treaties were adopted, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR.

### What is in it?

The ICCPR establishes a series of obligations for governments to help them work towards implementation of civil and political rights and to ensure there is no discrimination in the realisation of those rights.

### Legally recognise all rights and provide an 'effective remedy' for any breach of ICCPR rights

As the Cold War raged a view emerged that civil and political rights were superior to economic, social and cultural rights. In particular, Western states considered that civil and political rights had a legal quality about them that meant it was easy and appropriate for the legal system to determine when those rights had been breached.

The end of the Cold War has brought with it a re evaluation of this idea. We now recognise that the realisation of all rights, civil, cultural, economic, political and social rights can be assessed by judges in legal cases.

However, in the Cold War era the governments were not able to understand this! As a result, the ICCPR requires that civil and political rights not only be incorporated into domestic law but also that remedies be available if those rights are breached.

### Ensure that all the rights are available without discrimination

Governments must ensure that no one is discriminated against when claiming their civil and political rights. Reasons for discrimination include 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

### Recognise a broad range of civil and political rights

The ICCPR encompasses a broad range of civil and political rights.

### Security of person rights

Rights include the recognition of an inherent right to life, issues associated with the death penalty (a subsequent treaty seeks the abolition of the death penalty), the right to be free from torture, and the elimination of slavery, servitude and forced or compulsory labour.



### **Legal process rights**

Rights include the right not to be arbitrarily arrested or detained, to fair and timely judicial processes, to humane treatment if deprived of liberty, to equality before the law for all people, and the abolition of 'debtor's prisons'.

### **Freedom of movement**

Rights include the right to move about freely within a territory and to leave or enter a country.

### **Freedom of thought, association and cultural expression**

Rights include freedom of thought, conscience and religion, the right to associate with others (including through membership of a trade union), and the right of cultural minorities to live their culture.

### **Family rights**

Rights include freedom to enter marriage without coercion and equality within marriage and in the case of it ending.

### **Political rights**

Rights include the right to express your view through elections and to participate in public affairs

## **How does it work?**

### **First, the commitment**

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with ICCPR obligations. Second, you ratify the treaty, which is the legally binding action.

One hundred and sixty countries around the world have ratified the ICCPR, that is they have agreed that they will implement the rights contained in the ICCPR in their countries.

### **Second, the implementation**

Having committed to the ICCPR governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement ICCPR obligations through their laws, policies and programs.

### **Third, the external assessment**

To assist governments in their implementation, the ICCPR establishes a committee of oversight, the Human Rights Committee. The Human Rights Committee is comprised of 18 independent experts, elected by states parties to ICCPR. They meet three times a year for three weeks at a time.

The Human Rights Committee have the responsibility of assessing how well governments are implementing their ICCPR obligations. They have three different ways they can do this:

- by reviewing reports, submitted by countries, which outline how they are implementing ICCPR and challenges they have encountered (theoretically this occurs every four years)
- by adjudicating individual cases which allege a breach of ICCPR
- by adjudicating a state to state complaint (though this has never been used)

The government is not legally compelled to take the advice of the Human Rights Committee but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

### **Reporting**

Every four years, states parties to the ICCPR are required to submit reports to the Human Rights Committee, outlining their implementation of the ICCPR and identifying ongoing challenges. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the Human Rights Committee, non government organisations (NGOs) have begun to prepare alternative reports and present them to the Human Rights Committee. These alternative reports help the Human Rights Committee experts to understand issues affecting the implementation of the ICCPR in the country.

### **Individual communications**

Under a separate treaty, the Optional Protocol to the ICCPR, the Human Rights Committee have been authorised to receive individual communications alleging breaches of specific ICCPR rights by individuals or groups of individuals. The Optional Protocol to the ICCPR was adopted in 1966 and became operational in 1976. Australia has ratified it. The Human Rights Committee has found Australia in breach on several occasions, including in relation to discrimination against gay men and in relation to the detention of asylum seekers.

# Topic Seven:

## What is the CAT?

### What is it?

The Convention Against Torture and Cruel, Inhuman or Degrading Treatment and Punishment (CAT) sets out the best way for governments to ensure that people in their community are not tortured or treated in a cruel, inhuman or degrading way. The CAT was adopted in 1984 after negotiations by many governments of the world. It became operational in 1984.

### What is in it?

The CAT establishes a series of obligations for governments on how to prevent torture or cruel, inhuman or degrading treatment or punishment.

### Defines torture, limiting it to the actions of state officials

Torture has three parts to it. First, it is severe mental or physical pain or suffering. Second, it is inflicted on a person to make them confess, provide information, punish them (either for something they or others have done or are suspected of having done), intimidate them, coerce them to behave in a particular way, or because of a discriminatory reason. Third, it is carried out by a state official or with the knowledge of a state official.

Women's activists have made the argument that some forms of violence against women are torture. For example, if a soldier uses rape to coerce a woman to provide information it is torture. There is a significant debate on whether, if the state fails to stop domestic violence, whether some instances of domestic violence are torture.

### Also prevents cruel, inhuman or degrading treatment or punishment

The treaty also prevents cruel, inhuman or degrading treatment or punishment. As with torture, there is requirement that it be carried out by a state official or with the knowledge of a state official.

As with torture, women's activists have made the argument that some forms of violence against women are cruel, inhuman or degrading treatment or punishment. For example, shackling a pregnant prisoner to her bed during labour or subjecting women who have been sexually abused to strip searches may be considered cruel, inhuman or degrading treatment. There are also debates on, if the state fails to stop domestic violence, whether some instances of domestic violence are cruel, inhuman or degrading treatment or punishment.

### Sets out a framework for prevention

Governments have to take a number of steps to ensure that torture or cruel, inhuman or degrading treatment or punishment is not carried out, including through the adoption of legislation prohibiting it, adopting guidelines for treatment of people who have been arrested, detained or imprisoned and ensuring that the courts can punish those who torture others. States should also ensure that a broad range of people, including those who work in law enforcement, the armed forces, medicine, or are in some way involved with the detention of people are educated about the prohibition of torture.

### Stops a country from returning a person to a situation of torture

If someone is likely to be tortured if they are returned or sent to another country, then governments have an obligation not to send them to that country.





## How does it work?

### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with ICCPR obligations. Second, you ratify the treaty, which is the legally binding action.

One hundred and forty three countries around the world have ratified the CAT, that is they have agreed that they will implement the rights contained in the CAT in their countries.

### Second, the implementation

Having committed to the CAT governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement CAT obligations through their laws, policies and programs.

### Third, the external assessment

To assist governments in their implementation, the CAT establishes a committee of oversight, the Committee Against Torture. The Committee Against Torture is comprised of 10 independent experts, elected by states parties to the CAT. They meet two times a year for two three weeks at a time.

The Committee Against Torture have the responsibility of assessing how well governments are implementing their CAT obligations. They have four different ways they can do this:

- by reviewing reports, submitted by countries, which outline how they are implementing CAT and challenges they have encountered (theoretically this occurs every four years)
- by adjudicating individual cases which allege a breach of the CAT
- by launching an inquiry in cases of systematic torture by a state party
- by adjudicating a state to state complaint (though this has never been used)

The government is not legally compelled to take the advice of the Committee Against Torture but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

### Reporting

Every four years, states parties to the CAT are required to submit reports to the Committee Against Torture, outlining their implementation of the CAT and identifying ongoing challenges. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the Committee Against Torture, non government organisations (NGOs) have begun to prepare alternative reports and present them to the Committee Against Torture. These alternative reports help the Committee Against Torture experts to understand issues affecting the implementation of the CAT in the country.

### Individual communications

The Committee Against Torture have been authorised to receive individual communications alleging breaches of specific CAT rights by individuals or groups of individuals. The Committee Against Torture has found Australia in breach on several occasions, including in relation to sending failed refugee applicants to countries where they may be tortured.

### Inquiries procedure

The CAT also contains provisions for the Committee Against Torture to launch an inquiry into systematic torture, when it receives reliable information suggesting the existence of such abuses.

# Topic Nine:

## What is the CROC?

### What is it?

The Convention on the Rights of the Child (CROC) sets out the best way for governments to ensure that the rights of children are protected. The CROC was adopted in 1989 after negotiations by many governments of the world. It became operational in 1990.

### What is in it?

The CROC establishes a series of obligations for governments on how to ensure that the rights of children are protected.

### The best interests of the child

Promoting the “best interests of the child” is the foundation of the CROC. Governments need to ensure that, whether in the public or private spheres, the best interests of the child are met.

### Diverse family structures

The CROC recognises that parents as well as legal guardians, members of the extended family or community (where culturally appropriate) are all important people in raising children. The treaty does not set out a definition of parents, but rather recognises that the ideal family environment is one of happiness, love and understanding.

### Sets out a framework for protection

The CROC sets out a series of steps that governments should take to ensure that children's rights are protected, including through legislative and administrative measures.

### Ensure that all rights are available without discrimination

All of the rights in the CROC are to be available without discrimination, either against the child or against their parents or guardians.

### Sets out a broad range of rights

The CROC recognises a really diverse range of rights, from civil and political to economic, social and cultural. The implementation of economic, social and cultural rights is limited by the availability of resources and, for some countries, the provision of foreign aid.



## How does it work?

### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with CROC obligations. Second, you ratify the treaty, which is the legally binding action.

So far, one hundred and ninety three countries around the world have ratified the CROC, that is they have agreed that they will implement the rights contained in the CROC in their countries.

### Second, the implementation

Having committed to the CROC governments must implement it. In Australia this means the Commonwealth government, state and territory governments and local governments are all required to implement CROC obligations through their laws, policies and programs.

### Third, the external assessment

To assist governments in their implementation, the CROC establishes a committee of oversight, the Committee on the Rights of the Child (Children's Committee). The Children's Committee is comprised of 18 independent experts, elected by states parties to the CROC. They meet three times a year for three weeks at a time.

The Children's Committee have the responsibility of assessing how well governments are implementing their CROC obligations. In contrast to a number of other treaties, external assessment of CROC implementation is limited to the periodic reporting process. The Children's Committee reviews reports, submitted by countries, which outline how they are implementing CROC and challenges they have encountered (theoretically this occurs every five years). The government is not legally compelled to take the advice of the Children's Committee but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

### Reporting

Every five years, states parties to the CROC are required to submit reports to the Children's Committee, outlining their implementation of the CROC and identifying ongoing challenges. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the Children's Committee, non government organisations (NGOs) have begun to prepare alternative reports and present them to the Children's Committee. These alternative reports help the Children's Committee experts to understand issues affecting the implementation of the CROC in the country.

# Topic Ten:

## What is the Migrant Workers Convention?

### What is it?

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Migrant Workers Convention) sets out the best way for governments to protect the rights of migrant workers. The Migrant Workers Convention was adopted in 1990 after negotiations by many governments of the world. It became operational in 2003. *Australia has not signed on to this treaty.*

### What is in it?

The Migrant Workers Convention establishes a series of obligations for governments on how to protect the rights of migrant workers and their families.

#### Defines migrant workers

The treaty defines a migrant worker as someone who does not hold citizenship in a particular country and who is being paid for their work in that country. A diversity of migrant workers are recognised, including frontier workers (those who cross between countries to work), seasonal workers and itinerant workers.

#### Defines families

The treaty defines families in a reasonably broad way, including marriage partners and de facto partners, dependent children and other dependent persons.

#### Sets out a broad range of rights

The Migrant Workers Convention sets out a very broad range of rights for migrant workers and their families. Civil, political, economic, social and cultural rights are all addressed. Additional rights are set out for migrant workers who are lawfully in a country and for particular categories of migrant workers.

### How does it work?

#### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with treaty obligations. Second, you ratify the treaty, which is the legally binding action.

Thirty seven countries around the world have ratified the Migrant Workers Convention, that is they have agreed that they will implement the rights contained in the Migrant Workers Convention in their countries. Very few developed countries have ratified the treaty: Australia has made no move to ratify the Migrant Workers Convention.

#### Second, the implementation

Having committed to the Migrant Workers Convention governments must implement it. This means that all levels of government are required to implement treaty obligations through their laws, policies and programs. However, Australia has not ratified the Migrant Workers Convention.

#### Third, the external assessment

To assist governments in their implementation, the Migrant Workers Convention establishes a committee of oversight, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). The CMW is comprised of 10 independent experts, elected by states parties to the Migrant Workers Convention. They meet once a year for one week.

The CMW have the responsibility of assessing how well governments are implementing their treaty obligations. At present the CMW can only receive reports, every five years. However, when ten countries have agreed to an individual communications procedure, then the CMW will be able to adjudicate individual cases which allege a breach of the treaty.

The government is not legally compelled to take the advice of the CMW but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

# Topic Eleven:



## What is CRPD?

### What is it?

The Convention on the Rights of Persons with Disabilities (CRPD) sets out the best way for governments to ensure the rights of people with disability. CRPD was adopted in 2006 after negotiations by many governments of the world. It has not yet become operational. Australia has indicated its support for the CRPD and is working to sign on.

### What is in it?

CRPD establishes a series of obligations for governments to ensure the rights of people with disability.

### Uses a social model of disability

CRPD uses a social model of disability, which recognises that individual factors, including long term physical, mental, intellectual or sensory impairments interact with social factors, such as discrimination or other barriers, which may have a negative impact on the rights of people with disability.

### Establishes a series of general principles

CRPD has eight fundamental principles: respect for dignity, independence and freedom of choice; commitment to non discrimination; the importance of participation and inclusion; respect and acceptance of diversity; equality of opportunity; accessibility; equality between women and men; respect for children with disabilities.

### Sets out a series of steps to ensure the rights of people with disability

CRPD sets out a range of steps government can take, including adoption of legislation, policies and programs which secure the rights of people with disability, steps to make information accessible for people with disability, measures to ensure people with disability are actively engaged by decision making processes and research to support people with disability.

### Take action in both the public and private spheres

CRPD requires that governments take steps to eliminate discrimination against people with disability in both the public and private sectors. For example, CRPD would address lack of access to health services for people with disability and discrimination in all matters relating to marriage, family, parenthood and relationships.

### Sets out a broad range of rights

CRPD recognises a really diverse range of rights, from civil and political to economic, social and cultural, as well as rights to development. The implementation of economic, social and cultural rights is limited by the availability of resources and, for some countries, the provision of foreign aid.

### How does it work?

#### First, the commitment

Making the decision to be bound to a human rights treaty is a two stage process. First you sign the treaty. This is the declaration of intent and enables countries to examine their laws and policies etc to make sure they are in compliance with CRDP obligations. Second, you ratify the treaty, which is the legally binding action.

CRPD was adopted in 2006 and open for signature in March 2007. So far 98 countries, including Australia have signed up to the treaty, 54 have signed up to the Optional Protocol to CRPD, and 1 country has ratified the treaty.

#### Second, the implementation

Having committed to CRPD governments must implement it. In Australia this will mean that the Commonwealth government, state and territory governments and local governments will be required to implement CRPD obligations through their laws, policies and programs.

### Third, the external assessment

To assist governments in their implementation, CRPD establishes a committee of oversight, the Committee on the Rights of Persons with Disabilities (the Committee). The Committee will consist of at least 12 independent experts to be elected by states parties.

The Committee will have the responsibility of assessing how well governments are implementing CRPD obligations. There will be three primary ways to do this:

- by reviewing reports, submitted by countries, which outline how they are implementing CRPD and challenges they have encountered (theoretically this occurs every four years)
- by adjudicating individual cases which allege a breach of CRPD
- by launching an inquiry in cases of grave or systematic violations of CRPD by a state party

The government is not legally compelled to take the advice of the Committee but it is morally obliged to do so. Sometimes it is up to us to make the government feel the moral imperative!

#### *Reporting*

Every four years, states parties to CRPD will be required to submit reports to the CRPD, outlining their implementation of the Disability Convention and identifying ongoing challenges. Very few government reports provide a comprehensive assessment of their implementation, preferring to focus on their achievements.

To provide an additional source of information to the CRPD, it is likely that non government organisations (NGOs) will prepare alternative reports and present them to the CRPD. These alternative reports will help the CRPD experts to understand issues affecting the implementation of CRPD in the country.

#### *Individual communications*

The Committee may be authorised to receive individual communications alleging breaches of specific CRPD rights by individuals or groups of individuals. Australia has not signed up to the Optional Protocol to CRPD.

#### *Inquiries*

The Committee may be authorised to receive individual communications alleging breaches of specific CRPD rights by individuals or groups of individuals.



# Topic Twelve:



## CEDAW in Australia

### The political battle to make CEDAW applicable in Australia

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) was signed by the Fraser Liberal/National Party Coalition Government in 1980, and ratified by the Hawke ALP Government in 1983.

Australia's signing of CEDAW, under the Fraser Liberal government, showed Australia's commitment, in principle, to the rights it enshrines. After signing, the Hon Robert Ellicott and the Hon Andrew Peacock (the then Minister for Foreign Affairs) said that the signing evidenced "Australia's policy of equality for women and the elimination of discrimination."

### Opposition to CEDAW

There was quite heated debate surrounding the adoption of CEDAW. For example, during Parliamentary debate Senators argued against it, claiming that:

*"The convention [CEDAW]... seeks to assert that many women who consider themselves to be both happy and equal in their roles as mothers and wives are not happy... the convention in effect belittles the vital role of these women and consequently the role of their husbands".*

**Senator Crichton Browne, Australian Senate, 9 December 1983.**

*"From where did the clamour for equality originate? It began in the Eastern Soviet bloc countries, which, while speaking loudly for equality, were not particularly renowned for their practice of human rights. I am sure that Australian women do not want the same rights as women in Iran and India."*

**Senator Boswell, Australian Senate, 29 November 1983.**

Many Australians feared CEDAW and the effect that it would have on Australian society. Some groups and individuals organised rallies and wrote letters to members of parliament, hoping to influence Australia not to sign the treaty. Several parliamentarians went on to voice their opposition to CEDAW in parliament and worked to prevent Australia from signing the Convention.

Opponents argued that CEDAW would force women out of their homes and into the workforce and cause a breakdown of family life. In addition, the fact that the former Soviet Union bloc participated in the UN led some people to believe that Australia signing CEDAW would give these countries the power to make laws for Australia.

### Support for CEDAW

There was strong support for CEDAW from many Australian women's organisations. This support was demonstrated at a national level and also in local branches. These groups included the Federation of Business and Professional Women, the Young Women's Christian Association and Zonta International. Many other non government organisations (NGOs) also supported the Convention through the National Council of Women, a voluntary coordinating body that at the time had 583 affiliated organisations, representing over 1 million members.

Supporters worked to secure political support for CEDAW. For example, the Women's Electoral Lobby sent letters and had meetings, asking politicians and political candidates to support the Convention. Seminars were held and pamphlets were distributed to publicise CEDAW and inform women, allowing them to see how the Convention could address many issues relevant to their lives.

### Limits to CEDAW in Australia

Governments can limit the application of CEDAW (and any treaty) by "entering a reservation" to the treaty. Theoretically, reservations should not undermine the purpose or intention of the treaty, though some pretty major reservations have been entered to CEDAW.

Australia has two reservations which were entered by the Howard Liberal/National Party Coalition Government. The first reservation relates to the participation of women in direct armed combat and the second reservation relates to the provision of paid maternity leave. Interestingly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) also calls for paid maternity leave, but no reservation has been entered to that treaty.

## Implementation of CEDAW in Australian law and policy

### Commonwealth

Since it became a signatory to CEDAW, Australia has developed many laws to enforce CEDAW rights. The most important is the *Sex Discrimination Act 1984* (Cth).

The criminal justice system, the legal system, and a range of government policies and programs, among others, are also used for the implementation and enforcement of CEDAW.

#### **What is the Sex Discrimination Act 1984 (Cth)?**

The *Sex Discrimination Act (SDA) 1984* (Cth) implements some of Australia's obligations under CEDAW. The SDA was passed in 1984. The parliamentary debate surrounding the SDA was filled with controversy and in some ways resembled the debate that surrounded the signing of CEDAW, as similar views were expressed.

*"The sex discrimination bill 1983 contains provisions inconsistent with principles of justice and equality which will be used to undermine civil liberties and religious freedom. It could also be a means of undermining the traditional family structure of our nation."*

#### **From a petition presented to the Australian Federal Parliament on December 8, 1983, commenting on introduction of the Sex Discrimination Act.**

The SDA implements parts of the International Labour Organisation Convention 156, the *Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*. The major objectives of the SDA are to:

- promote equality between men and women;
- eliminate discrimination on the basis of sex, marital status or pregnancy or potential pregnancy at work, in educational institutions, in the provision of goods and services, in the provision of accommodation and the administration of federal programs, and dismissal from work because of family responsibilities; and
- eliminate sexual harassment at work, in educational institutions, in the provision of goods and services, in the provision of accommodation and the administration of federal programs.

In practical terms this means that in Australia it is against the law to discriminate on the basis of sex, marital status, pregnancy or potential pregnancy. The SDA also prohibits sexual harassment and dismissal from employment on the basis of family responsibilities. Victimization associated with any of these grounds is also prohibited.

The SDA makes it clear that in Australia, to live and work in an environment free of sex discrimination and sexual harassment is a human right not a privilege.

Nonetheless, there are limitations to the SDA. There are considerable exemptions granted under the SDA, for example to religious bodies, voluntary bodies, labour hire arrangements and areas of competitive sport.

The SDA can be amended by an act of parliament. It can be a subject of political machinations. For example, recently the federal government have attempted to amend the SDA in a way which would enable state/territory governments to discriminate against same sex couples by denying their access to assisted reproductive technologies.

### States and Territories

All states and territories have anti discrimination legislation in similar terms to the federal law. These laws are administered by state equal opportunity or anti discrimination bodies. In addition, laws, policies and programs of state/territory governments also contribute to the realisation of CEDAW.

In the ACT a groundbreaking human rights process was enacted in 2004 when the *Human Rights Act* was adopted. The Act was the first bill of rights adopted by a state or territory government in Australia. The Act guarantees key civil and political rights but does not cover economic, social and cultural rights. Nor does it enable individuals to start a legal case if they think their rights have been breached.



In Victoria a new human rights process has recently become available. Victoria has enacted its *Charter of Human Rights and Responsibilities*. The Charter protects mainly civil and political rights and these rights are subject to reasonable limits. Some of these rights overlap with CEDAW: the Charter includes a non discrimination provision that protects against direct discrimination and also prohibits the application of Charter rights in a discriminatory manner; the right to participate in public life; the right to privacy; the right to security, and; the right to equality before the law. It does not contain any special provision for protecting the rights of women (although it does state that special measures taken to advance the position of people or groups that have been disadvantaged are not discriminatory), nor does it contain the right to education, health care or (largely) employment.

While only some rights are contained in the Charter, it states explicitly that this does not limit or cancel any other rights that may exist, including under international law.

The Charter does not give individuals the right to go to court if their rights are breached. Rather, it works on a 'dialogue model' that aims to ensure all new and existing law and policy are consistent with the rights in the Charter.

### Local governments

Local government policies and programs must also be consistent with CEDAW obligations. A range of council services relate to CEDAW rights. However, local government engagement with human rights is an emerging field of work and frameworks for how to do this work are quite uncommon. Some very interesting work is occurring in the United States of America. Wild for Human Rights pioneered the strategy of implementing international treaty obligations through local council initiatives, focusing particularly on CEDAW <http://www.wildforhumanrights.org/hrtoolkit/localimplement/index.html>. The strategy has been expanded to address ICERD by the Urban Justice Centre Human Rights Project <http://www.urbanjustice.org/ujc/projects/human.html>

# Topic Thirteen:

## How did we create a NGO report?

The Women's Rights Action Network Australia (WRANA) worked with women across Australia to take their voices to the UN in the *Australian NGO Shadow Report*. The non government organisation (NGO) Shadow Report was prepared for the January 2006 Committee on the Elimination of Discrimination Against Women (CEDAW Committee) review of the Australian Government implementation of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

Right from the start we were really clear that everyone can and should have an opinion on whether governments in Australia are meeting their human rights obligations.

The *Women's Report Card Project* worked in local communities to make the links between everyday issues for women and CEDAW.

Consultations and training sessions on CEDAW were held in each state and territory to strengthen the ability of women's organisations to use CEDAW in their everyday work. In conducting the consultations WRANA worked to ensure that they were accessible to women with disability. In Victoria, we conducted consultations in English, Arabic, Chinese and Vietnamese.

Reports on implementation of CEDAW in each state/territory were prepared and then collated in a National Report Card. The reports focused on issues relating to housing and utilities, the legal system, education, economic security, health, leadership and participation, and violence against women. The National Report Card was available in English, Vietnamese, Chinese and Arabic, Braille, Large Print and Audio formats. Information from this process was also fed into the 2004 election campaign.

Indigenous women participated in many of the state and territory consultations. However, a specific Indigenous women's consultation process was also pursued to ensure that the particular experiences of Indigenous women were reflected in this report. A separate Indigenous women's report was coordinated by Koorie Women Mean Business and the National Network of Indigenous Women's Legal Services. Key recommendations were integrated into the Shadow Report.

The issues raised in these reports were explored in greater detail in the Shadow Report. WRANA sent four representatives to observe the 2006 CEDAW Committee review of the Australian Government and to present the Shadow Report.

Throughout the *Women's Report Card Project* we maintained an open and transparent relationship with the Government, in particular the Australian Government Office for Women. As part of the project we contributed a review of previous Concluding Comments to the government's preparation of the 4<sup>th</sup> and 5<sup>th</sup> Periodic Report; prepared briefing materials for the NGO sector on the process; communicated with a variety of politicians, including the Minister Assisting the Prime Minister for Women's Issues, informing her about the project, sending her updates, and a copy of the National Community Report and Shadow Report. We were also in correspondence with other relevant Ministers about the questions submitted to the CEDAW Committee. We also contributed to state/territory processes, for example, making submissions to the Victorian Government on their development of a human rights charter. These materials are included on the CD.



# Topic Fourteen:



## What's got the UN worried?

Australia's implementation of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) has been assessed on four separate occasions. The first occurred in 1988. The most recent was in 2006. The next report, the combined Sixth and Seventh Combined Periodic Report is due in August 2008.

### What happened in 2006?

In January 2006 representatives of the Australian Government met with the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) members to review the Fourth and Fifth Combined Periodic Report, which covered the years 1997 to 2004 (the Australian government was late submitting its report and then the backlog of reports waiting to be reviewed by the CEDAW Committee meant that it took two years to schedule the review meeting).

### What the UN said about women in Australia

#### Some things are working!!

For example, the Committee was impressed by the range of programs on violence against women, the maternity payment, changes to end detention of refugee women and their families during the refugee determination process, the increase in bulk billing levels, and the level of women participating in public and political life.

#### Some things are not working!!

The Committee asked many questions and followed up with a number of recommendations on how to improve women's human rights in Australia.

#### *The UN is worried about women's working conditions in Australia*

- the lack of paid maternity leave in Australia
- the impact of discrimination on Aboriginal and Torres Strait Islander, immigrant, refugee and minority women and girls' employment
- the impact of WorkChoices on women from non English speaking backgrounds, low income women and women in rural areas.

#### *The UN is worried about a range of issues affecting Aboriginal and Torres Strait Island women, including*

- education,
- health
- political participation
- employment
- levels of violence
- disproportionate levels of imprisonment
- lower life expectancy
- inappropriate superannuation regulations
- lack of representation following the abolition of Aboriginal and Torres Strait Islander Commission

#### *The UN is worried about the lack of institutional mechanisms to advance women's interests*

- inadequate statistics collection on all sorts of women
- inadequate mechanisms to assess the gender impacts of legislation
- inadequate funding for non government organisations working on women's issues

***The UN is worried about violence against women in Australia***

- the low levels of successful sexual assault prosecutions
- that it's women not men who have to leave home when he's violent
- that girls and women with disability are being forcibly sterilised
- that changes to the *Family Law Act* might be harmful for women leaving violent relationships.

***The UN is worried about racism against women in Australia***

- the impact of racism on women's rights to education, health, employment and political participation
- that women subject to racism might also be more vulnerable to violence
- the treatment of refugee and asylum seeker women, including the impact on women of bans on family reunion rights for temporary protection visa holders and on rules around domestic violence in refugee determination

***The UN is worried about women's health in Australia***

- that rural women can't access bulk billing as easily as urban women
- that women with disability have difficulties accessing health services
- the availability of reproductive health services, including abortion

***The UN is worried about women with disability in Australia***

- that girls and women with disability are being forcibly sterilised
- that women with disability have difficulties accessing health services
- that women with disability are over represented in prisons
- that statistics collection can hide the experiences of women with disability

***The UN is worried about discrimination against lesbians...***

- that women in same sex relationships were being discriminated against in access to services, particularly IVF

***The UN is worried that Australia still hasn't ratified the Optional Protocol to CEDAW***



# Topic Fifteen:



## A resource sheet on violence against women in the CEDAW reporting process

### Violence against women in a human rights framework

The human rights system was slow to recognise violence against women as a human rights issue. Human rights has traditionally focused on the actions of state actors (ie, soldiers, prison officials) rather than private actors (ie, men who are violent towards their partners). Human rights was also gender blind. Soldiers have raped women since war was created but it was seen as a spoil of victory rather than a human rights violation.

However, in the 1990s the human rights system finally caught up to the reality of women's lives. Violence against women was recognised as a human rights issue at the UN. UN members negotiated and adopted the Declaration on the Elimination of All forms of Violence Against Women and they appointed an independent expert to examine the prevalence of violence against women, the Special Rapporteur on Violence Against Women.

The Declaration on the Elimination of All forms of Violence Against Women defines violence against women as

*any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*

Another important human rights concept that has been developed over the past ten years is the idea of "due diligence": that governments have an obligation to take steps to stop violence by private actors. The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) General Recommendation on violence against women notes

*States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.*

Amnesty International have argued that "due diligence means that states bear responsibility for human rights abuses when they know, or ought to know, about abuses, and fail to take appropriate steps to prevent, stop or punish them and to ensure reparations for victims."

### Violence against women and CEDAW

The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has worked hard to hold governments accountable for acting to end violence against women. This is despite the fact that the treaty contains no reference to the practice of violence against women.

To overcome this shortcoming the CEDAW Committee have adopted an interpretative statement, a General Recommendation, on the topic. In it they argue that gender based violence is a form of discrimination. This makes the necessary link between violence against women and discrimination. They assert that states have an obligation to take positive measures to eliminate all forms of violence against women. They are also obliged to include information on these measures in their reports.

In 2005 the Optional Protocol was used by a woman in Hungary, Ms A T, to address failures of the state in protecting her from domestic violence. This enabled the CEDAW Committee to publish a series of recommendations relating to domestic violence. In the Hungarian case the CEDAW Committee outlined a range of measures a state party should take to end domestic violence (at page 13 of the decision).

## Violence against women in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

## Violence against women: the CEDAW Committee's Recommendations

The CEDAW Committee raised a number of issues in relation to violence against women. While they welcomed a range of efforts to address violence against women, they also had some significant concerns and made a number of recommendations for change. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).

### **The UN is worried by the continuing prevalence of violence against women:**

*18. While noting the efforts of the State party to address violence against women at all levels of authority, the Committee remains concerned about the continuing prevalence of violence against women...*

*19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions. It further recommends that public officials, especially law enforcement officials, the judiciary, health care providers and social workers, upon the State party to create public awareness of violence against women as an infringement of women's human rights that has grave social and financial costs for the whole community.*

### **The UN is worried by the low rates of reporting, prosecutions and convictions in sexual assault cases:**

*18. ... the Committee remains concerned ... by the low rates of reporting, prosecutions and convictions in sexual assault cases.*

*19. The Committee calls ... calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions.*

### **The UN is worried at the failure to implement laws that enable women leaving violence to stay in the home if they want to**

*18. ... the Committee remains ... concerned that laws that protect victims of violence and require perpetrators of domestic violence to leave the family home are not regularly enforced.*

*19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place.*

### **The UN is worried by the high levels of violence against women, particularly domestic violence, in indigenous, refugee and migrant communities**

*18. It is also concerned about the high levels of violence against women, particularly domestic violence, in indigenous, refugee and migrant communities.*

*19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It*



requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions.

#### **The UN is worried about limitations to the immigration system for women with violent partners**

22. ... The Committee is also concerned that women who are in the country on their partners' protection visa face legal and procedural impediments in lodging a separate application for a protection visa in the event of domestic violence.

23. The Committee recommends that the State party ... revisit the provisions of the Migration Legislation Amendment Act so that women who seek asylum and refugee protection can be considered individually in situations of domestic violence.

#### **The UN is worried about measures to address trafficking in women:**

21. The Committee recommends the formulation of a comprehensive strategy to combat the trafficking of women and exploitation resulting from prostitution, which should include the development of strategies to discourage the demand for prostitution, prevent women from entering prostitution and establish programmes of rehabilitation and support for women and girls who wish to discontinue their lives in prostitution. The State party should pursue the effective prosecution and punishment of traffickers and other offenders who exploit women on prostitution. The Committee encourages the State party to examine and adopt international good practices in combating trafficking. The Committee further urges the State party to consider the extension of temporary protection visas and reintegration and support services to all victims of trafficking, including those who are unable or unwilling to cooperate in the investigation and prosecution of traffickers.

#### **The UN is worried about racism as a form of violence against immigrant, refugee and minority women and girls:**

28. The Committee expresses concern that immigrant, refugee and minority women and girls, based on their ethnic background, may be subject to multiple forms of discrimination with respect to education, health, employment and political participation. It is also concerned that women belonging to these groups seem to be particularly vulnerable to violence.

29. The Committee urges the State party to take more effective measures to eliminate discrimination against refugee, migrant and minority women and girls and to strengthen its efforts to combat and eliminate xenophobia and racism in Australia, particularly its impact on women and girls. It also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.

#### **The UN were also worried, and asked questions during the Constructive Dialogue session, about the issue of sterilisation of women with disability:**

34. Regarding violence against women and girls with disabilities, Ms Shin wished to know whether the State party was aware of the problem of the sterilization of disabled women and girls and, if so, what it was doing to address it.

#### **Documents referred to in this resource sheet**

- CEDAW Concluding Comments on Australia (available on the CD)
- Decision of the CEDAW Committee on Ms A T and state responsibility for domestic violence, <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>
- CEDAW General Recommendation 19 on violence against women <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>
- UN Declaration on the Elimination of Violence Against Women <http://www.ohchr.org/english/law/eliminationvaw.htm>

# Topic Sixteen:

## A resource sheet on women's health in the CEDAW reporting process

### Women's health in a human rights framework

A number of treaties, including the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), address the issue of the right to health. The most extensive coverage is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights (CESCR) use a social model of health and draw on the World Health Organisation definition of health: "health is the state of complete physical, mental and social well being and not merely the absence of disease or infirmity."

The CESCR has identified four key components to the right to health:

- health services must be available: they must be available in sufficient quantity
- health services must be accessible: factors such as cost or discrimination shouldn't inhibit accessibility and services should be physically accessible
- health services must be acceptable to the users: for example, they must be culturally appropriate
- health services are to be quality services

The human rights framework recognises women's health issues in two ways. One, it recognises women specific violations that have a health dimension (for example, Female Genital Mutilation (FGM) or failure to make reproductive health services available). Two, it recognises that women can be discriminated against in accessing health services. [The health dimensions of violence against women are, of course, vital; please also refer to the violence against women resource sheet].

### Women's health and CEDAW

CEDAW specifically addresses the right to health in article twelve. This article establishes that states parties have a responsibility to eliminate discrimination against women in the area of health. There is a strong focus on services to support family planning and reproductive health.

The CEDAW Committee have explained their understanding of the right to health in an interpretative statement. The General Recommendation on Health articulates an obligation for health services to be appropriate. Health services are deemed inappropriate if they "lack services to prevent, detect and treat illnesses specific to women". The CEDAW Committee also assert that it is discriminatory to refuse to legally provide certain reproductive health services for women. The General Recommendation goes on to note that if, for example, a health service provider refuses to provide a service on the basis of a conscientious objection to that the service, the state has an obligation to ensure there are alternative health care providers available to women.

The General Recommendation also identifies four key factors in the realisation of women's right to health:

- different biological factors which influence women's experiences of health and ill health
- the impact of socio economic factors and harmful cultural practices on women's health
- psychosocial factors, including the impact of depression, post partum depression and other psychological conditions which can be related to social expectations towards women's body image
- the different consequences for women if a health service doesn't respect confidentiality of the patient

### Women's health in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).



## Women's health: the CEDAW Committee's Recommendations

The CEDAW Committee raised a number of issues in relation to women's health. While they welcomed a range of efforts to address women's health, they also had some significant concerns and made a number of recommendations for change. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).

### *The UN is worried about rural women's access to health services:*

*26. The Committee is concerned that although the rate of bulk billing for health services is increasing, there is still a disparity in the application of this principle in the rural areas and that, consequently, rural women may face difficulties in accessing health services.*

*27. The Committee recommends that the State party monitor bulk billing for health services, particularly in the rural areas, and take necessary action to ensure that it is fully applied.*

### *The UN is worried about women with disability's access to health services:*

*26. ... The Committee is further concerned that the health needs of disabled women are inadequately met due to the lack of special equipment and other infrastructure.*

*27. ... The Committee also recommends that the State party develop the necessary infrastructure to ensure that disabled women have access to all health services.*

*26. ... The Committee is also concerned that there is no information on how the State party is addressing specific health needs of different groups of women in accordance with risk factors on the basis of biology and social conditioning.*

*27. ... The Committee recommends that the State party take account of general recommendation 24 on health and develop full competence to address the health needs of women in accordance with their specific risk factors.*

### *The UN is worried about the access to health services by culturally and linguistically diverse/ non-English speaking background women:*

*26. ... The Committee is also concerned that there is no information on how the State party is addressing specific health needs of different groups of women in accordance with risk factors on the basis of biology and social conditioning.*

*27. ... The Committee recommends that the State party take account of general recommendation 24 on health and develop full competence to address the health needs of women in accordance with their specific risk factors.*

*28. The Committee expresses concern that immigrant, refugee and minority women and girls, based on their ethnic background, may be subject to multiple forms of discrimination with respect to ..., health....*

*29. The Committee ... also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.*

### *The UN is worried about the access to health services by Aboriginal and Torres Strait Islander women:*

*26. ... The Committee is also concerned that there is no information on how the State party is addressing specific health needs of different groups of women in accordance with risk factors on the basis of biology and social conditioning.*

*27. ... The Committee recommends that the State party take account of general recommendation 24 on health and develop full competence to address the health needs of women in accordance with their specific risk factors.*

*30. The Committee is concerned about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to ..., health .... The Committee is particularly concerned about the lower life expectancy among indigenous women.*

31. The Committee recommends that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It recommends that the State party increase indigenous women's access and awareness of the availability of targeted social services in all sectors. ... It calls on the State party to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.

### Documents referred to in this resource sheet

- CEDAW Concluding Comments on Australia (available on the CD)
- CEDAW General Recommendation 24 on women's health <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>
- CESCR General Recommendation 14 on health <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>



# Topic Seventeen:



## A resource sheet on women's economic security in the CEDAW reporting process

### Women's economic security in a human rights framework, including in CEDAW

Issues relating to women's economic security are addressed not only in the human rights framework but also through the International Labour Organisation (ILO). A range of issues have been considered, including

- Securing equal pay for women
- Creating workplaces which enable women and men to reconcile family responsibilities with work responsibilities
- The provision of social security systems
- Access to credit and financial services

#### Securing equal pay

Women and men should not be paid differently if they are doing the same job or a job of equal value. The legal basis for this is found in a range of treaties, including the general prohibition on sex discrimination in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and the specific prohibitions on wage discrimination in the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the ILO Discrimination (Employment and Occupation) Convention.

#### Family friendly workplaces

Paid work and other areas of life often collide, particularly for women who are still the primary care givers in our community. The ILO and UN have both tried to address this collision by identifying strategies which support women and men to reconcile their work caring for families with their paid work.

Five key steps have been identified:

1. The prohibition of pregnancy based discrimination at work (CEDAW and ILO Maternity Leave Convention; and provisions on sex discrimination in the ICESCR, ICCPR and ILO Equal Remuneration Convention)
2. The provision of paid maternity leave, for a period not less than 14 weeks with a minimum period of six weeks (ICESCR, CEDAW and ILO Maternity Leave Convention for provision of paid maternity leave; ILO Maternity Leave Convention for timeframe)
3. Terms and conditions which reflect the needs of workers with family responsibilities, including through the prohibition of maternity based discrimination and strategies to support parents at work (CEDAW, ILO Maternity Leave Convention [breast feeding breaks], ILO Workers with Family Responsibilities Convention) and prohibition of family responsibilities being grounds for dismissal (ILO Workers with Family Responsibilities Convention and CEDAW)
4. The promotion, development or provision of child and family care by public or private means (CEDAW and ILO Workers with Family Responsibilities Convention)
5. Education to challenge social, economic and cultural values on family responsibilities and the function of maternity and paternity (CEDAW and ILO Workers with Family Responsibilities Convention).

Of the treaties mentioned above Australia has signed up to all but the ILO Maternity Leave Convention and does not agree to the requirement under CEDAW to provide paid maternity leave. Interestingly, the ICESCR contains a provision on paid maternity leave, but the government haven't expressed a problem with that provision.

#### Social security

The ICESCR is the clearest of all treaties about the right to social security though it offers no view on who should provide it. CEDAW addresses it specifically in the context of family benefits and, for women living in rural areas, identifying that women should be able to benefit directly from social security programs.

### Access to financial services

Women should have the same rights as men in accessing bank loans, mortgages and other forms of financial credit according to CEDAW. For women in rural areas this extends to include agricultural credit and loans.

### Women's economic security in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

### Women's economic security: the CEDAW Committee's Recommendations

The CEDAW Committee identified a range of issues relating to women's economic security in the Recommendations and called on the government to implement measures to address them. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).

#### *The UN is worried about paid maternity leave in Australia:*

*24. While welcoming the introduction of the maternity payment in 2004 and the existence of paid maternity leave for female government employees in some states and territories as well as some paid maternity leave schemes in private sector employment, the Committee remains concerned about the lack of uniformity in work related paid maternity leave schemes. It is also concerned that there is no national system of paid maternity leave and that, as a consequence, the State party continues to maintain its reservation to article 11, paragraph 2, of the Convention.*

*25. The Committee urges the State party to take further appropriate measures to introduce maternity leave with pay or with comparable social benefits. It also recommends that the State party evaluate its maternity payment introduced in 2004 in the light of article 11, paragraph 2 (b), of the Convention and to expedite the steps necessary for the withdrawal of its reservation to this article.*

#### *The UN is worried by employment discrimination against culturally and linguistically diverse/non-English speaking background women:*

*28. The Committee expresses concern that immigrant, refugee and minority women and girls, based on their ethnic background, may be subject to multiple forms of discrimination with respect to ..., employment....*

*29. The Committee ... also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.*

#### *The UN is worried by employment discrimination against Aboriginal and Torres Strait Islander women:*

*30. The Committee is concerned about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to ..., employment ....*

*31. The Committee recommends that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It recommends that the State party increase indigenous women's access and awareness of the availability of targeted social services in all sectors. ... It calls on the State party to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.*



The CEDAW Committee also asked questions about government responsibility for discrimination in the private sector, noting that CEDAW establishes obligations to address discrimination in organisations and enterprises. They also asked questions about the gender impacts of the WorkChoices legislation and gender and race issues related to accessing superannuation. Finally they asked questions about men's roles in raising children and the steps the government has taken to enable men to share child raising, particularly in the context of changes to child custody arrangements in divorce.

### Documents referred to in this resource sheet

- CEDAW Concluding Comments on Australia (available on the CD)
- ILO Maternity Leave Convention <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>
- ILO Equal Remuneration Convention <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>
- ILO Workers with Family Responsibilities Convention <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C156>

# Topic Eighteen:

## A resource sheet on women and housing in the CEDAW reporting process

### Women and housing in a human rights framework

The right to housing is most clearly stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to housing is part of a broader right, the right to an adequate standard of living.

The right to housing has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR). The CESCR have suggested that seven important elements make up the right to housing:

- You should have the protection of the law in securing your housing tenure
- Your housing should have adequate materials, facilities and infrastructure
- Your housing should be affordable
- Your housing should be habitable
- Your housing should be accessible
- Your housing should be in a location which is accessible for other services, including employment
- Your housing should be culturally appropriate

Women should be able to access all forms of housing without discrimination. Another key element in women's access to housing is women's equal access to land, property and inheritance rights. The Human Rights Council at the UN have adopted resolutions on women's rights to land, property and housing which provide a useful overview of key issues affecting women's rights to land, property and housing.

### Women and housing in CEDAW

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) refers explicitly to housing in the context of women in rural areas (article 14). CEDAW calls on states to ensure that women in rural areas have adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications. CEDAW also calls on governments to ensure that all women have access to bank loans and mortgages, which are an important part of helping women access housing. CEDAW also has a general obligation to ensure that women are equally able to access economic rights, which includes the right to housing.

### Women's housing in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

### Women and housing: the CEDAW Committee's Recommendations

The CEDAW Committee did not address the issue of housing, either in its Recommendations or questions to the government. However, the Special Rapporteur on Housing has issued a report on housing in Australia which contains some useful recommendations

### Documents referred to in this resource sheet

- CEDAW Concluding Comments on Australia (available on the CD)
- CESCR General Recommendation 4 on housing [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)
- HRC resolutions on women's rights to land, property and housing <http://www.ohchr.org/english/issues/housing/women.htm>
- Special Rapporteur on Housing: Report on housing in Australia <http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/72/PDF/G0712572.pdf?OpenElement>

# Topic Nineteen:



## A resource sheet on Culturally and Linguistically Diverse (CALD)/ Non English Speaking Background (NESB) Women in the CEDAW reporting process

### CALD/NESB women and the human rights framework

The human rights of CALD/NESB women have mostly been addressed in the human rights framework through the fundamental principle of protection from non-discrimination on the basis of race and gender.

However, while the commitment to eradicating racial discrimination and sex discrimination is strong, it is only recently that an understanding of the “intersectional” nature of discrimination has been recognised. Intersectional discrimination recognises that a woman may be subject to discrimination based on several aspects of their identity at the same time.

The human rights system struggles with the idea of intersectional discrimination because of the distinct nature of each treaty. For example, in 1984, a migrant woman in the Netherlands sent a complaint to the Committee on the Elimination of Racial Discrimination (CERD) alleging that her employer had racially discriminated against her when he fired her because he thought that women with children from her racial group were less likely to return to work after having children. The CERD agreed with the woman that she had been racially discriminated against. However, it made no observation on the sex discrimination she experienced.

### CALD/NESB women and CEDAW

The human rights of CALD/NESB women have been addressed by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) on many occasions, as a component of interpretative statements, decisions under the Optional Protocol and in recommendations from reviews of government reports. The CEDAW Committee often uses terms such as migrant, refugee or minority women to identify their concerns.

In preparation for the World Conference Against Racism the CEDAW Committee issued a statement on “intersectional discrimination” – the impact that multiple forms of discrimination can have.

## CALD/NESB women in the reporting process: the Australian Government Reports and NGO Reports

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

## CALD/NESB women: the CEDAW Committee's Recommendations

The CEDAW Committee identified a range of issues relating to CALD/NESB women in the Recommendations and called on the government to implement measures to address them. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).

### *The UN is worried by violence against CALD/NESB women:*

*18. While noting the efforts of the State party to address violence against women at all levels of authority, the Committee ... is also concerned about the high levels of violence against women, particularly domestic violence, in indigenous, refugee and migrant communities.*

*19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place.*

### *The UN is worried by the treatment of refugee and asylum seeker women:*

*22. While appreciating the changes adopted by the State party in relation to detention of refugee women and their families, the Committee is nonetheless concerned about the disproportionately adverse gender specific dimensions and impact of laws and policy on refugees and asylum seekers. It is particularly concerned that persons on temporary protection visas are denied the right to family reunion for up to five years, which may impose particular hardships on women. The Committee is also concerned that women who are in the country on their partners' protection visa face legal and procedural impediments in lodging a separate application for a protection visa in the event of domestic violence.*

*23. The Committee recommends that the State party review and monitor its law and policy on refugees and asylum seekers, with a view to taking remedial measures to ameliorate any adverse impact on women. It encourages the State party to remove the current restrictions on women on temporary protection visas and to revisit the provisions of the Migration Legislation Amendment Act so that women who seek asylum and refugee protection can be considered individually in situations of domestic violence.*

### *The UN is worried by discrimination against CALD/NESB women:*

*28. The Committee expresses concern that immigrant, refugee and minority women and girls, based on their ethnic background, may be subject to multiple forms of discrimination with respect to education, health, employment and political participation.*

*29. The Committee urges the State party to take more effective measures to eliminate discrimination against refugee, migrant and minority women and girls and to strengthen its efforts to combat and eliminate xenophobia and racism in Australia, particularly its impact on women and girls. It also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.*



**The UN is worried by racist violence against CALD/NESB women:**

28. The Committee ... is also concerned that women belonging to these groups seem to be particularly vulnerable to violence.

29. The Committee urges the State party to take more effective measures to eliminate discrimination against refugee, migrant and minority women and girls and to strengthen its efforts to combat and eliminate xenophobia and racism in Australia, particularly its impact on women and girls. It also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.

**The UN is worried about the lack of data collection for CALD/NESB women:**

14. The Committee regrets that the report neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor information on the impact and results achieved of legal and policy measures taken. It also regrets the absence of sufficient information and data on women with disabilities.

15. The Committee requests the State party to include adequate statistical data and analysis, disaggregated by sex, ethnicity and disability, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention. It also recommends that the State party regularly conduct impact assessments of its legislative reforms, policies and programmes to ensure that measures taken lead to the desired goals and that it inform the Committee about the results of these assessments in its next report.

**The UN were also worried, and asked questions during the Constructive Dialogue session, about CALD/NESB women's economic security:**

- They asked questions about the impact of industrial relations changes on CALD/NESB women
- They asked questions about CALD/NESB women and superannuation

[See also recommendations on trafficking in the violence against women resource sheet: though not mentioned explicitly, many of the women trafficked into Australia are CALD/NESB women].

**Documents referred to in this resource sheet**

- CEDAW Concluding Comments on Australia (Available on the CD)
- CEDAW statement to the World Conference Against Racism, Racial Discrimination and Xenophobia <http://daccessdds.un.org/doc/UNDOC/GEN/N01/534/56/PDF/N0153456.pdf?OpenElement> at pages 47-49 of the PDF
- CERD Case: A. YilmazDogan v. The Netherlands, Committee on the Elimination of Racial Discrimination, Communication No. 1/1984, <http://www.law.wits.ac.za/humanrts/country/decisions/1-1984.html>

# Topic Twenty:

## A resource sheet on Aboriginal and Torres Strait Islander Women in the CEDAW reporting process

### Aboriginal and Torres Strait Islander women and the human rights framework

The human rights of Aboriginal and Torres Strait Islander women have mostly been addressed in the human rights framework through the fundamental principle of protection from non-discrimination on the basis of race and gender. The key documents have been the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All forms of Racial Discrimination (ICERD). Aboriginal and Torres Strait Islander organisations have particularly focused their attention on the ICERD, including successfully lobbying to have an early warning issued against the Australian government over aspects of native title law.

However, while the commitment to eradicating racial discrimination and sex discrimination is strong, it is only recently that an understanding of the “intersectional” nature of discrimination has been recognised. Intersectional discrimination recognises that a woman may be subject to discrimination based on several aspects of their identity at the same time.

Recognition of the human rights of Indigenous peoples a the UN has a long and difficult history. Most recently, it has taken ten years to draft the Draft Declaration on the Rights of Indigenous Peoples (DDRIP). The Human Rights Council adopted the DDRIP in June 2006. However, a number of governments, including Australia, are against adoption of the DDRIP and are actively lobbying for further negotiations.

### Aboriginal and Torres Strait Islander women and CEDAW

CEDAW does not explicitly refer to Aboriginal and Torres Strait Islander women, however the CEDAW Committee have often raised issues relating to Aboriginal and Torres Strait Islander (or other Indigenous women) in their Concluding Recommendations and have referred to the particular forms of discrimination they experience in some of their interpretative statements.

### Aboriginal and Torres Strait Islander women in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

### Aboriginal and Torres Strait Islander women: the CEDAW Committee’s Recommendations

The CEDAW Committee identified a range of issues relating to women and housing in the Recommendations and called on the government to implement measures to address them. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).

### *The UN is worried about the lack of data collection for Aboriginal and Torres Strait Islander women:*

*14. The Committee regrets that the report neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor information on the impact and results achieved of legal and policy measures taken. It also regrets the absence of sufficient information and data on women with disabilities.*



15. The Committee requests the State party to include adequate statistical data and analysis, disaggregated by sex, ethnicity and disability, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention. It also recommends that the State party regularly conduct impact assessments of its legislative reforms, policies and programmes to ensure that measures taken lead to the desired goals and that it inform the Committee about the results of these assessments in its next report.

**The UN is worried about discrimination against Aboriginal and Torres Strait Islander women in relation to employment, education, health and political participation:**

30. The Committee is concerned about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to employment, education, health and political participation. The Committee is particularly concerned about the lower life expectancy among indigenous women. It is also concerned about the disproportionately large number of indigenous women in prisons.

31. The Committee recommends that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It recommends that the State party increase indigenous women's access and awareness of the availability of targeted social services in all sectors. It further recommends that the State party take steps to increase indigenous women's legal literacy and improve their access to remedies for claims of discrimination. ... It calls on the State party to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.

**The UN is worried about the over-representation of Aboriginal and Torres Strait Islander women in prison:**

30. The Committee ... is also concerned about the disproportionately large number of indigenous women in prisons.

31. .... The Committee urges the State party to examine the reasons for the high rate of incarceration of indigenous women and take steps to address its root causes. It calls on the State party to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.

**The UN is worried by the high levels of violence against women, particularly domestic violence, in Indigenous communities**

18. It is also concerned about the high levels of violence against women, particularly domestic violence, in indigenous, refugee and migrant communities.

19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions.

**Documents referred to in this resource sheet**

- CEDAW Concluding Comments on Australia (Available on the CD)
- Draft Declaration on the Rights of Indigenous Peoples <http://www.ohchr.org/english/issues/indigenous/docs/declaration.doc>

# Topic Twenty One:

## A resource sheet on Women with Disability in the CEDAW reporting process

### Women with disability and the human rights framework

The Convention on the Rights of Persons with Disabilities (CRPD) is the most comprehensive statement on the human rights of people with disability. The Convention uses a social model of disability (which identifies oppressive social structures rather than the individual's impairment or medical condition as the cause of disability). It establishes a series of general principles, including equality between women and men, and sets out a series of steps to ensure a broad range of human rights of people with disability.

The CRPD is groundbreaking in its approach to women with disability. It has both a specific focus on women with disability (in a separate article/paragraph on women) and integrates gender concerns throughout the text. For example, the paragraphs on health and violence particularly address the gender dimensions of these issues.

### Women with disability and CEDAW

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) does not specifically mention women with disability. However, they have issued an interpretative statement, or General Recommendation, on women with disability and have addressed the accessibility of health services to women with disability in their interpretative statement on women and health.

General Recommendation 18 identifies that governments should take particular actions to secure the rights of women with disability in the areas of employment, education, health services and social security. It also calls on governments to include information on women with disability in their reports.

The issues for women with disability have not been a major focus of recommendations issued by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) after reviewing government reports. However, they have asked for further information in their initial questions and the issue has been raised during the constructive dialogue. The next step is to consistently address recommendations to the subject.

### Women with disability in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

### Women with disability: the CEDAW Committee's Recommendations

The CEDAW Committee identified a range of issues relating to women with disability in the Recommendations and called on the government to implement measures to address them. (The paragraph numbers included in each extract will guide you to the full quote in the Recommendations, these are included on the CD).



**The UN is worried about the lack of data collection for women with disability:**

14. The Committee regrets that the report neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor information on the impact and results achieved of legal and policy measures taken. It also regrets the absence of sufficient information and data on women with disabilities.

15. The Committee requests the State party to include adequate statistical data and analysis, disaggregated by sex, ethnicity and disability, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention. It also recommends that the State party regularly conduct impact assessments of its legislative reforms, policies and programmes to ensure that measures taken lead to the desired goals and that it inform the Committee about the results of these assessments in its next report.

**The UN is worried about women with disability's access to health services:**

26. ... The Committee is further concerned that the health needs of disabled women are inadequately met due to the lack of special equipment and other infrastructure.

27. ... The Committee also recommends that the State party develop the necessary infrastructure to ensure that disabled women have access to all health services.

26. ... The Committee is also concerned that there is no information on how the State party is addressing specific health needs of different groups of women in accordance with risk factors on the basis of biology and social conditioning.

27. ... The Committee recommends that the State party take account of general recommendation 24 on health and develop full competence to address the health needs of women in accordance with their specific risk factors.

**The UN were also worried, and asked questions during the Constructive Dialogue session, about the issue of sterilisation of women with disability:**

34. Regarding violence against women and girls with disabilities, Ms Shin wished to know whether the State party was aware of the problem of the sterilization of disabled women and girls and, if so, what it was doing to address it.

**The UN were also worried, and asked questions during the Constructive Dialogue session, about the over representation of women with disability in prison:**

31. Lastly, with regard to the over representation of women — particularly disabled and indigenous women — in prisons, Ms Simms wished to know how the Government planned to ensure that the factors that pushed women towards criminality in the first place were addressed in a real way, rather than within an anthropological framework.

**Documents referred to in this resource sheet**

- CEDAW Concluding Comments on Australia (Available on the CD)
- CEDAW General Recommendation 18 on Women With Disabilities <http://www.ohchr.org/english/issues/indigenous/docs/declaration.doc>
- CEDAW General Recommendation 24 on Women and Health <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>
- UN Convention on the Rights of Persons with Disabilities <http://www.ohchr.org/english/law/disabilities-convention.htm>

# Topic Twenty Two:

## A resource sheet on same sex attracted women in the CEDAW reporting process

### Same sex attracted women and the human rights framework

Human rights law has been slow to address the human rights of same sex attracted people, however, in the past ten fifteen years much progress has been made. The human rights of lesbian, gay, bi sexual, transgender and intersex (LGBTI) people have generally been framed as an issue of sexual orientation and more recently gender identity.

Many of the UN human rights treaty bodies have explored how the human rights system can be used to protect and promote the human rights of LGBTI people. For example, the Human Rights Committee found that Australia was discriminating against gay men in 1994, and argued that discrimination on the basis of sex included discrimination on the basis of sexual orientation.

Efforts have been made to adopt a resolution on LGBTI human rights at the UN Human Rights Council, however, there has been strong resistance from countries with strong religious lobbies.

An alternative strategy has been pursued by international experts who have adopted the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Though these principles have not been adopted by states, the Yogyakarta Principles are an important step in developing international human rights law in this area.

### Same sex attracted women and CEDAW

The Convention on the Elimination of All forms of Discriminating Against Women (CEDAW) does not explicitly mention discrimination against same sex attracted women. However, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) have called for the decriminalisation of lesbianism. And, the CEDAW definition of discrimination includes that women shall not be discriminated against on the basis of their marital status. Because lesbians and gay men are almost universally prohibited from marrying the CEDAW definition of discrimination can be used in advocacy strategies.

### Same sex attracted women in the reporting process: the Australian Government Reports and NGO Reports

The CEDAW reporting process is useful to non government organisations (NGOs) because it brings together, in one document, an overview of federal, state and territory government programs on a particular issue (see the Government Report and the Response to Issues and Questions on the CD) and a NGO critique of the programs (see NGO Shadow Reports on the CD).

### Same sex attracted women: the CEDAW Committee's Recommendations

The CEDAW Committee did not make any specific recommendations about same sex attracted women in their recommendations. However, they certainly raised questions during the constructive dialogue process:

*54. Mr. Flinterman ... said it would also be useful to have an overview of how the exemptions to the Act were applied and to know if there were any plans to amend the provisions of the Act regarding access to in vitro fertilization (IVF).*

*55. Ms. Pimentel said that the Sex Discrimination Act notwithstanding, several states and territories discriminated against same sex couples by denying them access to IVF and adoption. She asked if there were any plans to eliminate that discrimination.*

*48. Ms. Šimonovi asked whether the Sex Discrimination Act covered access to health services and whether or not the Government saw the need to unify states' laws on medically assisted procreation in order to prevent discrimination.*



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### Documents referred to in this resource sheet

- CEDAW Concluding Comments on Australia (Available on the CD)
- HRC Recommendations on the Toonen case on sexual orientation [http://www.austlii.edu.au/au/other/liac/hot\\_topic/hottopic/1998/2/1.html#casea](http://www.austlii.edu.au/au/other/liac/hot_topic/hottopic/1998/2/1.html#casea)
- Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity <http://yogyakartaprinciples.org/>

# Exercise One:

## Integrating the CEDAW Concluding Comments and a general human rights framework into advocacy reports

In this exercise, the focus is on how to integrate a human rights perspective into advocacy exercises, using the example of access to health services for women with disability.

### Background information

The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments particularly addressed the challenges women with disability have in accessing health services:

*27. ... The Committee also recommends that the State party develop the necessary infrastructure to ensure that disabled women have access to all health services.*

The CEDAW Committee General Recommendation on health addresses women with disability in paragraph 25:

*25. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should 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.*

And the Committee on Economic, Social and Cultural Rights (CESCR) addresses women at paragraph 21 and people with disability at paragraph 26. In this paragraph the CESCR refer to an earlier General Comment. The relevant paragraph is reproduced below:

*34. According to the Standard Rules, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society". The right to physical and mental health also implies the right to have access to, and to benefit from, those medical and social services including orthopaedic devices which enable persons with disabilities to become independent, prevent further disabilities and support their social integration. Similarly, such persons should be provided with rehabilitation services which would enable them "to reach and sustain their optimum level of independence and functioning". All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity.*



Another useful source of information is the newly adopted Convention on the Rights of Persons with Disabilities. This treaty has a particular focus on health (at article 25) and accessibility (at article 9):

*Article 25*

*(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*

...

*(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*

...

*(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*

*Article 9*

*1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:*

*(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*

*(b) Information, communications and other services, including electronic services and emergency services.*

## Exercise

Women With Disabilities Australia (WWDA), the peak body for women with disability, have produced a number of informative and comprehensive reports on women with disability and their access to health services.

**The following is an extract from a report by Sue Salthouse.<sup>1</sup> How would you amend it to incorporate a human rights analysis, with particular reference to the CEDAW Committee Concluding Comments?**

### *3.4 Physical Access to Services*

*All health facilities need to be accessible for people with disabilities. They are not. WWDA is aware of some improvements but on the whole there is an abysmal lack of accessible surgeries and health facilities. This applies in particular to private practices. There needs to be changes at the accreditation stage of approval of all types of practices, and at all health facilities, so that accessibility is ensured. Accessibility features should include accessible parking, accessible toilet and an accessible examination table. A national survey undertaken in 2003 of 3,553 surgeries to check for the presence of the latter (King 2003) showed that there were 14,008 fixed height beds, compared to only 719 adjustable height examination beds. This represents just 4.9% of the total examination beds in the surgeries surveyed. The actual availability of adjustable height beds in surgeries may be much lower, with the statistics skewed because some clinics have a number of such tables. GPs may use cost to justify the lack of adjustable height examination tables in their surgeries. However, their counterparts in sports medicine already have almost 100% availability (Victorian Network on Recreation and Disability 2005).*

*For women with disabilities the concept of 'doctor shopping' takes on new meaning, as we seek to find a doctor who meets our health needs located in a surgery which meets our access needs.*

**Use the space below to list four dot points you would incorporate into this section of the report**

<sup>1</sup> Our thanks to Sue Salthouse and Women With Disabilities Australia for allowing us use their work in this exercise. The extract comes from a presentation made by Sue Salthouse, "The Sick State of Health for Women with Disabilities" at the Australian Women's Health Network (AWHN) 5th Australian Women's Health Conference, 20 - 22 April, 2005, Carlton Crest Hotel, Melbourne.

# Exercise Two:

## Integrating the CEDAW Concluding Comments and a general human rights framework into media strategies

In this exercise, the focus is on how to integrate a human rights framework, particularly the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments, into media work, using the example of violence against women.

### Background information

The CEDAW Concluding Comments include two paragraphs that relate to violence against women and health, they are reproduced below:

*27. The Committee recommends that the State party monitor bulk billing for health services, particularly in the rural areas, and take necessary action to ensure that it is fully applied. The Committee recommends that the State party take account of general recommendation 24 on health and develop full competence to address the health needs of women in accordance with their specific risk factors. The Committee also recommends that the State party develop the necessary infrastructure to ensure that disabled women have access to all health services.*

*19. The Committee calls on the State party to take steps to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and migrant women, are able to benefit from the legislative framework and support systems in place. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished. It requests that adequate statistics be collected in a consistent manner. It requests that the State party provide information in its next report on the number of cases of violence reported to the police and other relevant authorities, and on the number of convictions. It further recommends that public officials, especially law enforcement officials, the judiciary, health care providers and social workers, upon the State party to create public awareness of violence against women as an infringement of women's human rights that has grave social and financial costs for the whole community.*

You might also want to refer to the resource sheets on violence against women and health for further information on the human rights framework.



## Exercise A

Local newspapers are an important source of information for many women in the community. How could you use the Concluding Comments to highlight issues of violence against women for women in your local community? In this exercise, we want you to frame a 250 word letter to the editor of the your local paper or develop four dot points that would build into a short article of 500 words that could be submitted to the local paper.

## Exercise B

The YWCA Australia toured an exhibition, Seventy7 Pairs of Shoes, which draws attention to the (on average) 77 domestic homicides perpetrated each year, predominantly men killing their female partners. How could you incorporate reference to the violence against women Concluding Comments in the media release?<sup>2</sup> We have left space around the media release for you to make amendments.

### **77 Prominent Australians Standing Up Against Domestic Violence**

*Tara Moss, supermodel turned crime writer, will launch the YWCA's Seventy7 Pairs of Shoes Exhibition at Melbourne's iconic Federation Square on Monday the 2nd of October.*

*This fantastic exhibition features 77 pairs of shoes donated by high profile Australians, accompanied by personal messages standing up against domestic violence.*

*The 77 pairs of shoes are in recognition of the number of Australians who tragically die as a result of domestic violence annually.*

*"Each year, on average, 77 Australians dies as a result of domestic violence, the majority of whom are women," Victorian YWCA President, Shannon Rees, said today.*

*"In Victoria alone domestic violence is responsible for more premature deaths of women aged 15 44 than any other well known risk factors, including high blood pressure, obesity and smoking."*

*"The Seventy7 Pairs of Shoes Exhibition aims to generate awareness of the devastating impact domestic violence has on families and our community."*

*"The daily tragedy of violence against women should be of great concern to all Australians."*

*Minister for Housing and Local Government, Candy Broad MLC, will also be speaking at the launch.*

*The exhibition features shoes from Cathy Freeman, Rove McManus, Bert Newton, Livinia Nixon, James Hird, Missy Higgins, Steve Waugh, Eric Bana, Andrew Denton, Germaine Greer, Kim Beazley, Steve Bracks and John So, just to name a few.*

<sup>2</sup> Our thanks to the YWCA Victoria for allowing us use their media release in this exercise.

# Exercise Three:

## Integrating the CEDAW Concluding Comments and a general human rights framework into peer based advocacy

In this exercise, the focus is on how to integrate the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments into peer based advocacy, using issues related to Aboriginal and Torres Strait Islander women.

### Background information

The CEDAW Concluding Comments particularly addressed the challenges that Aboriginal and Torres Strait Islander women faced

*31. The Committee recommends that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It recommends that the State party increase indigenous women's access and awareness of the availability of targeted social services in all sectors. It further recommends that the State party take steps to increase indigenous women's legal literacy and improve their access to remedies for claims of discrimination. The Committee urges the State party to examine the reasons for the high rate of incarceration of indigenous women and take steps to address*

*its root causes. It calls on the State party to continue to review and monitor the fulfillment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.*

The CEDAW Concluding Comments also addressed the provision of paid maternity leave and ratification of the Optional Protocol to CEDAW.

### Exercise

In the lead up to a federal election a group of women's organisations come together to develop an election platform. The platform identifies eight key areas for government action:

1. The introduction of a government funded paid maternity leave scheme
2. Changes to the industrial relations system to protect women workers
3. Changes to the welfare system to support women's education
4. Transparency in advertising of pregnancy counselling services
5. Affordable housing solutions for women
6. Affordable childcare solutions
7. Ratification of the Optional Protocol to CEDAW
8. Changes to the Family Law Act to address harmful impacts of the shared parenting agreements for women and children leaving violent partners.

Using the CEDAW Recommendations, develop three dot points which could be included in a letter to the coalition of women's organisations to encourage them to address one or a range of Aboriginal and Torres Strait Islander women's issues.

*Use the space below to list the three dot points:*





# Exercise Four:

## Integrating the CEDAW Concluding Comments and a general human rights framework into political advocacy strategies

In this exercise, the focus is on how to integrate the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments in political advocacy, using the example of paid maternity leave.

### Background information

The CEDAW Concluding Comments include three paragraphs that relate to paid maternity leave, they are reproduced below:

*7. The Committee notes with satisfaction the introduction of the maternity payment in 2004 ...*

*24. While welcoming the introduction of the maternity payment in 2004 and the existence of paid maternity leave for female government employees in some states and territories as well as some paid maternity leave schemes in private sector employment, the Committee remains concerned about the lack of uniformity in work related paid maternity leave schemes. It is also concerned that there is no national system of paid maternity leave and that, as a consequence, the State*

*party continues to maintain its reservation to article 11, paragraph 2, of the Convention.*

*25. The Committee urges the State party to take further appropriate measures to introduce maternity leave with pay or with comparable social benefits. It also recommends that the State party evaluate its maternity payment introduced in 2004 in the light of article 11, paragraph 2 (b), of the Convention and to expedite the steps necessary for the withdrawal of its reservation to this article.*

You may also wish to refer to the resource sheet on women and economic security.

### Exercise

The Good Shepherd Sisters are part of a network of nuns working on the issue of trafficking of women and girls - Australian Catholic Religious Against Trafficking in Humans (ACRATH).<sup>3</sup> ACRATH produced a report for the CEDAW Committee focusing exclusively on this issue. As a result of their lobbying the Concluding Comments contain a really useful paragraph on the issue of trafficking and recommendations on steps the government might take.

ACRATH has used this paragraph as the basis of a concerted lobbying campaign. Their first step was to write a letter to every parliamentarian outlining the Concluding Comments and requesting the opportunity to meet with them. They were invited to meet with about 35 federal members of parliament, including several ministers and shadow ministers.

Using the Concluding Comments on paid maternity leave draft a three paragraph letter to the Minister for Workplace Relations and the Minister for Women or your local member, bringing their attention to the issue and request either their response on how they will respond to the Concluding Comments or a meeting to take the issue further.

**Use the space below to list the key points for each paragraph:**

<sup>3</sup> Our thanks to the Good Shepherd Sisters and ACRATH for sharing their information with us and allowing us to use it in this exercise.

## Exercise Five:

# Integrating the CEDAW Concluding Comments and a general human rights framework into budget analysis

In this exercise, the focus is on how to integrate the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and a general human rights framework into budget analysis work, using the example of women's health.

### Background information

In the 2006 review of Australia the CEDAW Committee recommended that legislative reforms, policies and programs, which includes budget allocations, be reviewed to ensure they meet the aims of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW):

*14. The Committee regrets that the report neither provides sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention nor information on the impact and results achieved of legal and policy measures taken.*

*15. The Committee ... recommends that the State party regularly conduct impact assessments of its legislative reforms, policies and programmes to ensure that measures taken lead to the desired goals and that it inform the Committee about the results of these assessments in its next report.*

These recommendations provide the basis for incorporating CEDAW into budget analysis work.

Australia led the way in developing “women’s budgets” – an accountability mechanism for assessing whether programs and policies for women were given adequate financial support. Federal government interest in this initiative has waned under the Howard Coalition Government. However, other countries around the world have adopted and adapted the framework. This includes adding CEDAW, and other human rights treaties, to the framework.

The UN Women’s Development Fund (UNIFEM) have published a guide to integrating CEDAW and budget analysis: *Budgeting for Women’s Rights* by Diane Elson, [http://www.unifem.org/attachments/products/MonitoringGovernmentBudgetsComplianceCEDAW\\_eng.pdf](http://www.unifem.org/attachments/products/MonitoringGovernmentBudgetsComplianceCEDAW_eng.pdf)

This excellent guide suggests four different types of analysis:

- Analysing public expenditure programs from a CEDAW perspective
- Analysing public revenue from a CEDAW perspective
- Analysing the macroeconomics of the budget from a CEDAW perspective
- Analysing budget decision making from a CEDAW perspective



In this exercise we focus on analysing public expenditure programs from a CEDAW and ICESCR perspective. That is, we will explore how CEDAW and ICESCR can be used to analyse the adequacy of federal and state/territory budget allocations.

The UNIFEM guide suggests four different ways of assessing budget allocations:

1. Examining the priority given to gender equality and the advancement of women in budget allocations. *For example, tracking expenditures targeted towards women or that are pro women and assessing that as a proportion of total budget expenditure.*
2. Assessing whether there is any discrimination against women and girls in budget allocations. *For example, assessing whether changes to the welfare payment system for sole parents have a disproportionate impact on sole mothers.*
3. Assessing whether the budget allocations are adequate to enable governments to meet their gender equality obligations. *For example, whether state/territory women's safety strategies have been adequately funded.*
4. Examining gender equality in the impact of the budget allocations. *For example, investigating whether budget measures actually result in change on the ground.*

This exercise focuses on the third option, assessing whether the budget allocations are adequate to enable governments to meet their gender equality obligations. Three key questions need to be asked

1. What steps are necessary to implement CEDAW and other human rights treaty obligations?
2. What is the estimated cost of funding these obligations to an adequate level?
3. What is the actual allocation?

The easiest way to identify the necessary steps is to look at the treaties and also the interpretative statements of the treaty bodies and see what steps they identify.

### Exercise

This exercise focuses on the example of health expenditure. However, using the resource guides, particularly the information on how human rights treaty bodies have identified important components of each right, you could apply the analysis to other areas.

The exercise follows the steps of how to integrate CEDAW budget analysis into existing budget analysis processes. The Victorian Council of Social Service (VCOSS) produce an annual budget submission.<sup>4</sup> In this extract VCOSS is identifying the health expenditures necessary to address violence against women.

### Violence against women

*The Royal Women's Hospital has recently looked at the evidence of the health impacts of all forms of violence against women using the United Nations definition, which includes physical, sexual or psychological harm or suffering, threats, coercion or arbitrary deprivation of liberty and violence which occurs in public and private life. The evidence suggests that routine screening is ineffective and possibly dangerous. An approach is required which is based on the premise that good health care for women should recognise that one in two women will have experienced some form of violence over their lifetime, and that this will impact on the way they access health care. The basis of good practice therefore is to provide women with as much control as possible over their health care by creating a safe environment, good communication, respect and information.*

*There is currently no statewide policy that guides public health responses to violence against women. A framework is required to guide the health system's response to all forms of violence against women. Funds need to be allocated to allow for consideration of the available evidence and development of guidelines for all health care providers, from primary and community health through to acute services. These guidelines should include provisions for training for providers and health professional students, partnerships between health care providers and public health systems and service providers, funding for federal health programs that target women and young children as well as community health centres and research on effective interventions. VCOSS calls on the Government to resource the development and implementation of a statewide policy to guide public health responses to violence against women.*

<sup>4</sup> Our thanks to VCOSS for allowing us to use *Sustaining a Fairer Victoria: VCOSS State Budget Submission 2006-07* as the basis for this exercise.

### The CEDAW and ICESCR framework

The first question to ask what steps are necessary to implement CEDAW and the International Covenant on Economic, Social and Cultural Rights (ICESCR) treaty obligations in the context of health services for women experiencing violence?

CEDAW and ICESCR both have treaty obligations on health and both have interpretative statements on the right to health. CEDAW also has an interpretative statement on violence against women.

The interpretative statement on the right to health in the ICESCR identifies that:

- health services must be available: they must be available in sufficient quantity
- health services must be accessible: factors such as cost or discrimination shouldn't inhibit accessibility and services should be physically accessible
- health services must be acceptable to the users: for example, they must be culturally appropriate
- health services are to be quality services

The interpretative statement on the right to health in CEDAW identifies four key factors in the realisation of women's right to health:

- different biological factors which influence women's experiences of health and ill health
- the impact of socio economic factors and harmful cultural practices on women's health
- psychosocial factors, including the impact of depression, post partum depression and other psychological conditions which can be related to social expectations towards women's body image
- the different consequences for women if a health service doesn't respect confidentiality of the patient

Using the eight different elements identified in the interpretative statements how would you amend the VCOSS budget submission to include a CEDAW and ICESCR perspective in assessing budget allocations?

*Use the space below to list up to three key points you might make:*





# Exercise Six:

## Integrating the CEDAW Concluding Comments and a general human rights framework into a funding submission

In this exercise, the focus is on how to integrate the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments in funding submissions, using the example of programs to address racism against women from Non English Speaking Backgrounds.

### Background information

The CEDAW Concluding Comments identify the gender related impacts of racism and call for “more proactive measures”.

*29. The Committee urges the State party to take more effective measures to eliminate discrimination against refugee, migrant and minority women and girls and to strengthen its efforts to combat and eliminate xenophobia and racism in Australia, particularly its impact on women and girls. It also encourages the State party to be more proactive in its measures to prevent and eliminate discrimination against these women and girls within their communities and in society at large and to report on the steps taken in this regard in its next report.*

They also highlight inadequate funding for women’s programming:

*32. The Committee recommends that the State party increase its funding to non-governmental organizations involved in the provision of services for the promotion of women’s rights...*

The Reichstein Foundation provides philanthropic funding to community organisations. Their current priorities for projects are indigenous people, people with a disability (in particular, mental illness), newly arrived communities. They also support projects that address: human rights, justice and corrections issues, the environment and the western metropolitan region of Melbourne, in recognition of Lance Reichstein’s involvement in this area.

The Department of Immigration and Citizenship provide government funding to not for profit organisation under the Living in Harmony program. The projects “aim to promote Australian values and mutual obligation, engage the whole community and address understanding and intolerance at the community level.”

### Exercise

You are writing funding proposals for a peer support project that brings together newly arrived women from Non English Speaking Backgrounds with other women in the Australian community. You are writing one proposal for the Reichstein Foundation and one for Department of Immigration and Citizenship Living in Harmony program. How would you integrate the CEDAW Concluding Comments in each proposal? Would you take the same approach for government as for a philanthropic?

***Use the space below to write a short paragraph on the CEDAW Concluding Comments for each proposal:***

# Exercise Seven:

## Integrating the CEDAW Concluding Comments and a general human rights framework into the development of a public meeting agenda

In this exercise, the focus is on how to integrate the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) Concluding Comments in the development of a public meeting agenda, using the example of discrimination against same sex attracted women and their access to invitro fertilisation (IVF).

### Background information

The CEDAW Concluding Comments did not address discrimination against same sex attracted women. However, the issue was raised twice during the “constructive dialogue” process in relation to discrimination against single women and lesbians in their access to IVF. CEDAW prohibits discrimination on the basis of marital status.

*54. Mr. Flinterman ... said it would also be useful to have an overview of how the exemptions to the Act were applied and to know if there were any plans to amend the provisions of the Act regarding access to in vitro fertilization (IVF).*

*55. Ms. Pimentel said that the Sex Discrimination Act notwithstanding, several states and territories discriminated against same sex couples by denying them access to IVF and adoption. She asked if there were any plans to eliminate that discrimination.*

*48. Ms. Šimonovi asked whether the Sex Discrimination Act covered access to health services and whether or not the Government saw the need to unify states' laws on medically assisted procreation in order to prevent discrimination.*

Experts have adopted the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Though these principles have not been adopted by states, the Yogyakarta Principles are an important step in developing international human rights law in this area. The Yogyakarta Principles include rights related to founding a family, including calling on states to take:

*... all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;*

### Exercise

The Rainbow Families Council (<http://www.rainbowfamilies.org.au/>) are planning a public meeting on discrimination against lesbians who wish to access IVF. How might the questions asked by the CEDAW Committee and the Yogyakarta Principles be incorporated into the agenda?

**Use the space below to jot notes for a possible agenda:**



# A few reflections on answering the exercises



## Exercise One:

### Integrating the CEDAW Concluding Comments and a general human rights framework into advocacy reports

In this exercise, the focus is on how to integrate a human rights perspective into advocacy reports, using the example of access to health services for women with disability.

In integrating human rights into the report you might consider revising the opening sentence to frame the access issue from a human rights perspective. You might develop a couple of sentences which establish what human rights law has said about access to health services for people with disability. You could use the following documents to put forward some minimum standards:

- the Concluding Comments from the CEDAW Committee
- the CEDAW Committee General Recommendation on Health
- the CEDAW Committee General Recommendation on women with disability
- the CESCR General Recommendation on Health
- the CRPD

You might then weave this framework through the analysis showing how the current situation fails to meet the human rights standards.

Alternatively, you may wish to focus on one treaty alone. If that were the case you might go back and read the Concluding Comments issued the last time Australia appeared before that Committee and see if they said anything useful. You could then point to the fact that the Committee is concerned at lack of access and demonstrate that their concern still exists and the government has not taken adequate steps to address the inaccessible services. Alternatively, they may have taken some steps but not enough!

## Exercise Two:

### Integrating the CEDAW Concluding Comments and a general human rights framework into media strategies

In this exercise, the focus is on how to integrate a human rights framework, particularly the CEDAW Concluding Comments, into media work, using the example of violence against women.

In Exercise A the goal is to frame a 250 word letter to the editor to highlight the VAW and health Concluding Comments. The impetus for writing the letter could emerge from many different quarters. For example, if your community has struggled with jury trials achieving convictions in sexual assault cases you may wish to write to the paper if another trial fails to deliver a guilty verdict, pointing out that the CEDAW Committee is concerned about the lack of successful sexual assault prosecutions in Australia. If you are launching a report on domestic violence you may wish to write to the editor drawing their attention to the report and making the link to your findings and recommendations and the CEDAW Committee's findings and recommendations. If you are launching a campaign to improve access for women with disability to health services, you may wish to write to the editor highlighting the campaign and linking your campaign to the recommendations of the CEDAW Committee. If you are writing an article for submission you may wish to take one of the points raised by the CEDAW Committee and focus on local examples of both the problem and solutions/strategies your agency has put in place. Alternatively, you might want to go back to the resource sheets on health and violence and look at the interpretative statements of the Committees. For example, the CESCR identifies four key elements that need to be met for the right to health to be realised. You may wish to use these four key elements to frame your article, linking each element to problems in the local community and recommendations your organisation has developed to remedy the situation.

In Exercise B the challenge is to develop a short, pithy sentence that you can insert into the media release, raising the alarm that the UN is worried about domestic violence in Australia.

### Exercise Three:

#### Integrating the CEDAW Concluding Comments and a general human rights framework into peer based advocacy

In this exercise, the focus is on how to integrate the CEDAW Concluding Comments into peer based advocacy, using issues related to Aboriginal and Torres Strait Islander women.

Your letter might want to start by congratulating them for the initiative of developing a platform for the election and for including a number of issues that the CEDAW Committee had identified in their recommendations (for example, ratification of the OP to CEDAW and paid maternity leave) or asked questions about (for example, changes to the IR system, accessibility of reproductive health services and changes to the *Family Law Act*). You may then wish to draw their attention to the priority placed by the CEDAW Committee on addressing issues faced by Aboriginal and Torres Strait Islander women and provide a summary of the issues they raised, encouraging them to incorporate these issues into the election platform.

### Exercise Four:

#### Integrating the CEDAW Concluding Comments and a general human rights framework into political advocacy strategies

In this exercise, the focus is on how to integrate the CEDAW Concluding Comments in political advocacy, using the example of paid maternity leave.

In preparing a letter for the Ministers/local members you may wish to focus on both the positive and the negative elements of the CEDAW Committee's Concluding Comments. For example, the CEDAW Committee notes with satisfaction the maternity payment, but expresses concern about the lack of uniformity. It would be important to note in the letter that Australia does have a reservation to the paid maternity leave provisions of CEDAW. You may wish to express a view on the reservation and encourage them to take steps which would enable them to remove the reservation. It is up to you to decide whether you want to ask them a question (to elicit a response) or request a meeting (to discuss the issue further).

### Exercise Five:

#### Integrating the CEDAW Concluding Comments and a general human rights framework into budget analysis

In this exercise, the focus is on how to integrate the CEDAW Concluding Comments and a general human rights framework into budget analysis work, using the example of women's health. NB It is likely that this exercise may take longer than others to work through as there is a greater amount of background information.

Integrating the ICESCR and CEDAW framework into budget advocacy requires some work to identify what you think are the key components of women's right to health, established by the Committee's interpretative statements (outlined in the exercise). Once you have established your framework, you might then want to consider whether the government programs and budget allocations enable these key components to be realised. An alternative approach could be to explore the due diligence framework put forward in the VAW sheet, and consider whether the government programs do prevent violence, support investigation, punishment and compensation.

Simply integrating the CEDAW recommendations into the analysis may be a little easier as you can draw out the key elements of the violence and health recommendations and assess whether government programs and policies have comprehensively addressed the CEDAW Committee's concerns. You could then incorporate the CEDAW Committee's recommendations for change into your calls for change. It is also probably valuable to find out whether the government has incorporated human rights standards into any of their framework plans on violence/health and reference those if relevant.





## Exercise Six:

### Integrating the CEDAW Concluding Comments and a general human rights framework into a funding submission

In this exercise, the focus is on how to integrate the CEDAW Concluding Comments in funding submissions, using the example of programs to address racism against women from Non English Speaking Backgrounds.

The key to this exercise is recognising the different approaches that each funder takes to the UN human rights treaty system. The Federal Government has been quite dismissive of the human rights treaty system recommendations in the recent past. It may be that you choose to frame your inclusion of the CEDAW Committee's recommendations in a positive fashion: funding of this project will assist the government in demonstrating that they have addressed concerns raised by the CEDAW Committee and could be reported on in the next Periodic Report submitted by the Australian government.

The Reichstein Foundation is much clearer in its support for projects which promote human rights. This means that you might wish to incorporate the recommendations from the CEDAW Committee right up front. You might document the need for the project and then note that the human rights dimension of this problem in our community has been the focus of international concern, quoting the Concluding Comments.

## Exercise Seven:

### Integrating the CEDAW Concluding Comments and a general human rights framework into the development of a public meeting agenda

In this exercise, the focus is on how to integrate the CEDAW Concluding Comments in the development of a public meeting agenda, using the example of discrimination against same sex attracted women and their access to invitro fertilisation (IVF).

A range of different strategies could be adopted, ranging from putting a statement like "the UN is concerned, are you?" into a flyer, to inviting a speaker to talk about the human-rights dimensions, to putting together a one-pager with extracts from the CEDAW Shadow Report and the questions from the CEDAW Committee along with information on the Yogyakarta Principles.

# A few reflections on using these materials in a training session

The Women's Rights Action Network Australia (WRANA) has used earlier versions of these materials in training sessions held in Victoria and Canberra. The materials have been modified in light of feedback received during these sessions and are hopefully the better for the modifications!

Our training sessions were generally held over a four hour period and concluded with a shared lunch (which we were able to offer because of funding received from the Reichstein Foundation and the WomenSpeak network). Some participants noted that the sessions could have run all day without too much trouble.

The format of the sessions morphed as we went along. The majority of sessions had a particular focus (ie, violence against women, health or economic security) although we did one session with a generalist focus. Different strategies are required to support each type of session.

As a general rule, in an issue specific workshop, a brainstorm at the start of the session to identify key issues in the community on issue x is a useful and energising way to start the workshop. The trick is to link the issues to the human rights framework. To this end, you might wish to consider a) doing some research yourself before hand to identify the relevant human rights standards (the materials and tips in this kit will help you with this) or approach an organisation with expertise in the field of human rights to facilitate the session with you.

At some point, in both generalist and issue specific workshops, an "information dump" is required. In this session you need to set out the human rights framework – go over the key human treaties, talk about how human rights are implemented in Australia, and (in the case of an issue specific workshop) provide information on that topic (again the issue sheets in this kit will help). A time for questions and answers is an important component of this session. It is often helpful to move into a break after this session as it enables people to turn their brain off or ask a question in a less public forum.

In using the exercises you may wish to select one or two or offer participants a broader selection. Working in pairs or small groups seemed to work well. As a general rule twenty to thirty minutes was adequate time to complete one exercise, though Exercise Five on budget analysis is better done in a thirty to forty minute timeframe. It can be helpful in running these exercises to provide full copies of any of the resource materials referred to, for example, the General Recommendations or Concluding Comments and/or relevant treaty. It is important to provide a feedback time for each group to talk about the approach they had taken. Very often participants were able to offer new ideas or confirm the validity of the approach taken. At least five minutes for each group is needed.

We hope that these materials are useful to you as you explore the application of human rights treaties in your day to day work.

