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### Committee on Economic, Social and Cultural Rights

#### Forty-fifth session

#### Summary record of the 50th meeting

Held at the Palais Wilson, Geneva, on Monday, 15 November 2010, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

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Day of General Discussion on the right to sexual and reproductive health

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*The meeting was called to order at 3.10 p.m.*

**Day of General Discussion on the right to sexual and reproductive health**

*Panel 3: Cross-cutting issues*

1. **The Chairperson** announced that Mr. Mokhiber would chair the third panel.
2. **Mr. Mokhiber** (Office of the United Nations High Commissioner for Human Rights) said that the many different cross-cutting issues relating to the right to sexual and reproductive health concerned minorities, gender, poverty, criminalization, detention, disabled persons, the elderly and employment, and introduced the two experts who would speak on the topic: Ms. Mehra, former Special Rapporteur on violence against women, its causes and consequences now Executive Director of a legal resource group working in the fields of social justice and women's rights in India and South Asia; and Ms. Stefiszyn, Programme Manager at the Centre for Human Rights, University of Pretoria, who had authored research on violence against women in southern Africa and on the rights of women in the context of the HIV/AIDS pandemic.
3. **Ms. Mehra** (Partners for Law in Development) welcomed the Committee's plans to adopt a general comment on reproductive and sexual health, which, she hoped, would fully consider the complexity of the issues at stake. While some problems affecting sexual and reproductive health were recognized as such, others were still controversial and taboo. It was particularly important to take into account the social discourse that underpinned discrimination against women: the main purpose of social construction was to institutionalize male domination of women in all spheres of public and private life. That was evidenced by the dearth of contraceptives; power relations within the family; domestic violence; marital rape; and women's inability to control their own fertility. The health sector could also be a place of discrimination against women, especially when women had disabilities, were lesbians, transgender persons, single or young and had no access to medical care, or when they were subjected to abuse by health providers. She commended the analyses of those issues provided by the Committee on the Elimination of Discrimination against Women.
4. Women were highly exposed to violence rooted in cultural practices and acts of violence related to conflicts, migration or displacement. In order to remedy that situation, States must recognize that such violence existed and implement protective measures. Furthermore, with discrimination against women compounded by discriminations based on other grounds, it was necessary to identify the groups most at risk in order to protect them. Those included lesbian, gay, bisexual, transgender and intersex (LGBTI) and HIV-positive persons, sex workers, persons with disabilities, adolescents, migrants and people living in rural areas.
5. The Committee should note that sexuality was determined by societal factors that gave precedence to certain aspects of sexuality while stigmatizing others, and conferred legitimacy on some violations committed against women (marital rape, legal practice of pardon for rapists willing to marry their victims). Legal and normative attitudes that imposed double standards based on gender needed to be challenged.
6. With regard to underlying determinants of discrimination, national policies and their effects on enjoyment of the right to sexual and reproductive health were worthy of interest. Health was not merely the absence of disease: it encompassed a number of social and environmental determinants that made for a healthy life, including food, housing and access to water, education and employment. Providing high-quality health care accessible to all without discrimination was even more important. In addition, demographic policies that permitted forced sterilizations, imposed two-child limits on couples or denied risk-free

abortion services must be changed so as to protect the right to sexual and reproductive health. More generally, attention should be paid to States' strategic policies: those that favoured militarist policies, to the detriment of health, failed to meet their obligations to fulfil economic, social and cultural rights. She regretted liberal economic trends and the lack of regulations that conformed to human rights standards in some markets (biogenetics, assisted reproductive technology, human embryonic matter, ovules and tissues), which reconfigured patriarchy and population control through modern technology and were based on the rules of multinational trade. Given the vast diversity of the rights concerned, the Committee's terminology must reflect the many dimensions of sexual and reproductive health and the myriad cross-cutting issues.

7. **Mr. Mokhiber** (Office of the United Nations High Commissioner for Human Rights) noted with satisfaction that Ms. Mehra had stressed the impact of discrimination and traditions that restricted women's freedom of decision on sexual hierarchy and their consequences on health, and on transnational economic policies, an issue to which the Committee had paid close attention in recent years.

8. **Ms. Stefiszyn** (University of Pretoria), speaking on women's right to sexual and reproductive health in the context of the HIV/AIDS pandemic, said that the correlation between violence against women and the spread of HIV/AIDS was no longer in doubt. Lacking independence, women were unable to assert their rights regarding their sex life and, therefore, to protect themselves against HIV: attempts to do so often resulted in abuse from their partners. Unfortunately, in many countries domestic violence was not an offence. Prevention programmes advocating abstinence, fidelity and the use of condoms were based on the false premise that women controlled their sex life. Women were usually unsuccessful in negotiating male condom use and the female condom remained largely inaccessible to most women, owing to its limited availability and, particularly, its high price. Although male circumcision, the favoured solution in many African countries, apparently slowed the transmission of HIV from men to women, was nonetheless male-targeted; all too often, donors funded projects that benefited men and overlooked women's real situations. The right to health must be exercised without discrimination, including discrimination as to gender or HIV status, particularly towards vulnerable groups.

9. The stigmatization and discrimination levelled at women living with HIV/AIDS were among the main factors of the spread of the virus. Many HIV-affected women were stigmatized as "vectors" of the disease, some of them having been subjected to forced sterilization on the basis that they should not exercise their fundamental right to decide when to have children. Forced sterilization was common in southern Africa and South America. Other vulnerable groups (including LGBTI, drug addicts and sex workers) encountered the same problems regarding access to health care. Such discrimination and stigmatization undermined Government efforts in the fight against HIV/AIDS.

10. **Mr. Mokhiber** (Office of the United Nations High Commissioner for Human Rights) noted that patriarchal structures denied women their free will and tended to exacerbate violation of their rights. The criminalization of certain types of behaviour compounded discrimination and stigmatization, resulting in limited access to health care. States must therefore gather disaggregated statistics to guide their political decision-making in the promotion of the right to sexual and reproductive health.

11. **Ms. Barahona Riera** (Rapporteur for the formulation of a general comment on the right to sexual and reproductive health) agreed that the way society was constructed lay at the root of all problems of discrimination against women and other vulnerable groups, and asked experts for advice on how the general comment, which was primarily of a legal nature, could reflect that fact.

12. **Mr. Riedel** asked Ms. Mehra for further details on ill-treatment by health providers. He would also like more detailed information on the usefulness of disaggregated data.

13. **Ms. Moodie** (United Nations Children's Fund – UNICEF) said that the right to sexual and reproductive health was of vital and growing importance to UNICEF, which sought to promote that right in all aspects of its policies, programming and partnerships. It supported each individual's right to a healthy sexual life free from coercion, discrimination or violence and to decide freely on the number and spacing of their children, which was in line with the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women; the global consensus reached by Governments at the International Conference on Population and Development (ICPD); and other international commitments which mandated UNICEF to promote sexual and reproductive health and rights and gender equality as dual strategies to ensure the protection and empowerment of women, adolescents and children.

14. In that context, UNICEF promoted application of the International Technical Guidance on Sexuality Education developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in partnership with other bodies of the United Nations system, and implemented a joint plan of action with the United Nations Population Fund (UNFPA), World Health Organization (WHO) and the World Bank to expand assistance programmes for maternal and newborn health in 25 priority countries. UNICEF had steadily scaled up its activities to promote sexual and reproductive health, with a particular focus on adolescents. It looked forward to continuing dialogue with the Committee and other partners to follow up on those activities.

15. **Mr. Abramson** (Children's rights lawyer, specializing in the Convention on the Rights of the Child) said that international law recognized children as human beings from the moment of conception. The American Convention on Human Rights stipulated that the right to life was "protected by law, and, in general, from the moment of conception", and the Convention on the Rights of the Child had been specifically written to protect human beings from the time of conception.

16. Where power relationships were most unequal was between adults and children, especially during the prenatal and neonatal periods, as seen in practices such as prenatal sex selection against girls and prenatal selection in the event of disability, even minor ones (such as webbed fingers or toes, which could easily be surgically corrected). The opinion of the unborn child, for whom international law recognized rights from the moment of conception, particularly the right not to be subjected to violence, was given less than adequate weight in the debate. The Committee must take that fully into consideration in its draft general comment, respecting the balance between a number of sometimes conflicting rights.

17. **Mr. Texier** said that the birth-control issue opposed two conflicting notions: that of the freedom of women and men to control their sexuality and to decide if, they wished to have children and when and how many; and the doctrine common to many religions that birth control was a sin. Given that the Covenant had been ratified by 160 States with very different social, economic and political systems and beliefs, he wondered how far the general comment could go on the issue of birth control.

18. **Ms. Van de Velde** (Consultant in the field of children's rights) spoke of her personal experiences. She had been conceived under violent circumstances then rejected by her mother, raped as a young woman, had an abortion and a miscarriage, and now had a daughter. Advocating the systematic recourse to abortion in cases of rape or incest amounted, in a way, to a cruel reminder to persons conceived by violence, and who had escaped abortion, that they should not have been born. She regretted that often, in what was

touted as a solution to a problem, human beings were often without concern for the life of the baby in gestation. A survey showed that 80 per cent of women who had undergone abortions after rape or incest regretted their decision, and 100 per cent of those who had kept the child were happy to have done so. The rights of the unborn child as a human being must be taken fully into account.

19. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights) said that the draft general comment must take account of the sexual and reproductive health rights of persons with disabilities. There were other problems that specifically affected the disabled: forced sterilizations and abortions, sexual violence and abuse, non-recognition of their decision-making abilities, a dearth of appropriate information, and the risk of dual discrimination in the face of poverty and underdevelopment, all of which affected sexual and reproductive health. The Convention on the Rights of Persons with Disabilities laid down a number of highly pertinent principles, particularly the freedom to make one's own choices (art. 3); the right to decide freely and responsibly on the number and spacing of their children (art. 23); and access to 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 (art. 25).

20. **Mr. Buckley** (Society for the Protection of Unborn Children) pointed out that he had submitted a document contesting the authority of the Committee on Economic Social and Cultural Rights to issue a general comment on a notion that was absent from the negotiated language of the Covenant. His organization's view was that the right to life of all human beings from the moment of conception to natural death was enshrined in the International Bill of Human Rights. The Preamble of the Convention on the Rights of the Child recognized the fundamental rights of the child throughout the prenatal period.

21. The Committee must ensure that the Covenant was implemented in accordance with interpretive norms as set out in article 31 of the Vienna Convention on the Law of Treaties. His NGO, which recognized neither the right to abortion nor any right that harmed innocent lives, invited the Committee to resist pressure from powerful international organizations that stood to make significant profits from the sacrifice of human lives, and to avoid any ideological campaign that aimed to widen the meaning of the Covenant, while ignoring the fate of the most vulnerable – children at the stage of life between conception and birth.

22. **Mr. Schmitt** (World Organization for Pre-Natal Education – OMAEP) said that his organization, which brought together associations from some 20 countries, based its work on scientific data, taking into account the various countries' cultural traditions. Its work had revealed that what occurred after birth was actually conditioned long in advance, at conception. Recent research showed the positive influence that a mother's psychological well-being could have on a child's development during gestation, regardless of the conditions in which the child had been conceived.

23. **Mr. French** (Save the Children) thanked the panellists for their contributions on gender-based discrimination, which had direct repercussions on a child's health and survival, hence the need for a cross-cutting approach. For example, the spacing of children was affected when a woman could not control when or with whom she would have a child. The risk of death was threefold for a child born less than 18 months after its older sibling, compared to a child born 3 years after. The lack of decision-making power for women could also lead to early marriage and pregnancy; and the risk of death during pregnancy was double for women between 15–20 and 5 times higher for girls aged under 15.

24. **Ms. Jernow** (International Commission of Jurists) said that the criminalization of consensual sexual activity, sex work, the spread of HIV and, more generally, extramarital sex affected two aspects of sexual and reproductive health rights. Firstly, criminalization directly violated the right to health by forbidding access to health services for persons

considered deviant or immoral, and triggering stigmatization and fear of or discrimination against them. Nor were health services designed to meet their needs. Countries in which consensual sex acts were a criminal offence could seldom provide details on population's risk awareness and behaviour.

25. Secondly, criminalization of consensual sexual activity directly affected sexual health by denying freedom to control one's body and choose one's partners, thus, violating the rights to privacy, dignity and non-discrimination, which must not be jeopardized on grounds of religion or prejudice. Laws on homosexual activity were often used to justify the harassment and arrest of persons thought to be gay or sexually deviant. Such laws were motivated more by hostility towards homosexuals than by objective opinions, which was legally inadmissible.

26. **Ms. Verzivoli** (International Baby Food Action Network), drawing attention to the issue of breastfeeding, said that it was an integral part of the female reproductive cycle and thus of reproductive health, and was good for both mother and child. In practice, women and the population at large must be informed of its advantages, and women must be supported by comprehensive sexual and reproductive health services, even in times of natural disasters and emergencies.

27. **Ms. Meyer de Stadelhofen** (World Union of Catholic Women's Organizations) said that her organization promoted the right to life and condemned abortion; she regretted that a topic as sensitive as sexual and reproductive health had not been dealt with differently. It would have been more fitting to bring together experts from various cultures and religions in order to showcase different approaches and, thus, have a better grasp of the problems.

28. In the area of sexual education, parents showed a clear preference for international instruments because the subject involved religious and moral convictions. States' policies must bolster parents' efforts by respecting those convictions. Sexual education could not seek to impose a government-sanctioned moral code or world view. Her organization regretted the approach to sexual education that copied too closely the educational models from countries of the North which had clearly shown their limitations: a rise in sexual violence in schools and in teenage pregnancy, and the spread of sexually transmitted diseases in school. Young people themselves were also aware that such education, focusing solely on risks, was very negative. Given the extreme violence to which they were exposed daily, regardless of the school they attended or their social or family background, what young people yearned for fundamentally was dialogue and education on respect for the intimacy and the deep sense of sexuality to which young people essentially aspire.

29. **Ms. Philipps** (Centre for Reproductive Rights) said that her organization had observed myriad violations of the sexual and reproductive health rights of HIV-positive women. Those violations were not limited to the scope of the International Covenant on Economic, Social and Cultural Rights, but touched on a range of human rights issues — the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to physical and mental integrity; the right to dignity; the right to health; the right to control one's own body; the right not to be subjected to gender-based violence; the right to privacy; the right to family life — that must all be taken into consideration in the draft general comment.

30. **Ms. Todd-Ghev** (World Health Organization – WHO) pointed out that the draft general comment covered a large number of issues that the Committee was particularly well placed to address on a cross-cutting basis. She invited the Committee to ensure that the drafting of the text was not hijacked by the debate on abortion. The issue had to be dealt with, but it might dominate discussions and the analysis of issues to the detriment of the many other aspects to be addressed. She also recommended that the Committee should call on the many specialists and bodies (WHO, Joint United Nations Programme on HIV/AIDS

(UNAIDS) and UNFPA) which had long been gathering data and conducting scientific analyses in that field.

31. **Ms. Timberlake** (UNAIDS) said that it was for the Committee to determine the focus of the general comment clearly and in advance. Some of the issues might not be limited to health, but might concern all the Covenant rights. For those rights not covered by the Covenant, the Committee might wish to consider cooperation with the Human Rights Committee.

32. It was essential to consider sexuality and reproduction separately, as was the current trend. That, in turn, raised a number of issues, notably with regard to young people's and adults' right to sexuality both within and outside marriage; sex work and the rights of sex workers; the challenge of certain persons' rights to sexuality (HIV-positive persons, disabled persons and drug addicts). The legislative dimension apart, the Committee should also examine the social side of things, as well as behaviour and the scope of States' obligations in that regard. UNAIDS was willing to provide clarification on the criminalization of HIV transmission and how it could help women. It was opposed to criminalization, judging that far from protecting women, it tended to work against them from a legal standpoint.

33. **Ms. Bonoan-Dandan** said that all contributions to the debate were worthwhile, but they could not all be taken into consideration in the draft general comment. She assured participants that Committee members would reach informed and balanced decisions on sensitive issues. The idea of issuing the general comment stemmed directly from the consideration of the reports of States parties and the problems that had arisen during the process.

34. **Ms. Bras Gomes** added that the Committee's legitimacy to consider a draft general comment of that nature lay in the dialogue it had held with States parties on those issues for more than 15 years, during which time it had gathered information on the situation in countries. Explaining that the draft was not one on abortion, she wished to refocus the debate. One of the main objectives of a general comment was to define the obligations for States; contributions from specialists were intended to help the members of the Committee to determine the general comment's substantive content.

35. **Ms. Nowicka** (Polish Federation for Women and Family Planning) expressed support for the Committee's project to formalize in a general comment principles that it had already been applying for some time. In the *Tysic v. Poland* case, the European Court of Human Rights had noted the negative consequences that criminalization of the rights to sexual and reproductive health could have on the services that the law guaranteed to the population and to women in particular. In Poland, while women could not be imprisoned for having had an abortion, anyone who encouraged them to do so risked imprisonment, as in the case of a mother who had helped her 14-year-old daughter — raped, pregnant and on the verge of suicide — to have an abortion.

36. **Ms. Ball** (Human Rights Law Resource Centre) invited the Committee to use the case law of other Committees as a basis for its general comment so as to ensure cohesion between the various instruments of the United Nations. It was particularly important that the Committee should refer to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (art. 2 (f) and art. 5 (a)), as well as article 10 of the International Covenant on Civil and Political Rights and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which recognized the prisoners' particular vulnerability and States' obligations to take positive measures on their behalf.

37. **Ms. Mehra** (Partners in Law for Development) said that social construction must be included in the introduction of the general comment, given its weight in the approach of

other human rights bodies to discrimination. It would then be easier for States parties to take measures to combat cultural prejudices and bring about change in practices in private affairs, which were considered sacrosanct. The subordination of women, a result of social construction, meant that the abuse they suffered within the family was often ignored and, by the same token, public institutions, including the health-care system, tended to adopt the same attitude.

38. **Ms. Stefiszyn** (University of Pretoria) stressed that the substantial case law of the various human rights bodies already contained the principles mentioned during the debate. The state of human rights had changed considerably since the Universal Declaration of Human Rights, and a number of new issues had come to the fore in the international debate (sexual orientation, abortion and prostitution); it was vital that the Committee on Economic, Social and Cultural Rights continued along those lines by devoting a paragraph of the general comment to HIV/AIDS and dealing with the issue of criminalization. With regard to birth control and religious beliefs, international law was based on what was considered universal and not on public morality, and it was to that that States parties acceded when ratifying an instrument.

39. **Ms. Barahona Riera** (Rapporteur for the formulation of a general comment on the right to sexual and reproductive health) said that the draft general comment was the fruit of the Committee's experience and of the case law of other treaty bodies. All the concepts had been extensively debated and the Committee based itself on international law and official terminology.

40. **Mr. Mokhiber** (Office of the United Nations High Commissioner for Human Rights) said that all the activities of human rights specialists were based on the guidelines given by committees on the legal ramifications of the rights enshrined in the various instruments. He was satisfied that the drafting of the general comment was well under way, and assured the Committee of the unfailing support of the Office of the High Commissioner.

*Panel 4: conclusions*

41. **Ms. Barahona Riera** (Rapporteur for the formulation of a general comment on the right to sexual and reproductive health) said that the three experts who would speak subsequently had in common a clear vision of the scope of the recommendations or of committees' general comments and a keen awareness of the difficulties and responsibility that Committee members had in carrying out their functions.

42. **Mr. Puras** (Committee on the Rights of the Child) underlined the importance that his own Committee assigned to the draft general comment of the Committee on Economic, Social and Cultural Rights on the right to sexual and reproductive health. In its activities, the Committee on the Rights of the Child continually raised issues pertaining to that right, and general comment No. 4 (2003) on adolescent health and development made direct reference to that right. In its dialogue with States parties to the Convention on the Rights of the Child, that Committee considered what steps were taken to promote the right to sexual and reproductive health in relation to children's right to holistic development, placing particular interest on sex education in schools and measures for protecting children and adolescents against practices harmful to their health (such as early marriage and female genital mutilation). In many countries and regions, synergies between modern public health standards, scientific evidence and the human rights-based approach and the efforts of Government, civil society and other important stakeholders had helped to protect sexual health and reproductive rights as an integral component of the fundamental rights of adults and children alike.



43. The Committee on the Rights of the Child was nonetheless fully aware of the obstacles and challenges in that field: sexual and reproductive health remained the most sensitive and disputed issue in international human rights law. In its concluding observations, his Committee had raised concerns about policy shifts that were usually the reflections of ideological preferences, which tended to scale down sexual and health education programmes geared towards adolescents or deny adolescents access to confidential services. The need to seek consensus on effective measures for promoting and protecting the rights of children and adolescents was therefore all the more pressing. The initiative of the Committee on Economic, Social and Cultural Rights was an important step in that direction.

44. **Ms. Šimonović** (Committee on the Elimination of Discrimination against Women) underscored the importance of consultation and cooperation between United Nations treaty bodies in the drafting of general recommendations on rights that were covered by more than one instrument. The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women had established a joint working group to prepare a joint general recommendation on harmful practices, with particular focus on female genital mutilation.

45. In its general comment, the Committee on Economic, Social and Cultural Rights should address the right to sexual and reproductive health from the perspective of problems specific to women, it being they who suffered most from the refusal of that right. The Convention on the Elimination of All Forms of Discrimination against Women shed a different, gender-sensitive light on the rights provided for by the other human rights instruments. Several articles of the Convention and the Committee's general recommendations promoted the adoption of specific measures against discrimination directly relating to the right to sexual and reproductive health, in particular general recommendation No. 19 (1992), on violence against women; general recommendation No. 21 (1994), on equality in marriage and family relations; general recommendation No. 24 (1999), on women and health; and general recommendation No. 28, on the core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Articles 4 and 11 of the Convention provided for special measures for the protection of women with regard to maternity and reproduction; article 12 required States parties to ensure to women appropriate services in connection with pregnancy (notably health care, family planning, monitoring during pregnancy, prenatal and post-natal care), while article 16 enshrined women's right to decide freely on matters relating to their sexuality and reproduction, and article 10 guaranteed access to information and advice on family planning.

46. In some of its concluding observations, the Committee on the Elimination of Discrimination against Women had expressed concern over high rates of maternal mortality, which was linked in particular to insufficient reproductive health services and a lack of high-quality post-abortion care for complications arising from unsafe abortions. It exhorted States to repeal legislation that criminalized abortion, it denounced sex-selection of the foetus and recommended that it should be prohibited in domestic law, and advocated implementation of comprehensive strategies that could overcome the traditional stereotypes that maintained a marked preference for boys. In the case of *A.S. v. Hungary* (communication No. 4/2004), brought before the Committee on the Elimination of Discrimination against Women, the Committee had ruled that the State party had not complied with the provisions of articles 10 (*h*), 12 and 16 (*e*) of the Convention by failing to provide appropriate information and advice on family planning, and had recommended that the State should compensate Ms. A.S. accordingly.

47. **Ms. Andion** (Centre for Reproductive Rights) underlined the importance of national, regional and international norms as a solid standard-setting framework for sexual

and reproductive health rights, which the general comment would strengthen and promote. The Committee could count on public health stakeholders who had made groundbreaking progress, particularly through the use of modern technology and science. The general comment must take account of the fact that the Optional Protocol to the Covenant had already been adopted. The text must be thorough and form a living and dynamic standard-setting instrument while providing guidelines that could be applied in any country no matter what its situation. It must also cover all possible legal, social and cultural obstacles, and not be limited solely to health care. The Committee would have to decide whether it associated the right to sexual and reproductive health only with the right to health, or whether it also linked that right to the right to equality and non-discrimination, and the right to education, to scientific progress and to an adequate standard of living.

48. She recapped the elements of the right to sexual and reproductive health that differentiated it from other rights: criminalization — of HIV transmission in particular — repercussions of applications for authorization of access to sexual and reproductive health for women and girls; discrimination on multiple grounds; the link between human rights and medical ethics; informed consent and conscientious objection; and the greater influence of ideologies, religion and morals on sexual health policies than of science, public health and human rights. When identifying the groups that would require particular attention, the Committee would have to ensure that none were excluded. Lastly, the Committee would have to find a way to harmonize the reasonableness of the steps taken by the State party (article 8 (4) of the Protocol) with the minimum core obligations. The text must also make mention of the progressive realization of rights.

49. **Ms. Barahona Riera** (Rapporteur for the formulation of a general comment on the right to sexual and reproductive health) recalled that the right to sexual and reproductive health was based on article 12 of the Covenant (right to health), which was inextricably linked to all the other articles of the Covenant.

50. **Ms. Bonoan-Dandan** said that the general comment must be balanced, dynamic and information-based and must be built on established and accepted norms, but that the Committee would have to draw on its own experience and consideration of the situation in the States parties, as well as the work of the other treaty bodies, in drafting the text. The general comment would be grounded in the core obligations of the Covenant. It was important to bear in mind the link between the right to sexual and reproductive health and the right to participate in cultural life, along with the delicate issues of relationships within couples and the customs of local communities, minorities or indigenous populations.

51. **Mr. Martins da Cunha** (Brazil) said that the following points should be incorporated in the text: access to medicines and medical services; universal coverage and health care; international cooperation (article 2 (1) of the Covenant) and the social determinants of sexual and reproductive health, notably those related to other human rights (including non-discrimination, the right to food, the right to housing and the right to privacy).

52. **Ms. Brown** (ESCR-Net Coordinator for Women and the Working Group; International NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights) said that the Optional Protocol to the Covenant would enable all women to make their voices heard by an international body when they had not received reparation at the national level. The Committee would have to decide how it wished to receive expert evidence on communications (for example, in oral hearings or *amicus curiae*). A substantive equality approach aided understanding of the ways in which women experienced violations of their rights while clearly integrating States' obligations in terms of conduct and result and facilitating the adoption of positive measures to implement remedies. That approach should respond to all women's demands and guarantee that appropriate sanctions were imposed. The normative clarity of the text was therefore

important for States parties and rights holders and claimants alike. It would also help courts at the national level to apply the established provisions.

53. **Ms. Farha** (Centre for Equality Rights in Accommodation) encouraged the Committee to adopt a robust and progressive definition of substantive equality, in keeping with the jurisprudence of the Committee on Economic, Social and Cultural Rights (general comments Nos. 16 and 20), that of the Committee on the Elimination of Discrimination against Women and other jurisprudence at the international level. The four hallmarks of substantive equality were placing the rights bearer at the centre of the analysis, examining the effects of policies, programmes or laws, taking account of both State action and inaction, and implementing positive obligations, especially the obligation of immediacy. She urged the Committee to continue to bear in mind its general comments Nos. 16 and 20 when drafting the general comment on sexual and reproductive health.

54. **Ms. Barahona Riera** (Rapporteur for the formulation of a general comment on sexual and reproductive health) thanked all those who had participated in the general debate and concluded by recalling that the right to sexual and reproductive health was a fundamental right. Implementation of the Covenant should transcend beyond the purely normative in order to guarantee everyone access to the highest attainable standard of sexual and reproductive health care, preferably free of charge.

55. **The Chairperson** also thanked participants and emphasized how important the day had been in enabling all parties (States, NGOs and Committee members) to play their part. Like all rights, the right to sexual and reproductive health was an unquestionable right which was easy to define and difficult to implement. He emphasized that the Committee was independent and neutral and that its role was to help States parties apply the provisions of the Covenant and give them the tools they needed to implement it, enabling them to do all they could with the available resources with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means (art. 2). All contributions would be welcome, as they were indispensable to the work of the Committee, which would embark on the task of drafting the general comment, then proceed to a thorough examination of the text. If the general comment, once finalized, succeeded in shedding even a little light on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, it would be more than justified, although the Committee hoped it would achieve much more.

*The meeting rose at 6 p.m.*