

2007

Seeking Integral Reparations for the Murders and Disappearances of Women in Ciudad Juárez: A Gender and Cultural Perspective

Jorge Calderón Gamboa

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), [International Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Gamboa, Jorge Calderón. "Seeking Integral Reparations for the Murders and Disappearances of Women in Ciudad Juárez: A Gender and Cultural Perspective." Human Rights Brief 14, no. 2 (2007) : 31-35.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Seeking Integral Reparations for the Murders and Disappearances of Women in Ciudad Juárez: A Gender and Cultural Perspective

by Jorge Calderón Gamboa*

Since 1993, more than 4,000 women have disappeared from Ciudad Juárez, Mexico, while nearly 400 have been confirmed murdered,¹ the victims of femicide.² Diversity in motivation and perpetrator notwithstanding, widespread gender bias and discrimination characterizes the manner by which these crimes are investigated, prosecuted, and (rarely) prevented. Despite more than a decade and thousands of lost and interrupted lives, the Mexican government has failed to curb the violence, and many of the murders and disappearances remain unsolved.

Alarmed, international governmental authorities and organizations are beginning to take action. In November 2006, for example, the United Nations Committee against Torture (UNCAT) urged the Mexican government to intensify its investigation of the crimes and to increase its efforts to eliminate discrimination against women.³ The U.S. government and the European Parliament have also commissioned studies of the problem and discussed potential solutions.

Mexico's failure to adequately investigate and put a stop to femicide in Ciudad Juárez constitutes a breach of its duties under international law, thereby requiring the State to provide integral reparations. Thus far, the country's effort to provide redress to victims falls short of international reparations standards, and is insufficient to heal the individual and societal wounds in Ciudad Juárez. Femicide not only injures the murdered women and their families, but also threatens the security of women everywhere. An effective reparations program must therefore address the reparations needs of both direct and indirect victims of femicide.

Such a program should build upon recent progress made by truth commissions in other parts of the world in order to deliver integral reparations that reach beyond mere economic compensation. By addressing the root causes of femicide, reparations may serve as a tool for preventing the reoccurrence of atrocities. This requires reparation measures to operationalize a gender-sensitive, cultural perspective.

This article begins with a brief survey of the situation in Ciudad Juárez, illustrating how Mexico is in breach of its domestic and international legal obligations. It then highlights the international legal standards for reparations, the measures Mexico has thus far undertaken, and the considerable gap between these measures and international standards. It concludes with recommendations for closing this gap, envisioning a holistic approach to reparations that will reach all victims of femicide in Ciudad Juárez and bring a close to this bloody chapter of Mexican history.



© Kari Lyderson

Crosses decorate a stretch of desert near the colonia of Anapra, a shantytown where multiple women's bodies have been found.

HUMAN RIGHTS VIOLATIONS IN CIUDAD JUÁREZ

The femicides in Ciudad Juárez represent a clear breach of Mexico's domestic and international legal responsibility to protect human rights and prevent violence perpetrated against marginalized social groups. Not only has the government failed to prevent the murders or diligently investigate reported disappearances, but some governmental authorities have been implicated in the Juárez crimes.⁴

Like many Latin American countries, Mexican society is *machista*, endorsing a general view of male superiority and an opposition to women's participation in traditional male roles, such as work, sports, and politics. Women are relegated to the home, a tendency reflected by Mexican families, schools, religious institutions, and the public sphere.

This general attitude of discrimination against women began to morph into widespread violence in the early 1990s, following an economic downturn. In Ciudad Juárez, the dominant *maquiladora*

*Jorge Calderón Gamboa is a LL.M. Candidate at American University Washington College of Law. I would like to thank Susana SaCouto, director of the War Crimes Research Office, for her advice and input. I would also like to thank Elsa Arismendi for her help in editing this article.

(factory)-based economy favors a female workforce, as women are expected to be docile and compliant and thus more highly productive.⁵ As the economy recessed, employment became even scarcer for men, and created a great deal of resentment towards women. Rapid industrialization abruptly changed the gender roles in traditional Mexican society, and may have catalyzed the surge in violence, as traditional attitudes towards women fell out of step with social and economic changes.⁶

The resulting violence against women in Ciudad Juárez has been widespread and brutal. According to an Amnesty International report issued in 2003,⁷ at least 370 women were murdered between 1993 and 2003, and more than half of those murders involved some form of sexual violence. The report chronicles in graphic detail how the bodies of victims were often found naked, severely beaten, and abandoned amongst garbage and rubble. Most of the victims were girls or young women from poor families. Because of the sexual nature of many of the murders, and because they took place against a backdrop of male resentment of female dominance in the workplace, these crimes fit the general definition of femicide.⁸ Government authorities are considered to be the perpetrators of some of these murders, as are drug traffickers and criminal gang members.⁹ There are also many cases that seem to be linked to domestic and interfamilial violence. All of these cases reflect the status of women in a society where killing a woman, for some time, did not have any consequence under the Mexican justice system.¹⁰

For many years the government responded with passive non-intervention. Authorities classified the crimes as isolated cases perpetrated against prostitutes, limited to the local state of Chihuahua.¹¹ To date, only about 20 percent of the murders have

This failure constitutes a violation of international law because Mexico has ratified a number of international instruments that require states to prevent gender-motivated violence. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States Parties to protect women, prevent gender discrimination by public and private actors, and modify cultural patterns of conduct that may lead to gender-based discrimination.¹⁴ The CEDAW Committee's General Recommendation 19 regarding violence against women reaffirms fundamental rights, while pushing States to impose criminal sanctions for domestic violence.¹⁵ Mexico's failure to prevent the femicide in Ciudad Juárez also violates numerous articles of the American Convention of Human Rights (ACHR), including the state obligation to respect life, human dignity, personal liberty, and judicial protection,¹⁶ as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention).¹⁷

MEXICO'S DUTY TO GRANT INTEGRAL REPARATIONS UNDER INTERNATIONAL STANDARDS

Mexico's breach of its international human rights obligations by failing to stop violence against women in Ciudad Juárez imposes on the government the duty under both national¹⁸ and international¹⁹ law to provide reparations. This section will provide an overview of the types of reparations that international law requires in situations where a State fails to live up to its obligations to protect human rights. It is important to note, however, that reparations represent not only a State *obligation* but also a victim's *fundamental right*.²⁰ Victims are entitled to integral reparations that are adequate, effective, and fast.²¹

“Amnesty International chronicled in graphic detail how the bodies of victims were often found naked, severely beaten, and abandoned amongst garbage and rubble. Most of the victims were young women from poor families. In Ciudad Juárez, the femicides took place against a backdrop of male resentment of female dominance in the workplace.”

been investigated and brought to trial,¹² although in recent years the local and federal governments have increased their efforts to address the problem. As the Washington Office on Latin America (WOLA) summarized, there are four main reasons why Mexico bears responsibility for the violence against women in Ciudad Juárez: the State's failure to slow the pace at which women are being murdered in Juárez; inadequate police investigation of past murders; lack of accountability for the official negligence, abuse, and complicity contributing to widespread impunity; and official downplay of the problems of violence against women, impunity, and state corruption in Chihuahua.¹³

International law recognizes the existence of “direct,” “indirect,” and “collective” victims.²² In the case of Ciudad Juárez, the direct victims are the women who have suffered violence. The indirect victims are the families and other persons close to those direct victims. And the collective victim is the group suffering the violence; specific groups of marginalized women in Ciudad Juárez. Furthermore, a recent decision by the IACHR in the case of *Maria Eugenia Morales de la Sierra v. Guatemala* illustrates a broader collective concept, including “potential victims.” There, the IACHR recognized that all women in Guatemala were “potential victims” of discrimination because the civil law was discriminatory against women.²³

By analogy, all women who live in Ciudad Juárez are collective and potential victims of femicide because they are all exposed to suffering and violence as a consequence of their gender. Of course, this does not indicate that all the women in Ciudad Juárez must receive compensation. Rather, the potentially vulnerable living situation of women underscores the need for collective reparation measures such as guaranties of non-repetition and other affirmative actions.

To provide these three categories of victims with a remedy, the Inter-American system has generally recognized two types of damages: “pecuniary” and “non-pecuniary.”²⁴ There are some sub-categories of pecuniary damages, including “special damages” and “loss of earnings.” Generally speaking, these types of damages seek to provide monetary and other material remedies to compensate victims of human rights violations and their families. In the case of Ciudad Juárez, pecuniary damages might consist of compensation for funeral expenses plus additional compensation equivalent to the “value” of the lost life.

An important type of non-pecuniary damage is “moral damages,” or reparations for the misrecognition of the human dignity of the victim and the pain and suffering that ensues.²⁵ In Ciudad Juárez, the indirect victims of femicide are the ones entitled to moral damages for the emotional, psychological, and mental harm that they suffered as a result of the femicidal killings of their loved ones. In cases of gross human rights violations, the IACHR presumes severe mental suffering to be a natural consequence of the violation, thereby entitling indirect victims to moral damages.²⁶

Another important type of non-pecuniary damage is “life plan damages,” designed to assist survivors of human rights violations in restoring their professional and personal aspirations.²⁷ In certain instances, life plan damages may also be provided to the children of murdered and kidnapped victims²⁸ or those who have faced severe discrimination.

The third step in formulating reparations for human rights violations consists of identifying the specific measures available to provide the types of damages described above. *The Basic Principles on the Right to Reparations for Victims of Gross Human Rights Violations* (“Basic Principles”) constitute important guidelines in this matter, as Mexico voted in favor of the adoption of these principles in 2005.²⁹ The Basic Principles suggest concrete actions that governments can take to fulfill five main goals of reparation.

First, the Basic Principles call for a restoration of the enjoyment of human rights, identity, family life, return to one’s place of residence, restoration of employment, and return of property.³⁰ Second, the Basic Principles assert that governments should compensate victims of human rights violations for any physical or mental harm, lost opportunities including employment, education and social benefits, material and moral damages, and medical, legal, and psychological services.³¹ Third, to achieve the goal of rehabilitation, governments should make medical and psychological care available, as well as legal and social services.³² Fourth, the Basic Principles call for satisfaction, or measures aimed at recovering the dignity of the victims, including disclosure of the truth, finding the disappeared, identifying the bodies, issuing public apologies, providing commemoration, and organizing tributes to the victims.³³ Finally, the Basic Principles call for guarantees of non-repetition, such as efforts to educate the public about human rights, reform

existing laws, and implement other mechanisms to protect human rights.³⁴

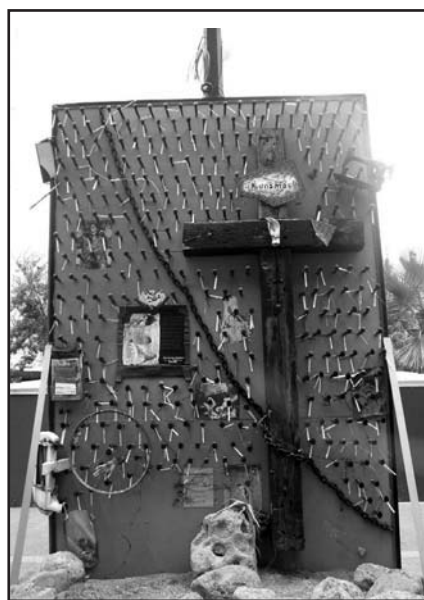
Other special measures could also be performed depending on the nature of the specific case. For example, Professor Theo van Boven suggests the implementation of affirmative action for marginalized groups and considers that additional resources should also be granted to implement development programs.³⁵

MEXICO’S RESPONSE TO THE FEMICIDE

Although Mexico has finally begun to make amends for its systematic failure to prevent or prosecute femicide in Ciudad Juárez, these efforts have failed to provide an adequate remedy to all victims of these crimes. Recently, the Mexican government appointed a special prosecutor to investigate the crimes of femicide in areas near Ciudad Juárez,³⁶ and it created the Commission for Prevention and Eradication of Violence against Women (“Special Commission”),³⁷ whose mandate is to analyze the situation in which Mexican women live and propose measures of reparation to address any cultural discrimination. However, the scope of the Special Commission is limited and ineffective, and the General Prosecutor of Mexico (PGR) has not acted upon the few proposals of the Special Commission.

To provide “compensation” for the indirect victims, the Mexican Government implemented the “Economic Assistance Fund” designed to provide monetary compensation to the families of murdered women from Juárez. Unfortunately, the fund, which contains approximately U.S. \$3 million, is poorly designed and managed. Victims have not been identified and damages have not

been defined, and the fund has not reached consensus on how to distribute the compensation.³⁸ As of July 2006, only 113 of 300 families designated to receive aid had received due compensation.³⁹ The fund is also flawed insofar as it is structured as an “aid fund” rather than a “reparation fund,” and thus victims (and their families) have to comply with complicated procedural requirements in order to claim and receive compensation.⁴⁰



Monument to Femicide in Chihuahua

The compensation measures offered by the Mexican government do not correspond to the international standards of reparation for human rights violations, which address moral and life plan damages as well as material damages. Rather, the government conceives of reparations narrowly, providing only material damages. In this manner, the government fails to abide by the Special Commission’s goal of providing a holistic and integral response to the atrocity of femicide. The government has initiated only a limited number of measures that could be considered collective

damages aimed at providing satisfaction and guaranties of non-repetition. One example is the “Acequia del Pueblo Project,” which is devoted to building a public road that would serve as both a gathering place for women and a memorial to remember the women who have died as a result of femicide.⁴¹ It has also developed plans to “dignify” parts of the city where many women were killed,⁴² and a “Habitat Program” to improve the safety of certain areas of Ciudad Juárez.⁴³

Although such steps may seem tangential to the crimes that were committed in Ciudad Juárez, international legal experts have stressed that reparations need to be shaped such that victims and the public can see a direct relationship between the injuries suffered and the specific measures to redress them. In the case of the *Mapiripán Massacre*, the IACHR found that the reparation measures granted at the domestic level were not enough to redress the damages under the international law criteria; therefore, the court granted additional reparations.⁴⁴ As Professor Diane Orentlicher has noted, “It is important to design a programme that distributes a variety of material and symbolic benefits and does so in a coherent fashion. A reparations programme is internally coherent if it establishes relations of complementarity or mutual support between the various kinds of benefits it distributes.”⁴⁵

Thus, although the Mexican government is taking positive steps to redress the serious harm caused in Ciudad Juárez, there remains the need for a true program of integral reparations. Informed by gender and cultural perspectives, an integral reparations program will assist Mexico in fulfilling its international obligations, providing genuine redress, and eradicating femicide.

A GENDER AND CULTURAL PERSPECTIVE IN THE PROVISIONS OF REPARATIONS

The Special Commission has done an important job promoting gender and cultural perspectives in its recommendations for reparations, yet governmental entities such as the PGR have failed to adopt these perspectives. Reparations programs have traditionally prioritized the patrimonial damages without holistically considering human nature, and often excluded benefits for women and minority groups.⁴⁶ Yet in the context of femicide in Ciudad Juárez, where culture and gender roles were a major part of the crimes, reparations will fail to make victims and the society whole unless they are shaped from a gender and cultural perspective. The concept of a gender and a cultural perspective is not clearly defined, but it is based on the principle that damages and policies created in response to human rights violations should take into account the gender and culture of the victims and the society in which the violations took place.

Post-conflict truth commissions provide a useful precedent for broadly-conceived, holistic reparations taking account gender and culture. The *Sierra Leona Truth Commission* applied an integral program of reparations, which included specialized measures for victims of sexual violence, such physical health care, free fistula surgery, HIV/AIDS testing, care, and treatment, and mental health care. Children were enrolled in educational and health-related programs. Other largely symbolic measures included a public apology, memorials, commemoration ceremonies, and reburials.⁴⁷ This process of reparation went further than traditional approaches and took into consideration the cultural and gender context of the victims.

The *Peruvian Truth Commission* (PTRC) incorporated into its report an individual chapter about violence against women, ana-

lyzing sexual violence as collateral damage from the war and considering this violence as a war crime. The reparations proposals presented in the Report “include reparations not only for women directly victimized by sexual violence, but also for the children born from such violence. Moreover, the PTRC recommended that the government include specific references to women during the symbolic acts of reparation, such as offering apologies to victims. In a more general sense, the PTRC recommended that the reconciliation process be oriented toward a reassessment of the value of women through recognition of their rights and their full and equal participation in civic life.”⁴⁸

The experience of these two truth commissions on different continents illustrate the need for recognizing that human rights violations impact traditional and structural spheres, such as culture and gender. Reparation measures must likewise address these dimensions.

GUIDELINES FOR INCLUDING A GENDER AND CULTURAL PERSPECTIVE IN REPARATIONS

The process of designing integral reparations is similar to the role of the doctor with his or her patient. The doctor must understand the reasons behind the patient’s suffering and the underlying context. The doctor must then locate all injuries and treat each one separately, providing different remedies depending on their characteristics. Accordingly, Mexico must reformulate its approach to reparation, recognizing this as a *right* for the victims and *obligation* for the state. Hence, it must provide an integral reparation program that coordinates not only the assistance fund, but also all the separate initiatives that are being implemented, in order to grant integral reparations for the direct, indirect, collective, and potential victims. This reparation program must be based on a gender and cultural perspective that cuts across all the initiatives. The resulting program will adequately attend to the victims not only in terms of compensation, but also as redress for personal and societal damages.

In order to implement this approach, the Mexican government should follow seven general guidelines. First, the Mexican government must recognize and provide reparations to *all* victims of the femicide, including not only the direct victims and their loved ones, but also the collective and potential victims throughout the country. Second, because of the nature of these crimes, it is essential not only to identify and redress pecuniary damages, but also moral damages and life plan damages.

Third, to address the root causes of femicide, the government must provide *satisfactory measures* for those potential victims in Juárez and improve the legal rights of all women in Mexico. Fourth, it is essential to try to improve the situation of women in Mexican society, as the *machista* culture contributed to legal vacuum that permitted the femicide to continue. For this reason, the government should adopt the recommendation of the Special Commission and establish a *Truth Commission* with the goal of searching for the main causes of the violence and providing redress for the victims and society.

Fifth, since the distribution of government resources is often symbolic of a society’s values, the budget of the Mexican Congress should be distributed in such a way that reflects the long historical debt owed to Mexican women.⁴⁹ Such efforts might include “affirmative action” programs that would actively seek to place more women in local politics and to provide more educational opportunities for women.⁵⁰

Sixth, in order to grant adequate integral reparations, it is important that a “Reparation Program” be created that includes not only a monetary assistance fund, but also the adequate coordination of the other initiatives to repair the damages done to all victims. The provision of specialized psychological and medical treatment to victims and their families, for example, would be an essential service in order to provide rehabilitation measures caused by a crime such as femicide. In addition, the government should take greater steps to bring the perpetrators of these crimes to justice.

Finally, the government should take steps to demonstrate to victims and the public at large that the government condemns these horrific crimes and that the victims will not be forgotten. For example, as a satisfactory measure, the federal and local government should make an official public apology recognizing its failure to carry out its obligations. In response to this, the federal government must give accurate instructions to all the authorities of the states about their obligations to respect, protect, and fulfill women’s rights as provided in CEDAW and the Belem do Para Convention and fulfill those rights.⁵¹ In addition, the municipal cemetery where the victims rest should be rebuilt, for it is currently in a precarious condition, and there should be a special memorial place for the victims of femicide. The government might also explore the possibilities of doing symbolic reburials for the bodies recently found and renaming a street of the city with the name of the direct victims.⁵²

Finally, the government must take steps to ensure non-repetition of the femicide of Ciudad Juárez. For example, it should continue with the *Acequia Project* ensuring that the public places for meeting and sharing provide a well-balanced atmosphere for society. Moreover, it should reinforce gender training programs for

men who work in public services, as well as special police training at the federal and local level. More men should be hired in the *maquilas* to help remove the stereotypes against female *maquila* workers and cultivate a more balanced work environment.⁵³ Additionally, the government should analyze the manner by which the culture of *maquilas* contributed to the femicide. To this end, a domestic mechanism should be established to implement the “UN Norms on the Responsibility of Transnational Corporations and other Business Enterprises with regard to Human Rights,” which shall include the duty to provide reparations under Norm 18.⁵⁴

CONCLUSION

By allowing the atrocious violence committed against women in Ciudad Juárez, Mexico has breached its obligation to protect human rights, as well as to respect and fulfill the rights of women in Juárez. Even though Mexico has yet to be officially declared responsible under international law, given its clear breach of its international obligations, Mexico has the duty to repair the damages, and the victims have the right to receive adequate, effective, and fast reparations. To address this, the Mexican State has implemented some social programs and an assistance fund, but these efforts have not covered the international standards of integral reparation for human rights violations. These efforts have also failed to approach the problem from a gender and cultural perspective, and thus are unlikely to eliminate the root causes of the femicide. It is thus crucial for Mexico to reformulate its approach to reparations by crafting an integral “Reparation Program” that coordinates not only the assistance fund, but also all the separate initiatives that are being implemented, which should clearly address a gender and cultural perspective in order to grant integral reparations for the direct, indirect, collective, and potential victims. *HRB*

ENDNOTES: Femicide in Ciudad Juárez

1 European Parliament, Background Paper, Joint Public Hearing, *Femicide: The Case of Mexico and Guatemala* (hereafter “European Parliament Report”), available at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20060419_h_backgroundnote_/droi20060419_h_backgroundnote_en.pdf (April 19, 2006).

2 “Femicide” has been defined as “the sum total of the various forms of violence against women due to their gender, class, ethnicity, age, . . . factors which come together and reinforce one another in a particular period and location. . . . These damages are inflicted on females by strangers as well as persons known to them. . . . What these crimes have in common is the attitude that women are expendable and can be routinely used, abused and discarded.” Deputy Blanca Gamez, Secretary of the Special Commission on Femicide, *Presentation to the Special Commission to Study and Review the Investigation of Murders Perpetrated Against Women in Mexico and to Promote Justice for the Victims of Femicide*, available at <http://www.senado.gob.mx/english.php> (March 2005).

3 UNCAT, *Conclusions and Recommendations of the Committee Against Torture*, U.N. Doc. CAT/C/MEX/CO/4, available at http://www.ohchr.org/english/bodies/cat/docs/37/cat_c_mex_co_4_sp.pdf (Nov. 2006).

4 Commission for Prevention and Eradication of Violence against Women in Ciudad Juárez, *Second Report of 2004 – 2005* (hereafter “Second Report”), at 37.

5 *Id.* at 27, 40

6 *Id.* at 209, 210.

7 Amnesty International, *Intolerable Killings: 10 Years of Abductions and Murders of Women in Ciudad Juárez and Chihuahua*, available at <http://web.amnesty.org/library/index/engamr410262003> (1993).

8 See Commission for the Prevention and Eradication of Violence Against Women in Ciudad Juárez, *Preliminary Report of May–November 2005*, 1 (citation omitted) (defining femicide as “assassination of women by men in a con-

tinuum of acts of sexual violence, merely for being women or for not being so “appropriately”).

9 Second Report, *supra* note 4, at 27, 40

10 It should be noted that Ciudad Juárez is the biggest border city in Mexico, and that both men and women have lost their lives due to violence arising from cross-border trafficking in drugs, sex, biological organs, and persons. The difference, however, is that almost all the crimes against women have “no logical reason” (in a criminal sense). Moreover, the murder rate of women, as compared to men, is significantly higher in Ciudad Juárez than in similarly situated Mexican cities. Finally, most of the murders of women have signs of tremendous violence, particularly sexual violence, that reflect the general vulnerability of women in the society of Ciudad Juárez.

11 This is also the way the crimes in Ciudad Juárez were addressed for many years by newspaper editorials, authorities, and even families of victims. Elena Poniatowska, “1ª Parte: Son las mujeres quienes ayudan a las mujeres en Ciudad Juárez,” http://www.jornada.unam.mx/2002/04/01/aborto_poni/poni_Juarez1.htm (June 12, 2002).

12 European Parliament Report, *supra* note 2.

13 Laurie Freeman, “Reposted in Still Waiting for Justice: Shortcomings in Mexico’s Efforts to End Impunity for Murders of girls and Women in Ciudad Juárez and Chihuahua” (Oct. 2005).

14 CEDAW, arts. 2 (c), 2(e), and (5), Sept. 3, 1981, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (accessed Feb. 11, 2007).

15 Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19* (11th session, 1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed Feb. 11, 2007).