

Women's Human Rights Alliance
**A Shadow Report on the International Covenant on Economic, Social
and Cultural Rights**

Questions for women's groups in relation to a Shadow Report

Introduction

The Irish government is currently preparing its next report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This report will be examined by the UN Expert Committee that monitors the implementation of the Covenant. The Women's Human Rights Alliance (WHRA), which is a coalition of nongovernmental organisations with a specific interest in women's human rights. The WHRA is preparing its Shadow Report—i.e. an alternative report to the "official version" that will also be considered by the UN Expert Committee. This questionnaire has been prepared in order to provide a means for the concerns and perspectives of women's organisations, community based organisations and other nongovernmental organisations in relation to economic, social and cultural rights to be reflected in this Shadow Report.

In the Shadow Report we want to focus on the right to health and particularly on the social determinants of health. Article 12 of the Covenant refers to the right to health, whereas other Articles are relevant to the social determinants of health in areas such as gender equality, employment, education and training, childcare, social welfare, housing, violence against women, sexual violence etc. (see attached summary) We would encourage you to make reference to specific articles in the Convention in your response, as in the Shadow Report we will look at these issues as they are relevant to each Article.

The Shadow Report gives us an opportunity to show how changes in government policies can impact positively on women's health status. This means that as well as looking at the factors that affect access to good quality health care, we are also interested in all of the factors that affect women's health and well-being.

Please answer the questions below and return to [The National Women's Council of Ireland](#) by the 15th of December 2009. Where possible, refer to any examples that have been documented or to relevant recent reports or research.

1. What do you consider to be the main factors that impact on women's health and well-being? We encourage you to consider this in a broad sense, for example, issues such as social exclusion, inequality, discrimination, poverty, access to employment and training, housing, as well as government policies affecting women's status and equality etc.
2. The right to health in Ireland requires that healthcare provision is accessible, of a good quality, available, affordable and is delivered in a non-discriminatory fashion. Do you believe the Irish Government is delivering this for women? Feel free to refer to specific services that you consider relevant e.g. hospital, primary healthcare, community healthcare, preventative healthcare, GP, maternity services or mental health services.
3. What are the main barriers that women face in accessing health care? You might consider information barriers, cost barriers, lack of equality or attitudinal barriers, and physical barriers.
4. Do some groups of women experience specific barriers in relation to the social factors that affect their health and in accessing health care, e.g. older women, Traveller and minority ethnic women, disabled women, lone parents, lesbians? Please highlight the particular barriers/issues faced by specific groups of women.
5. Do you consider that health services have progressed, become worse or stayed the same in the last five years?
6. Do you feel that our health system and health service are designed to meet the particular needs of women?
7. Are there any new policies and practices, or lack of, that are having a negative impact on women's health? (This may include policies and practices on violence against women, which impact on women's health.)
8. Do you consider that opportunities exist for participation in decision-making in relation to health policies and practices?
9. In light of what we have discussed what one thing could the government do that would bring about positive change in terms of women's health?

The International Covenant on Economic, Social and Cultural Rights: The Right to Health

The Universal Declaration of Human Rights (UDHR) 1948, provides that "Everyone has the right to a standard of living adequate for the health of himself [herself] and of his [her] family, including food, clothing, housing, and medical care and necessary social services." (Article 25(1))

The right to health is also recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and many other international treaties including the Convention on the Elimination of all Forms of Discrimination Against Women (1979).¹

Article 12 of the ICESCR states that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Breaking down the right to health

"Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of

¹ Article 12 of CEDAW reads as follows:

1. States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

the highest attainable standard of health conducive to living a life in dignity."²

The precise meaning of the right to health has been expanded upon in one of the *General Comments* of the Committee. The interdependence and indivisibility of human rights are particularly relevant to the right to health. These have been identified as including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.³

It is clear that the right to health is not necessarily the right to be healthy, a great many factors of which will lie outside state control. For example, international human rights law cannot protect against genetic factors, individual susceptibility to ill-health or individual life choices. Rather, the right to the highest attainable standard of health is to be understood as the right to the "enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."⁴

The right to health therefore relates not only to health care but to conditions which allow people to attain a high standard of health, including the removal of barriers or conditions which may impede their right. It therefore involves preventive aspects of health, as well as health care. As such, it is about clinical medicine and public health: "whereas clinical medicine has traditionally focused on the health status of individuals, public health has focused on the need to promote and protect the health of populations and to ensure conditions under which people can be healthy and remain so."⁵

Elements of the Right to Health

In relation to all aspects of the right to health, but particularly in relation to health care facilities, there are four elements to the right against which the state is to be measured:

(a) Availability

² Committee on Economic, Social and Cultural Rights, *General Comment 14 (2000) on the right to the highest attainable standard of physical and mental health*, para. 1

³ *ibid*, para 3

⁴ *ibid*, para 9

⁵ Judith Asher, *The Right to Health: A Resource Manual for NGOs*, p, 18

- (b) Accessibility
- (c) Acceptability
- (d) Quality

•Availability

Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity.

•Accessibility

Health facilities, goods and services have to be accessible to everyone without discrimination. Accessibility has four overlapping dimensions: non-discrimination, physical accessibility, economic accessibility, information accessibility.

•Acceptability

All health facilities, goods and services must be respectful of medical ethics and culturally appropriate⁶ ... sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

•Quality

Health facilities, goods and services must also be scientifically and medically appropriate and of good quality

Obligations on the government

Human rights law imposes obligations on the government to respect, protect and fulfil particular rights. *General Comment 14, Paragraph 33*

The right to health, like all human rights, imposes three types of obligations on States parties: the obligations to respect, protect and fulfil.

- Respect requires States to refrain from interfering with the enjoyment of the right to health e.g. the state must not impose discriminatory practices relating to women's health status and needs;
- Protect requires States to take measures that prevent others from interfering with anyone else's right to health, e.g. the state must take

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Culturally appropriate health care provision involves a range of interventions including ensuring that the leadership and workforce of a health system is diverse and representative of its patient population, interpreter services, culturally and linguistically appropriate health education materials and training to enhance service providers knowledge of the relationship between sociocultural factors and health beliefs

measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, from gender-based violence;

- Fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health e.g. the state must provide a public, private or mixed health insurance system which is affordable for all.⁷

Women and Right to Health

Article 3 of the ICESCR provides that women and men have an equal right to the enjoyment of all economic, social and cultural rights. In relation to health, this means that governments must adopt a gender-based approach in order to take account of the biological and socio-cultural factors that play a role in influencing the health of men and women.⁸

The two strands of the right to health have gender implications:

- The ability of women to access the determinants of health such as food, water and housing; and
- Women's specific health issues including reproductive rights.⁹ The Committee has recommended that national women's health strategies be adopted to address the prevention and treatment of diseases affecting women, policies to provide access to health care, and the removal of barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.¹⁰

While the CESCR Committee has not specified the specific responsibilities of States in relation to gender and health, the CEDAW committee has made the following recommendations: ¹¹

⁷ Committee on Economic, Social and Cultural Rights, *General Comment 14 (2000) on the right to the highest attainable standard of physical and mental health*, para. 33

⁸ Committee on Economic, Social and Cultural Rights, *General Comment 14 (2000) on the right to the highest attainable standard of physical and mental health*, para. 20

⁹ Committee on Economic, Social and Cultural Rights, *General Comment 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights*, para. 24-29

¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment 14 (2000) on the right to the highest attainable standard of physical and mental health*, para. 21

¹¹ CEDAW Committee [General Recommendation No. 24: Women and Health \(Article 12\)](#)

- ✓ States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.
- ✓ States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.
- ✓ States parties should also, in particular:
 - (a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;
 - (b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;
 - (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;
 - (d) Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care;
 - (e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;
 - (f) Ensure that the training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.