

REPRODUCTIVE & SEXUAL HEALTH

Challenges to the realization of the right to health of women

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highest attainable standard of physical and mental health*

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Article 12, International Covenant on Economic, Social and Cultural Rights, 1966

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 State 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.

Right to Health Framework

**Committee on Economic, Social and Cultural
Rights**



General Comment 14 (2000)

*Authoritative interpretation of the right to health under
Article 12*

General Comment 14

Not just the right to be 'healthy' Freedoms:

- Bodily integrity
- Autonomy
- Freedom from interference
- ***right to control one's health and body, including sexual and reproductive freedom.***

Entitlements:

- Functioning adequate healthcare system
- Equitable distribution of health services
- Access to medicines
- **Special provisions for vulnerable groups(women, ethnic minorities**

General Comment 14

Health is a fundamental human right, indispensable for the realisation of other human rights.

The right to health **is interrelated and interdependent** on the recognition and enjoyment of other fundamental rights and freedoms, such as:

- **Human dignity**
- **Freedom from cruel, inhuman and degrading treatment**
- **Autonomy**
- **Access to information**
- **Non-discrimination**

General Comment 14

Right to health includes the right to *underlying social determinants of health*, whilst also being an *inherent* aspect for the realisation of other social determinants

Social determinants:

- Nutritious food and safe water
- Adequate sanitation
- Safe housing
- Healthy occupational and environmental condition
- Education
- *Gender equality*

General Comment 14

Sexual and reproductive healthcare facilities, goods, services and programs must be:

- **Available**
 - **Adequate number** of services, goods and facilities for reproductive and sexual health, e.g. adequate number of family planning services
- **Accessible**
 - ***Non-discrimination***, for example services that only women and girls need must be accessible, (especially women from minorities)
 - Services must be ***physically accessible and financially*** accessible, with provision for the poor; State must provide for affordable reproductive health services within the State
 - Women must be able to seek, receive and impart ***information*** about sexual and reproductive health

General Comment 14

- **Acceptable**
 - Medical ethics, respectful of requirements of minorities, *gender-sensitive* and respectful of confidentiality
 - Gender sensitivity requires health facilities, goods and services to respond to the particular needs of women and respect the capacity of each woman to make-decisions concerning her own reproductive health
- **Quality**
 - Scientifically and medically appropriate, skilled medical staff, safe medicines, equipment and adequate sanitation

Availability, accessibility, acceptability and good quality are interrelated and essential to the realisation of the right to health

General Comment 14

- **Respect:** States must *neither directly nor indirectly violate* the right to health, e.g. States must refrain from enacting laws that criminalize access to reproductive health facilities, goods and services
- **Protect:** States must take measures to *prevent third parties* from interfering with the right to health, e.g. States must prevent third parties, such as conscientious objectors, from preventing access to lawful abortion services
- **Fulfill:** States are required to adopt *appropriate legislative, judicial and administrative measures and a national plan and strategy* for realizing the right to health, e.g. States must provide for a national plan to make available effective sexual and reproductive health services that are accessible and acceptable to the needs of women. *Not enough to have general Constitutional provision. There has to be a law to ensure the provision of goods, services and facilities*

General Comment 14

Two levels of obligations – Immediate

The State cannot use economic or resource constraints to justify non-implementation of an immediate obligation.

Key immediate obligations include:

- ***Non-discrimination***, eg. removing laws that criminalise health services that are only needed by women and girls
- Deliberate, concrete and targeted steps towards the full realisation of the right to health, such as implementing ***evidence-based policies***

General Comment 14

Two levels of obligations – Continuing

The State has an obligation to ensure *progressive realisation* of the right to health over a period of time.

What does progressive realisation require?

- Specific and ongoing obligation to move as expeditiously and effectively towards full realisation of the right to health
- Resource dependent, however *maximum of available resources* should be used
- Burden is on the State to show that it is *unable* to comply, rather than *unwilling* to comply
- *Indicators* and *benchmarks* should be identified, such as improved maternal health

General Comment 14

Progressive Realization

Implicit within progressive realisation is the principle of *non-retrogression* because the obligations are continuing and progressive:

- Right to health determinants and conditions should improve.
- At a minimum, right to health determinants and conditions should not worsen.

Austerity measures targeting existing public services and social protections may violate the right to health if the availability, accessibility, acceptability or quality of health facilities, goods or services is undermined for vulnerable groups of people , e.g. women (particularly minorities)

General Comment 14

Core Obligations

In addition to immediate obligations, certain minimum essential levels of the right to health must be satisfied. These obligations are *non-derogable* and are known as core obligations of the State. They are obligations of *highest priority*.

Core obligations include:

- Non-discriminatory access to health facilities, goods and services, especially for vulnerable and marginalized groups
- *Ensuring reproductive, maternal (pre-natal and post-natal) and child health care is considered to be an obligation of comparable priority to core obligations*

Implementing the Right to Health

National strategy and plan of action

Whilst measures to implement the right to health may vary depending on a State's resources, it is a **core obligation** to adopt and implement a national public health strategy and plan of action based on epidemiological **evidence**.

- Particular focus on **vulnerable or marginalised** groups, eg. women in need of reproductive health services
- Identification of **indicators** and **benchmarks** to measure progressive realization over time
- **Participatory with the participation of affected communities** and **transparent** process

Implementing the Right to Health

Participation

- The right to health requires active and informed participation of communities in *decision-making, implementation, monitoring and evaluation*, with special attention on vulnerable and marginalized groups such as women.
- The right to health framework is *consistent with a gender-aware human rights based approach* because it seeks to empower and enable rights-holders to hold duty-bearers to account.
- Women must be *active* participants regarding their reproductive and sexual health

Implementing the Right to Health

Monitoring and Accountability

The right to health framework requires *effective, transparent and accessible* monitoring and accountability mechanisms at national and international levels.

Monitoring is particularly important for *measuring progressive realization*.

Active and informed participation of affected groups is necessary for ensuring effective monitoring and accountability mechanisms.

Women and the Right to Health

Specific State obligations in respect of women (GC 14)

- Develop and implement a comprehensive *national health strategy* for women to ensure and fulfill their right to health
- Promote and ensure access to a full range of *high quality and affordable* health care, including sexual and reproductive services
- ***Remove all barriers interfering*** with access to health services, education and information
- Reduce health risks such as *maternal mortality and morbidity*
- Preventative and remedial action to protect women from the impact of harmful traditional cultural practices and norms that deny them their *full reproductive rights*.

Criminal laws & Women's Rights

- Women are viewed as ***objects***, not subjects under the law
- Negates women's human ***dignity*** and ***autonomy***
- Violates the principle of ***equality*** of rights
- Barrier to ***participation*** of women, on equal terms with men, in political, social, economic and cultural life
- Undermines access to ***health*** facilities, goods and services
- Increases ***vulnerability*** of women
- Are **discriminatory** in nature

Criminal laws and women's rights

- Criminal regulation of health services that **only women need**, is **antithetical to the empowerment of women**, instead **isolating women** and discouraging them from taking steps to protect their health due to fear of prosecution and stigmatization.
- Perpetuate, wrongful gender ***stereotypes, discrimination and marginalisation of women and girls***
- Women almost ***exclusively bear the health burdens*** caused by restrictions on reproductive and sexual autonomy
- Generates ***disproportionately poor health outcomes*** for **women** compared to men

Criminal laws and women's rights

- Impacts **women from poorer and marginalized sections in a discriminatory manner**. They don't have the resources to access expensive services, e.g. traveling abroad to access abortion
- Criminalisation leads women to **resort to unsafe abortions**
- Leads to **preventable deaths**
- States should “ensure that measures are taken to *prevent coercion* in regard to fertility and reproduction, and to ensure that women are *not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control*”

(CEDAW Committee General Recommendation 19 (1992) on violence against women)

Criminal laws and women's rights

- Criminal laws can **impede access to *lawful* sexual and reproductive health services and information**, including family planning, due to the '*chilling effect*' such laws have on women and medical practitioners, concerned about prosecution (*ABC v Ireland*)
- Because criminal laws and other legal restrictions are based on, and perpetuate stigma, **women also face *discrimination* and *prejudice* when accessing lawful healthcare**

Criminal laws & women's rights

- Public morality is *not a legitimate justification* for enacting or enforcing laws intended to regulate conduct or decision-making on sexual and reproductive health matters
- Laws based on public morality are not *evidence-based*
- ‘Morals’ tend to reflect a dominant social or cultural patterns, in which *stereotyped roles for men and women* typically prevail. CEDAW requires States to modify such patterns (Article 5)

Criminal laws & women's rights

Autonomy and dignity

- When criminal and other laws regulate the conduct and decision-making of individuals on sexual and reproductive health matters, the State *coercively substitutes* its will for that of the individual
- Women are not viewed as individuals having *agency* and capable of making decisions about their reproductive lives
- “*Dignity requires that individuals are free to make **personal decisions** without interference from the State, especially in an area as important and intimate as sexual and reproductive health*”

Criminal laws & women's rights

- Laws that “criminalise medical procedures only needed by women and that punish women who undergo these procedures” constitute a ***barrier to the ability of women to access appropriate healthcare services on the basis of equality with men***
(CEDAW Committee General Recommendation 24 (1999) on the right to health)
- Duty on States to ***respect*** rights by not “obstructing action taken by women in pursuit of their health goals”.
- The removal of criminal laws is also an ***immediate*** obligation of the right to health to due their discriminatory nature
- **Criminal laws must be removed**

No Restriction on Sexual & Reproductive and Health Services

- Most countries offer abortion and SRHS not only on the basis of the life exception but also on the deleterious consequences but also on the basis of the adverse consequences to women's health
- That is the only way to ensure that a full range of health sexual and reproductive health services are available and accessible to women