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Committee on Economic, Social and Cultural Rights

General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction

1. The right to sexual and reproductive health is an integral part of the right to health enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights.[1] It is also reflected in other international human rights instruments.[2] The adoption of the Programme of Action at the International Conference on Population and Development in 1994 further highlighted reproductive and sexual health issues within the human rights framework. [3] Since then, international and regional human rights standards and jurisprudence related to the right to sexual and reproductive health have considerably evolved. The most recently adopted *2030 Agenda for Sustainable Development* also includes goals and targets to be achieved in the area of sexual and reproductive health.[4]

2. Due to numerous legal, procedural, practical and social barriers, people's access to the full range of sexual and reproductive health facilities, services, goods and information is seriously restricted. In fact, the full enjoyment of the right to sexual and reproductive health remains a distant goal for millions of people, especially for women and girls, throughout

[1] See The Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the highest attainable standard of health (art. 12), paras 2, 8, 11, 16, 21, 23, 34 and 36 (2000).

[2] Convention on the Elimination of All Forms of Discrimination against Women(1979), article 12; Convention on the Rights of the Child(1989), articles 17, 23~25 and 27; and Convention on the Rights of Persons with Disabilities(2006), Articles 23 and 25; See also the Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation No. 24: Women and Health (1999), paras 11, 14, 18, 23, 26, 29, 31(b); and the Committee on the Rights of the Child (CRC), General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (2013).

[3] United Nations, *Report of the International Conference on Population and Development, Cairo 5-13 September 1994,* A/CONF.171/13/Rev.1. It is based on 15 principles, and Principle 1 states, "All human beings are born free and equal in dignity and rights…."

[4] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, adopted by the UN General Assembly in Sept. 2015, which contains Goal 3: Ensure healthy lives and promote well-being for all at all ages and Goal 5: Achieve gender equality and empower all women and girls.

the world. Certain individuals and population groups that experience multiple and intersecting forms of discrimination that exacerbate exclusion in both law and practice, such as lesbian, gay, bisexual, transgender and intersex persons (LGBTI)[5] and persons with disabilities, the full enjoyment of the right to sexual and reproductive health is further restricted.

3. This General Comment aims to assist State parties' implementation of the International Covenant on Economic, Social and Cultural Rights and fulfilment of their reporting obligations under the Covenant. It concerns primarily on States parties' obligation to ensure every individual's enjoyment of the right to sexual and reproductive health required under article 12, but is also related to other provisions of the Covenant.

4. In its General Comment No. 14 on the right to the highest attainable standard of health (2000), the Committee has already addressed in part the issue of sexual and reproductive health.[6] Considering the continuing grave violations of the right to sexual and reproductive health, however, the Committee views that the issue deserves a separate general comment.

II. Context

5. The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, over matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.

6. Sexual health and reproductive health are distinct from, but closely linked, to each other. Sexual health, as defined by WHO, is "a state of physical, emotional, mental and social well-being in relation to sexuality."[7] Reproductive health, as described in the ICPD Programme of Action, concerns the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour.[8]

Underlying and Social Determinants

7. In its General Comment No. 14, the Committee states that the right to the highest attainable standard of health not only includes the absence of disease and infirmity and the right to the provision of preventive, curative and palliative health care, but it extends to the underlying determinants of health. The same is applicable to the right to sexual and reproductive health. It extends beyond sexual and reproductive health care to the underlying

[5] For the purpose of this General Comment, references to LGBTI persons include, in addition to lesbian, gay, bisexual, transgender and intersex persons, other persons who face violations of their rights on the basis of their actual or perceived sexual orientation, gender identity and sex characteristics, including those who may identify with other terms. For intersex persons, see *Fact Sheet on Intersex*, http://www.unfe.org. https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf.

[6] CESCR, *General Comment No. 14*: *The right to the highest attainable standard of health (art. 12)*.(2000)

[7] WHO, *Sexual Health, Human Rights and the Law* (2015), working definition on sexual health, p. 5.

[8] ICPD *Programme of Action* (A/CONF.171/13), chapter 7 "Reproductive rights and reproductive health."

determinants of sexual and reproductive health, including access to safe and potable water and adequate sanitation, access to adequate food and nutrition, and adequate housing, safe and healthy working conditions and environment, and access to health-related education and information and effective protection from all forms of violence, torture and discrimination and other human rights violations that negatively impact on the right to sexual and reproductive health.[9]

8. Further, the right to sexual and reproductive health is also deeply affected by "social determinants of health," as defined by the WHO.[10] In all countries, patterns of sexual and reproductive health generally reflect social inequalities in society and unequal distributions of power based on gender, ethnic origin, age, disability and other factors. Poverty and income inequality, systemic discrimination, and marginalization based on grounds identified by the Committee are all social determinants of sexual and reproductive health, which also have impacts on the enjoyment of an array of other rights as well.[11] The nature of these social determinants, which are often expressed in laws and policies, limits the choices that individuals can exercise with respect to their sexual and reproductive health. Therefore, to realize the right to sexual and reproductive health, States parties must address the social determinants as manifested in laws, institutional arrangements and social practices that prevent individuals from effectively enjoying in practice their sexual and reproductive health.

Interdependence with Other Human Rights

9. The realization of the right to sexual and reproductive health requires that States parties also meet their obligations under other provisions of the Covenant. For example, the right to sexual and reproductive health, combined with the right to education (articles 13 and 14) and the right to non-discrimination and equality between men and women (articles 2.2 and 3), entail a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate.[12] The right to sexual and reproductive health, combined with the right to work (article 6) and just and favourable working conditions (article 7), as well as the right to non-discrimination and equality between men and women again, requires States to ensure employment with maternity protection and parental leave for workers, including vulnerable workers such as migrant workers or women with disability, as well as protection from sexual harassment at the workplace and prohibition of discrimination based on pregnancy, childbirth, parenthood, [13] or sexual orientation, gender identity or intersex status.

10. The right to sexual and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the right to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality. For example, lack of emergency obstetric care services or denial of abortion often lead to maternal mortality and morbidity, which in turn constitutes a violation of the

[9] See CESCR's *General Comment No. 14.*

[10] WHO Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health. Final Report of the Commission on Social Determinants of Health* (2008).

[11] CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)*. (2009)

[12] Report of the Special Rapporteur on the right to education, Vernor Munoz, (A/65/162), 23 July 2010

[13] CEDAW Art. 11.1(f) and 11.2.

right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment.[14]

III. Normative Content of the Right to Sexual and Reproductive Health

A. Elements of the Right to Sexual and Reproductive Health

11. The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health. Following the elaboration in the Committee's General Comment No. 14, a comprehensive sexual and reproductive health care contains the following four interrelated and essential elements.[15]

Availability

12. An adequate number of functioning health care facilities, services, goods and programs should be available to provide the population with the fullest possible range of sexual and reproductive health care. This includes ensuring the availability of facilities, goods and services for the guarantee of the underlying determinants of the realization of the right to sexual and reproductive health, such as safe and potable drinking water and adequate sanitation facilities, hospitals and clinics.

13. Ensuring the availability of trained medical and professional personnel and skilled providers who are trained to perform the full range of sexual and reproductive health care services is a critical component of ensuring availability.[16] Also essential medicines should be available, including a wide range of contraceptive methods, such as condoms and emergency contraception, medicines for abortion and for post-abortion care, and medicines, including generic medicines, for the prevention and treatment of sexually transmitted infections and HIV.[17]

[14] Human Rights Committee*, KL v. Peru* (2005); CEDAW Communication No. 17/2008, *Alyne da Silva Pimentel v. Brazil*; The Committee Against Torture (CAT), *Concluding Observations: El Salvador*, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009); CAT, *Concluding Observations: Nicaragua*, para 16, UN Doc. CAT/C/NIC/CO/1 (2009)

[15] CESCR *General Comment No. 14* on the right to the highest attainable standard of health defined normative elements of state obligations to guarantee the right to health. These standards also apply to the underlying determinants, or the preconditions of health, including access to sexuality education and sexual and reproductive health information, CESCR *General Comment No. 14: The Right to the highest attainable standard of health*, (2000), para 12; See also, CRC General Comment No. 15: *The right of the child to the highest attainable standard of health* (art. 24), Chapter IV, Section E, 2013; CRC *General Comment No. 15* on adolescent health has applied these norms to adolescents. States parties should provide health services that are sensitive to the particular needs and human rights of all adolescents.

[16] CESCR *General Comment No. 14*, para 12(a); United Nations, Human Rights Council (2012), *Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality*. U.N. Doc. A/HRC/21/22, para. 20.

[17] Essential medicines are defined as 'those that satisfy the priority health care needs of the population and that are intended to be available within the context of functioning health systems at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and community can afford.' CESCR *General Comment No. 14*; WHO, *Essential Medicines List* (18th ed. 2013).

14. Unavailability of goods and services due to ideologically based policies or practices, such as the refusal to provide services based on conscience, must not be a barrier to accessing services; an adequate number of health care providers willing and able to provide such services should be available at all times in both public and private facilities and within reasonable geographical reach.[18]

Accessibility

15. Health facilities, goods, information and services related to sexual and reproductive health care[19] should be accessible to all individuals and groups without discrimination and free from barriers. As elaborated in the Committee's General Comment 14, accessibility includes physical accessibility, affordability and information accessibility.

Physical accessibility

16. Health facilities, goods, information and services related to sexual and reproductive health care must be available within safe physical and geographical reach for all, so that persons in need can receive timely services and information. Physical accessibility should be ensured for all, especially persons belonging to disadvantaged and marginalized groups, including, but not limited to, persons living in rural and remote areas, persons with disabilities, refugees and internally displaced persons, stateless persons and persons in detention. When dispensing sexual and reproductive services to remote areas is impracticable, substantive equality calls for positive measures to ensure persons in need to have communication and transportation to such care.

Affordability

17. Publicly or privately provided sexual and reproductive health services must be affordable for all. Essential goods and services, including those related to the underlying determinants of sexual and reproductive health, must be provided at no cost or based on the principle of equality to ensure that individuals and families are not disproportionately burdened with health expenses. People without sufficient means should be provided with the necessary support to cover the costs of health insurance and accessing health facilities providing sexual and reproductive health information, goods and services.[20]

Information accessibility

18. Information accessibility includes the right to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues generally and also for individuals to receive specific information on their particular health status. All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections and HIV prevention, safe abortion and post abortion care, infertility and fertility options, and reproductive cancers.

19. Such information must be provided in a manner consistent with the needs of the individuals and community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status.[21]

[18] European Committee on Social Rights, *IPPF v Italy*, 2014.

[19] Reference in this document to health facilities, goods and services includes the underlying determinants.

[20] See generally, CESCR, *General Comment No. 14*, para. 19

[21] See the issue paper, *Human Rights and Intersex People*, published by the Commissioner for Human Rights, Council of Europe, April 2015.

Information accessibility should not impair the right to have personal health data and information treated with privacy and confidentiality.

Acceptability

20. All facilities, goods, information and services related to sexual and reproductive health must be respectful of the culture of individuals, minorities, peoples and communities and sensitive to gender, age, disability, sexual diversity and life-cycles requirements. However, this cannot be used to justify the refusal to provide tailored facilities, goods, information and services to specific groups.

Quality

21. Facilities, goods, information and services related to sexual and reproductive health must be of good quality, meaning that they are evidence-based and scientifically and medically appropriate and up-to-date. This requires trained and skilled healthcare personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advancements and innovations in the provision of sexual and reproductive health services, such as medication for abortion,[22] assisted reproductive technologies, and advancements in the treatment of HIV and AIDS, jeopardizes the quality of care.

B. Special Topics of Broad Application

Non-Discrimination and Equality

22. Article 2, paragraph 2 of the Covenant provides that all individuals and groups shall not be discriminated and enjoy equal right. All individuals and groups should be able to enjoy equal access to the same range, quality and standard of sexual and reproductive health facilities, information, goods and services and to exercise their rights to sexual and reproductive health without any discrimination.

23. Non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including LGBTI persons, to be fully respected for their sexual orientation**,** gender identity and intersex status. Criminalisation of sex between consenting adults of same gender or expression of one's gender identity is a clear violation of human rights. Likewise, regulations treating LGBTI persons as mental or psychiatric patients or requiring that they be "cured" by so-called "treatment" are a clear violation of their right to sexual and reproductive health. State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health.

24. Non-discrimination and equality require not only legal and formal equality but also substantive equality. Substantive equality requires that the distinct sexual and reproductive health needs of particular groups, as well as any barriers that particular groups may face, are addressed. The sexual and reproductive health needs of particular groups should be given tailored attention. For example, persons with disabilities should be able to enjoy not only the same range and quality of sexual and reproductive health services but also those they would need specifically because of their disabilities.[23] Further, reasonable accommodation must be made to enable persons with disabilities to fully access sexual and reproductive health services on an equal basis, such as physically accessible facilities,

[22] See WHO, *Safe abortion: technical and policy guidance for health systems* (2012).
[23] See CRPD, Art. 25 on health.

information in accessible formats and decision-making support, and States should ensure that care is provided in a respectful and dignified manner that does not exacerbate marginalization.

Equality between Women and Men and Gender Perspective

25. Due to women's reproductive capacities, the realization of women's right to sexual and reproductive health is essential to the realization of the full range of their human rights. Women's right to sexual and reproductive health is indispensable to their autonomy and their right to make meaningful decisions about their lives and health. Gender equality requires that women's health needs, different from men, are taken into account and appropriate services are provided for women in accordance with their life cycles.

26. Women's experiences of systemic discrimination and violence throughout their lives require comprehensive understanding on the concept of gender equality in the right to sexual and reproductive health. Non-discrimination on the basis of sex, as guaranteed in Article 2.2, and women's equality guaranteed in Article 3 of the Covenant, require the removal of not only direct discrimination but also indirect discrimination and ensuring of formal as well as substantive equality.[24]

27. Seemingly neutral laws, policies and practices can perpetuate the already existing gender inequalities and discrimination against women. Substantive equality requires that the laws, policies and practices do not maintain, but rather alleviate, the inherent disadvantage that women experience in exercising their right to sexual and reproductive health. Gender-based stereotypes, assumptions and expectations of women as men's subordinates and of women's role as only caregivers and mothers in particular, are obstacles to substantive gender equality including the equal right to sexual and reproductive health and need to be modified or eliminated, as does men's role only as heads of the household and breadwinners.[25] At the same time special measures, both temporary and permanent, are necessary to accelerate *de facto* equality of women and to protect maternity.[26]

28. The realization of women's rights and gender equality, both in law and in practice, requires repealing or reforming the discriminatory laws, policies and practices in the area of sexual and reproductive health. Removal of all barriers interfering with women's access to comprehensive sexual and reproductive health services, goods, education and information is required. To lower rates of maternal mortality and morbidity requires emergency obstetric care and skilled birth attendance, including in rural and remote areas, and prevention of unsafe abortions.[27] Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and comprehensive sexuality education, including for adolescents, liberalize restrictive abortion laws, guarantee women and girls access to safe abortion services and quality post-abortion care,[28] including by training

[24] See CESCR *General Comment No. 16*.

[25] See CEDAW, Art. 5.

[26] CEDAW, Art. 4.1 is on "temporary special measures aimed at accelerating de facto equality between men and women", and Art. 4.2 is on "special measures… aimed at protecting maternity". See also CESCR *General Comment No. 16*, para. 15.

[27] See the report of UN Secretary-General, *Framework of Actions for the Follow-up to the Programme of Action of the International Conference on Population and Development Beyond 2014*, A/69/62.

[28] See the report of UN Secretary-General, *Framework of Actions for the Follow-up to the Programme of Action of the International Conference on Population and Development Beyond*

health care providers, and respect women's right to make autonomous decisions about their sexual and reproductive health.[29]

29. It is also important to undertake preventive, promotional and remedial action to shield all individuals from the harmful practices and norms and gender-based violence that deny them their full sexual and reproductive health, such as female genital mutilation, child and forced marriage and domestic and sexual violence including marital rape, among others. States parties must put in place laws, policies and programmes to prevent, address and remediate violations of all individuals' right to autonomous decision-making on matters regarding their sexual and reproductive health, free from violence, coercion and discrimination.

Intersectionality and Multiple Discrimination

30. Individuals belonging to particular groups may be disproportionately affected by intersectional discrimination in the context of sexual and reproductive health. As identified by the Committee,[30] groups such as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescents, LGBTI persons, and people living with HIV/AIDS are more likely to experience multiple discrimination. Trafficked and sexually exploited women, girls and boys are subject to violence, coercion and discrimination in their everyday lives, with their sexual and reproductive health at great risk. Also, women and girls living in conflict situations are disproportionately exposed to the high risk of violations of their rights, including through systematic rape, sexual slavery, forced pregnancy and forced sterilization.[31] Measures to guarantee non-discrimination and substantive equality should be cognizant of and seek to overcome the often exacerbated impact that intersectional discrimination has on the realization of the right to sexual and reproductive health.

31. Laws, policies and programmes, including temporary special measures, are required to prevent and eliminate discrimination, stigmatization and negative stereotyping that hinders access to sexual and reproductive health. Prisoners, refugees, stateless persons, asylum seekers and undocumented migrants, given their additional vulnerability by condition of their detention or legal status, are also a group with specific needs that require the State to take particular steps to ensure their access to sexual and reproductive information, goods and health care. States must ensure that individuals are not subject to harassment for exercising their right to sexual and reproductive health. Eliminating systemic discrimination will also frequently require devoting greater resources to traditionally neglected groups,[32] and to ensure that anti-discrimination laws and policies are implemented in practice by officials and others.

2014, A/69/62; WHO, *Safe Abortion: Technical and Policy Guidance for Health System,* 2nd ed. (2012).

[29] Ibid.

[30] Including race and colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status including ethnicity, age, nationality, marital and family status, disability, sexual orientation and gender identity, intersex status, health status, place of residence, economic and social situation, other status, and those facing multiple forms of discrimination, see CESCR *General Comment No. 20*.

[31] See *Vienna Declaration and Programme of Action* (1993), 3. The equal status and human rights of women, para. 38; *Beijing Declaration and Platform for Action* (1995), E. Women and Armed Conflict, para. 135.

[32] CESCR, *General Comment No. 20*, para. 39.

32. States parties should take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination. They should ensure that such persons have a access to the full range of sexual and reproductive healthcare services.

IV. States Parties' Obligations

A. General Legal Obligations

33. As prescribed by Article 2.1 of the Covenant, States parties must take steps to the maximum of available resources with a view to achieving progressively the full realization of the right to sexual and reproductive health. States parties must move as expeditiously and effectively as possible towards the full realization of the highest attainable standard of sexual and reproductive health. This means that, while its full realization may be achieved progressively, steps towards that goal must be taken immediately or within a reasonably short time. Such steps should be deliberate, concrete and targeted, using all appropriate means, particularly including, but not limited to, the adoption of legislative and budgetary measures.

34. States parties are under immediate obligation to eliminate discrimination against individuals and groups and to guarantee their equal right to sexual and reproductive health. This requires States to repeal or reform laws and policies that nullify or impair certain individual's and group's ability to realize their right to sexual and reproductive health. A wide range of laws, policies and practices undermine the autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws. States parties should also ensure that all individuals and groups have equal access to the full range of sexual and reproductive health information, goods and services, including by removing all barriers that particular groups may face.

35. States must adopt the necessary measures to eliminate conditions and combat attitudes that perpetuate inequalities and discrimination, particularly on the basis of gender, in order to enable all individuals and groups to enjoy sexual and reproductive health on a basis of equality.[33] States must recognize and take measures to rectify entrenched social norms and power structures that impair the equal exercise of their right, such as the impact that gender roles have on the social determinants of health. Such measures must address and eliminate discriminatory stereotypes, assumptions and norms concerning sexuality and reproduction, which underlie restrictive laws and undermine the realization of sexual and reproductive health.

36. As needed, States should implement temporary special measures to overcome long-standing discrimination and entrenched stereotypes against certain groups and to eradicate conditions that perpetuate discrimination. States should focus on ensuring that all individuals and groups are effectively enjoying their right to sexual and reproductive health on a substantively equal basis.

37. A State party has the duty to establish that it has obtained the maximum available resources, including those made available through international assistance and cooperation, with a view to complying with its obligations under the Covenant.

[33] *See* CESCR, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3),* paras. 6-9.

38. Retrogressive measures should be avoided, and if applied, the State party has the burden of proof of their necessity.[34] This applies equally in the context of sexual and reproductive health. Examples of retrogressive measures include the removal of sexual and reproductive health medications from national drug registries; laws or policies revoking public health funding for sexual and reproductive health services; the imposition of barriers to sexual and reproductive health information, goods and services; enacting laws criminalizing certain sexual and reproductive health conduct and decisions; and legal and policy changes that reduce the States' oversight of private actors' obligations to respect individuals' rights to access sexual and reproductive health services. In the extreme circumstances under which retrogressive measures may be inevitable, States must ensure that such measures are only temporary, do not disproportionately affect disadvantaged and marginalized individuals and groups or are not applied in an otherwise discriminatory manner.

B. Specific Legal Obligations

39. States parties have an obligation to respect, protect and fulfil the right to sexual and reproductive health of everyone.

Obligation to respect

40. The obligation to *respect* requires States to refrain from directly or indirectly interfering with individuals' exercise of the right to sexual and reproductive health. States must not limit or deny anyone access to sexual and reproductive health, including through laws criminalizing sexual and reproductive health services and information, while confidentiality of the health data should be maintained. States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion, HIV non-disclosure, exposure and transmission, consensual sexual activities between adults or transgender identity or expression.[35]

41. The obligation to respect also requires States to remove and refrain from enacting laws and policies that create barriers in access to sexual and reproductive health services. This includes third-party authorization requirements, such as parental, spousal and judicial authorization requirements for access to sexual and reproductive health services and information, including for abortion and contraception; biased counselling and mandatory waiting periods for divorce, remarriage or access to abortion services; mandatory HIV testing; and the exclusion of particular sexual and reproductive health services from public funding or foreign assistance funds. The dissemination of misinformation and imposition of restrictions on individuals' right to access to information about sexual and reproductive health also violates the duty to respect human rights. National and donor states must refrain from censoring, withholding, misrepresenting or criminalizing information on sexual and

[34] See CESCR, *General Comment No. 14*, para. 32.

[35] See, e.g., CESCR, Concluding Observations: Chile, para. 53, UN Doc. E/C.12/1/Add.105 (2004); CEDAW, General Recommendation No. 14, para. 24 & 31(c); Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/66/254 (2011); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20 (2010).

reproductive health,[36] both to the public and to individuals. Such restrictions impede access to information and services, and can fuel stigma and discrimination.[37]

Obligation to protect

42. The obligation to *protect* requires States to take measures to prevent third parties from directly or indirectly interfering with the enjoyment of the right to sexual and reproductive health. The duty to protect requires States to put in place and implement laws and policies prohibiting conducts by third-parties that cause harm to physical and mental integrity or undermine the full enjoyment of the right to sexual and reproductive health, including the conduct of private healthcare facilities, insurance, and pharmaceutical companies and manufacturers of health-related goods and equipment. This includes the prohibition of violence and discriminatory practices, such as the exclusion of particular individuals or groups from the provision of sexual and reproductive health services.

43. States must prohibit and prevent private actors from imposing practical or procedural barriers to health services, such as physical obstruction from facilities, dissemination of misinformation, informal fees and third-party authorization requirements. Where health care providers are allowed to invoke conscientious objection, States must appropriately regulate this practice to ensure that it does not inhibit anyone's access to sexual and reproductive health care, including by requiring referrals to an accessible provider capable of and willing to provide the services being sought, and the performance of services in urgent or emergency situations.[38]

44. States are obliged to ensure that adolescents have full access to appropriate information on sexual and reproductive health, including family planning and contraceptives, the dangers of early pregnancy and the prevention and treatment of sexually transmitted diseases (STDs) including HIV/AIDS, regardless of their marital status and whether their parents or guardians consent, with respect for their privacy and confidentiality.[39]

Obligation to fulfil

45. The obligation to *fulfil* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to ensure the full realization of the right to sexual and reproductive health.[40] States should aim to ensure universal access without discrimination for all individuals, including those from disadvantaged and marginalized groups, to a full range of quality sexual and reproductive health care, including maternal health care; contraceptive information and services; safe abortion care; prevention, diagnosis and treatment of infertility, reproductive cancers, sexually transmitted infections and HIV/AIDS including by generic medicines. States must guarantee physical and mental health care for survivors of sexual and domestic violence in

[36] CESCR, *General Comment No. 14: The right to the highest attainable standard of health (article 12)* (2000); CRC, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child* (2003).

[37] See Amnesty International, *Left Without a Choice: Barriers to Reproductive Health in Indonesia* (2010).

[38] CESCR, *Concluding Observations: Poland*, para. 28, UN Doc. E/C.12/POL/CO/5 (2009); Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para. 24 & 65(m), UN Doc. A/66/254 (2011); CEDAW, *General Recommendation No. 24: Women and health*, (1999), para. 11.

[39] CRC, *General Comment No. 4*, paras. 28 and 33.

[40] See CESCR, *General Comment No. 14*, paras. 33 and 36~37.

all situations, including access to post-exposure prevention, emergency contraception, and safe abortion services.

46. The obligation to fulfil also requires States to take measures to eradicate practical barriers to the full realization of the right to sexual and reproductive health, such as disproportionate costs and lack of physical or geographical access to sexual and reproductive health care. States must ensure that health care providers are adequately trained on the provision of quality and respectful sexual and reproductive health services and ensure that such providers are equitably distributed throughout the state.

47. States must develop and enforce evidence-based standards and guidelines for the provision and delivery of sexual and reproductive health services, and such guidance must be routinely updated to incorporate medical advancements. At the same time, States are required to provide age-appropriate, evidence-based, scientifically accurate comprehensive education for all on sexual and reproductive health.[41]

48. States must also take affirmative measures to eradicate social barriers in terms of norms or beliefs that inhibit individuals of different ages and genders, women, girls and adolescents, from autonomously exercising their right to sexual and reproductive health. Social misconceptions, prejudices and taboos about menstruation, pregnancy, delivery, masturbation, wet dreams, vasectomy and fertility should be modified so that these would not obstruct individual's enjoyment of the right to sexual and reproductive health.

C. Core Obligations

49. States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to sexual and reproductive health. In this regard, States parties should be guided by contemporary human rights instruments and jurisprudence, [42] as well as the most current international guidelines and protocols established by the UN agencies, in particular WHO and UNFPA.[43] The core obligations include at least the following:

(a) To repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine individual's or particular group's access to sexual and reproductive health facilities, services, goods and information;

(b) To adopt and implement a national strategy and action plan, with adequate budget allocation, on sexual and reproductive health, which is devised, periodically reviewed and monitored through a participatory and transparent process, disaggregated by the prohibited grounds of discrimination;

(c) To guarantee universal and equitable access to affordable, acceptable and quality sexual and reproductive health services, goods and facilities, in particular for women and disadvantaged and marginalized groups;

[41] See CESCR, *General Comment No. 14*; CEDAW, *General Recommendation No. 30*, para. 52(c); CRC, *General Comment No. 15*, para. 54.

[42] For example, *ICPD beyond 2014*; CEDAW's decisions on Communication No. 17/2008, *Alyne da Silva Pimentel Teixeira (deceased) v. Brazil* and Communication No. 22/2009, *L. C. v. Peru*; General Comments and Recommendations of CRC and CEDAW.

[43] See e.g. *Interagency Field Manual for Reproductive Health in Humanitarian Settings* (2010): http://www.who.int/reproductivehealth/publications/emergencies/field_manual_rh_humanitarian_settings.pdf, and *Improving Reproductive Health: Guidelines Introduced by WHO-UNFPA Strategic Partnership Programme*: http://www.unfpa.org/rh/guidelines.htm.

(d) To enact and enforce the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriages and domestic and sexual violence including marital rape, while ensuring privacy, confidentiality and free, informed and responsible decision-making, without coercion, discrimination or fear of violence, on individual's sexual and reproductive needs and behaviours;

(e) To take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need;

(f) To ensure all individuals and groups have access to comprehensive education and information on sexual and reproductive health, that is non-discriminatory, non-biased, evidence-based and taking into account the evolving capacities of children and adolescents;

(g) To provide medicines, equipment and technologies essential to sexual and reproductive health, including based on the WHO Essential Medicines List[44]; and

(h) To ensure access to effective and transparent remedies and redress, including administrative and judicial ones, for violations of the right to sexual and reproductive health.

D. International Obligations

50. International cooperation and assistance are a key element of article 2.1 of the Covenant and are crucial for the realization of the right to sexual and reproductive health. In compliance with article 2.1, States that are not able to comply with their obligations and cannot realize the right to sexual and reproductive health due to a lack of resources must seek international cooperation and assistance. States that are in a position to do so must respond to such requests in good faith and in accordance with the international commitment of contributing at a minimum 0.7% of their gross national income for international cooperation and assistance.

51. States parties should ensure, in compliance with their Covenant obligations, that their bilateral, regional and international agreements dealing with intellectual property or trade and economic exchanges, do not impede access to medicines, diagnostics or related technologies required for prevention or treatment of HIV/AIDS or other diseases related to sexual and reproductive health. States should ensure that international agreements and domestic legislation incorporate to the fullest extent any safeguards and flexibilities therein that may be used to promote and ensure access to medicines and health care for all. States parties should review their international agreements, including on trade and investment, to ensure that these are consistent with the protection of the right to sexual and reproductive health, and should amend them as necessary.

52. Donor States and international actors have an obligation to comply with the human rights standards, which are also applicable to sexual and reproductive health. To this end, international assistance should not impose restrictions on information or services existing in donor States, draw trained reproductive health care workers away from recipient countries or push recipient countries to adopt models of privatization. Also, the donor States should not reinforce or condone legal, procedural, practical or social barriers to the full enjoyment of sexual and reproductive health existing in the recipient countries.

53. Intergovernmental organizations, and in particular the United Nations, specialized agencies, programmes and bodies, have a crucial role to play and contribution to make in the universal realization of the right to sexual and reproductive health. WHO, UNFPA, UN

[44] WHO *Model List of Essential Medicines*, s. 18.3.

Women, Office of the High Commissioner for Human Rights and other UN agencies provide technical guidance and information as well as capacity building and strengthening. They should cooperate effectively with States parties, building on their respective expertise in relation to the implementation of the right to sexual and reproductive health at the national level, with due respect to their individual mandates, in collaboration with the civil society.[45]

V. Violations

54. Violations of the right to sexual and reproductive health can occur through the direct action of States or other entities insufficiently regulated by States. Violations through *acts of* commission include the adoption of legislation, regulations, policies or programmes which create barriers to the realization of the right to sexual and reproductive health in the State party or in the third countries, or the formal repeal or suspension of legislation, regulations, policies or programmes necessary for the continued enjoyment of the right to sexual and reproductive health.

55. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to sexual and reproductive health and the failure to enact and enforce relevant laws. Failure to ensure formal and substantive equality in the enjoyment of the right to sexual and reproductive health constitutes a violation of this right. The elimination of *de jure* as well as *de facto* discrimination is required for the equal enjoyment of the right to sexual and reproductive health.[46]

56. Violations of the obligation to *respect* occurs where the State through laws, policies, or actions undermine the right to sexual and reproductive health, and includes State interference with an individual's freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard. They also occur when the State removes or suspends laws and policies that are necessary for the enjoyment of the right to sexual and reproductive health.

57. Examples of violations of the obligation to respect include establishment of legal barriers impeding individuals' access to sexual and reproductive health services, such as the criminalization of women undergoing abortions and the criminalization of consensual sexual activity between adults. Banning or denying access in practice to sexual and reproductive health services and medicines, such as emergency contraception, also violates the obligation to respect. Laws and policies which prescribe involuntary, coercive or forced medical interventions, including forced sterilization; mandatory HIV/AIDS, virginity or pregnancy testing, also violate the obligation to respect.

58. Laws and policies that indirectly perpetuate coercive medical practices further violate this duty, including incentive or quota-based contraceptive policies and hormonal therapy, surgery or sterilization requirements for legal recognition of one's gender identity. Violations of the obligation to respect also include state practices and policies that censor or withhold information, or present inaccurate, misrepresentative or discriminatory information, related to sexual and reproductive health.

59. Violations of the obligation to *protect* occur where a State fails to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health. This includes the failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including

[45] CESCR, *General Comment No. 14*, paras. 63~65.
[46] CESCR, *General Comment No. 16*, para. 41.

domestic violence, rape including marital rape, and sexual assault, abuse and harassment, including during conflict, post-conflict and transition situations, and including violence targeting LGBTI persons or women seeking abortion or post-abortion care; harmful practices such as female genital mutilation; child and forced marriages; forced sterilization, forced abortion and forced pregnancy; and medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children.

60. States must effectively monitor and regulate specific sectors, such as private health care providers, health insurance companies, educational and child-care institutions, institutional care facilities, refugee camps, prisons and other detention centres, to ensure that they do not undermine or violate individuals' enjoyment of the right to sexual and reproductive health. States have an obligation to ensure that private health insurance companies do not refuse to cover sexual and reproductive health services. Furthermore, States also have an extraterritorial obligation[47] to ensure that the transnational corporations, such as pharmaceutical companies operating globally, do not violate the right to sexual and reproductive health of people in other countries, for example through non-consensual testing of contraceptives or medical experiments.

61. Violations of the obligation to *fulfil* occur when States do not take all necessary steps to facilitate, promote and provide for the right to sexual and reproductive health within maximum available resources. Such violations arise where States fail to adopt and implement a holistic and inclusive national health policy that adequately and comprehensively includes sexual and reproductive health or where a policy fails to appropriately address the needs of disadvantaged and marginalized groups.

62. Violations of the obligation to fulfil also occur where States fail to progressively ensure sexual and reproductive health facilities, goods and services are available, accessible, acceptable and of good quality. Examples of such violations include the failure to guarantee access to the full range of contraceptive options in order to ensure that all individuals are able to utilize an appropriate method that suits their particular situation and needs.

63. In addition, violations of the obligation to fulfil occur where States fail to take affirmative measures to eradicate legal, procedural, practical and social barriers to the enjoyment of the right to sexual and reproductive health and to ensure that health care providers treat all individuals seeking sexual and reproductive health care in a respectful and non-discriminatory manner. Violation of the obligation to fulfil would also occur where States fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically-accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula.

VI. Remedies

64. States must ensure that all individuals have access to justice and to a meaningful and effective remedy in instances where the right to sexual and reproductive health is violated. Remedies include, but are not limited to, adequate, effective and prompt reparation in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition as appropriate. The effective exercise of the right to a remedy requires funding

[47] See *The Maastricht Principles on Extraterritorial Obligations of State in the Area of Economic, Social and Cultural Rights* (2011).

access to justice and information about the existence of these remedies. It is also important that the right to sexual and reproductive health is enshrined in laws and policies and is fully justiciable at the national level, and that judges, prosecutors and lawyers are made aware of that such a right can be enforced. Where third parties contravene the right to sexual and reproductive health, States must ensure that such violations are investigated and prosecuted, and that the perpetrators are held accountable, while the victims of such violations are provided with remedies.