

CESCR GENERAL COMMENT NO. 22: THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH

This reference document is intended to provide sexual and reproductive health and rights advocates with detailed information on the Committee on Economic, Social and Cultural Rights' General Comment No. 22 on the right to sexual and reproductive health (UN Doc. E/C.12/GC/2 (March 4, 2016)), with the goal of facilitating integration of its content into advocacy at the international, regional and national level.

SEXUAL HEALTH DEFINITIONS AND TERMINOLOGY

- "Sexual health, as defined by WHO, is 'a state of physical, emotional, mental and social well-being in relation to sexuality.'" (Para. 6)
- "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." (Para. 6)

IMPORTANCE OF UNDERLYING AND SOCIAL DETERMINANTS OF HEALTH

- Sexual and reproductive health "extends beyond sexual and reproductive health care to the underlying determinants of sexual and reproductive health." (Para. 7)
- "Poverty and income inequality, systemic discrimination, and marginalization based on grounds identified by the Committee are all social determinants of sexual and reproductive health." (Para. 8)

AFFORDABILITY

- "Publicly or privately provided sexual and reproductive health services must be affordable for all." (Para. 17)
- Essential goods and services related to 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." (Para. 17)
- "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." (Para. 17)

ESSENTIAL MEDICINES

- "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." (Para. 13)

COMPREHENSIVE SEXUALITY EDUCATION AND ACCESS TO INFORMATION

- The realization of the right to sexual and reproductive health requires states to ensure "a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate." (Para. 9)
- States must "ensure that all educational institutions incorporate unbiased, scientifically-accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula." (Para. 63)
- "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." (Para. 41)
- "National and donor states must refrain from censoring, withholding, misrepresenting or criminalizing information on sexual and reproductive health, both to the public and to individuals. Such restrictions impede access to information and services, and can fuel stigma and discrimination." (Para. 41)

ABORTION

- “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 right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment.” (Para. 10)
- “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, including by training health care providers, and respect women’s right to make autonomous decisions about their sexual and reproductive health.” (Para. 28)
- States are obligated 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.” (Para. 34)

CONSCIENTIOUS OBJECTION

- “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.” (Para. 14)
- “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.” (Para. 43)

SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

- “Criminalisation of sex between consenting adults of same gender or expression of one’s gender identity is a clear violation of human rights.” (Para. 23)
- “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.” (Para. 23)
- “Laws and policies that indirectly perpetuate coercive medical practices further violate [the obligation to respect], including... hormonal therapy, surgery or sterilization requirements for legal recognition of one’s gender identity.” (Para. 58)

PEOPLE WITH DISABILITIES

- “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. (Para. 24)
- “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, 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.” (Para. 24)

AUTONOMY/DECISION-MAKING

- “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.” (Para. 25)
- “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.” (Para. 29)

SUBSTANTIVE EQUALITY

- “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.” (Para. 27)
- “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.” (Para. 27)

REMOVAL OF BARRIERS

- “Removal of all barriers interfering with women’s access to comprehensive sexual and reproductive health services, goods, education and information is required.” (Para. 28)
- States must remove and refrain from enacting laws that create barriers in accessing reproductive and sexual services including “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 counseling 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.” (Para. 41)

RETROGRESSIVE MEASURES

- “Retrogressive measures should be avoided, and if applied, the State party has the burden of proof of their necessity.” (Para. 38)
- “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.” (Para. 38)

CRIMINALIZATION

- “Criminalisation of sex between consenting adults of same gender or expression of one’s gender identity is a clear violation of human rights.” (Para. 23)
- “States must reform laws that impede the exercise of the right to sexual and reproductive health [such as] laws criminalizing abortion, HIV non-disclosure, exposure and transmission, consensual sexual activities between adults or transgender identity or expression.” (Para. 40)

FULL RANGE OF SEXUAL AND REPRODUCTIVE HEALTHCARE

- “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.” (Para. 45)
- “States must guarantee physical and mental health care for survivors of sexual and domestic violence in all situations, including access to post-exposure prevention, emergency contraception, and safe abortion services.” (Para. 45)

STANDARD AND GUIDELINES

- “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.” (Para. 47)

DONOR STATES AND INTERNATIONAL ASSISTANCE

- “Donor States and international actors have an obligation to comply with the human rights standards, which are also applicable to sexual and reproductive health. . . . [I]nternational 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.” (Para. 52)
- “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.” (Para. 52)

THIRD PARTIES

- Under States’ duty to protect, States are required to “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.” (Para. 42)
- “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.” (Para. 43)
- “States have an obligation to ensure that private health insurance companies do not refuse to cover sexual and reproductive health services.” (Para. 60)

VIOLATIONS OF RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH

The CESCR recognizes that states have a duty to respect, protect, and fulfill the full realization of the right to sexual and reproductive health. The Committee explicitly indicates that the following are violations of these duties:

- Establishment of legal barriers impeding individuals’ access to sexual and reproductive health services, such as criminalization of women undergoing abortions and the criminalization of consensual sexual activity between adults. (Para. 57)
- Banning or denying access in practice to sexual and reproductive health services and medicines, such as emergency contraception. (Para. 57)
- 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. (Para. 57)
- Laws and policies that indirectly perpetuate coercive medical practices, including incentive or quota-based contraceptive policies and hormonal therapy, surgery or sterilization requirements for legal recognition of one’s gender identity. (Para. 58)
- State practices and policies that censor or withhold information, or present inaccurate, misrepresentative or discriminatory information, related to sexual and reproductive health. (Para. 58)
- Failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including 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. (Para. 59)
- Failure to prohibit and take measures to prevent female genital mutilation; child and forced marriages; forced sterilization, forced abortion and forced pregnancy; medically unnecessary, irreversible and involuntary surgery and treatment performed on intersex infants or children. (Para. 59)
- State failure 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. (Para. 61)

REMEDIES

- “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.” (Para. 64)

- “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.” (Para. 64)
- When violations to a person’s right to sexual and reproductive health occur, “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.” (Para. 64)