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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.<sup>1</sup> It is also reflected in other international human rights instruments.<sup>2</sup> The adoption of the Programme of Action of the International Conference on Population and Development in 1994 further highlighted reproductive and sexual health issues within the human rights framework.<sup>3</sup> Since then, international and regional human rights standards and jurisprudence related to the right to sexual and reproductive health have considerably evolved. Most recently, the 2030 Agenda for Sustainable Development includes goals and targets to be achieved in the area of sexual and reproductive health.<sup>4</sup>

2. Due to numerous legal, procedural, practical and social barriers, 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

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<sup>1</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 2, 8, 11, 16, 21, 23, 34 and 36.

<sup>2</sup> See Convention on the Elimination of All Forms of Discrimination against Women, art. 12; Convention on the Rights of the Child, arts. 17, 23-25 and 27; and Convention on the Rights of Persons with Disabilities, arts. 23 and 25. See also Committee on the Elimination of Discrimination against Women general recommendation No. 24 (1999) on women and health, paras 11, 14, 18, 23, 26, 29, 31 (b); and Committee on the Rights of the Child general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.

<sup>3</sup> *Report of the International Conference on Population and Development, Cairo 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex. The Programme of Action is based on 15 principles. Principle 1 states that “All human beings are born free and equal in dignity and rights”.

<sup>4</sup> United Nations, *Transforming our World: the 2030 Agenda for Sustainable Development*, adopted by the General Assembly in September 2015. Goal 3 of the 2030 Agenda is “Ensure healthy lives and promote well-being for all at all ages”, and Goal 5 is “Achieve gender equality and empower all women and girls”.



remains a distant goal for millions of people, especially for women and girls, throughout 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<sup>5</sup> and persons with disabilities, the full enjoyment of the right to sexual and reproductive health is further restricted.

3. The present general comment is aimed at assisting State parties in their implementation of the Covenant and fulfilling their reporting obligations thereunder. It concerns primarily the obligation of States parties to ensure every individual's enjoyment of the right to sexual and reproductive health, as required under article 12, but is also related to other provisions of the Covenant.

4. In its general comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), the Committee has already addressed in part the issue of sexual and reproductive health. Considering the continuing grave violations of this right, however, the Committee is of the view 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, regarding 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 the World Health Organization (WHO), is "a state of physical, emotional, mental and social well-being in relation to sexuality".<sup>6</sup> Reproductive health, as described in the Programme of Action of the International Conference on Population and Development, 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.<sup>7</sup>

### Underlying and social determinants

7. In its general comment No. 14, the Committee stated that the right to the highest attainable standard of health not only included the absence of disease and infirmity and the right to the provision of preventive, curative and palliative health care, but also extended to the underlying determinants of health. The same is applicable to the right to sexual and

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<sup>5</sup> For the purpose of the present general comment, references to lesbian, gay, bisexual, transgender and intersex persons include 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 available from [https://unfe.org/system/unfe-65-Intersex\\_Factsheet\\_ENGLISH.pdf](https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf).

<sup>6</sup> See WHO, *Sexual Health, Human Rights and the Law* (2015), working definition on sexual health, sect. 1.1.

<sup>7</sup> See Programme of Action of the International Conference on Population and Development, chap. 7.

reproductive health. It extends beyond sexual and reproductive health care to the underlying determinants of sexual and reproductive health, including access to safe and potable water, adequate sanitation, adequate food and nutrition, adequate housing, safe and healthy working conditions and environment, health-related education and information, and effective protection from all forms of violence, torture and discrimination and other human rights violations that have a negative impact on the right to sexual and reproductive health.

8. Further, the right to sexual and reproductive health is also deeply affected by “social determinants of health”, as defined by WHO.<sup>8</sup> In all countries, patterns of sexual and reproductive health generally reflect social inequalities in society and unequal distribution of power based on gender, ethnic origin, age, disability and other factors. Poverty, 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 an impact on the enjoyment of an array of other rights as well.<sup>9</sup> 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), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate.<sup>10</sup> 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, also requires States to ensure employment with maternity protection and parental leave for workers, including workers in vulnerable situations, such as migrant workers or women with disabilities, as well as protection from sexual harassment in the workplace and prohibition of discrimination based on pregnancy, childbirth, parenthood,<sup>11</sup> 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 rights 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 leads to maternal mortality and morbidity, which in turn constitutes a violation of the

<sup>8</sup> 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).

<sup>9</sup> See Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

<sup>10</sup> A/65/162.

<sup>11</sup> See Convention on the Elimination of All Forms of Discrimination against Women, 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.<sup>12</sup>

### **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, comprehensive sexual and reproductive health care contains the four interrelated and essential elements described below.<sup>13</sup>

##### **Availability**

12. An adequate number of functioning health-care facilities, services, goods and programmes 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.<sup>14</sup> Essential medicines should also 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.<sup>15</sup>

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

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<sup>12</sup> See Human Rights Committee Communication No. 1153/2003, *Karen Noelia Llantoy Huamán v. Peru*, views adopted on 24 October 2005; Committee on the Elimination of Discrimination against Women communication No. 17/2008, *Alyne da Silva Pimentel v. Brazil*, views adopted on 25 July 2011; CAT/C/SLV/CO/2, para. 23; and CAT/C/NIC/CO/1, para. 16.

<sup>13</sup> In paragraph 12 of general comment No. 14, the Committee 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. See also Committee on the Rights of the Child general comment No. 15, which applied those norms to adolescents. States parties should provide health services that are sensitive to the particular needs and human rights of all adolescents.

<sup>14</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14, para. 12 (a); and A/HRC/21/22 and Corr.1 and 2, para. 20.

<sup>15</sup> Essential medicines are defined by WHO 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". See Committee on Economic, Social and Cultural Rights general comment No. 14; and WHO, Model List of Essential Medicines, 19th ed. (2015).

provide such services should be available at all times in both public and private facilities and within reasonable geographical reach.<sup>16</sup>

### **Accessibility**

15. Health facilities, goods, information and services related to sexual and reproductive health care<sup>17</sup> should be accessible to all individuals and groups without discrimination and free from barriers. As elaborated in the Committee's general comment No. 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 that persons in need have communication and transportation to such services.

#### *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 support necessary to cover the costs of health insurance and access to health facilities providing sexual and reproductive health information, goods and services.<sup>18</sup>

#### *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, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer.

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

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<sup>16</sup> *International Planned Parenthood Federation – European Network v. Italy*, complaint No. 87/2012 (2014), resolution adopted by the Committee of Ministers of the Council of Europe on 30 April 2014.

<sup>17</sup> Reference in the present document to health facilities, goods and services includes the underlying determinants.

<sup>18</sup> See, generally, Committee on Economic, Social and Cultural Rights general comment No. 14, para. 19.

intersex status.<sup>19</sup> 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-cycle 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 health-care personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as medication for abortion,<sup>20</sup> assisted reproductive technologies and advances 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 (2) of the Covenant provides that all individuals and groups shall not be discriminated against and shall enjoy equal rights. 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 experiencing any discrimination.

23. Non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. Criminalization of sex between consenting adults of the same gender or the expression of one's gender identity is a clear violation of human rights. Likewise, regulations requiring that lesbian, gay, bisexual transgender and intersex persons be treated 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, be 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

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<sup>19</sup> Council of Europe Commissioner for Human Rights, "Human rights and intersex people", issue paper (2015).

<sup>20</sup> WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed. (2012).

services which they would need specifically because of their disabilities.<sup>21</sup> 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, 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 the right of women to sexual and reproductive health is essential to the realization of the full range of their human rights. The right of women 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 the health needs of women, different from those of men, be taken into account and appropriate services provided for women in accordance with their life cycles.

26. The experiences of women of systemic discrimination and violence throughout their lives require comprehensive understanding of 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) of the Covenant, and the equality of women, as guaranteed in article 3, require the removal of not only direct discrimination but also indirect discrimination, and the ensuring of formal as well as substantive equality.<sup>22</sup>

27. Seemingly neutral laws, policies and practices can perpetuate already existing gender inequalities and discrimination against women. Substantive equality requires that 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 related to women being the subordinates of men and their role being solely as 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 the role of men solely as heads of household and breadwinners.<sup>23</sup> At the same time, special measures, both temporary and permanent, are necessary to accelerate the de facto equality of women and to protect maternity.<sup>24</sup>

28. The realization of the rights of women and gender equality, both in law and in practice, requires repealing or reforming discriminatory laws, policies and practices in the area of sexual and reproductive health. Removal of all barriers interfering with access by women 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. 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; to liberalize restrictive abortion laws; to guarantee

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<sup>21</sup> See Convention on the Rights of Persons with Disabilities, art. 25.

<sup>22</sup> Committee on Economic, Social and Cultural Rights general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

<sup>23</sup> See Convention on the Elimination of All Forms of Discrimination against Women, art. 5.

<sup>24</sup> Article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women is concerned with "temporary special measures aimed at accelerating de facto equality between men and women", while article 4 (2) focuses on "special measures... aimed at protecting maternity". See also Committee on Economic, Social and Cultural Rights general comment No. 16, para. 15.

women and girls access to safe abortion services and quality post-abortion care, including by training health-care providers; and to respect the right of women to make autonomous decisions about their sexual and reproductive health.<sup>25</sup>

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 other things. States parties must put in place laws, policies and programmes to prevent, address and remediate violations of the right of all individuals 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,<sup>26</sup> groups such as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescents, lesbian, gay, bisexual, transgender and intersex 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 a high risk of violation of their rights, including through systematic rape, sexual slavery, forced pregnancy and forced sterilization.<sup>27</sup> 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 hinder 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 groups 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<sup>28</sup> and ensuring that anti-discrimination laws and policies are implemented in practice by officials and others.

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<sup>25</sup> A/69/62; see also WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed. (2012).

<sup>26</sup> Including groups that are discriminated against on the grounds of 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 or other status, and those facing multiple forms of discrimination. See Committee on Economic, Social and Cultural Rights general comment No. 20.

<sup>27</sup> See Vienna Declaration and Programme of Action of 1993 (A/CONF.157/23), para. 38; and Beijing Declaration and Platform for Action of 1995 (A/CONF.177/20), para. 135.

<sup>28</sup> See Committee on Economic, Social and Cultural Rights 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 access to the full range of sexual and reproductive health-care services.

## **IV. Obligations of States parties**

### **A. General legal obligations**

33. As prescribed by article 2 (1) of the Covenant, States parties must take steps, to the maximum of their 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 full realization of the goal may be achieved progressively, steps towards it must be taken immediately or within a reasonably short period of 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 the ability of certain individuals and groups to realize their right to sexual and reproductive health. There exists a wide range of laws, policies and practices that undermine 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 measures necessary to eliminate conditions and combat attitudes that perpetuate inequality and discrimination, particularly on the basis of gender, in order to enable all individuals and groups to enjoy sexual and reproductive health on the basis of equality.<sup>29</sup> States must recognize, and take measures to rectify, entrenched social norms and power structures that impair the equal exercise of that right, such as gender roles, which have an impact on the social determinants of health. Such measures must address and eliminate discriminatory stereotypes, assumptions and norms concerning sexuality and reproduction that 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 effectively enjoy 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.

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<sup>29</sup> See Committee on Economic, Social and Cultural Rights general comment No. 16, paras. 6-9.

38. Retrogressive measures should be avoided and, if such measures are applied, the State party has the burden of proving their necessity.<sup>30</sup> 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; imposition of barriers to information, goods and services relating to sexual and reproductive health; enacting laws criminalizing certain sexual and reproductive health conduct and decisions; and legal and policy changes that reduce oversight by States of the obligation of private actors to respect the right of individuals 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, and 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 of everyone to sexual and reproductive health.

### **Obligation to respect**

40. The obligation to respect requires States to refrain from directly or indirectly interfering with the exercise by individuals 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 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, non-disclosure of HIV status, exposure to and transmission of HIV, consensual sexual activities between adults, and transgender identity or expression.<sup>31</sup>

41. The obligation to respect also requires States to repeal, 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 the imposition of restrictions on the right of individuals to access 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 the provision of information on sexual and reproductive health,<sup>32</sup> both to the public and to

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<sup>30</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14, para. 32.

<sup>31</sup> See e.g. E/C.12/1/Add.105 and Corr.1, para. 53; Committee on the Elimination of Discrimination against Women general recommendation No. 24, paras. 24 and 31 (c); A/66/254; and A/HRC/14/20.

<sup>32</sup> Committee on Economic, Social and Cultural Rights general comment No. 14; and Committee on the Rights of the Child general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

individuals. Such restrictions impede access to information and services, and can fuel stigma and discrimination.<sup>33</sup>

### **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 conduct by third parties that causes harm to physical and mental integrity or undermines the full enjoyment of the right to sexual and reproductive health, including the conduct of private health-care 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 of 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 that it does not inhibit the performance of services in urgent or emergency situations.<sup>34</sup>

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, including HIV/AIDS, regardless of their marital status and whether their parents or guardians consent, with respect for their privacy and confidentiality.<sup>35</sup>

### **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.<sup>36</sup> 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; and prevention, diagnosis and treatment of infertility, reproductive cancers, sexually transmitted infections and HIV/AIDS, including with generic medicines. 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.

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

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<sup>33</sup> Amnesty International, *Left Without a Choice: Barriers to Reproductive Health in Indonesia* (2010).

<sup>34</sup> See E/C.12/POL/CO/5, para. 28; A/66/254, paras. 24 and 65 (m); and Committee on the Elimination of Discrimination against Women general recommendation No. 24, para. 11.

<sup>35</sup> See Committee on the Rights of the Child general comment No. 4, paras. 28 and 33.

<sup>36</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14, paras. 33 and 36-37.

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.<sup>37</sup>

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 do not obstruct an individual's enjoyment of the right to sexual and reproductive health.

### C. Core obligations

49. States parties have a core obligation to ensure, at the very least, minimum essential levels of satisfaction of the right to sexual and reproductive health. In this regard, States parties should be guided by contemporary human rights instruments and jurisprudence,<sup>38</sup> as well as the most current international guidelines and protocols established by United Nations agencies, in particular WHO and the United Nations Population Fund (UNFPA).<sup>39</sup> The core obligations include at least the following:

(a) To repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group 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 prohibited ground 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;

(d) To enact and enforce the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriage and domestic and sexual violence, including marital rape, while ensuring privacy,

<sup>37</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14; Committee on the Elimination of Discrimination against Women general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, para. 52 (c); and Committee on the Rights of the Child general comment No. 15, para. 60.

<sup>38</sup> See, for example, [www.icpdbeyond2014.org](http://www.icpdbeyond2014.org); Committee on the Elimination of Discrimination against Women communications No. 17/2008, and No. 22/2009, *L.C. v. Peru*, views adopted on 17 October 2011; and general comments and recommendations of Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women.

<sup>39</sup> See e.g. Inter-agency Field Manual on Reproductive Health in Humanitarian Settings (Inter-agency Working Group on Reproductive Health in Crises, 2010), available from [www.who.int/reproductivehealth/publications/emergencies/field\\_manual\\_rh\\_humanitarian\\_settings.pdf](http://www.who.int/reproductivehealth/publications/emergencies/field_manual_rh_humanitarian_settings.pdf); and publications by UNFPA on sexual and reproductive health, available from [www.unfpa.org/sexual-reproductive-health](http://www.unfpa.org/sexual-reproductive-health).

confidentiality and free, informed and responsible decision-making, without coercion, discrimination or fear of violence, in relation to the sexual and reproductive needs and behaviours of individuals;

(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 are non-discriminatory, non-biased, evidence-based, and that take 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 Model List of Essential Medicines;<sup>40</sup>

(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 key elements 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 that 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 per cent 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 exchange 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 they 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 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, donor States should not reinforce or condone legal, procedural, practical or social barriers to the full enjoyment of sexual and reproductive health that exist in the recipient countries.

53. Intergovernmental organizations, and in particular the United Nations and its specialized agencies, programmes and bodies, have a crucial role to play and contribution to make with regard to the universal realization of the right to sexual and reproductive health. The World Health Organization, UNFPA, the United Nations Entity for Gender

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<sup>40</sup> See WHO Model List of Essential Medicines, sect. 18.3.

Equality and the Empowerment of Women (UN–Women), the Office of the United Nations High Commissioner for Human Rights and other United Nations entities 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 civil society.<sup>41</sup>

## V. Violations

54. Violations of the right to sexual and reproductive health can occur through the direct action of States or other entities that are insufficiently regulated by States. Violations through acts of commission include the adoption of legislation, regulations, policies or programmes that create barriers to the realization of the right to sexual and reproductive health in the State party or in third countries, or the formal repeal or suspension of legislation, regulations, policies or programmes that are 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.<sup>42</sup>

56. Violations of the obligation to respect occur when the State, through laws, policies or actions, undermines the right to sexual and reproductive health. Such violations include 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 the establishment of legal barriers impeding access by individuals 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 that prescribe involuntary, coercive or forced medical interventions, including forced sterilization or mandatory HIV/AIDS, virginity or pregnancy testing, also violate the obligation to respect.

58. Laws and policies that indirectly perpetuate coercive medical practices, including incentive- or quota-based contraceptive policies and hormonal therapy, as well as surgery or sterilization requirements for legal recognition of one's gender identity, constitute additional violations of the obligation to respect. Further violations 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 when 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

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<sup>41</sup> See Committee on Economic, Social and Cultural Rights general comment No. 14, paras. 63-65.

<sup>42</sup> See Committee on Economic, Social and Cultural Rights general comment No. 16, para. 41.

domestic violence, rape (including marital rape), sexual assault, abuse and harassment, including during conflict, post-conflict and transition situations; violence targeting lesbian, gay, bisexual, transgender and intersex persons or women seeking abortion or post-abortion care; harmful practices such as female genital mutilation, child and forced marriage, 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 enjoyment by individuals 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<sup>43</sup> to ensure that 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 when States fail to adopt and implement a holistic and inclusive national health policy that adequately and comprehensively includes sexual and reproductive health or when a policy fails to appropriately address the needs of disadvantaged and marginalized groups.

62. Violations of the obligation to fulfil also occur when States fail to progressively ensure that 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 so 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 when 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 also occur when 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 meaningful and effective remedy in instances in which 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 remedy requires funding access to justice and information about the existence of these remedies. It

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<sup>43</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.

is also important that the right to sexual and reproductive health be enshrined in laws and policies and be fully justiciable at the national level, and that judges, prosecutors and lawyers be made aware of that such a right can be enforced. When 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.

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