

Discussion Day on the Right to Sexual and Reproductive Health

Contribution towards the Elaboration of a General Comment

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1) The General Comments of the Committee on Economic, Social and Cultural Rights significantly impact what is (and is not) prioritized at the country level. They influence how policymakers understand their obligations, how academics and activists work with these obligations and ultimately how people experience their economic, social and cultural rights and in this case how they will experience their sexual and reproductive health and rights. Whatever title is given to the General Comment has clear implications from a legal perspective for general understanding of the nature of the right or the rights involved. While the obligations relating to sexual and reproductive health need to be articulated in relation to specific rights as contained in the Covenant – and here I would suggest emphasizing nondiscrimination and the right to health (while making links to other rights in the Covenant and in other treaties) -- there are concerns about what can be seen or interpreted as making up a new right called a right to Sexual and Reproductive Health. I worry very much that this naming of a new right in how the General Comment is titled – the right to Sexual and Reproductive Health -- will have a negative effect and narrow the understanding of what government obligations for sexual and reproductive health entail rather than strengthening and fully clarifying what these obligations should look like. General understanding of the legal obligations will not be sufficient if the General Comment is understood to be articulating a new right. Therefore would respectfully suggest that the title of this General Comment be simply “Sexual and Reproductive Health” or perhaps “Sexual and Reproductive Health and the Covenant” but not be “the Right to Sexual and Reproductive Health.” Much in line

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with the approach the Committee has taken at other times when dealing with themes which cut across a range of rights. (persons with disabilities)

2) It is important that the General Comment be written so as to ensure the sexual and reproductive health of **all** populations. This would need to be clearly articulated as part of a government's obligations in relation to sexual and reproductive health. There is a danger that unless this General Comment is explicit about this that it will inadvertently narrow what is understood to be protected rather than be a clear and evidence-based General Comment which fully protects the rights and sexual and reproductive health of all populations. In terms of obligations, this would mean ensuring the text is explicit that rights in relation to sexual and reproductive health need to be respected, protected and fulfilled not only for women, but also for men, for transgender populations and for adolescents (whatever their gender) and all populations specifically noted as protected against discrimination in General Comment 20. The suggestion is therefore that the General Comment make explicit that the legal obligations in relation to sexual and reproductive health are clearly grounded in the nondiscrimination framework as articulated in GC 20 (as well as GC 14).

3) In terms of core obligations, and recognizing this as a key component of how most General Comments are drafted, I wish to suggest that it is important the General Comment not set out a minimum package or a minimum core in terms of Sexual and Reproductive Health -- even as I understand there may be an eagerness on the part of the Committee to do so. The UN agencies that work in the area of sexual and reproductive health, including WHO and UNFPA, have not defined a single minimum package of Sexual and Reproductive Health services, except in crises situations, precisely because Sexual and Reproductive Health encompasses so many different things -- including not only family planning and safe(r) pregnancy but sexuality education and sexual health information, HIV, gender-based violence, female genital cutting, abortion, sterilization, sexual harassment, honor crimes, sexual orientation, gender identity and expression.

And for this range of topics which fall under the rubric of Sexual and Reproductive Health they lay out what could be characterized as obligations in relation to both the underlying determinants of sexual and reproductive health and the delivery of available, accessible, acceptable and quality sexual and reproductive health services for people to fully achieve their sexual and reproductive health and rights.

I would therefore suggest that the General Comment, in line with what is done by the UN agencies, be very careful not to articulate one minimum core but come back to what is articulated in General Comment 14, building on Article 12, and noting the other rights key to sexual and reproductive health in particular non discrimination. I would suggest to list out the full sexual and reproductive health package as articulated by the agencies, including the range of relevant sexual and reproductive health issues, with specific attention to health services, to the broader health system, and to the lived experience -- in other words the underlying determinants -- of what it takes for a person to realize their sexual and reproductive health. The General Comment would then need to be explicit about the role of progressive realization with respect to obligations of states relating to sexual and reproductive health.

4) Sexual and Reproductive Health by its very nature brings up sensitive issues - - gender-based violence, abortion, adolescent access to sexual and reproductive health services etc.. and while these issues can be contentious it would be very important for the General Comment to be explicit in its treatment of these topics, drawing on the Committees own jurisprudence, so as to ensure this General Comment moves rights protections forward in every way. It is imperative that this process not be rushed, and that adequate time is taken to ensure the most positive outcomes for the sexual and reproductive health and rights of all people.
