



Preliminary Contribution to the Proposed Draft General Comment on the Right to Sexual and Reproductive Health

November 15, 2010 Day of General Discussion, 45th Session of the CESCR
[Submitted on October 18, 2010]

In light of the Day of General Discussion on “the right to sexual and reproductive health” on November 15th, 2010 at the 45th Session of the Committee on Economic, Social and Cultural Rights, the Center for Economic and Social Rights (CESR) would like to bring attention to key issue points that the Committee should address in the drafting of the upcoming General Comment on the right to sexual and reproductive health (SRH). Sexual and reproductive health rights continue to be neglected, contested and violated with impunity worldwide. This is evidenced, for example, by the relatively low gains made in the last decade in reducing preventable maternal death despite commitments under the Millennium Development Goals, as well as the systematic underreporting and misreporting of sexual and reproductive rights violations.

Therefore, CESR welcomes the Committee’s decision to give focused attention to sexual and reproductive health rights. The General Comment is a valuable opportunity to: (a) reaffirm the importance of sexual and reproductive rights as an integral and indivisible part of the human rights framework (b) clarify the scope and content of legal obligations around sexual and reproductive rights and (c) provide more guidance to states on how to make human rights principles operational in sexual and reproductive health policy and practice. This note sets out the reasons why CESR considers these to be the key objectives of a new General Comment and gives some preliminary pointers as to how these issues could be addressed by the Committee. CESR looks forward to providing further input once a draft has been made available for consultation.

I. Reaffirm Sexual and Reproductive Rights as integral to and indivisible from other human rights

- The consensus documents emerging from the International Conference on Population and Development (ICPD) in Cairo in 1994 and the Fourth World Conference on Women (FWCW) in Beijing in 1995 explicitly recognized reproductive and sexual health as a fundamental aspect of human rights, of particular relevance to the rights to bodily integrity and security of person, to non-discrimination and equality between women and men, and to economic and social rights, including the right to the highest attainable standard of health. This recognition has been reflected in the work of all the UN treaty bodies, which have addressed SRH from different human rights perspectives. The General Comment should therefore stress the indivisibility and interrelation of sexual and reproductive health rights to other human rights, both civil and political, and economic, social and cultural.

- The General Comment should put emphasis on the need to address the direct, indirect and structural determinants that may influence the level of enjoyment of sexual and reproductive health. These determinants – such as women’s level of education, socio-economic status or nutritional state – are related to the enjoyment of other human rights, such as the right to education, the right to an adequate standard of living and the right to food. Yet policies to address the underlying determinants of health rarely address these determinants as human rights issues in and of themselves. The General Comment should underscore the importance of taking these determinants – and their corresponding human rights obligations – into account in the implementation and monitoring of sexual and reproductive health policies. In particular it should acknowledge how economic policies directly shape and determine the enjoyment of sexual and reproductive health.
- It is imperative that the General Comment build upon and not undermine the progressive jurisprudence and body of authoritative interpretation on sexual and reproductive health by the CESCR and other treaty monitoring bodies, as well as that of regional human rights mechanisms. It should also draw on the normative guidelines produced by expert inter-governmental agencies such as the WHO, UNAIDS, UNFPA, UNICEF and OHCHR on sexual and reproductive health-related issues including access to emergency obstetric careⁱ and safe abortionⁱⁱ, HIV/AIDS preventionⁱⁱⁱ and discrimination on grounds of sexual orientation and gender identity.^{iv}
- While a holistic approach is needed to address the interconnected dimensions of sexual and reproductive health – particularly where policy coherence often tends to be fragmented – sexual rights must also be recognized as distinct from reproductive rights. The Committee should affirm the content of sexual rights as articulated in international instruments and interpretation by UN human rights bodies, clarifying their relationship to reproductive rights.

II. Clarify States’ Legal Obligations to SRH Rights

- As with previous General Comments, the Committee can provide invaluable guidance to states by clarifying the nature of state obligations to respect, protect and fulfill the right to sexual and reproductive health. CESCR believes the General Comment on sexual and reproductive rights can add particular value by shedding light on the scope and content of the obligation to fulfill, as it is the most poorly understood obligation and, as such, one of the most neglected in the framing and implementation of policies related to sexual and reproductive health. In particular, the Committee should elucidate states’ legal obligations related to the progressive realization of sexual and reproductive rights according to maximum available resources, the elimination of discrimination and substantive inequality, and the prioritization of minimum core obligations in relation to sexual and reproductive health.
- All too often, states attribute their failure to make progress in improving sexual and reproductive health outcomes to a lack of resources. While resources are undoubtedly required to strengthen health systems and create the enabling conditions for everyone to access sexual and reproductive health care and services of acceptable quality, the slow progress in reducing preventable maternal death – which can often be avoided at a low cost – or reducing early pregnancy can be traced back to the failure of states to use the resources at their disposal to make reasonable and equitable progress, and to the absence of mechanisms for holding the state to account for the progressive fulfilment of sexual and reproductive rights.

- Moreover, the apparent stalling in global progress in the last decade along many of the indicators related to sexual and reproductive health^v may in some respects be attributable to inconsistent and even deliberately retrogressive measures, such as policy shifts that restrict the scope of sexual and health education for youth or the adoption of increasingly restrictive abortion laws which place women’s lives and health at risk, or the inequitable allocation of resources, goods and services in ways that widen sexual and reproductive health disparities between population groups.^{vi}
- The General Comment should stress that the duty of states to progressively fulfill the right to health includes putting in place adequate fiscal policies enabling them to generate the maximum of potentially available resources and to distribute these equitably so as to reduce SRH disparities between population groups. Resources must be allocated in a transparent, non-discriminatory and participatory way, giving preference to disadvantaged groups. The lack of a clearly defined budget for sexual and reproductive health programs undermines transparency and accountability. The Committee should also stress that the states’ duty to ensure maximum available resources are being devoted to fulfill sexual and reproductive rights without discrimination, which applies equally in the context of decentralization and privatization of health services.
- In addressing the resource dimensions of the obligation to fulfill, the General Comment should also examine the extraterritorial obligations of states in a position to do so to provide international cooperation and assistance to other states with limited capacity to meet their full SRH obligations. Donor countries should be held accountable for how their overseas development assistance on health enables recipient states to meet their immediate and progressive obligations with regard to sexual and reproductive rights in a sustainable manner. The General Comment should also stress that the duty to respect and protect sexual and reproductive rights extends to ensuring that its international trade, aid and investment policies do not undermine the realization of this right in other jurisdictions.
- The General Comment should also emphasize that states have immediate obligations to prioritize the universal attainment of “minimum essential levels” in relation to sexual and reproductive rights. The Committee should consider clarifying and expanding on the core obligations outlined selectively in General Comment 14, Paragraph 44 of which includes key components of sexual and reproductive health as “obligations of comparable priority”. In doing so, the Committee could draw on the work done by expert inter-governmental agencies to identify core sexual and reproductive health services, including the UNFPA recommendations related to a “core package of reproductive and health services”^{vii} and the Inter-American Commission on Human Rights’ “immediate priority measures”^{viii}. A further point of reference are the SRH-related commitments and benchmarks agreed upon in the context of the Millennium Development Goals and their accompanying targets, by which states committed to providing universal access to reproductive health care by 2015 and to establishing “a minimum level of social security and health care for all.”^{ix}

III. Provide Guidance to States on Making These Principles Operational

- The General Comment should provide guidelines for the establishment of monitoring and accountability systems within states to assess the obligations to respect, protect and fulfill sexual and reproductive health rights. Systems to monitor fulfillment of the right to sexual and reproductive health should not only assess sexual and reproductive health outcomes in light of these principles; they should also assess states’ policy efforts, including policy commitments and resource allocation, from the perspective of

the criteria set out in General Comment 14 on the right to health. In so doing, the Committee should draw on the work being done within the UN system and by non-governmental human rights and public health advocates to further develop analytical frameworks, indicators and benchmarks on sexual and reproductive health in order to assess progressive realization and other dimensions of state party obligations.^x

- Monitoring activities need to be systematic in their method and continuous in their collection, assessment and interpretation of information. Monitoring activities should also actively feed into policy formation and implementation and must be able to make comparisons over time and across different groups in order to assess the obligations of progressive realization and principle of non-discrimination. The data gathered by states must be disaggregated so as to identify inequalities in the enjoyment of sexual and reproductive health on grounds such as gender, ethnicity, disability, age, socio-economic status and urban/rural location.
- The General Comment should also provide guidance on the range of measures states must take to establish accessible, transparent and effective accountability mechanisms and means to seek judicial and administrative redress in the case of sexual and reproductive health rights' violations. In particular, the Committee could encourage the potential oversight role of National Human Rights Institutions in promoting state accountability. The General Comment should also stress the need for states to take measures to ensure accountability in the context of decentralized and privatized health services.
- The General Comment should also call on states to ensure accountability mechanisms are accessible in practice to affected communities and individuals, by lifting the barriers frequently faced by those seeking justice and redress in relation to sexual and reproductive rights. The General Comment should also highlight the need to ensure the full participation of affected communities and individuals in the design, implementation and monitoring of policies relevant to sexual and reproductive health.

ⁱ World Health Organization, UNFPA, UNICEF and AMDD, *Monitoring Emergency Obstetric Care: A Handbook*. Geneva, Switzerland: World Health Organization, 2009.

ⁱⁱ World Health Organization, *Safe Abortion: technical and policy guidance for health systems*, Geneva, Switzerland, 2003

ⁱⁱⁱ UNAIDS, *Practical Guidelines for Intensifying Hiv Prevention: Towards Universal Access*. Geneva, Switzerland, 2007.

^{iv} Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity

^v UNFPA, *How Universal is Access to Reproductive Health? A Review of the Evidence*, New York, September 2010

^{vi} Report of the Office of the United Nations High Commissioner for Human Rights on Preventable Maternal Mortality and Morbidity and Human Rights, A/HRC/14/39, April 16, 2010.

^{vii} UNFPA, *Sexual and Reproductive Health for All: reducing poverty, advancing development and protecting human rights*, New York, September 2010.

^{viii} OAS, *Access to Maternal Health Services from a Human Rights Perspective*, Paragraph 20, Washington DC, 2006.

^{ix} UN General Assembly, *Draft Resolution Referred to the High Plenary Meeting of the General Assembly by the General Assembly at its Sixty-fourth Session, Keeping the Promise: United to Achieve the Millennium Development Goals*, A/65/L.1, September 17, 2010

^x UN Economic and Social Council, *Report of the High Commissioner for Human Rights on the Implementation of Economic, Social and Cultural Rights*, E/2009/90, June 8, 2009.