

Members of the United Nations Committee on Economic,
Social and Cultural Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

Re: Day of General Discussion on the Right to Sexual and Reproductive Health

From: Soledad García Muñoz¹

Montevideo, 12 November 2010

Dear Committee Members,

I am deeply grateful for your invitation to participate in the Committee on Economic, Social and Cultural Rights' upcoming Day of General Discussion and General Comment to be held in Geneva on 15 November 2010. I feel honored to have the opportunity to share thoughts and experiences with the Committee's experts as well with other distinguished colleagues.

I very much regret not being able to be with you personally that day as planned. However through these lines I will try to express some of the ideas that I would like transmit you during the session, hoping that you find it useful to inform the process of drafting a General Comment on sexual and reproductive health, in relation to Articles 10(2) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

First at all, I congratulate the Committee for addressing this important topic. For all human beings and especially women and girls the full access to sexual and reproductive health is key to ensure the human right integrally. You have ahead the big opportunity to develop and confirm significant standards for the benefit of the humanity and of the International Law development in a field where there is much to say and especially to do.

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*This document only reflects the views of the author and do not represent any institutional position.

A. Some preliminary thoughts

Fifteen years since the strong human rights agenda the International Conference on Population and Development (ICPD, Cairo) established² and despite sexual and reproductive health has been considered in relation to the Millennium Development Goals as “*a prerequisite of all goals, particularly those related to gender and health*”³ the fact is that we are very far from achieving the goals of universal access to reproductive health and reduced maternal mortality by two thirds proposals for 2015.

The situation is too grave as we can realize in listening the UN Secretary General, Mr. Ban Ki Moon just in relation to maternal health: “*Today, maternal mortality is the slowest moving target of all the Millennium Development Goals – and that is an outrage. Together, let us make maternal health the priority it must be. In the 21st century, no woman should have to give her life to give life*”⁴

The lack of access to the information, services and choices related to the sexual and reproductive health causes grave violations of the human rights recognized by the ICESCR but also by other international human rights instruments, as the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of Persons with Disabilities. Same applies to other regional human rights treaties. The matter is definitely called to keep in development⁵.

Therefore, the question must be addressed integrally in accordance with the principles of universality, indivisibility and interdependence of human rights considering all the standards so far developed by the international consensus and the international human rights law. The “*pro persona*” principle must also guide all interpretation in the field as it allows us to identify the highest possible standard in order to better protect the rights of persons.

B. Some key aspects about the universal access to the Right to Sexual and Reproductive Health

You asked me to share with you my thoughts about “*The right to sexual and reproductive health and universal Access*”.

² See García Muñoz et al., “Derechos Humanos en la agenda de población y desarrollo: vínculos conceptuales y jurídicos, estándares de aplicación”, a publication of the Inter- American Institute of Human Rights and UNFPA, 2009.

³ See <http://www.who.int/reproductivehealth/topics/mdgs/en/index.html>.

⁴ *Ibidem*

⁵ On this sense a remarkable initiative is the Campaign for an Inter- American Convention on Sexual and Reproductive Rights. See: http://www.convencion.org.uy/01campana/Documentos/Convencion_2010/prop2010-lima-ingl.pdf

Given the constraints of the time I will try to focus my contribution on such a broad topic emphasizing several issues that are for me especially relevant in the emergency arena of human rights we are talking about. Thus, universal access to sexual and reproductive health implies to refer at least the following aspects starting by consider the accessibility both in terms of physical access and access to information:

1) Equality and not discrimination: the importance of the gender and of the diversity perspectives in considering the right under examination

The universal access to the right to sexual and reproductive health depends crucially on the ability of States to guarantee the exercise of this and other human rights on a real equality and without discrimination basis. Non discrimination and equality are the two core principles for the implementation of all the Covenant rights as well the specific right to which we refer.

The Committee has extensively analyzed this issue in its General Recommendation No. 20 and now has the opportunity to apply the developed standards specifically in relation to the right to sexual and reproductive health. The Committee also has the opportunity to refine the standards developed in its General Recommendation No 16. In general terms this was a great contribution of the Committee but unfortunately the subject is barely mentioned despite being one of the biggest challenges ahead in building a world that ensures equality between women and men. I am sure the Committee will take this time to do so completing its interpretation on the matter.

The approach to the right to sexual and reproductive health is an issue that requires high gender and sexual diversity sensitivity as women⁶ and LGBTTI population⁷ are primarily affected and faced major obstacles in its exercise. In addition, the topic requires a clear understanding of the diversity of human collectives affected by the restrictions on the enjoyment of the right under analysis because situations of discrimination.

So it is especially important for the Committee, as it surely will, try to identify these groups and point to the states what are their reinforced obligations with them in the light of the Covenant.

In the region where I live, for example, women need of special measures to access to the right to sexual and reproductive health, as well marginalized collectives such as LGTTBI people, children, young people⁸, older people, indigenous people, persons with disabilities, African descent, migrants, displaced and refugees, people living in poverty, among others. They are

⁶ See http://www.esscr-net.org/usr_doc/Montreal_Principles_-_ENGLISH.doc

⁷ See <http://www.yogyakartaprinciples.org/>

⁸ The "Iberoamerican Convention on Youth Rights" (2008) is the first international treaty adopted on the specific rights of this population and contains relevant dispositions related to the right under examination.

tremendously cut its access to and enjoyment of the right under review. So this General Recommendation is an important tool to demonstrate the general and specific rights of all these collectives and to realize the in force State obligations with them.

In order to adopt measures to ensure the right of people to access sexual and reproductive health without discrimination, the participation of the diverse human collective and groups, especially those living in more marginalized situations in the decision making process is key to ensuring that states respond to real needs and take appropriate action.

2) The right to comprehensive sexual education as a prerequisite for the universal access to the right to sexual and reproductive health

In its General Comment No. 14 (2000), the Committee interpreted the right to health as an inclusive right *“extending not only to timely and appropriate health care but also to the underlying determinants of health”* which implies *“access to health-related education and information, including on sexual and reproductive health”*.

This issue of interdependency, indivisibility and due diligence has a great potential in practice. If human beings especially women could fully enjoy the right to receive comprehensive sexual education from childhood, there is no doubt that the numbers of illnesses and deaths related to our sexuality and reproduction are greatly reduced. If women know their rights and feel empowered and own of our bodies, would be far fewer unwanted pregnancies and abortions in the world.

In Argentina, the women’s movement uses a wise and eloquent slogan in its campaign for legal abortion: *“educación sexual para decidir, anticonceptivos para no abortar, aborto legal para no morir”* (sexual education to decide, contraceptive to avoid abortion, legal abortion to avoid death)⁹. This sentence pretty much sums up all the doors are closed to women before they need of resorting to abortion¹⁰.

⁹ VID <http://www.abortolegal.com.ar/>

¹⁰ As I explained recently in an Argentine newspaper: *“The international human rights standards make clear that people have the right to receive comprehensive sexual education, to have access to contraception and support the right of women to access to safe, legal and free abortions, especially in cases where pregnancies are the result of domestic violence or they are a risk to the life or the health of women. However, we are still far from being educated and trained to enjoy in equality and freedom of our sexual and reproductive rights, nor enjoy unrestricted the right of access to contraceptive methods, and sexual education is taboo for some society sectors that paradoxically also oppose the inevitable consequence of their denial: the abortions. Education and prevention are the key issue to ending abortions, not the penalty, which does not*

Recently the Special Rapporteur on the right to education presented a report to the General Assembly focusing on the human right to comprehensive sexual education¹¹. I had the great honor to support the former Rapporteur, Mr. Vénor Muñoz in drafting this report which is a very important tool for understanding, promoting and defending this right.

The report has been widely applauded by civil society working in the field and the most committed States in encouraging the progress of the sexual rights and reproductive rights. I sincerely hope that the ESCRC uses and endorses the important standards and recommendations that the report contains without yielding to the pressures that you can find in another direction.

It is worth emphasizing that the right to comprehensive sexual education is clearly a right itself as well a question of due diligence, a prerequisite of the access to the right to sexual and reproductive health and also an essential part of the right of persons to human rights education¹². *A contrario sensu*: without human right to comprehensive sexual education and without human right education the right to sexual and reproductive right cannot be enjoyed.

3) National Implementation

The right under analysis presents great challenges in terms of national implementation, requiring that the Committee is particularly precise and emphatic in this regard. Let me highlight three areas which I believe require special attention:

Legislation

National legislations are often restrictive or do not meet international standards in this area. It is really necessary the call of the Committee on the matter, especially in relation to laws criminalizing abortion. And beyond the national legislation status it is also a good opportunity for the Committee to remind States their obligations regarding the principle of good faith and other derivatives of the Vienna Convention on the Law of Treaties (1969) and Customary International Law.

Policies, plan and strategies

prevent the practice, but it actually creates an illegal market that kills thousands of women each year worldwide. Did they have no right to life?" See <http://www.pagina12.com.ar/diario/sociedad/subnotas/154018-49485-2010-09-29.html>

¹¹ See document A/65/162

¹² See Inter-American Institute of Human Rights, Eight Inter-American Report on Human Rights Education, San José, Costa Rica, 2009.

The Committee has established *“States parties should ensure that strategies, policies, and plans of action are in place and implemented in order to address both formal and substantive discrimination by public and private actors in the area of the Covenant rights. Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality”*¹³

In this area of human rights this important standard is often not reflected in practice. So the call from the Committee to meet this obligation specifically in relation to the right to sexual and reproductive health will be very important.

The Committee could take this opportunity to share with the States some guidelines or guiding principles for the formulation of public policies on the matter: human rights based approach and a gender and not discrimination focus are unavoidable on the design and implementation of such policies.

Access to justice

It is an aspect of the access to remedies and accountability that from my national, regional and international experience is one of the most challenging obstacles in ensuring the enforceability and justiciability of the access to the right to sexual and reproductive health nationally when the State fails to provide it.

I am referring to the access to justice especially from women as in all regions of the world they must confront judiciaries lack of gender perspective, resistance and understanding about women rights. These systems often re-victimizes women who come to them with the hope of realizing their rights, so many women do not even use judicial resources. The criminalization of abortion is one of the biggest obstacles on the matter and as said before it's very important the Committee claims for the revision of the national legislations on the matter.

C.Final remarks

Again I congratulate the Committee to include the analysis of this right on its agenda. The human rights issues related to sexuality and human reproduction, such as those related to women's human rights are perhaps the ones that generate the greatest resistance and denial of the terrible consequences of the lack of access to sexual health and reproductive health, especially women and children worldwide.

But reality speaks of an emergency: 113 countries have not reached the goals on gender equity and equality in primary and secondary education. An

¹³ General Comment No 20, par. 38.

estimated 137 million women in 2007 had an unmet need for family planning and more than 500 000 women die every year from pregnancy-related causes, 99% of them in developing countries¹⁴.

Your planned General Recommendation on the matter would be a qualified tool to assist states and other actors to change this situation by recognizing, promoting and protecting the sexual rights and reproductive rights as an integral part of the universal human rights.

It is an area in which in the XXI century humanity cannot keep waiting. Remaining to your complete disposition I wish you all the wisdom and courage this high responsibility requires.

Best regards,

Soledad García Muñoz

¹⁴ SEE

<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11992.htm>