

Comments for CESCR Day of General Discussion on "the right to sexual and reproductive health"

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Introduction

This contribution to the CESCR Day of General Discussion, as part of the preparatory work for formulation of a General Comment on the "right to sexual and reproductive health," will focus on two areas of reproductive health which have been considered contentious and therefore relatively neglected. The first relates to women's right to deal safely with unwanted pregnancies through use of emergency contraception and safe abortion care. In much of the developing world and in some industrialized countries, women's access to safe abortion is restricted by laws, personal beliefs of healthcare providers, and criminal penalties. The second area pertains to the right of women living with HIV to choose whether and when they wish to have children, which has been obstructed by health-care providers who have pressured, tricked and coerced them into sterilization.

Dealing safely with unwanted pregnancies

HIV-related illness and maternal mortality are the leading causes of death globally among women of reproductive age¹ and unsafe abortions cause a large proportion of such deaths. In Africa, with the largest number of women living with HIV, and Latin America, unsafe abortions account for more than 95% of all pregnancy terminations.² Unsafe abortion accounts for approximately 13% of global maternal deaths,³ with higher proportions in many developing countries (e.g., Argentina 20%).⁴ Women younger than 24 years account for almost 46% of these deaths worldwide,³ with rates as high as 59% for women aged 25 years and younger in Namibia.⁵ We know that women living with HIV are among the adolescent and adult women who have 5.5 million unsafe abortions each year; data from South Africa indicate that HIV may increase the risk of mortality from obstetric complications such as those associated with unsafe abortions.¹ In addition, it has been estimated that provision of safe legal abortion can prevent nearly all 5 million disabilities due to unsafe abortion annually.⁶

Laws making emergency contraception (EC) and abortion illegal violate numerous human rights:

- Large numbers of women do not have access to acceptable and affordable methods of contraception; this is particularly the case for adolescents and women living with HIV, who are often denied contraceptives other than condoms by health-care providers. In addition, many women do not/cannot consistently use contraceptive methods, face contraceptive failures,⁷⁻⁹ or are survivors of sexual violence¹⁰ and subsequently suffer unwanted pregnancies. When these women are prevented from using EC or having a safe abortion, their **rights to decide whether and when to have children and to freedom of thought and conscience are violated**. Yet some countries have made EC illegal (e.g., Honduras), refused registry of EC products (e.g., Ecuador) or prohibited distribution through the public health system (e.g., Chile, Peru).¹¹
- Research shows that women have abortions just as frequently where abortion is legally restricted as where it is broadly permitted, but deaths and injuries from unsafe abortion occur at much higher rates in restrictive settings. Where women are denied access to safe abortion care,

which carries less maternal risks than giving birth, they often feel forced to seek unsafe abortions and their lives are then endangered (**violation of the right to life**).

- Many women also suffer shorter and longer-term morbidity due to unsafe abortions, including sepsis, hemorrhage, perforated uterus, fistulas and infertility (**violation of right to health**). This is particularly tragic in the case of young women, who may have to undergo a hysterectomy and never be able to have children.¹²
- Pregnancy prevention and pregnancy termination are health measures needed only by women and not by men; therefore laws that prohibit or make access to EC and abortion difficult or impossible constitute a **violation of the right to freedom from discrimination based on sex**.
- Women in countries around the world are being imprisoned for abortion-related events, in some cases for what women report as miscarriages (e.g., Chile, Congo, Mexico, Uganda).¹³⁻¹⁶ In some countries, they are reported to authorities by health-care providers when they seek post-abortion care, which constitutes a **breach of their right to privacy and confidentiality**. Harassment by providers in efforts to make women “admit” they had an induced abortion can be characterized as **cruel and inhumane treatment**. The illegality (or perceived illegality even where abortion is permitted by law) contributes to stigmatization and subsequent discrimination and abuse within health services.
- Where EC is available and abortion is legally permitted for various indications (e.g., in cases of rape, to protect a woman’s health), women may still not be able to access these services, although accessibility is an essential component of the right to health. In some cases, this is because governments do not ensure that women know about the existence of, or eligibility for, EC and abortion, thereby **violating women’s right to information** (e.g., in Argentina, Namibia).^{4, 20, 21} Some governments have failed to issue or implement guidelines on safe abortion care so that health-care providers do not offer such treatment,⁴ or have imposed onerous, time-consuming procedures to obtain authorization for a legal abortion so that access is denied in practice.²⁰ This constitutes a **violation of their right to the benefits of scientific progress**.
- Women living with HIV also encounter abuse and discrimination from health-care providers when they seek legal abortions; for example, women living with HIV in India reported having been verbally castigated, pinched and hit during procedures and HIV-positive women in Nepal have suffered **breaches of confidentiality** concerning their HIV status.^{22, 23} In South Africa, women have been pressured or required to agree to sterilization in order to have a safe abortion.²⁴ In India and Nepal, women living with HIV also reported delays in abortion-related treatment and this was related to their HIV status.^{22, 23} These actions all constitute cruel and inhumane treatment and **violations of women’s rights to self-determination, liberty and security of person**.

Involuntary sterilization of women living with HIV

Due to the stigma and misconceptions surrounding childbearing by HIV-positive women in many places, women living with HIV have found themselves tricked and pressured into sterilization by health-care providers. In Chile and Namibia, court cases are currently being pursued in this regard. In Chile, a case that has now been submitted to the Inter-American Commission on Human Rights concerns a woman who was sterilized during a caesarean section without having given her consent.²⁴ In Namibia, cases have been filed for 15 women who, in some cases, signed papers that they could not understand or even read due to language and illiteracy problems.^{25, 26}

In South Africa, too, women have been pressured or required to agree to sterilization in order to have a safe abortion.²⁷

According to Article 1 of the Covenant on Economic, Social and Cultural Rights, all people have the right to self-determination; this means that women living with HIV must be able to decide for themselves if they wish to undergo a procedure which would render them permanently incapable of conceiving children. Article 5 of the Covenant moreover says that no State, group or person may destroy another's rights; governments are therefore responsible for ensuring that health-care providers do not violate the rights of women living with HIV in this way. Article 12 further states that all people have the right to enjoy the highest standard of physical and mental health, which is violated when they are coerced into undergoing a medical procedure that they do not want.

Conclusion

We believe that the two issues highlighted above require urgent attention within the reproductive health sphere and request that they also be addressed in the upcoming General Comment on the right to sexual and reproductive health. Further information can be provided if needed.

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