**Call for contributions: Draft General Recommendation n°37 on Racial discrimination in the enjoyment of the right to health**

27 July 2023

**The Center for Reproductive Rights (the Center)—an international non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Geneva, and Washington, D.C. and a staff of approximately 200 diverse professionals in 14 countries—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfil. Since its inception 30 years ago, the Center has advocated for the realization of women and girls’ human rights on a broad range of issues, and has conducted advocacy to support norm development at the U.N., including with the treaty monitoring bodies in the development of General Recommendations and Comments.**

The Center is pleased to provide this contribution in response to the Committee on the Elimination of Racial Discrimination’s (“CERD Committee” or “Committee”) call for contributions on the Draft General Recommendation n°37 on racial discrimination in the enjoyment of the right to health.

**Substantive gender equality (paras 2, 3, 4, 5 and section III):** The Center welcomes the Committee’s acknowledgement of structural and systemic discrimination and the legacies of the past related to colonialism and slavery in the realization of the right to health. Nonetheless, the draft should highlight how this interacts with gender, including that realizing substantive gender equality requires addressing the historical roots of gender discrimination, gender stereotypes, and traditional understandings of gender roles that perpetuate discrimination and inequality.[[1]](#endnote-1) For example, substantive equality has been recognized by United Nations treaty Monitoring Bodies (“UNTBs” or “TMBs”) in the context of sexual and reproductive health and rights (SRHR) to call on States to ensure positive reproductive health outcomes[[2]](#endnote-2) and to condemn laws that restrict or prohibit health services primarily needed by women such as abortion on the basis that they violate the rights to equality and non-discrimination.[[3]](#endnote-3)

In section II, the upcoming general recommendation should be edited to clearly reflect States’ obligations to achieve gender substantive equality and addressing how race interacts with gender by 1) addressing discriminatory power structures and the role gender plays within them;[[4]](#endnote-4) 2) recognizing that women and persons of diverse gender identity experience different kinds of rights violations due to discriminatory social and cultural norms involving intersecting forms of discrimination, including race; 3) ensuring equality of results such as lower rates of maternal mortality; 4) ensuring that women and persons of diverse gender identity can make fully informed decisions free from discrimination, violence and coercion;[[5]](#endnote-5) and 5) guaranteeing protection against gender discrimination by public institutions and by private actors in public and private spheres.[[6]](#endnote-6)

**Elements of the right to sexual and reproductive health (section 2, paras. 11 and 12):** The Center welcomes the Committee’s initiative to issue a general recommendation focused on the right to health and racial discrimination. This is an effort that comes after two main developments in the protection of the right to health with General Comment 14 (2000) on the right to health and General Comment No. 22 (2010) on sexual and reproductive health and rights of the Committee on Economic, Social and Cultural Rights (“ESCR Committee”).[[7]](#endnote-7) To keep building on the international human rights standards and avoid possible confusion and misunderstanding, the Committee should ensure that the draft is aligned with these two previous general comments and follows standards around 1) availability,[[8]](#endnote-8) 2) accessibility[[9]](#endnote-9) - including physical accessibility,[[10]](#endnote-10) economic accessibility (affordability),[[11]](#endnote-11) information accessibility[[12]](#endnote-12) and legal accessibility[[13]](#endnote-13) - 3) acceptability[[14]](#endnote-14), and 4) quality of services.[[15]](#endnote-15)

The draft should reiterate that promoting equality and tackling discrimination are cross-cutting obligations of immediate realization, not subject to the principle of progressive realization.[[16]](#endnote-16) Intersecting forms of discrimination that compound violations of sexual and reproductive health of women and girls also falls within the scope of States’ core obligation to eliminate discrimination.[[17]](#endnote-17) Core obligations of States include, among other things, “[t]o 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.[[18]](#endnote-18)

Regarding non-retrogression, the upcoming general recommendation should highlight that “[r]etrogressive measures should be avoided and, if such measures are applied, the State party has the burden of proving their necessity. This applies equally in the context of sexual and reproductive health […]. 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.”[[19]](#endnote-19) Specifically on abortion, States should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion.[[20]](#endnote-20)

**Maternal health (Section B.2. para 11, 12 and Section II):** The Center welcomes the sections dedicated to SRHR. Nonetheless, the draft should be updated to reflect the impact of racial discrimination on the higher rates of maternal mortality and morbidity, higher risk of unwanted pregnancies, and socioeconomic and other barriers in accessing safe abortion for racial and ethnic minorities. The CERD Committee has highlighted this concern in country reviews.[[21]](#endnote-21)

It is important that the Committee update the draft to meet international human rights standards on the rights to health, [[22]](#endnote-22) life, freedom from torture[[23]](#endnote-23) and access to information[[24]](#endnote-24) in order to guide States in their obligation to protect maternal health without discrimination. On the right to health, the draft should include specific language on 1) availability of pre and post-natal care, skilled birth attendants, and emergency obstetric services;[[25]](#endnote-25) 2) accessibility of maternal health care facilities to all women on a non-discriminatory basis, in law and in practice – including physical accessibility,[[26]](#endnote-26) economic affordability[[27]](#endnote-27) and information accessibility;[[28]](#endnote-28) 3) acceptability of maternal health services that respect the dignity of women and is sensitive to their needs and perspectives;[[29]](#endnote-29) and 4) adequate quality of facilities, goods, information and services related to sexual and reproductive health, including that all services be evidence-based and scientifically and medically appropriate, up-to-date and of good quality.[[30]](#endnote-30)

The duty to protect life obliges States to take appropriate measures to address the general conditions in society that may prevent individuals from enjoying their right to life with dignity.[[31]](#endnote-31) This includes ensuring access to health care and improving access to medical examinations and treatments designed to reduce maternal and infant mortality.[[32]](#endnote-32) Additionally, States must review their abortion laws to protect the right to life and ensure that women and girls do not have to resort to unsafe abortions.[[33]](#endnote-33) They have the obligation to effectively protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions.[[34]](#endnote-34)

It is also important to highlight that treaty monitoring bodies have recognized that the disrespect and abuse women face in maternal health facilities can amount to ill-treatment.[[35]](#endnote-35) “The contexts in which females are at risk [of torture or ill-treatment and the consequences thereof] include […] medical treatment, particularly involving reproductive decisions”.[[36]](#endnote-36) As the Committee against Torture (CAT Committee) has repeatedly stated, the right to be free from torture and cruel, inhuman, and degrading treatment (CIDT) carries with it non-derogable State obligations to prevent, punish, and redress violations of this right.

Access to accurate and timely sexual and reproductive health information, including specific information on an individual’s own health status, is essential to ensuring autonomous decision-making in sexual and reproductive health concerning maternal health care.[[37]](#endnote-37) States must ensure that information provided is science and evidence-based.[[38]](#endnote-38) The right to health also encompasses States’ obligation to address social and other determinants of health for women to be able to seek and access the maternal health services they need.[[39]](#endnote-39) Truly fulfilling these rights, however, may require States taking special temporary measures to address longstanding and institutionalized discrimination that are at the root of inadequate or outright denial of sexual and reproductive health services.[[40]](#endnote-40)

**Abortion (para 22):** The Center welcomes the Committee’s acknowledgement that persons under the purview of the Convention against the Elimination of Racial Discrimination are at a higher risk of unwanted pregnancies and often lack the means to overcome socioeconomic and other barriers to access abortion. However,the Committee should also update the draft to align its language and international human rights standards on access to abortion with the recent Abortion Care Guidelines issued by the World Health Organization (WHO) in 2022.[[41]](#endnote-41) Relevantly, in outlining States’ core obligations on the right to sexual and reproductive health, the ESCR Committee recommends that States be guided by the current international guidelines established by UN agencies, in particular WHO.[[42]](#endnote-42) Notably, the human rights obligations of non-discrimination and equality are a bedrock of every recommendation contained in the WHO guidelines, all of which are based on public health evidence and rooted in core human rights standards.[[43]](#endnote-43)

WHO recommends the full decriminalization of abortion, and against laws and other regulations that restrict abortion by grounds.[[44]](#endnote-44) Grounds-based approaches restricting access to abortion should be revised in favor of making abortion available on the request of the woman, girl or other pregnant person.[[45]](#endnote-45) WHO further recommends against third party authorizations[[46]](#endnote-46) or mandatory waiting periods.[[47]](#endnote-47) WHO specifically provides that the regulation of abortion should have the objective of meeting the particular needs of marginalized persons, including non-binary persons, women from ethnic, religious and racial minorities, migrant and displaced women, among others. [[48]](#endnote-48)

International and regional human rights bodies have further recognized that restrictive abortion laws violate women’s human rights, including their right to be free from ill-treatment, life, privacy, and freedom from gender discrimination or gender stereotyping, and that States have an obligation to liberalize such restrictive laws.[[49]](#endnote-49) Denial or delay of safe abortion and post-abortion care and forced continuation of pregnancy are also forms of gender discrimination and gender-based violence.[[50]](#endnote-50)

**Humanitarian contexts including armed conflicts (paras. 10, 15, 16):** The Center appreciates the reference of the impact of forced displacement, conflicts, climate change and disasters on the right to health. Nevertheless, a range of other important situations affecting the right to health should be included in the draft. Specifically, the draft should indicate that the upcoming general recommendation applies in humanitarian situations, crises and armed conflict, and reiterate that international human rights law (IHRL), continues to apply in these situations and provides the most robust standards on SRHR than any other body of international law.[[51]](#endnote-51) These standards are complementary to those in international humanitarian and criminal law and can and should be used as interpretative tool for gaps in other branches of international law.[[52]](#endnote-52)

The ESCR Committee and the Committee on the Elimination Against Women (CEDAW Committee) have specifically highlighted that IHRL standards concerning SRHR continue to apply during situations of crisis.[[53]](#endnote-53) Furthermore, the WHO has reiterated that, especially in times of crisis, States should eliminate legal and administrative barriers to SRH services, including abortion.[[54]](#endnote-54) The ESCR Committee has further observed that restrictions on SRHR institutionalize discriminatory stereotypes that are exacerbated by crisis and humanitarian situations.[[55]](#endnote-55)

Additionally, the CEDAW Committee, noting with concern the effects of conflict on SRHR and maternal mortality, has called on States to prioritize the provision of sexual and reproductive health services.[[56]](#endnote-56) States specifically should 1) “ensure that sexual and reproductive health care includes access to sexual and reproductive health and rights information; psychosocial support; family planning services, including emergency contraception; maternal health services […]; safe abortion services; post-abortion care […] among others;” [[57]](#endnote-57) 2) “Women and girls, including those who may be particularly vulnerable to HIV, have access to basic health services and information, including HIV prevention, treatment, care and support.”[[58]](#endnote-58) 3) “Coordinate all activities with stakeholders from the humanitarian and development communities to ensure a comprehensive approach that does not duplicate efforts in the fields of education, employment and health and reaches disadvantaged populations, including in remote and rural areas.” [[59]](#endnote-59)

**Remedies and accountability** (**para. 57 section III E)**: The Center welcomes the inclusion of an accountability section and recommends that it include a clear gender perspective that specifically refers to obligations on the provision of reparations for SRHR violations.[[60]](#endnote-60) Reparations must be timely, effective, transformative and address root causes of violations including, among other things, guarantees of non-recurrence and rehabilitation, such as the removal of “specific barriers women and girls may face in seeking justice by establishing confidential and non-biased processes to receive and address complaints and make meaningful changes to services.”[[61]](#endnote-61)

Similarly, States must specifically implement effective, immediately accessible, and rapidly-responding processes by which individuals can assert their rights to treatment and receive an authoritative response from an independent body when they are denied access to reproductive health services.[[62]](#endnote-62) In accordance with international human rights standards, such a mechanism must take up cases in a timely fashion and prioritize and expedite decisions involving sexual and reproductive health due to the time-sensitive nature of reproductive healthcare.[[63]](#endnote-63)

**Participation and decision-making** **paras (paras 29, 30 31 and 60):** The Center appreciates the reference to inclusive participation. It is, however, important that the Committee include references of human rights experts emphasizing the link between a lack of inclusive participation in political decision-making systems and inadequate health care for women.[[64]](#endnote-64) Similarly, evidence from cases of marginalized populations either refused SRH access or being entirely neglected have also prompted the WHO to recognize the association between participation of affected populations and health outcomes, which led to its recommendation that the participation of marginalized and affected populations in all stages of decision-making and implementation of policies and programmes is essential.[[65]](#endnote-65)

**SOGIESC (across the draft):** The Center observes a lack of gender inclusive language and reference to persons with diverse sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC) who are under the purview of the CERD Convention scant. It is important that the upcoming general recommendation emphasizes that States have an obligation under IHRL to guarantee non-discrimination for everyone, regardless of their gender identity or expression.[[66]](#endnote-66) Anti-discrimination laws should be adopted withcomprehensive lists of prohibited grounds of discrimination, including gender identity and other status.[[67]](#endnote-67) The right to sexual and reproductive health encompasses the right of all persons, including lesbian, gay, bisexual, transgender, and intersex persons, to full respect for their sexual orientation, gender identity, and intersex status.[[68]](#endnote-68) Legal gender recognition of transgender persons is particularly necessary to ensure their access to, among other things, quality health care, housing, social security, education, and employment, and is crucial for their protection from violence, discrimination, ill-treatment, and torture.[[69]](#endnote-69)

**Human rights-based approach**: The Center encourages the Committee to incorporate a human rights-based approach across the draft to enable the capacity of duty-bearers to meet their obligations to respect, protect and fulfil every right, and for rights holders to claim their rights and seek reparation, justice and guarantees of non-repetition when their rights have been violated.[[70]](#endnote-70) For instance, para. 25 of the draft should clearly highlight States’ obligations to respect the right to health and the right to life and avoid using the term “margin of appreciation.” The margin of appreciation doctrine has generally been rejected as a standard of review under the UN and all other regional human rights systems, except the European Court of Human Rights.[[71]](#endnote-71) Given the controversy over the existence of such a doctrine in the European system[[72]](#endnote-72) and the fact that the UN system has not recognized this doctrine, it is important to remove the reference. Similarly, para. 32 should remind States of their obligation to monitor health outcomes. The lack of comprehensive statistics is not the only way to measure the effectivity of laws and policies nor should it justify any lesser scrutiny of States’ failures to meet their legal obligations under IHRL. The role of robust qualitative data— including from academia and civil society organizations— is valuable in this regard.

Furthermore, following with the structure of other general comments and recommendations, instead of a section under the title of “recommendations”; the upcoming general recommendation should ensure that the draft includes clear and detailed international human rights standards with indicators to measure progress. Human rights indicators are essential in the implementation of human rights standards and commitments, to support policy formulation, impact assessment and transparency.[[73]](#endnote-73) They are also key guide States in the fulfillment of their human rights obligations as well as to facilitate the Committee the monitoring of the implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its States parties.

**Should the Committee need any additional information, please do not hesitate to reach out to Tania Agosti Senior Global Advocacy Advisor at** [**tagosti@reprorights.org**](mailto:tagosti@reprorights.org) **or to Paola Salwan Daher Associate Director for Global Advocacy at** [**pdaher@reprorights.org**](mailto:pdaher@reprorights.org)**.**

1. Committee on Economic, Social and Cultural Rights, General Comment No. 22: On the right to sexual and reproductive health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/22 (2016) [**hereinafter CESCR Committee, Gen. Comment No. 22]** para. 27 in Center for reproductive Rights, Breaking Ground 2020 [↑](#endnote-ref-1)
2. CEDAW Committee, Gen. Recommendation No. 24, Twentieth session (1999) para. 21[**hereinafter CEDAW Committee, Gen. Comment No. 24**]; Committee on Economic, Social and Cultural Rights, General Comment Committee, No. 16 on The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), U.N Doc E/C.12/2005/411 (2005), para. 29 [**hereinafter CEDAW Committee, Gen. Comment No. 16**]; See also, Human Rights Committee, Concluding Observations: Rwanda, U.N. Doc. CCPR/C/RWA/CO/4 (2016).; CEDAW Committee, Concluding Observations: Argentina, paras. 34-35, U.N. Doc. CEDAW/C/ARG/CO/7 (2016).; CEDAW Committee, Concluding Observations: Thailand, para. 39, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017).; CEDAW Committee, Concluding Observations: Congo, para. 36(f), U.N. Doc. CEDAW/C/COG/CO/6 (2012).; CRC Committee, Concluding Observations: Central African Republic, para. 55, U.N. Doc. CRC/C/CAF/CO/2 (2017).; CEDAW Committee, Concluding Observations: Nigeria, paras. 37-38, U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017).; CESCR Committee, Concluding Observations: Namibia, para. 65(a), U.N. Doc. E/C.12/NAM/CO/1 (2016). [↑](#endnote-ref-2)
3. CESCR Committee, Gen. Comment No. 22, paras. 22 – 28.; Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20 (2016) para. 59 [**hereinafter CRC Committee, Gen. Comment No. 20**]; Committee on the Elimination of Discrimination against Women, Communication No. 17/2008, Alyne da Silva Pimentel Teixeira v. Brazil, U.N. Doc. CEDAW/C/49/D/17/2008 (2011), paras. 7.6- 7.7 [**hereinafter Alyne da Silva Pimentel Teixeira v. Brazil**]; See also Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women’s access to justice, U.N. Doc CEDAW/C/GC/33, paras. 47, 51(l) [**hereinafter CEDAW Committee, Gen. Recommendation No. 33**]; Committee on the Elimination of Discrimination against Women, General recommendation No. 24: Article 12 of the Convention (women and health) (1999) para. 11 [**hereinafter CEDAW Committee, Gen. Recommendation No. 24**]. [↑](#endnote-ref-3)
4. States should examine and address current societal power structures, such as traditional family and work-place roles, and analyze the role that gender plays within them. Substantive equality then requires states to change institutions in order to address the inequalities. *See* Committee on the Discrimination against women, General recommendation No. 25: Article 4, paragraph 1, of the Convention (2004), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, paras. 7-8, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [**hereinafter CEDAW Committee, Gen. Recommendation No. 25**]; Committee on the Discrimination against Women, General Recommendation No. 28: The core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, (2010), U.N. Doc. CEDAW/C/GC/28, para. 9 [**hereinafter CEDAW Committee, Gen. Recommendation No. 28**]; Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20 (2009), paras. 8, 9 and 39 [**hereinafter ESCR Committee, Gen. Comment No. 20**]. [↑](#endnote-ref-4)
5. Given that discrimination manifests itself differently between and among men and women, States should address these inequalities accordingly. States should focus on ensuring equal outcomes for women, including different groups of women, which may require states to take positive measures and mandate potentially different treatment of men and women, as well as between different groups of women, in order to overcome historical discrimination and ensure that institutions guarantee women’s rights. *See, e.g.,*CEDAW Committee, Gen. Recommendation No. 25paras. 8-10; Committee on the Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. E/C.12/2000/4 (2000) para. 10 [**hereinafter**

   **ESCR Committee, Gen. Comment No. 3**]; Human Rights Committee, General Comment No. 28 on Article 3 (The equality of rights between men and women) (2000) para. 3 in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. E/C.12/2000/4 (2000) [**hereinafter CCPR Gen. comment No.28]**; CEDAW Committee, Gen. Recommendation No. 28, para. 20. [↑](#endnote-ref-5)
6. CEDAW Committee, Gen. Recommendation No. 28, para. 17; *See, also* Human Rights Committee, Concluding Observations: Cape Verde, para. 8, U.N. Doc. CCPR/C/ CPV/CO/1 (2012); Human Rights Committee, Concluding Observations: Jordan, para. 7, U.N. Doc. CCPR/C/JOR/CO/4 (2010); Human Rights Committee, Concluding Observations: Canada, para. 20, U.N. Doc. CCPR/C/79/Add.105 (1999); CEDAW Committee, Gen. Recommendation No. 25, para. 10; CRC Committee, Gen. Comment No. 15, para. 10; CPRD Committee, Concluding Observations: United Kingdom, U.N. Doc. CRPD/C/GBR/CO/1 (2017). [↑](#endnote-ref-6)
7. CESCR Committee, Gen. Comment No. 22; CESCR Committee Gen. Comment 14. [↑](#endnote-ref-7)
8. CESCR Committee, Gen. Comment No. 22, para. 12-21.; Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (Art. 12), ( 2000) para. 12 in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. E/C.12/2000/4 (2000) [**hereinafter CESCR Committee, Gen. Comment No. 14**]. [↑](#endnote-ref-8)
9. *Id*. [↑](#endnote-ref-9)
10. *Id*. [↑](#endnote-ref-10)
11. *Id*. [↑](#endnote-ref-11)
12. *Id*. [↑](#endnote-ref-12)
13. *Id*. [↑](#endnote-ref-13)
14. CESCR Committee, Gen. Comment No. 22, para 20; CESCR Committee Gen. Comment 14, para 12 c) and 35 [↑](#endnote-ref-14)
15. CESCR Committee, Gen. Comment No. 22, para 21; CESCR Committee Gen. Comment 14, para 12 d), 21, 35 [↑](#endnote-ref-15)
16. Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6 (2018) para 12 [**hereinafter CRPD, General comment No. 6**]. [↑](#endnote-ref-16)
17. Human Rights Council, Report of the Working Group on discrimination against women and girls, A/HRC/47/38 (2021), para. 19. [↑](#endnote-ref-17)
18. CESCR, General Comment 22, para. 49(c)).” [↑](#endnote-ref-18)
19. CESCR, General Comment 22, para. 38. [↑](#endnote-ref-19)
20. Human Rights Committee General comment 36, para.8 [↑](#endnote-ref-20)
21. The CERD Committee has expressed its concern about the high rate of maternal mortality among Afro-Brazilian, indigenous and Quilombola women and disproportionately high increases in the maternal mortality rate negatively affecting those women during the COVID-19 pandemic. *See* CERD Committee, Concluding observations on the combined eighteenth to twentieth periodic reports of Brazil, (2022) CERD/C/BRA/CO/18-20, para. 17; The CERD Committee further notes with concern that racial and ethnic minorities are disproportionately affected by higher rates of maternal mortality and morbidity, and are at a higher risk of unwanted pregnancies and of lacking the means to overcome socioeconomic and other barriers to access to safe abortion in CERD Committee, Concluding observations on the combined tenth to twelfth reports of the United States of America, CERD/C/USA/CO/10-12, (2023) para 35; CEDAW Committee also notes with concern “[t]he persistent segregation of Roma women in hospital maternity wards, the disrespectful treatment by medical staff and the lack of adequate health care services throughout pregnancy and childbirth” in CEDAW Committee, Concluding observations on the seventh periodic report

    of Slovakia, CEDAW/C/SVK/CO/7 (2023), para 42 (b). [↑](#endnote-ref-21)
22. *See, e.g.,* CEDAW Committee, Concluding Observations: Belize, para. 56, U.N. Doc. A/54/38/ Rev.1 (1999); Human Rights Committee, Concluding Observations: Mali, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003). [↑](#endnote-ref-22)
23. Human Rights Committee Gen. comment 36 para 8, CAT Genera Comment 2, para. 22 [↑](#endnote-ref-23)
24. CESCR Committee, Gen. Comment No. 22, para. 18 [↑](#endnote-ref-24)
25. States should guarantee hospitals stock sufficient obstetric supplies and emergency medicines, establish referral systems for obstetric emergencies, and ensure health workers have adequate training on quality maternal health services. *See* ESCR Committee, Gen. Comment No. 14, paras. 12, 14; see also ESCR General Comment 22, paras.12-14

    States should ensure that maternal health services are geographically accessible to women, particularly in rural areas. see ESCR Committee, Gen. Comment No. 14, 12, para. 12(b) [↑](#endnote-ref-25)
26. States should ensure that maternal health services are geographically accessible to women, particularly in rural areas, see ESCR Committee, Gen. Comment No. 14, para. 12(b); See also ESCR Committee, Gen. Comment No. 22 paras.15-16 [↑](#endnote-ref-26)
27. Maternal health services must be affordable, with States granting free services where needed and should take into account the costs of transportation in accessing maternal health care CEDAW Committee, Gen. Recommendation No. 24, paras. 21, 29 [↑](#endnote-ref-27)
28. States should further ensure that women, their families, and their communities have adequate information about the signs of potentially dangerous obstetric complications and the availability of sexual and reproductive health services see ESCR Committee, Gen. Comment No. 14, para. 12(b) and ESCR Committee Gen. Comment 22, para. 18 [↑](#endnote-ref-28)
29. Gen. Comment No. 14, para. and ESCR Committee Gen. Comment 20. CEDAW, also recognizes that negative attitudes of health workers can deter women from seeking health services, see CEDAW Committee, Gen. Recommendation No. 24, para. 22 [↑](#endnote-ref-29)
30. This requires trained and skilled health-care personnel and scientifically approved and unexpired drugs and equipment.

    CESCR Gen. Comment 22, para 21; see also ESCR Gen. Comment 12, para. 12.d and 21 [↑](#endnote-ref-30)
31. Human Rights Committee, General Comment No. 36: On the right to life (Art. 6 of the International Covenant on Civil and Political Rights), para. 26, U.N. Doc. CCPR/C/GC/36 (2018) para 3[**hereinafter Human Rights Committee, Gen. Comment No. 36**]. [↑](#endnote-ref-31)
32. *Id*., para 26 [↑](#endnote-ref-32)
33. *Id.* para 8 [↑](#endnote-ref-33)
34. *Id.* [↑](#endnote-ref-34)
35. Human Rights Committee, Concluding Observations: Nigeria, para. 22, U.N. Doc. CCPR/C/NGA/CO/2 (2019).; CESCR Committee, Concluding Observations: Kenya, para. 53, U.N. Doc. E/C.12/KEN/CO/2-5 (2016); CAT Committee, Concluding Observations: Kenya, para. 27, U.N. Doc. CAT/C/ KEN/CO/2 (2013); CAT Committee, Concluding Observations: United States of America, para. 21, U.N. Doc. CAT/C/USA/CO/3-5 (2014); CAT Committee, Concluding Observations: Ireland, paras. 29-30, U.N. Doc. CAT/C/IRL/CO/2 (2017).; Human Rights Committee, Concluding Observations: Ireland, para. 11, U.N. Doc. CCPR/C/IRL/CO/4 (2014).; CEDAW Committee, Concluding Observations: Ireland, para. 15(a), U.N. Doc. CEDAW/C/IRL/CO/6-7 (2017) in Center for reproductive Rights, Breaking Ground (2020), p. 11. [↑](#endnote-ref-35)
36. Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, U.N. Doc. CAT/C/GC/2 (2008), para. 22 (2008) [**hereinafter CAT General comment 2]** [↑](#endnote-ref-36)
37. CESCR Committee, Gen. Comment No. 22, para. 18. [↑](#endnote-ref-37)
38. CESCR Committee, Gen. Comment No. 22, paras. 18, 21, 47.; CEDAW Committee, Concluding Observations: Slovakia, para. 31(e), U.N. Doc. CEDAW/C/SVK/CO/5-6 (2015). [↑](#endnote-ref-38)
39. See, e.g., CEDAW Committee & CRC Committee, Joint Gen. Recommendation No. 31 & Gen. Comment No. 18; *see also* CRC Committee, Concluding Observations: Mongolia, Center for Reproductive Rights 45 para. 51(a), U.N. Doc. CRC/C/MNG/CO/3-4 (2010) [↑](#endnote-ref-39)
40. ESCR Committee, Gen. Comment No. 22, para. 36. [↑](#endnote-ref-40)
41. World Health Organization, [Abortion Care Guideline](https://www.who.int/publications/i/item/9789240039483.) (2022); *See also* Center for Reproductive Rights, [Fact Sheet: Law and Policy Recommendations of WHO’s New Abortion Guideline](https://reproductiverights.org/factsheet-who-abortion-guideline/) (2022). [↑](#endnote-ref-41)
42. CESCR, General Comment 22, para. 49. [↑](#endnote-ref-42)
43. In accordance with the WHO guideline development process, the formulation and refinement of recommendations . . . was based on the available evidence (with quality of evidence ranging from high to very low), using the Grading of Recommendations Assessment, Development and Evaluation (GRADE) approach to recommendation development, with reference to the Evidence-to-Decision (EtD) tables prepared by the ESTs, and also guided by the participants’ own expertise and experience. The WHO-INTEGRATE framework was used as a basis for deciding on the direction and strength of each recommendation . . . For the law and policy recommendations, this same framework was used but an innovative approach was developed to evaluate the evidence in a manner that effectively integrated human rights protection and enjoyment as part of health outcomes and analysis.” [↑](#endnote-ref-43)
44. This guideline provides the first-ever definition of “decriminalization” in the context of abortion by a United Nations agency or human rights mechanism: “Decriminalization means removing abortion from all penal/criminal laws, not applying other criminal offences (e.g. murder, man-laughter) to abortion, and ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors.” It notes that “decriminalization would ensure that anyone who has experienced pregnancy loss does not come under suspicion of illegal abortion when they seek care” and that “decriminalization of abortion does not make women, girls or other pregnant persons vulnerable to forced or coerced abortion. Forced or coerced abortion would constitute serious assault as these are non-consensual interventions.” World Health Organization, [Abortion Care Gudieline](https://www.who.int/publications/i/item/9789240039483.), 2022, Section 2.2.1 (pp. 24–25) [↑](#endnote-ref-44)
45. *Id.* Section 2.2.2 (pp. 26–27) [↑](#endnote-ref-45)
46. *Id*. Section 3.3.2 (pp. 42–44) [↑](#endnote-ref-46)
47. *Id.* Section 3.3.1 (pp. 41–42). [↑](#endnote-ref-47)
48. The WHO also notes that in countries where abortion access is highly restricted, safe abortion has often become the privilege of the rich while poor women have little choice but to resort to unsafe methods, leading to deaths and morbidities that become the social and financial responsibility of the public health system, and denial of women’s human rights. *See, e.g.,* sections 1.1 (p. 2); 1.2.3 (pp. 3–4); 1.3.1 (p. 8); 1.3.3 (pp. 12–13); 2 (p. 21); 2.2 (p. 23); 3.1 (p. 31); 3.3.1 (pp. 41–42). [↑](#endnote-ref-48)
49. ESCR Committee, Gen. Comment No. 22, para 28 CEDAW/C/OP.8/GBR/1 para.65; HRC GC 36, para 8. See also, *Mellet v. Ireland*, Human Rights Committee, Commc’n No. 2324/2013, , U.N. Doc. CCPR/C/116/D/2324/2013 (2016) paras. 7.6, 7.7, 7.8,; *Whelan v. Ireland*, Human Rights Committee, Commc’n No. 2425/2014, paras. 7.7 - 7.9, 7.12, U.N. Doc. CCPR/C/119/D/2425/2014 (2017).; *K.L. v. Peru*, Human Rights Committee, Commc’n No. 1153/2003, U.N. Doc. CCPR/ C/85/D/1153/2003 (2005).; *L.C. v. Peru*, CEDAW Committee, Commc’n No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).; CESCR Committee, Gen. Comment No. 22, , para. 10.; *Alyne da Silva Pimentel Teixeira v. Brazil*; CAT Committee, Concluding Observations: El Salvador, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009).; CAT Committee, Concluding Observations: Nicaragua, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009). [↑](#endnote-ref-49)
50. Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence

    against women, updating general recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (2017), para. 18 **[hereinafter**

    **CEDAW Committee, Gen. Recommendation No. 35]**.; CEDAW Committee, Gen. Recommendation No. 24, paras. 11, 14. [↑](#endnote-ref-50)
51. ESCR Committee Gen. comment No. 14 and general comment No. 22; CEDAW Gen. recommendation No. 28 and Gen. recommendation No. 30 (2013) and Gen. recommendation No. 37. [↑](#endnote-ref-51)
52. Amnesty International, [Fair Trial Manual (2nd ed. 2014](https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf)) in Center for Reproductive Rights, Technical Paper: [Accountability for Sexual and Reproductive Health and Rights in Humanitarian Settings](https://reproductiverights.org/accountability-for-sexual-and-reproductive-health-and-rights-in-humanitarian-settings/), (2021) [**hereinafter CRR technical paper**]. [↑](#endnote-ref-52)
53. ESCR Committee, Gen. comment No. 14 (2000) and Gen. Comment No. 22 (2016); and CEDAW Gen. recommendation No. 28 (2010), Gen. recommendation No. 30 and Gen. recomendation No. 37. [↑](#endnote-ref-53)
54. *Id*.; *see also* World Health Organization, [COVID-19 Operational Guidance](https://www.who.int/publications/i/item/covid-19-operational-guidance-for-%20maintaining-essential-health-services-during-an-outbreak), (June 1, 2020), (categorizing reproductive health as a “high priority” essential service and urging countries to maintain access to reproductive health services throughout the COVID-19 pandemic). [↑](#endnote-ref-54)
55. CESCR, General Comment No. 22, paras. 22-24 in CRR technical paper 2021. [↑](#endnote-ref-55)
56. Committee on Discrimination against Women, General Recommendation No. 30, (2013) on women in conflict prevention, conflict and post-conflict situation CEDAW/C/GC/30 (2013) [**hereinafter CEDAW Gen. Comment No. 30]**; see also CRR technical paper [↑](#endnote-ref-56)
57. CEDAW Gen. Comment No. 30, para. 52 c [↑](#endnote-ref-57)
58. *Id.* Para 52 d) [↑](#endnote-ref-58)
59. *Id.* Para 52 e) [↑](#endnote-ref-59)
60. CEDAW Gen. Comment No. 30, para. 77 and 81 g) [↑](#endnote-ref-60)
61. *Id*., paras. 77-79 [↑](#endnote-ref-61)
62. *See P. and S. v. Poland*, No. 57375/08 Eur. Ct. H.R., para. 99 (2012); L.C., No. 22/2009, para. 8.17 in Center for Reproductive Rights, [Response to Call for Submissions in Connection with the Convention on the Elimination of Discrimination Against Women General Discussion on Access to Justice](file:///C:/Users/TAgosti/Downloads/CenterForReproductiveRights.pdf%20(ohchr.org)) (2013). [↑](#endnote-ref-62)
63. *L.C. v Peru*, No. 22/2009, para. 8.17. [↑](#endnote-ref-63)
64. *See, e.g,* Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Promotion and Protection of All Human Rights, Civil, Political, Economic, and Social Rights, Including the Right to Development, A/HRC/11/6, May 18, 2009, paras. 29, 35; Report of the Working Group on discrimination against women and girls, Women’s and girls’ sexual and reproductive health rights in crisis, A/HRC/47/38, April 28, 2021, para. 28. [↑](#endnote-ref-64)
65. World Health Organization, [*Sexual health, human rights, and the law*](https://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf;jsessionid=EA4D9E1DD5CD016042ADDE96C32125B5?sequence=1.), 2015, p. 6. [↑](#endnote-ref-65)
66. For definitions, see the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity in CESCR General Comment n°20, para. 32. [↑](#endnote-ref-66)
67. *See* CCPR/C/NGA/CO/2 (CCPR 2019) para 17 and See CCPR/C/BLR/CO/5 (CCPR 2018 )para 20. [↑](#endnote-ref-67)
68. CESCR, Gen. Comment 22, para 30 [↑](#endnote-ref-68)
69. United Nations High Commissioner for Human Rights, Report on discrimination and violence based on sexual orientation and gender identity (A/HRC/29/23), 2015 paras.69-70; [↑](#endnote-ref-69)
70. [The Human Rights-Based Approach (unfpa.org)](https://www.unfpa.org/human-rights-based-approach#:~:text=A%20rights-based%20approach%20develops%20the%20capacity%20of%20duty-bearers,from%20interfering%20with%20the%20enjoyment%20of%20the%20right.). [↑](#endnote-ref-70)
71. Gary Born, Danielle Morris & Stephanie Forrest, “[A Margin of Appreciation: Appreciating Its Irrelevance in International Law](https://harvardilj.org/wp-content/uploads/sites/15/61.1-Born.pdf),” Harvard International Law, Journal / Vol. 61; Ryan, C; (2014); [↑](#endnote-ref-71)
72. The Margin of Appreciation in A, B And C v Ireland: A Disproportionate Response to the Violation of Women’s Reproductive Freedom. **UCL Journal of Law and Jurisprudence** , 3 (1) pp. 237-261. [10.14324/111.2052-1871.024](https://doi.org/10.14324/111.2052-1871.024) [↑](#endnote-ref-72)
73. OHCHR, Human Rights Indicators, A Guide to Measurement, 2012 [↑](#endnote-ref-73)