**Call for inputs: upcoming report on legal empowerment by UN Special Rapporteur on the independence of judges and lawyers**

**3 May 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 submission for the call for inputs on legal empowerment and support the mandate of the United Nations Special Rapporteur on the independence of judges and lawyers (IJL) in its next thematic report on the promise of legal empowerment to expand and transform access to justice to be presented at the 78th session of the General Assembly in October/November 2023. This submission will mainly focus on the shortcomings of existing judicial and other legal systems when protecting sexual and reproductive health and rights (SRHR) in order to inform best judicial and legal advocacy practices and clarify State obligations.

**1.** **Introduction**

Sexual and reproductive health and rights (SRHR) are not only rights in and of themselves but are also central to guaranteeing the realization of many other rights. Across the globe there is both increasing recognition of these rights as well as backlash against them. The courts and judicial systems have played a role in both advancing these rights[[1]](#footnote-1) as well as limiting these rights, and in some jurisdictions with retrogressive effect.[[2]](#footnote-2) Violations of SRHR continue with widespread impunity on many reproductive rights issues,[[3]](#footnote-3) and restrictive laws on accessing SRH services abound. For example, currently, 24 countries globally do not permit abortion under any circumstances (6% of women), 41 countries permit abortion only when the woman’s life is at risk (22% of women), 48 countries permit abortion on the basis of health or therapeutic grounds (12 % women), 24 countries permit abortion on broad social or economic grounds (24% of women) and 75 countries allow abortion on Request with different gestational limits (36% of women).[[4]](#footnote-4) To this respect, it is worth noting that even where countries contain broader exceptions for abortion, for example, unequal or limited access due to a combination of structural constraints, discrimination, stigma, and a lack of financial resources prevent women and others from exercising basic SRHR.[[5]](#footnote-5) Additionally, in humanitarian settings, only around 20 percent of women and girls, including refugees, have access to SRH services.[[6]](#footnote-6) In both contexts, individuals belonging to particular groups may also be disproportionately affected by intersectional discrimination in the context of sexual and reproductive health.[[7]](#footnote-7)

Restrictions on sexual and reproductive health and rights (SRHR), institutionalize discriminatory stereotypes based on the belief that women are not competent decision-makers and that their primary role is to have children and to parent them.[[8]](#footnote-8) These stereotyped provisions deny services that only women need and as such constitute discrimination and persistent violations of women’s human rights.[[9]](#footnote-9)Their impact is exacerbated by intersectional discrimination which is compounded by crisis and humanitarian situations.[[10]](#footnote-10) Stereotyping compromises the impartiality and integrity of the justice system.[[11]](#footnote-11) Notably, only 13 percent of women turn to a judicial authority to resolve a legal issue.[[12]](#footnote-12) Most women continue to seek legal assistance outside formal justice systems often due to fear of retaliation or stigma and unawareness that they have a legal problem for which they could seek recourse.[[13]](#footnote-13)

In contexts with severe restrictiveness to SRHR as well as in countries with relative liberality, women, girls and people of diverse sexual orientation, gender identity and sex characteristics (SOGIESC) face discrimination not only in trying to exercise their SRHR, as the laws surrounding reproductive healthcare specifically prohibit or restrict a service only women need, but also in seeking access to justice for violations committed against them. Unless they challenge the law itself and are successful in having it invalidated, they are unable to seek remuneration or retribution in the civil or criminal justice systems for the reproductive rights violations committed against them. Additionally, it is unlikely that such a challenge to the law would be adjudicated quickly enough to protect the individual’s human rights, including rights to health and to sexual and reproductive health. For example, in challenging a restrictive law on emergency contraception, it is unlikely that court systems could act quickly enough, within the 72 hours window after intercourse when emergency contraception is effective.[[14]](#footnote-14)

It is therefore critical that the access to justice framework incorporates a strong gender and intersectional perspective and clarifies States’ obligations to eliminate stereotypes in law and in practice. This will be key to guide States in taking the necessary measures to guarantee women the right to sexual and reproductive health and establish appropriate institutions and avenues to effectively provide redress for sexual and reproductive rights violations. [[15]](#footnote-15)

**2. SRHR violations and State’s obligations**

**a) SRHR violations**

Effective access to justice is a fundamental right necessary for the protection of all other rights.[[16]](#footnote-16) It also optimizes the emancipatory and transformative potential of the law.[[17]](#footnote-17) Access to justice encompasses due process, the right to a fair trial, including equal access to and equality before the courts, and seeking and obtaining just and timely remedies for rights violations including SRHR.[[18]](#footnote-18)

Violations of SRHR are linked to structural discrimination and may take many forms, such as forced sterilization, forced abortion, forced pregnancy, as well as the criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, the forced continuation of pregnancy and the abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services.[[19]](#footnote-19) Among others, they violate the rights to be free from torture or cruel, inhuman or degrading treatment (CIDT);[[20]](#footnote-20) to equality and non-discrimination; [[21]](#footnote-21) to privacy;[[22]](#footnote-22) to determine the number, timing, and spacing of children;[[23]](#footnote-23) to life and health;[[24]](#footnote-24) to education and information; and to benefit from scientific progress.[[25]](#footnote-25)

Patterns of sexual and reproductive health and rights generally reflect social inequalities in society and unequal distribution of power based on gender, ethnic origin, age, disability and other factors[[26]](#footnote-26) such as sexual orientation and gender identity. Intersectional factors of discrimination, requires specific recognition when addressing SHRHR violations.[[27]](#footnote-27) For instance, in the case of adolescents, the lack of recognition of their evolving capacities to take their own decisions may carry additional barriers in accessing their SRHR. [[28]](#footnote-28)

**b)** **Human rights** **framework on SRHR**

States have an obligation to ensure available accessible, acceptable and quality sexual and reproductive health services.[[29]](#footnote-29) There is an affirmative duty to take appropriate legislative, administrative and other appropriate measures to prevent violations of SRHR.[[30]](#footnote-30) This includes reforming their laws to enable women to access comprehensive reproductive health services and remove surrounding criminal sanctions.[[31]](#footnote-31) States’ obligations to guarantee SRHR require that women and girls not only have access to comprehensive and accurate reproductive health information and services, but also that they experience positive reproductive health outcomes such as lower rates of maternal mortality, and have the opportunity to make fully informed decisions—free from violence, discrimination, and coercion—about their sexuality and reproductive lives.[[32]](#footnote-32) Obligations also include ensuring substantive gender equality[[33]](#footnote-33), the essential elements of the right to health[[34]](#footnote-34), and reproductive autonomy.[[35]](#footnote-35)

With regards to abortion specifically, States must decriminalize and repel any laws or regulations that restrict abortion as it is recommended by the World Health organization (WHO) in its most recent Abortion Care Guideline.[[36]](#footnote-36) WHO, further recommends that abortion be available on the request of the woman, girl or other pregnant person,[[37]](#footnote-37) against gestational age limits,[[38]](#footnote-38) mandatory waiting periods for abortion[[39]](#footnote-39) and third-party authorization.[[40]](#footnote-40) To support its law and policy recommendations, WHO’s provides public health evidence and consistently refers to discrimination as playing a part in hindering access to abortion services.[[41]](#footnote-41)

**c) Access to remedies to protect SRHR rights**

Accountability for SRHR violations requires the provision of reparations.[[42]](#footnote-42) 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.”[[43]](#footnote-43)

Specifically, States must implement effective, immediately accessible, 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.[[44]](#footnote-44) In accordance with international human rights standards, the mechanism must be compelled to take up the case in a timely fashion and issue a rapid decision, due to the time sensitive nature of reproductive healthcare.[[45]](#footnote-45) Human rights standards also dictate that the mechanism must protect women's physical and mental health,[[46]](#footnote-46) take into account women’s opinions[[47]](#footnote-47) and provide a well-founded, written decision.[[48]](#footnote-48) The mechanism must guarantee meaningful participation and should consist of independent decision-makers who do not face the threat of backlash or criminal charges for authorizing reproductive healthcare services.[[49]](#footnote-49) Finally, there must be a right to appeal the decision.[[50]](#footnote-50) States’ failure to put in place a system which ensures effective judicial action in the context of access to healthcare services, information and education constitutes a violation of the right to health.[[51]](#footnote-51)

**d) Access to justice for SRHR violations**

Women and girls face many difficulties in gaining access to justice as a result of direct and indirect discrimination. Such inequality is apparent not only in the discriminatory content and/or impact of laws, regulations, procedures, customs and practices, but also in the lack of capacity and awareness on the part of judicial and quasi-judicial institutions to adequately address violations of women’s human rights.[[52]](#footnote-52) Additionally, when the judiciary adjudicate human rights violations, particularly economic, social and cultural rights, there are practical shortcomings that may exclude women who are unable to afford legal counsel and may employ impractically high evidentiary standards.[[53]](#footnote-53)

States must ensure that women are protected against discrimination by public authorities and the judiciary, including by the competent courts, other public institutions and by private actors.[[54]](#footnote-54) To do so, judicial institutions must apply the principle of substantive or de facto equality, to interpret laws, including national, religious and customary laws, in line with that obligation.[[55]](#footnote-55) States must also conduct awareness-raising campaigns targeting women, the judiciary and legal professionals to ensure access to remedies for human rights violations[[56]](#footnote-56); provide training[[57]](#footnote-57); provide legal aid services;[[58]](#footnote-58) and enhance civil remedies so that women can enforce their rights through litigation.[[59]](#footnote-59)

**5. The experience of the Center working in legal empowerment innovations at the regional, national and community levels**

In an effort to contribute to accountability and effective access to SRHR by women and girls and other persons, the Center is working on innovative modalities to engage with the judiciary on issues related to systemic discrimination and harms within legal systems. Likewise, it is implementing creative approaches to partnership with grassroot justice and health advocates in humanitarian situations. The work of the Center, from strategic litigation to training of advocates, helps to sensitive the judiciary and national, regional and international accountability mechanisms to SRHR violations and helps shape the law to ensure better protection of these rights.

**a) The Center’s strategic litigation work across the globe**

The Center uses national, regional and UN courts and human rights mechanisms to obtain redress for violations of SRHR. The Center sees this strategy as an important opportunity to also raise the level of awareness of the judiciary on SRHR and human rights obligations. The Center in partnership with national level NGOs has won groundbreaking cases based on international human rights law and national level constitutional protections. Two major recent examples of this work are the ruling of the High Court in Kenya and Constitutional Court case of Colombia.[[60]](#footnote-60)

In Kenya, the High Court ruling in PAK and Salim Mohammed v. Attorney General et al., a case brought by the Center and the Reproductive Health Network Kenya (RHNK).[[61]](#footnote-61)The High Court affirmed that abortion care is a fundamental right, and that arbitrary arrests and prosecution of patients and health care providers for seeking or offering abortion services are illegal. It also directed the Kenyan parliament to enact an abortion law and public policy framework that aligns with the Constitution.

The 2022 Constitutional Court of Colombia landmark ruling to decriminalize abortion up to 24 weeks of gestation came in response to a lawsuit filed by the Causa Justa (Just Cause) movement[[62]](#footnote-62), of which the Center for Reproductive Rights is a member. In its decision, the Court found that criminalization of abortion is one of the main barriers to safe abortion and criminalization of abortion violated the right to equality of women, girls and adolescents, particularly affecting migrants. The Court also determined that criminalizing abortion does not prevent it and that, contrary to the Colombian Constitution, it did not respect the principle of minimum use of criminal law.[[63]](#footnote-63)

Landmark cases such as these and others like K.L. v. Peru[[64]](#footnote-64) or Alyne v. Brazil[[65]](#footnote-65), establish lasting legal protections that have been relied upon time and again to further protect the right to bodily reproductive autonomy of women and girls not just in the countries where the decisions were rendered, but across borders and regions.[[66]](#footnote-66)

**b) The work of Center with the judiciary in Asia**

The Center believes that engagement with judicial actors to promote awareness of reproductive rights will lead to better enforcement of laws and human rights standards while enhancing the power of the law to promote reproductive rights of women and girls.

To this end, the Center has for instance engaged with judicial actors in Asia to empower the judiciary with knowledge and expertise to champion and develop jurisprudence to support fulfillment of reproductive rights. One of the components of this effort involved working with the Nepal Judicial Academy to develop reproductive rights curricula for judges as well as a bench book on child marriages, including relevant laws and human rights standards. Additionally, to promote cross-learning across the region, the Center has facilitated the exchange of judicial experiences promoting reproductive rights in South Asia, and the use of constitutional and international human rights standards to promote and protect reproductive rights. In Nepal, the Center has worked with justice sector actors, including judges, court officers, prosecutors to impart knowledge on human rights frameworks on reproductive rights based on international human rights standards, national laws and comparative jurisprudence.

The engagement has resulted key to ensuring that progressive developments in international human rights law, constitutional law as well as national laws and policies are activated by courts so that they lead to tangible, positive impact on the lives of women and girls.

**b) The work of the Center in humanitarian settings**

Within a broader framework of rights-based accountability for women and girls in humanitarian situations[[67]](#footnote-67), the Center seeks to strengthen accountability for SRHR by implementing participatory forms of planning, implementation, and monitoring within humanitarian program cycle.[[68]](#footnote-68)

For instance, in Uganda, the Center and CARE International piloted a rights-based community-led accountability model in one of the largest refugee hosting districts in the world.[[69]](#footnote-69) Developed with the local community and adapted to the local culture and its needs, the model constructed a three-tiered accountability system composed of: (1) a Council for SRHR where community representatives were trained to inform their community of their rights and collect and review complaints; (2) an independent, third-party ombudsperson selected by the local government and humanitarian health system actors to review Council directed complaints and facilitate a meaningful response; and (3) a community-based monitors network to relay decisions back to complainants and the community in order to ensure the implementation of redress measures and their long-term sustainability.[[70]](#footnote-70)

The pilot brought an opportunity for remedies and reforms to be guided and demanded by women and girls most directly impacted yet who experience intersectional discrimination that limits their access to formal legal mechanisms. This integrated approach resulted in a rapid increase in complaints regarding SRHR.[[71]](#footnote-71) For example, the mechanism ordered the reform of subcounty by-laws to meet constitutional protections for maternal health services[[72]](#footnote-72) The mechanism also enabled access to forms of restitution and rehabilitation when SRHR were denied. For example, a district policy that limited access to anti-retroviral treatments (ARTs) for incoming refugees was reversed. The policy was revised to make ARTs available free of charge to all persons from the refugee community, with no distinction based on duration of registration in Uganda.[[73]](#footnote-73)

**6. Recommendations**

The Center respectfully suggest that the report includes the following recommendations:

* **Guarantee women, girls and people of diverse SOGIESC access to justice for sexual and reproductive rights violations by enshrining sexual and reproductive rights into laws, guaranteeing adequate remedies at the national level and reinforce judicial remedies with their, equal, meaningful and effective participation.**
* **Take targeted measures to prevent harm in the context of reproductive health, including by:** 
  + **Implementing effective, immediately accessible, rapidly-responding processes by which individuals can assert their rights to health and to sexual and reproductive health and receive an authoritative response from an independent body when they are denied access to sexual and reproductive health services. The mechanism must guarantee meaningful participation and should consist of independent decision-makers.**
  + **Guaranteeing women the right to appeal denials of access to care through an independent body and ensuring that authorizations from this body are enforced;**
  + **Preventing stigmatization of SRH services.**
  + **Ensuring all individuals and groups have access to comprehensive education and up-to-date, accurate information on sexual and reproductive health that are public available, accessible, non-discriminatory, non-biased, evidence-based, and that take into account the evolving capacities of children and adolescents**.
* **Ensure access to abortion with no restriction as to reason and no third-party intervention requirements, in line with WHO Abortion Care Guideline (2022) and in line with other treaty monitoring bodies emphasizing how all restrictions on access to abortion disproportionately impact individuals facing intersecting forms of discrimination.**
* **Regulate and oversee the practices of medical professionals to refuse to provide abortion care, or other forms of reproductive health care, on grounds of conscience or religion to ensure that they do not impede women’s access to legal abortion care.**
* **Reform laws surrounding informed consent to ensure the full respect, protection and fulfillment of the right to bodily autonomy especially by women and girls facing intersectional forms of discrimination.**
* **Train the judiciary and other accountability mechanisms in guaranteeing SRHR in accordance with international human rights standards and public health evidence, including to:** 
  + **Recognize that restrictive laws on SRH, including abortion and contraception, constitute barriers to access justice for sexual and reproductive rights violations as they prevent timely enforcement of sexual and reproductive rights and/or redress following violations and abuses.**
  + **Repeal criminaization of sexual and reproductive health services, as per WHO and international human rights standards**
  + **Ensure access to abortion for all persons with no restriction as to reason and no third-party intervention requirements, in line with the updated WHO Abortion Care Guideline (2022).**
* **Monitor implementation of laws surrounding reproductive health services to ensure that women are not unlawfully denied access to such services.**
* **Address compounded barriers that persons in humanitarian situations experience to access justice for sexual and reproductive rights violations, and invest in innovative modalities that support integrated community-led approaches to legal empowerment and access to rights-based services.**

Should the mandate 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).

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2. Center for Reproductive Rights, [U.S. Supreme Court Takes Away the Constitutional Right to Abortion](https://reproductiverights.org/supreme-court-takes-away-right-to-abortion/) (2022) and Center for Reproductive Rights, [Regression on Abortion Access Harms Women in Poland](https://reproductiverights.org/regression-abortion-access-harms-women-poland/) (2022). [↑](#footnote-ref-2)
3. 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. 35. [↑](#footnote-ref-3)
4. Center for Reproductive Rights, [The World’s abortion laws](https://reproductiverights.org/maps/worlds-abortion-laws/) [↑](#footnote-ref-4)
5. 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, paras. 25 [↑](#footnote-ref-5)
6. 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, paras. 25. [↑](#footnote-ref-6)
7. CESCR, [General Comment 22](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F22&Lang=en) ( 2022), para 30 [↑](#footnote-ref-7)
8. See Simone Cusack & Rebecca Cook, Stereotyping Women in the Healthcare Sector: Lessons from CEDAW 16 WASH. & LEE J.C.R. & SOC. JUST. 47, 56-57, 66 (2009) 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](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/AccesstoJustice/CenterForReproductiveRights.pdf) (2013). [↑](#footnote-ref-8)
9. CEDAW, [General recommendation No. 33](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en) (2015) para 3 [↑](#footnote-ref-9)
10. CESCR, General Comment No. 22, paras. 22-24 in CRR technical paper 2021 [↑](#footnote-ref-10)
11. CEDAW,. General recommendation No. 33 para 26; see also OHCHR, [Gender stereotyping](https://www.ohchr.org/en/women/gender-stereotyping)

    [OHCHR and women’s human rights and gender equality](https://www.ohchr.org/en/women/gender-stereotyping) and also OHCHR, [Sexual and reproductive health and rights](https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights)

    [OHCHR and women’s human rights and gender equality](https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights). [↑](#footnote-ref-11)
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13. The World Justice Project, *Measuring the Justice Gap: A People-Centered Assessment of Unmet Needs Around the World (*2019), p. 15. [↑](#footnote-ref-13)
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15. CEDAW, access to justice – [concept note for half day general discussion](https://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2013/ConceptNoteAccessToJustice.pdf), endorsed by the committee on the elimination of discrimination against women at its 53rd session 2 (2012) [↑](#footnote-ref-15)
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17. CEDAW General Comment 33, para 2 [↑](#footnote-ref-17)
18. *Id,* paras. 3-4. [↑](#footnote-ref-18)
19. Working Group on discrimination against women and girls, [Women’s and girls’ sexual and reproductive health rights in crisis](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/096/69/PDF/G2109669.pdf?OpenElement) (2021), para 23 [↑](#footnote-ref-19)
20. Human Rights Comm., Gen. Comment No. 36, para. 8; CAT Committee, Concluding Observations: Poland, (2029) para. 33(d); CAT Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, (2019) para. 46 [↑](#footnote-ref-20)
21. CEDAW, [General Recommendation No. 24](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F4738&Lang=en), para 24 [↑](#footnote-ref-21)
22. CCPR, general recommendation n° 36, para 8 [↑](#footnote-ref-22)
23. CEDAW, General Comment N°24, para.28 [↑](#footnote-ref-23)
24. CEDAW General Comment 24 and CCPR General comment 36 [↑](#footnote-ref-24)
25. Center for reproductive Rights, [Briefing paper: the right to contraceptive information and services for women and adolescents 12-14](https://reproductiverights.org/briefing-paper-the-right-to-contraceptive-information-and-services-for-women-and-adolescents/) (2010) [↑](#footnote-ref-25)
26. Id*.,* para. 8. [↑](#footnote-ref-26)
27. CEDAW [general recommendation 28](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F28&Lang=en), para18 and CEDAW [General recommendation No. 33](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en), para 8 [↑](#footnote-ref-27)
28. Convention on the Rights of the Child, (1989), Art.14; see also Rebecca J. Cook & Bernard Dickens, Recognizing Adolescents’ Evolving Capacities to Exercise Choice in Reproductive Health Care, 20 int'l journal of gynecology & obstetrics 13-21 (2000). [↑](#footnote-ref-28)
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30. General Assembly, Res. 60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006), para 3 [↑](#footnote-ref-30)
31. CESCR, [General Comment 22](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F22&Lang=en), para 40 [↑](#footnote-ref-31)
32. Center for Reproductive Rights, [Breaking Ground 2018 Treaty Monitoring Bodies](C:\\Users\\christinazampas\\Library\\Containers\\com.apple.mail\\Data\\Library\\Mail Downloads\\F9E50B64-2BA0-4E63-BD74-CF91B69EDD54\\Breaking-Ground-2018.pdf (reproductiverights.org))

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33. CEDAW, General Recommendation No. 25, paras. 7-8; CEDAW General Recommendation No. 28 para. 9; ESCR, General Comment No. 20 paras. 8, 9 & 39 Breaking Ground 2018 page 4 and 5. [↑](#footnote-ref-33)
34. ESCR General Comment No. 22 (2016) para. 39, 45-46 and 49; CRC Gen. Comment No. 15, CEDAW Gen. Recommendation No. 24 para 27,21 and 25; ESCR Committee, Gen. Comment No. 14 paras. 12, ESCR Gen. Comment No. 22, para. 49; CEDAW Committee, Concluding Observations: Hungary, para. 31(b), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); ESCR Committee, Concluding Observations: Djibouti, para. 5(e), U.N. Doc. E/C.12/DJI/ CO/1-2 (2014); Poland, para. 27, U.N. Doc. E/C.12/POL/CO/5 (2009); Armenia, para. 22(b), U.N. Doc. E/C.12/ARM/CO/2-3 (2014); CRC Committee, Concluding Observations: Mozambique, para. 47(c), U.N. Doc. CRC/C/15/Add.172 (2002); Human Rights Committee, Concluding Observations: Republic of Moldova, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009); CAT Committee, Concluding Observations: Philippines, paras. 38-39, U.N. Doc. CAT/C/PHL/CO/ (2016) in Breaking Gound 2018 page 7-8. [↑](#footnote-ref-34)
35. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 1; International Covenant on Civil and Political Rights (ICCPR), art. 3, G.A. CEDAW Committee, Decision 57/II Statement by the Committee on the Elimination of Discrimination against Women on sexual and reproductive health: beyond the 2014 review of the International Conference on Population and Development, U.N. Doc. A/69/38 (2014), CEDAW Committee, Concluding Observations: Sierra Leone, para. 32 (b), U.N. Doc. CEDAW/C/ SLE/CO/6 (2014) in Breaking ground 2018 page 9-11. [↑](#footnote-ref-35)
36. In outlining states’ core obligations of the right SRHR, the CESCR Committee notes that States should be guided by the current international guidelines established by UN agencies, in particular the World Health Organization (WHO) see CESCR Committee, [Gen. Comment No. 22](https://undocs.org/Home/Mobile?FinalSymbol=E%2FC.12%2FGC%2F22&Language=E&DeviceType=Desktop&LangRequested=False), para. 49; World Health Organization, [*Abortion Care Guideline*](https://www.who.int/publications/i/item/9789240039483.) (2022), Section 2.2.1 (pp. 24–25). See also CERD, Concluding observations of the United States of America (2022) [CERD/C/USA/CO/10-12](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FUSA%2FCO%2F10-12&Lang=en) para 36 : “…It (the Committee) further recommends that the State party take all measures necessary to mitigate the risks faced by women seeking an abortion and by health providers assisting them, and to ensure that they are not subjected to criminal penalties. In that respect, the Committee draws the State party’s attention to the World Health Organization’s Abortion Care Guideline”; CAT, Concluding observations El Salvador, CAT/C/SLV/CO/3 (2022) para 31: “The Committee invites the State party to take the necessary measures, in accordance with the World Health Organization’s abortion care guideline (2022), to ensure that neither patients who resort to abortions nor the medical professionals who perform them face criminal sanctions, and that women and girls have effective access to post-abortion care, regardless of whether they have had an abortion legally or illegally.” [↑](#footnote-ref-36)
37. World Health Organization, [Abortion Care Guideline](https://www.who.int/publications/i/item/9789240039483.) (2022) Section 2.2.2 (pp. 26–27); Section 2.2.3 (pp. 28–29). [↑](#footnote-ref-37)
38. Id. Section 2.2.1 (pp. 24–25) [↑](#footnote-ref-38)
39. Id. at Section 3.3.1 (pp. 41–42). [↑](#footnote-ref-39)
40. Id. at Section 3.3.2 (pp. 42–44). [↑](#footnote-ref-40)
41. Id. at p. 42. [↑](#footnote-ref-41)
42. CEDAW Committee, General Recommendation No. 30, para. 77. [↑](#footnote-ref-42)
43. *Id*., paras. 77-79; [↑](#footnote-ref-43)
44. 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). [↑](#footnote-ref-44)
45. L.C. v Peru, No. 22/2009, para. 8.17 in Id. [↑](#footnote-ref-45)
46. Id para 9 [↑](#footnote-ref-46)
47. Id. para. 8.17. [↑](#footnote-ref-47)
48. Id. para. 8.17; See also Tysiąc v. Poland, No. 5410/03 Eur. Ct. H.R., para. 117 (2007) [↑](#footnote-ref-48)
49. CESCR, [General Comment 22](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F22&Lang=en), para 40 [↑](#footnote-ref-49)
50. Id [↑](#footnote-ref-50)
51. CEDAW Committee, [Gen. Recommendation No. 24](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F4738&Lang=en), para. 13 [↑](#footnote-ref-51)
52. CEDAW, [General recommendation No. 33](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en), para 22 [↑](#footnote-ref-52)
53. Commissioner for Human Rights, Follow-up Report on the Slovak Republic (2001 – 2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, para. 37 (2006) [↑](#footnote-ref-53)
54. CEDAW Committee, [Gen. Recommendation No. 28](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F28&Lang=en), para. 17. [↑](#footnote-ref-54)
55. Id [↑](#footnote-ref-55)
56. CEDAW Concluding Observations: Paraguay,(2007) para. 11 [↑](#footnote-ref-56)
57. OHCHR, [Gender Stereotyping and the Judiciary: A Workshop Guide](https://www.ohchr.org/en/publications/gender-stereotyping-and-judiciary-workshop-guide), 2020. [↑](#footnote-ref-57)
58. CEDAW Concluding Observations: Democratic Republic of the Congo (2008), para. 12 [↑](#footnote-ref-58)
59. CEDAW Committee, Concluding Observations: Guyana, (2001) para. 163 [↑](#footnote-ref-59)
60. [↑](#footnote-ref-60)
61. PAK & another v Attorney General & 3 others (Constitutional Petition E009 of 2020) [2022] KEHC 262 (KLR) (24 March 2022) (Judgment) [Constitutional (2022)](http://kenyalaw.org/caselaw/cases/view/231489/) in Center for Reproductive Rights, [Kenyan High Court Affirms the Right to Abortion Under the Constitution and Directs Parliament to Enact Reforms](https://reproductiverights.org/malindi-kenya-court-affirms-abortion-right-pak/) (2022) [↑](#footnote-ref-61)
62. Causa justa, is a movement in Colombia fighting for reproductive autonomy of all women and is made up of more than 200 organizations, health care providers, academics, research centers, and activists working to protect women’s rights in Colombia [↑](#footnote-ref-62)
63. Center for Reproductive Rights, [Kenyan High Court Affirms the Right to Abortion Under the Constitution and Directs Parliament to Enact Reforms](https://reproductiverights.org/malindi-kenya-court-affirms-abortion-right-pak/) (2022) [↑](#footnote-ref-63)
64. [Human Rights Committee, KL v. Peru (2002)](https://reproductiverights.org/case/kl-v-peru-united-nations-human-rights-committee/) [↑](#footnote-ref-64)
65. [Committee on the Elimination of Discrimination Against Women, Alyne da Silva Pimentel v. Brazil (2007](https://reproductiverights.org/case/alyne-da-silva-pimentel-v-brazil-committee-on-the-elimination-of-discrimination-against-women/)) [↑](#footnote-ref-65)
66. For instance, The highest courts in Argentina, Brazil, and Colombia all relied on the decision in K.L. v. Peru in their own landmark cases liberalizing restrictive abortion laws in those countries; in Kenya, the decision in Alyne was critical to the court recognizing serious human rights violations stemming from the detention of women for the inability to pay their maternity bills. In Uganda, a court relied on the standards created in Alyne to hold the Ugandan government accountable for failing to provide adequate maternal health services, including emergency obstetric care. Additionally, in two dissents from the European Court of Human Rights, judges looked to Alyne in Center for Reproductive Rights, [Across Borders: How International and Regional Reproductive Rights Cases Influence Jurisprudence Worldwide](https://reproductiverights.org/influencing-srhr-law-across-borders/). [↑](#footnote-ref-66)
67. [↑](#footnote-ref-67)
68. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Follow-up on the application of the technical guidance on the

    application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity, A/HRC/39/26, June 29, 2018, para. 29; Grady Arnott,Charles Otema,Godfrey Obalim,Beatrice Odallo,Teddy Nakubulwa,SamB. T. Okello, PLOS Global Public health, [Human rights-based accountability for sexual and reproductive health and rights in humanitarian settings: Findings from a pilot study in northern Uganda](https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0000836)*,* (2022)*;* Center for Reproductive Rights, [Ensuring Sexual and Reproductive Health and Rights of Women and Girls Affected by Conflic](https://reproductiverights.org/breaking-through-a-guide-to-sexual-and-reproductive-health-and-rights)t (2017) [↑](#footnote-ref-68)
69. Center for Reproductive Rights and CARE, [Implementing rights-based accountability for sexual and reproductive health and rights in humanitarian settings](https://reproductiverights.org/breaking-through-a-guide-to-sexual-and-reproductive-health-and-rights), 2022, p. 2 [↑](#footnote-ref-69)
70. Id p. 3 [↑](#footnote-ref-70)
71. Id. p. 3 and 4 [↑](#footnote-ref-71)
72. The Constitutional Court of Uganda, Constitutional, [petition n°16 of 2011](https://www.cehurd.org/publications/download-info/judgement-to-the-constitutional-petition-no-16-of-2011-maternal-health-case-decided-in-the-affirmative/), 19 August 2020 [↑](#footnote-ref-72)
73. Id [↑](#footnote-ref-73)