

CHAPTER 3

Relevant international law

3.1 Introduction

This chapter outlines some of the most important fundamental rights set out in relevant international human rights documents that can be raised in litigating cases related to violations of SRHR. It discusses the expanse and nature of specific rights based on decisions, concluding observations, and general comments of various United Nations (UN) monitoring bodies as well as reports and statements by UN special procedures. The chapter explains how specific rights recognised in international law will apply to certain scenarios and which actions could be argued as violating these rights. In this way, it aims to support the use of international law principles in domestic SRHR-related lawsuits.

For a discussion on why domestic courts should look to international law, please refer to Chapter 2.

Checklist

- ▶ Which international human rights are violated in your particular case?
- ▶ Which international treaties provide for the particular rights you have identified? *[See pages 15-17 for case examples of specific rights violations]*
- ▶ Has your country ratified the particular treaty?
- ▶ Did the events in your case take place after the ratification of the treaty?
- ▶ Has your country made any reservations to the treaty that may exclude its application to the facts of your case?
- ▶ Has the treaty monitoring body made any General Comments or General Recommendations that elaborate on the identified right(s)?
- ▶ Has there been any concluding observations or statements from UN bodies that are relevant to your case? *[See Chapter 7 for a list of relevant online resources]*
- ▶ Are there any relevant international guidelines that provide additional support for your case?

Relevant documents discussed in this chapter

- Beijing Declaration and the Platform for Action, United Nations Fourth World Conference on Women (1995)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Convention on the Rights of Persons with Disabilities (2006)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Guidelines on HIV/AIDS and Human Rights (as consolidated in 2006)
- Programme of Action, United Nations International Conference on Population and Development (1994)
- United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)
- United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993)
- Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights (1993)
- World Health Organisation, World Health Assembly Resolution (2005)

Relevant cases discussed in this chapter

- AS v Hungary
- Karen Noelia Llantoy Huamán v Peru
- LMR v Argentina
- Pimentel v Brazil

The chapter is divided into the following sections:

- Overview of the sources of relevant international law;
- Introduction to SRHR;
- Right to non-discrimination and equality;
- Right to health including SRH care;
- Right to information;
- Right to liberty and security of the person;
- Freedom from cruel, inhuman and degrading treatment;
- Right to life; and
- Right to privacy.

3.2 Overview of the Sources of International Law

International treaties and conventions provide the primary sources of international law. Internationally, these agreements are negotiated and finalised within the UN system. There are nine core human rights treaties.⁵⁷

Once ratified, a treaty or convention becomes legally binding on the State.⁵⁸ Depending on their legal systems, some States are required to domesticate international laws by the enactment of national laws. For other States, the ratification of the treaty or convention means that it is immediately directly applicable at national level. Regardless, States are required to take steps to ensure that the provisions of the treaty or convention are respected, protected, promoted and fulfilled at national level.⁵⁹

Lawyers defending the rights of complainants in cases related to violations of SRHR can use a number of important international treaties to support their arguments. It is important for lawyers to determine at an early stage of the litigation whether and when these treaties were ratified by their State, in order to determine whether they may be applied to the facts of the case.

Table: Dates of ratification of key international instruments⁶⁰

Country	ICCPR	ICESCR	CEDAW	CRPD
Angola	10/1/1992	10/1/1992	17/9/1986	-
Botswana	8/9/2000	-	13/8/1996	-
Dem. Rep. of Congo	1/11/1976	1/11/1976	17/10/1986	Signed
Lesotho	9/9/1992	9/9/1992	22/8/1995	2/12/2008
Malawi	22/12/1993	22/12/1993	12/3/1987	27/08/2009
Mozambique	21/7/1993	-	21/4/1997	30/01/2012
Namibia	28/1/1994	28/11/1994	23/11/1992	4/12/2007

⁵⁷ These are the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disabilities (CRPD); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); and International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

⁵⁸ It should be noted that, even where States have not signed or ratified conventions or treaties, these can still be binding if their principles form part of customary international law. In addition, signing a treaty obliges the country to abide by the object and purpose of the treaty. **See** article 18(a) of the Vienna Convention on the Law of Treaties (1969) *available at* <http://www.worldtradelaw.net/misc/viennaconvention.pdf> (accessed 26 August 2013).

⁵⁹ However, States can make reservations when ratifying treaties and conventions, expressing their reservation from adhering to certain provisions within the treaty.

⁶⁰ As of December 2012.

Country	ICCPR	ICESCR	CEDAW	CRPD
Swaziland	26/3/2004	26/3/2004	26/3/2004	24/09/2012
Zambia	10/4/1984	10/4/1984	21/6/1985	1/2/2010
Zimbabwe	13/5/1991	13/5/1991	13/5/1991	-

In addition, various UN institutions have applied and provided guidance on the nature and scope of rights enshrined in the various conventions. All UN systems have a wide array of mechanisms to monitor, advance and protect human rights, including country reports, on-site visits and special reports. A UN committee has been created to oversee each treaty. These expert committees are tasked with monitoring country compliance with the treaties. Countries that have ratified treaties are obliged to make periodic reports to the relevant committee, setting out progress towards the realisation of rights enshrined in the particular treaty. In fulfilling this function, the committees may issue general comments and recommendations to define and clarify the scope and nature of the rights enshrined within the respective treaties. They also issue concluding observations after considering country reports, and statements with respect to individual country activities. These documents provide additional guidance to lawyers on the nature of relevant rights, their application within States as well as, in some cases, their specific application in the context of violations of SRHR.

Some of the bodies or committees incorporate an individual complaints procedure to carry out their mission. This procedure is similar to traditional litigation in which a victim of human rights violations sues a State for its non-compliance with obligations imposed by particular treaties the State has ratified. The committee or other relevant body carries out quasi-judicial proceedings and decides if the State can be declared liable. Committees may offer decisions or recommendations on individual cases. The individual complaint procedure is often incorporated through an optional protocol.

Table: Relevant international treaties and their monitoring bodies

International UN Treaty	UN Human Rights Monitoring Body
International Covenant on Civil and Political Rights (ICCPR) (including its first Optional Protocol)	Human Rights Committee (HRC)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (including its Optional Protocol)	Committee on the Elimination of Discrimination against Women
Convention on the Rights of Persons with Disabilities (CRPD)	Committee on the Rights of Persons with Disabilities

The Human Rights Council⁶¹ has also established mechanisms, known as special procedures, to address human rights. Individuals, known as special rapporteurs, examine, monitor, advise and publicly report on human rights situations. Of particular relevance to SRHR are the Special Rapporteur on the Right of Everyone to Enjoyment of the Highest Attainable Standard of Physical and Mental Health; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Special Rapporteur on Violence against Women, Its Causes and Consequences. Their reports may provide valuable guidance on the application of various rights to individual cases.

In addition to binding treaties, a number of guidelines and declarations can also be useful when litigating cases of violations of SRHR. Although these international human rights documents are not legally binding, they nevertheless contain persuasive guidance on SRH-related human rights. They expand upon key human rights principles and apply them directly to the situation of SRHR. Important documents and guidelines for litigating SRHR-related cases, especially cases involving WLHIV and women with disabilities include:

- United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991);⁶²
- Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights (1993);⁶³
- United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993);⁶⁴
- Programme of Action, United Nations International Conference on Population and Development (1994);⁶⁵
- Beijing Declaration and the Platform for Action, United Nations Fourth World Conference on Women (1995);⁶⁶
- UNAIDS and OHCHR International Guidelines on HIV/AIDS and Human Rights (1996 and 2006);⁶⁷

⁶¹ The Human Rights Council of the UN is an inter-governmental body that is responsible for the promotion and protection of human rights globally. It consists of 47 member states that are elected periodically by the General Assembly of the UN.

⁶² UN Doc A/RES/46/119 (1991) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PersonsWithMentalIllness.aspx> (accessed 26 August 2013).

⁶³ UN Doc. A/CONF.157/23 (1993) available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> (accessed 26 August 2013).

⁶⁴ UN Doc A/RES/48/96 (1993) available at <http://www.un.org/documents/ga/res/48/a48r096.htm> (accessed 26 August 2013).

⁶⁵ Available at <http://www.un.org/popin/icpd2.htm> (accessed 26 August 2013).

⁶⁶ Available at <http://www.un.org/womenwatch/daw/beijing/platform/> (accessed 26 August 2013).

⁶⁷ Available at http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed 26 August 2013).

- World Health Organisation, World Health Assembly Resolution on Disability, including prevention, management and rehabilitation (2005);⁶⁸ and
- UNFPA and WHO Sexual and Reproductive Health of Women Living with HIV/AIDS: Guidelines on care, treatment and support for women living with HIV/AIDS and their children in resource-constrained settings (2006).⁶⁹

3.3 Introduction to Sexual and Reproductive Health Rights

SRH is recognised as an essential human right guaranteed in various international and regional human rights instruments as well as some national laws and policies. While the notion of “the right to SRH” is relatively new and is sometimes not expressly provided for in domestic law, SRHR encompasses rights which have long been recognised in international human rights law and national laws.

Reproductive rights were first officially recognised as such in 1994 at the International Conference on Population and Development (ICPD) in Cairo, Egypt.⁷⁰ The definition of SRH agreed to in Cairo moved beyond safe motherhood, family planning and fertility control, and was notable for being broad and comprehensive, and for placing reproductive health in the context of human rights and the right to health. The ICPD’s subsequent Programme of Action (PoA)⁷¹ for universal access to SRH by 2015 linked governments’ *existing* legally binding obligations under various treaties and conventions to their duty to protect reproductive rights, particularly those of women, stating that:

[R]eproductive rights embrace certain human rights that are already recognised in national laws, international human rights documents and other relevant UN consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence...⁷²

Although all human rights are in some way implicated in SRHR, there are twelve rights that are most often cited as forming a SRHR framework to empower women and advance their SRH.⁷³ These are:

⁶⁸ World Health Assembly Resolution 58.23 58th World Health Assembly (2005) *available at* http://www.who.int/disabilities/WHA5823_resolution_en.pdf (accessed 26 August 2013).

⁶⁹ *Available at* http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/srh_women_aids.pdf (accessed 26 August 2013).

⁷⁰ ICPD PoA *supra* note 65.

⁷¹ The ICPD PoA commitment was later reaffirmed in various other international meetings such as the Beijing Declaration and Platform for Action.

⁷² ICPD PoA *supra* note 65 at para 7.3.

⁷³ “Twelve Human Rights Key to Human Rights” *Center for Reproductive Rights* (2008), 1 *available at* <http://reproductiverights.org/en/document/twelve-human-rights-key-to-reproductive-rights> (accessed 26 August 2013). **See also** L Gerntholtz & C Grant “International, African and Country Legal Obligations on Women’s Equality in Relation to Sexual and Reproductive Health, Including HIV and AIDS” *HEARD and ARASA* (2010), 14 *available at* <http://www.heard.org.za/downloads/international-african-and-country-legal-obligations-on-womens-equality-in-relation-to-sexual-and-reproductive-health-including-hiv-and-aids.pdf> (accessed 26 August 2013).

- The right to life;
- The rights to liberty and security of the person;
- The right to health, including reproductive and sexual health;
- The right to decide the number and spacing of children;
- The rights to consent to marriage and to equality in marriage;
- The right to privacy;
- The rights to equality and non-discrimination;
- The right to be free from practices that harm women and girls;
- The right not to be subjected to torture and cruel, inhuman and degrading treatment or punishment;
- The right to be free from sexual and gender-based violence;
- The right to access sexual and reproductive health education and family planning information; and
- The right to enjoy scientific progress.

All of these rights may be implicated in violations of a person's SRHR. In this chapter we focus on those rights which are likely to be specifically provided for in domestic law and discuss how international law can be used to support litigation relating to violations of sexual and reproductive self-determination and discrimination against particular groups of women in accessing SRH care services. In particular, we look at the right to equality and non-discrimination; the right to health, including SRH; the right to information; the rights to liberty and security of the person; the right to freedom from cruel, inhuman and degrading treatment; the right to life; and the right to privacy. We do not cover the other rights which form part of the SRHR framework as they are less likely to be provided for under domestic law. However, lawyers should consider whether including violations of the other rights listed above may be beneficial in domestic litigation.

3.4 Right to Non-Discrimination

The right to non-discrimination protects women from discrimination in their enjoyment of all aspects of the right to SRH. This includes access to SRH information and services provided on the basis of informed consent, as well as respecting their rights to dignity, privacy and confidentiality. This right is particularly relevant in cases where specific populations are denied access to SRH services due to, for example, their gender, HIV status or a disability. Laws, policies and practices that permit coercive health interventions such as forced abortion and sterilisation against women and/or specific populations of women may violate the right to non-discrimination.

A number of international treaties protect individuals from discrimination on the basis of gender, HIV status and disability. The relevant treaties discussed in this manual are the ICCPR, ICESCR, CEDAW and CRPD.

The ICCPR guarantees freedom from discrimination under article 2(1), which states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.⁷⁴

The ICESCR has a similar provision under article 2(2), which states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷⁵

Both article 2(1) of the ICCPR and article 2(2) of the ICESCR only guarantee non-discrimination with respect to the rights provided for in each treaty. Thus, for example, in a case challenging the coercive sterilisation of women due solely to their HIV status, one must argue that the coercive medical intervention violated article 2(2) of the ICESCR because it discriminated against the patient in her trying to exercise her right to health as provided for under article 12 of the ICESCR. Simply arguing discrimination as a violation of article 2(2) of the ICESCR is not enough.

Discrimination against women

CEDAW is particularly relevant when addressing cases of discrimination against women, including addressing cases of WLHIV and women with disabilities. For example, CEDAW would be relevant in cases where a woman with a disability has been subjected to a forced abortion especially when such treatment is based on her disabled status.

CEDAW's basic principle of non-discrimination is set forth in article 2 as follows:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

⁷⁴ Article 2(1) of the ICCPR (emphasis added).

⁷⁵ Article 2(2) of the ICESCR.

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.⁷⁶

In addition to the protection under article 2, article 12(1) of CEDAW urges States to work towards the elimination of “discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁷⁷ Article 14 specifically addresses discrimination against women in rural areas.⁷⁸ Article 16 of CEDAW also states that “parties shall take all appropriate measures to ... ensure, on a basis of equality of men and women ... the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”⁷⁹

Recognising the particular discrimination experienced by women, the ICCPR under article 3 specifically provides that all countries “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the [ICCPR]”.⁸⁰ The HRC has stressed the importance of article 3 stating that “the full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently, States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.”⁸¹

Similarly, article 3 of the ICESCR obliges States to ensure equality between men and women in the enjoyment of all economic, social and cultural rights set forth in the ICESCR. Of particular relevance in SRHR cases, the ICESCR under article 12 guaranteeing the right to health provides specifically for the elimination of discrimination against women in accessing health. The CESCR has noted:

Interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services...the

⁷⁶ Article 2 of the CEDAW.

⁷⁷ *Id.*, article 12(1).

⁷⁸ *Id.*, article 14.

⁷⁹ *Id.*, article 16.

⁸⁰ Article 3 of the ICCPR.

⁸¹ General Comment No 28: Equality of Rights between Men and Women (Article 3) Human Rights Committee 68th Session UN Doc CCPR/C/21/Rev.1/Add.10 (2000) (HRC General Comment No 28) at para 2 *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80> (accessed 26 August 2013).

removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health...[and] undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.⁸²

Discrimination against WLHIV

Neither the ICCPR nor the ICESCR specifically list HIV as a prohibited ground of discrimination. However, the CESCR explicitly stated that the inclusion of “other status” in the ICESCR is a clear indication that the list is not exhaustive and that “other grounds” may be incorporated into this category. The CESCR stated that:

A flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds in article 2, paragraph 2 [of the ICESCR].⁸³

The CESCR has recognised several other prohibited grounds in a non-exhaustive list that includes health status, including HIV, as well as age, disability, nationality, marital and family status, sexual orientation and gender identity, place of residence, and economic and social situation.⁸⁴ With respect to discrimination on the basis of HIV status, it urges States to “ensure that a person’s actual or perceived health status is not a barrier to realising the rights under the Covenant”.⁸⁵ It refutes the view that restricting human rights in the context of a person’s health status is necessary for the protection of public health, noting that such restrictions are discriminatory, including “when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.”⁸⁶

In the same way, the HRC has found that the non-discrimination provision of the ICCPR protects individuals from discrimination on the basis of HIV status. In its Concluding Observations on the State Report of the Republic of Moldova, the HRC noted its concern that people living with HIV were subjected to discrimination in a myriad of situations in Moldova in violation of article 2 of the ICCPR.⁸⁷

⁸² General Comment No 14: The Right to the Highest Attainable Standard of Health Committee on Economic Social and Cultural Rights 22nd session UN Doc E/C.12/2000/4 (2000) (CESCR General Comment No 14) at para 21 *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (accessed 26 August 2013).

⁸³ General Comment No 20: Non-discrimination in Economic, Social and Cultural rights (art. 2, para 2) Committee on Economic Social and Cultural Rights 42nd Session UN Doc E/C.12/GC/20 (2009) (CESCR General Comment No 20) at para 27 *available at* <http://www.refworld.org/docid/4a60961f2.html> (accessed 26 August 2013).

⁸⁴ *Id* at paras 28-35.

⁸⁵ *Id* at para 33.

⁸⁶ *Id*.

⁸⁷ Concluding Observations of the Human Rights Committee: Republic of Moldova 97th Session UN Doc CCPR/C/MDA/CO/2 (2009) at para 12 *available at* <http://www.refworld.org/docid/4afc28752.html> (accessed 26 August 2013).

The prohibition against discrimination on the basis of HIV is echoed in a number of international resolutions, declarations, and guidelines. The International Guidelines states:

States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and people with disabilities from discrimination in both the public and private sectors, ensure privacy and confidentiality and ethics in research involving human subjects, emphasise education and conciliation, and provide for speedy and effective administrative and civil remedies.⁸⁸

The World Health Assembly—the highest decision-making body of the World Health Organisation (WHO)—in 1988 urged member States to “avoid discriminatory action against, and stigmatisation of [people living with HIV] in the provision of services, employment and travel”.⁸⁹

Similarly, the UNGASS Declaration of Commitment on HIV/AIDS adopted by the UN General Assembly urges States to:

Enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against...people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection.⁹⁰

This was reaffirmed by the General Assembly in 2006 in its Political Declaration on HIV/AIDS.⁹¹

Of particular relevance to the SRHR of WLHIV, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has noted the limited access women have to HIV-related health care and has recommended that States intensify HIV programmes that “give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection.”⁹²

⁸⁸ Guideline 5 of the International Guidelines on HIV/AIDS and Human Rights *supra* note 67.

⁸⁹ World Health Assembly Resolution 41.24 on the Avoidance of Discrimination in Relation to HIV-infected People and People with AIDS (1998) in UNDP, *Compendium of key documents relating to human rights and HIV in Eastern and Southern Africa*, 39 available at http://www.pulp.up.ac.za/pdf/2008_03/2008_03.pdf (accessed 26 August 2013).

⁹⁰ Declaration of Commitment on HIV/AIDS UN General Assembly 26th Special Session UN Doc A/RES/S-26/2 (2001) at para 58 available at <http://www.un.org/ga/aids/docs/aress262.pdf> (accessed 26 August 2013).

⁹¹ Political Declaration on HIV/AIDS UN General Assembly Resolution 60/262 60th Session UN Doc A/RES/60/262 (2006) at para 29 available at http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf (accessed 26 August 2013).

⁹² General Recommendation No 15: Avoidance of Discrimination against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS) Committee on the

For a more detailed discussion on the right to equality and non-discrimination and its application to HIV please see *Equal Rights for All: Litigating Cases of HIV-Related Discrimination*.⁹³

Discrimination against women with disabilities

Neither the ICCPR nor the ICESCR specifically list disability as a prohibited ground of discrimination. However, as highlighted above, the CESCR explicitly stated that the inclusion of “other status” in the ICESCR is a clear indication that the list is not exhaustive and that “other grounds” may be incorporated into this category.⁹⁴

The CESCR has recognised several other prohibited grounds in a non-exhaustive list that includes health status, and disability.⁹⁵ With regard to disability-based discrimination, despite no explicit recognition of persons with disabilities in the ICESCR, the CESCR noted that:

Since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognised in the Covenant. In addition, in so far as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability. Moreover, the requirement contained in article 2 (2) of the Covenant that the rights “enunciated ... will be exercised without discrimination of any kind” based on certain specified grounds “or other status” clearly applies to discrimination on the grounds of disability.⁹⁶

The CESCR has furthermore reaffirmed the importance of addressing the needs of persons with disabilities in the context of the right to physical and mental health and to ensure that “not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.”⁹⁷ The Convention on the Rights of Persons with Disabilities (CRPD), which entered into force in May 2008, aims to promote the human rights of people with disabilities, eradicate disability-based discrimination and protect people with disabilities against discrimination by others. The CRPD under article 5(2) “prohibit[s] all discrimination on the basis of disability and guarantee[s] to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

Elimination of Discrimination against Women 9th Session UN Doc A/45/38 (1990) available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom15> (accessed 26 August 2013).

⁹³ “Equal Rights for All: Litigating Cases of HIV-Related Discrimination” *Southern Africa Litigation Centre* (2011) available at <http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2012/10/HIV-and-Discrimination-Manual-pdf.pdf> (accessed 26 August 2013).

⁹⁴ CESCR General Comment No 20 *supra* note 83 at para 27.

⁹⁵ *Id* at paras 28 and 33.

⁹⁶ General Comment No 5: Persons with Disabilities Committee on Economic Social and Cultural Rights 11th Session UN Doc E/1995/22 (1994) at para 5 available at <http://www.unhcr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d> (accessed 26 August 2013).

⁹⁷ CESCR General Comment No 14 *supra* note 82 at para 26.

Article 6 of the CRPD deals explicitly with the rights of women with disabilities to equality and non-discrimination. It obliges countries to recognise that “women and girls with disabilities are subject to multiple discrimination, and in this regard [requires countries to] take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.”⁹⁸

Article 23 of CRPD further obliges States to take measures “to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others,”⁹⁹ which includes “the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education...and the means necessary to enable them to exercise these rights,¹⁰⁰ as well as the protection of the fertility rights of persons with disabilities.¹⁰¹ Article 25 of the CRPD, dealing with health rights, furthermore states that people with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability and obliges States to provide equitable health care, including reproductive health care,¹⁰² as well as to prevent discriminatory denial of health care services.¹⁰³

The ICPD Programme of Action also speaks of equality of men and women in health services and specifically states that “Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices.”¹⁰⁴ With regard to people with disabilities, the Programme of Action provides that governments should recognise the SRH needs of people with disabilities and should “eliminate specific forms of discrimination that persons with disabilities may face with regard to reproductive rights”.¹⁰⁵

The UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities require States to ensure that their laws do not discriminate against persons with disabilities with respect to sexual relationships, marriage and parenthood and provide that “persons with disabilities must have the same access as others to family-planning methods, as well as to information in accessible form on the sexual functioning of their bodies.”¹⁰⁶

⁹⁸ Article 6(1) of the CRPD.

⁹⁹ *Id.*, article 23 (1).

¹⁰⁰ *Id.*, article 23(1) (b).

¹⁰¹ *Id.*, article 23(1) (c).

¹⁰² *Id.*, article 25(a).

¹⁰³ *Id.*, article 25(f).

¹⁰⁴ ICPD PoA *supra* note 65 at para 5.5.

¹⁰⁵ *Id.* at para 6.30.

¹⁰⁶ Rule 9(2) of the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities *supra* note 64.

Definition of discrimination

The HRC has defined discrimination as:

Imply[ing] any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹⁰⁷

This definition has been adopted by the CESCR with respect to the discrimination provisions in the ICESCR.¹⁰⁸

CEDAW under article 1 provides a more particular definition of discrimination against women:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁰⁹

The CRPD defines discrimination on the basis of disability as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹¹⁰

The protection against discrimination under the ICESCR and ICCPR extends to both direct and indirect discrimination. Direct discrimination “occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground”.¹¹¹ Denying a person a medical procedure based on their HIV status is an example of direct discrimination. Indirect discrimination, on the other hand, “refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of rights [under each treaty] as distinguished by prohibited grounds of discrimination”.¹¹² A policy requiring all people accessing ante-natal services to be tested for HIV is an example of indirect discrimination as it may discriminate against women as they are the only gender accessing ante-natal services.

¹⁰⁷ General Comment No 18: Non-discrimination Human Rights Committee 37th session UN Doc HRI/GEN/1/Rev.1 at 26 (1989) (HRC General Comment No 18) at para 7 *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument) (accessed 26 August 2013).

¹⁰⁸ CESCR General Comment No 20 *supra* note 83 at para 7.

¹⁰⁹ Article 1 of the CEDAW.

¹¹⁰ Article 2 of the CRPD.

¹¹¹ CESCR General Comment No 20 *supra* note 83 at para 10(a).

¹¹² *Id* at para 10(b).

State obligations to eradicate discrimination extends to both ending it formally in laws and substantively in practice.¹¹³ That is, merely addressing formal discrimination in a State’s constitution, laws and policy documents “will not ensure substantive equality” as intended by article 2(2) of the ICESCR. The CESCR has stated that:

Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States Parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.¹¹⁴

What acts amount to discrimination in relation to sexual and reproductive health?

It is likely that in addition to discriminatory access to SRH services, failure to permit a patient to exercise their sexual and reproductive self-determination could violate the right to non-discrimination.

The CEDAW Committee noted, in General Recommendation 19, that coercive acts can amount to discrimination, stating that “[d]iscrimination against women includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹¹⁵ This includes subjecting women to coercive medical procedures which can result in physical, mental or sexual harm to the women.

Case Example: Lack of Appropriate Maternal Health Services

In *Pimentel v Brazil*,¹¹⁶ the CEDAW Committee found that the lack of appropriate maternal health services in Brazil that clearly fail to meet the specific, distinctive health needs and interests of women constitutes discrimination against women under article 12, paragraph 1, and article 2 of CEDAW. The CEDAW Committee established that Pimentel had not only been discriminated against because she was a woman, but also because she was poor and of African descent.¹¹⁷ The CEDAW Committee has noted that “special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups” and that the duty to eliminate discrimination in access to health care includes the responsibility to take into account the manner in which societal factors, which can vary among women, determine health status.¹¹⁸

¹¹³ *Id* at para 38.

¹¹⁴ *Id* at para 8.

¹¹⁵ CEDAW General Recommendation No 19: Violence against Women Committee on the Elimination of Discrimination against Women 11th session UN Doc A/47/38 (1992) at para 6 available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed 26 August 2013).

¹¹⁶ CEDAW/c/49/D/17/2008 (*Alyne da Silva Pimentel v Brazil*) at para 7.6 available at <http://www.escr-net.org/sites/default/files/CEDAW-C-49-D-17-2008.pdf> (accessed 26 August 2013).

¹¹⁷ *Id* at para 7.7.

¹¹⁸ CEDAW General Recommendation No 24: Article 12 of the Convention (Women and Health) Committee on the Elimination of Discrimination against Women 20th Session UN Doc A/54/38/Rev.1, chap. I

In *AS v Hungary*,¹¹⁹ the CEDAW Committee found that Hungary had violated the complainant's rights to protection from discrimination in health care provided for under article 12, amongst other rights, in forcing her to be sterilised, and cited its General Recommendations 19 and 24 with approval.

3.5 Right to Equality

The ICCPR provides for the right to equality under article 26 and broadly requires that all national laws be free from discrimination stating:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.¹²⁰

This article does not limit the scope of the rights protected from discrimination. In SRHR cases, it is useful to allege both violations of article 26 of the ICCPR and the non-discrimination articles of the appropriate treaties discussed in section 3.4 above.

With respect to women with disabilities, the CRPD under article 5(1) requires all countries to “recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.”¹²¹

The HRC has specifically found that coercive acts (such as requiring women to be sterilised without their consent) can be a violation of the right to equality under article 26.¹²²

Limitation on rights to equality and non-discrimination

According to the HRC, States are permitted to differentiate in treatment but only if “the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR]”.¹²³

Similarly, the CESCR warns that “differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective”.¹²⁴ However, the CESCR does make it clear that failure to remedy differential treatment “on the basis of a lack of available resources is not an objective and reasonable

(1999) (CEDAW General Recommendation No 24) at para 6 *available at* <http://www.refworld.org/docid/453882a73.html> (accessed 26 August 2013).

¹¹⁹ CEDAW/C/36/D/4/200 at paras 11.3-11.4 *available at* http://www2.ohchr.org/english/law/docs/Case4_2004.pdf (accessed 26 August 2013).

¹²⁰ Article 26 of the ICCPR (emphasis added).

¹²¹ Article 5(1) of the CRPD.

¹²² Concluding Observations of the Human Rights Committee: Slovakia 78th Session UN Doc CCPR/CO/78/SVK (2003) at para 12 *available at* [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.SVK.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.SVK.En?Opendocument) (accessed 26 August 2013).

¹²³ HRC General Comment No 18 *supra* note 107 at para 13.

¹²⁴ CESCR General Comment No 20 *supra* note 83 at para 13.

justification unless every effort has been made to use all resources that are at the State Party's disposition in an effort to address and eliminate the discrimination, as a matter of priority".¹²⁵

Whether discriminatory behaviour in the context of provision of SRH services can be deemed as justifiable as provided for under the ICCPR and ICESCR and other relevant law is discussed in more detail in chapter 5.

3.6 Right to Health, Including Sexual and Reproductive Health

Violations of reproductive self-determination and discrimination in accessing health care services will most often result in a violation of the right to health, recognised in several international human rights treaties. However, relying on other rights such as the right to be free from cruel, inhuman and degrading treatment or the right to life may be more persuasive in jurisdictions where the right to health is not provided for in the domestic law.

International human rights law recognises the right of every person to health, including SRH, on the basis of a broad understanding of health as the "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"¹²⁶ and as being dependent on and indispensable for the exercise of other human rights such as the right to non-discrimination, equality, privacy and the prohibition against torture.¹²⁷

The ICESCR is the first binding instrument that recognises the right to health under article 12 and makes mention of an aspect of reproductive health - maternal health - as a key element of the right to health. It requires State Parties to recognise "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"¹²⁸ and to take steps to reduce infant mortality¹²⁹ and to protect mothers for a reasonable period before and after childbirth.¹³⁰

The right to health, including sexual and reproductive health has since been expanded upon in CEDAW¹³¹ and the CRPD,¹³² where it has moved beyond a focus on maternal health to encompass a wide range of SRHR.

¹²⁵ *Id.*

¹²⁶ Preamble to the Constitution of the World Health Organisation as adopted by the International Health Conference New York (1946). This was signed on 22 July 1946 by the representatives of 61 States and entered into force on 7 April 1948. Available at <http://www.who.int/about/definition/en/print.html> (accessed 26 August 2013).

¹²⁷ CESCR General Comment No 14 *supra* note 82 at para 3.

¹²⁸ Article 12(1) of the ICESCR.

¹²⁹ *Id.*, article 12 (2).

¹³⁰ *Id.*, article 10(2).

¹³¹ Articles 12, 16 and particularly 16(e) of the CEDAW.

¹³² Articles 23 and 25 of the CRPD.

Article 12 of CEDAW provides:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

While article 16 provides in relation to SRHR:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - ...
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

The right to health includes making available and accessible SRH information and SRH prevention and treatment services. The CESCR's General Comment No. 14 notes the importance of making SRH information and services available, accessible and acceptable.¹³³

Similarly, article 12 of CEDAW provides for the equal rights of women to health care services, including family planning; this has been described in the CEDAW Committee's General Recommendation 24, as including an obligation on States to ensure that health services are accessible and acceptable.¹³⁴ The CRPD specifically identifies the right to SRH as a human right and emphasises the availability and accessibility of services for people living with disability.¹³⁵ Article 9 of the CRPD obliges States to take measures to ensure people with disabilities have access to a range of information and services to allow them to participate fully in all aspects of life.

¹³³ Note that the CESCR is in the process of drafting a General Comment specifically on SRHR. **See** A Yamin "Remarks Prepared for Day of General Discussion: General Comment on the Right to Sexual and Reproductive Health" *United Nations Committee on Economic, Social and Cultural Rights 45th Session* (2010), 1 available at <http://www2.ohchr.org/english/bodies/cescr/docs/discussion/AliciaYamin.pdf> (accessed 26 August 2013) **and** "Background Paper to Support the Development of a General Comment on the Right to Sexual and Reproductive Health by the Committee on Economic, Social and Cultural Rights (CESCR Committee): International Standards on Women's Sexual and Reproductive Rights and Gaps in the International Legal Framework" *Centre for Reproductive Rights* (2010) (CRR Background Paper), 2 available at http://www2.ohchr.org/english/bodies/cescr/docs/discussion/CRR_DGD15112010.pdf (accessed 26 August 2013).

¹³⁴ CEDAW General Recommendation No 24 *supra* note 118 at paras 21 and 22.

¹³⁵ Articles 9, 24 and 25 of the CRPD.

There are two central components of making available and accessible SRHR information and services relevant to cases of sexual and reproductive self-determination and discrimination in accessing health care services: the obligation to obtain informed consent prior to conducting a medical procedure; and non-discrimination in making health care services available and accessible.

Voluntary, informed consent

The CESCR notes that the right to health includes the right to freely consent to medical treatment. The CESCR explains: “[t]he right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.”¹³⁶

The right to health in both CEDAW and the CRPD also includes the concept of informed consent. Article 12(1), which includes the right to quality health care services under CEDAW has been interpreted to include the concept of voluntary, as well as *informed* consent to health services by the CEDAW Committee’s General Recommendation No. 24.¹³⁷ The General Recommendation states that the right to quality health care services under article 12(1) of CEDAW includes an obligation that States provide acceptable services, which “are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.”¹³⁸ It further recommends that countries ensure health services are consistent with the human rights of women, including the rights to autonomy, informed consent, choice as well as privacy and confidentiality.¹³⁹

The CEDAW Committee has stressed that this means that women “have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives”.¹⁴⁰

Similarly, article 25(d) of the CRPD requires State Parties to provide health care on the basis of “free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities.” The Committee on the Rights of Persons with Disabilities is new and has not yet offered any guidance on how to interpret the CRPD right to health provision.

UN bodies and international guidelines have noted that for informed consent to be

¹³⁶ CESCR General Comment No 14 *supra* note 82 at para 8.

¹³⁷ CEDAW General Recommendation No 24 *supra* note 118 at paras 20, 22 and 31.

¹³⁸ *Id* at para 22.

¹³⁹ *Id* at para 31(e). CEDAW General Recommendation No 24 *supra* note 118. Protection of the right to confidentiality is furthermore seen as a core component of creating acceptable health care services in terms of the ICESCR right to health. CESCR General Comment No 14 at para 12(b) and (c) acknowledges that accessibility to health information should not impair the right to have medical information treated confidentially and that all health facilities, goods and services must be designed to protect the right to confidentiality.

¹⁴⁰ CEDAW General Recommendation No 24 *supra* note 118 at para 20.

established, the patient must be provided with information on the nature and effect of the medical procedure and in a language and manner which she understands.¹⁴¹ In addition, they have noted that there can be no coercion, duress, or undue influence on the patient to consent.¹⁴²

With respect to sexual and reproductive self-determination, subjecting women to mandatory or coercive reproductive health interventions – including mandatory HIV testing and forced or coerced sterilisation and abortion – has been found in many cases to violate the right to health.

The CEDAW Committee specifically provides that “States Parties should not permit forms of coercion, such as non-consensual sterilisation, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women’s rights to informed consent and dignity”.¹⁴³ In addition, the CEDAW Committee’s General Recommendation No. 19 on Violence against Women also provides that “[c]ompulsory sterilisation or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children,”¹⁴⁴ a right protected by article 16(1)(e) of CEDAW.

Case Example: Forced Sterilisation

In the case of *AS v Hungary*, the CEDAW Committee found that Hungary had violated both articles 12 and 16 of CEDAW relating to a woman’s right to appropriate healthcare services and her right to decide freely and responsibly on the number and spacing of her children, respectively, when AS was sterilised without being given adequate information to provide informed consent.¹⁴⁵ In the case, AS had been subjected to a sterilisation during a surgical intervention in connection with a miscarriage in a public hospital in Hungary. She had not received any information on the procedure in a manner which she could comprehend nor was she informed of the effects the procedure would have on her fertility. In finding a violation of article 12, the CEDAW Committee stressed that “[a]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent”.¹⁴⁶

Similarly, the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (UN Special Rapporteur on the Right to Health) has affirmed that the ICESCR’s section 12 includes the concept of

¹⁴¹ “Report to the General Assembly (Main Focus: Right to Health and Informed Consent) *Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health* UN Doc A/64/272 (2009) (Report of the Special Rapporteur on Health: Informed Consent) at paras 15 and 23 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/450/87/PDF/N0945087.pdf?OpenElement> (accessed 26 August 2013).

¹⁴² *Id* at paras 13 and 14.

¹⁴³ CEDAW General Recommendation No 24 *supra* note 118 at para 22.

¹⁴⁴ General Recommendation No 19 *supra* 115 at para 22.

¹⁴⁵ *AS v Hungary supra* note 119 at paras 11.3 and 11.4.

¹⁴⁶ *Id* at para 11.3.

informed consent to health services¹⁴⁷ and defines a rights-based approach to health services as one where counselling, testing and treatment for all diseases are part of a “voluntary health-care continuum”.¹⁴⁸ He has stressed that informed consent is not passive acceptance that a procedure is going to take place, but a “voluntary and sufficiently informed decision” that protects the patient’s right to be involved in decisions about his or her own health and body. The patient’s judgement is decisive.¹⁴⁹

The WHO explains that information must be communicated to the patient in a way appropriate to the latter’s capacity for understanding, minimising the use of unfamiliar technical terminology. It further notes that if the patient does not speak the common language, some form of interpretation should be available.¹⁵⁰

The UN Special Rapporteur on the Right to Health has furthermore emphasised that coercion includes “conditions of duress such as fatigue or stress” and that “undue influences include situations in which the patient perceives there may be an unpleasant consequence associated with refusal of consent.”¹⁵¹

Notably, he emphasised that certain populations, including women, are at increased risk of violations of their right to informed consent due to social, economic and cultural inequalities.¹⁵² The UN Special Rapporteur on the Right to Health notes that:

Gender inequalities reinforced by political, economic and social structures result in women being routinely coerced and denied information and autonomy in the health-care setting. Women’s SRHR demand special considerations; pregnant women are at times denied consent along an appropriate health-care continuum justified by the best interests of the unborn child. Social and legal norms limit women’s independent access to sexual and reproductive health services. Evidence reveals that women are often entirely excluded from decision-making in health care. Women are often coerced into “routine” HIV/AIDS testing in ante-natal care settings without links to counselling and treatment. Forced sterilization or contraception continues to affect women, injuring their physical and mental health and violating their right to reproductive self-determination, physical integrity and security. Women are often provided inadequate time and information to consent to sterilization procedures, or are never told or discover later that they have been sterilized. ..Stigma and discrimination against women from marginalized communities, including indigenous women, women with disabilities and women living with HIV/AIDS, have made women from these communities particularly vulnerable to such abuses.¹⁵³

¹⁴⁷ Report of the Special Rapporteur on Health: Informed Consent *supra* note 141 at para 18.

¹⁴⁸ *Id* at para 24.

¹⁴⁹ *Id* at para 9.

¹⁵⁰ “A Declaration on the Promotion of Patients’ Rights in Europe” WHO (1994), article 2.4 *available at* http://www.who.int/genomics/public/eu_declaration1994.pdf (accessed 26 August 2013).

¹⁵¹ Report of the Special Rapporteur on Health: Informed Consent *supra* note 141 at para 14.

¹⁵² *Id* at para 46.

¹⁵³ *Id* at paras 54 and 55.

In addition to the WHO, other international SRH instruments and professional bodies also note the need for voluntary and informed consent for all SRH procedures. The ICPD Programme of Action emphasises that “reproductive health care programmes should provide the widest range of services without any form of coercion”,¹⁵⁴ and ensure that all people have the information and access to services to exercise their right to decide if, when and how often to reproduce.¹⁵⁵

Professional bodies such as the International Federation of Gynaecology and Obstetrics (FIGO) have also issued guidelines confirming the right to control and decide on matters of one’s own sexuality and reproductive health. FIGO has specifically issued a guideline on sterilisation which highlights that coerced or forced sterilisation can be a violation of rights, including the right to health.¹⁵⁶

Informed Consent in a Nutshell

- A medical procedure may only be performed with the informed consent of the patient. Informed consent requires information, understanding as well as consent in order to satisfy the requirements of legality. This requires that a woman has information, understands the information and agrees to undergo the relevant SRH procedure.
- In order for a woman to give free and informed consent to reproductive health care services, she needs to have information about the purpose of the service as well as the material risks, benefits and alternative options, including non-treatment.
- The information must be provided in a manner that is easy to understand.
- Finally, consent is only present if it is provided freely, without undue influence, coercion, fraud, misrepresentation or mistake. At its simplest level, this requires that women not be forced to consent. It also means that the circumstances surrounding the provision of consent should also be those which do not exert pressure on the woman providing consent.

Non-Discrimination

The right to health set out in the ICESCR includes the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable standard of health, according to the CESCR.¹⁵⁷ The CESCR has described accessibility of health care as meaning that “[h]ealth facilities, goods and services have to be accessible to everyone without discrimination... especially the most vulnerable or marginalised sections of the population” and specifically mentions “persons with disabilities and persons with HIV/

¹⁵⁴ Principle 8 of the ICPD PoA *supra* note 65.

¹⁵⁵ *Id* at para 7.2.

¹⁵⁶ “New Guidelines on Sterilisation of Women” *The International Federation of Gynaecology and Obstetrics* (2011).

¹⁵⁷ CESCR General Comment No 14 *supra* note 82 at para 8.

AIDS.”¹⁵⁸ The CESCR furthermore views this as one of the minimum core obligations in relation to the right to health.¹⁵⁹

Likewise, both CEDAW and the CRPD recognise the importance of non-discrimination in access to health care; the CRPD emphasises that people with disabilities have the right to reproductive and family planning information and services on the same basis as other persons.¹⁶⁰ For a more detailed discussion of the right to non-discrimination, see section 3.4.

3.7 Right to Information

Access to information is closely linked to the attainment of other human rights. Without information regarding sexual and reproductive health and rights, women would be less likely to access services, even when they are available. In addition, without adequate, accurate information women will not be able to make informed decisions. The right to information is critical in ensuring that women have sexual and reproductive self-determination. For example, if they have not been provided the needed information prior to consenting women cannot be found to have provided voluntary, informed consent to health procedures.

The right to information can be found in a number of human rights treaties. Article 19(2) of the ICCPR states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.” Although there is no specific international jurisprudence on the interpretation of this right in the ICCPR, the right to information “of all kinds” implies that the right is broad enough to include reproductive health information. In addition, article 10 of CEDAW specifically provides:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

...

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.¹⁶¹

The CEDAW Committee, highlighting their concern that many countries fail to provide access to sexual health information, emphasised that countries “should ensure, without prejudice or discrimination, the right to sexual health information, education and services

¹⁵⁸ *Id* at para 12 (b).

¹⁵⁹ *Id* at paras 43-44.

¹⁶⁰ **See**, for instance, articles 23 and 25.

¹⁶¹ Article 10(h) of the CEDAW.

for all women and girls”.¹⁶²

One of the core aspects of the right to health under article 12(1) of the ICESCR is the duty of governments to ensure the provision of health information, including methods of preventing and controlling particular illnesses.¹⁶³ According to the CESCR, the right to health includes “access to health-related education and information, including on sexual and reproductive health”.¹⁶⁴ Health-related information and education should include information on the availability of services and be available in local languages.¹⁶⁵ The CESCR has raised concern over the lack of sexual and reproductive health information noting that access to such information could reduce maternal mortality, abortion and adolescent pregnancy.¹⁶⁶

In the context of HIV, the CESCR has made calls for States to “ensure that all persons know about the disease and how to protect themselves”.¹⁶⁷ The CRPD obliges countries to take effective and appropriate measures to ensure “[t]he rights of persons with disabilities . . . to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided . . .”¹⁶⁸

The CESCR has confirmed that health information cannot be withheld or intentionally misrepresented.¹⁶⁹ The UN Special Rapporteur on the Right to Health has affirmed this when he recommended that Poland adopt:

Mandatory, age-appropriate, comprehensive, science and evidence-based, non-discriminatory and gender-sensitive sexuality education taught by appropriately trained personnel, including non-judgemental information and education on healthy relationships and family life, sex and relationships, and comprehensive sexual and reproductive health.¹⁷⁰

¹⁶² CEDAW General Recommendation No 24 *supra* note 118 at para 18.

¹⁶³ CESCR General Comment No 14 *supra* note 82 at para 44(d).

¹⁶⁴ *Id* at para 11.

¹⁶⁵ *Id* at paras 36–37. **See also** “Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health: Mission to Uganda” Committee on Economic, Social and Cultural Rights 62nd Session UN Doc E/CN.4/2006/48/Add.2 (2006) (Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health) at paras 33 and 35.

¹⁶⁶ CRR Background Paper *supra* note 133, 7.

¹⁶⁷ Concluding Observations of the Committee on Economic Social and Cultural Rights: Russian Federation 31st Session UN doc E/C.12/1/Add.94 (2003) at para 62 *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.94.En](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.94.En) (accessed 26 August 2013).

¹⁶⁸ Article 23(1) (b) of the CRPD.

¹⁶⁹ CESCR General Comment No 14 *supra* note 82 at para 34.

¹⁷⁰ “Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover: Mission to Poland” Human Rights Council 14th Session U.N. Doc. A/HRC/14/20/Add.3 (2010) *available at* <http://www.refworld.org/docid/4c0770ee2.html> (accessed 26 August 2013).

Access to information can be a particular concern for women with disabilities when countries fail to put in place mechanisms to ensure that women with disabilities (such as blind women, women with hearing disabilities and women with mental disabilities) can access appropriate information in order to make use of sexual and reproductive health services. This failure to put in place mechanisms may be discriminatory.

Health information, whether preventive or curative, needs to be accurate and sufficiently detailed. Failure to provide enough information to enable women to make decisions in specific situations may also be a violation of SRHR. In the case of *AS v Hungary*, the CEDAW Committee in finding a violation of article 12 of CEDAW noted that seventeen minutes was not adequate time for hospital personnel to provide AS with the necessary counselling and information about sterilisation, including alternatives, risks and benefits, for her to make an informed decision.¹⁷¹

3.8 Rights to Liberty and Security of the Person

Various treaties provide for the rights to liberty and security of person.¹⁷² These rights include protection for all people from coercive medical interventions that take place without voluntary and informed consent and is relevant in cases of sexual and reproductive self-determination.

Article 9(1) of the ICCPR states that “[e]veryone has the right to liberty and security of person... No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

There is limited discussion by UN committees on the rights to liberty and security of the person in the context of SRHR. However, the UN Special Rapporteur on the Right to Health has stated that “[g]uaranteeing informed consent is a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity in an appropriate continuum of voluntary health care services...”¹⁷³ The Special Rapporteur has also noted that informed consent invokes several elements of human rights that are indivisible, interdependent and interrelated and that in addition to the right to health, these include security and dignity of the human person.¹⁷⁴

Similarly, the UN Special Rapporteur on Violence against Women, its Causes and Consequences expressed concern that practices such as coerced or forced sterilisation and forced abortions may violate a woman’s right to physical integrity and security.¹⁷⁵

¹⁷¹ *AS v Hungary supra* note 119 at para 11.2.

¹⁷² **See** article 3 of the UDHR, article 9(1) of the ICCPR, and article 14 of the CRPD.

¹⁷³ Report of the Special Rapporteur on Health: Informed Consent *supra* note 141 at para 18.

¹⁷⁴ *Id.*

¹⁷⁵ “Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and Practices that Impact Women’s Reproductive Rights and Contribute to, Cause or Constitute Violence against Women, Radhika Coomaraswamy” Commission on Human Rights 55th Session UN doc E/CN.4/1999/68/Add.4 (1999) at paras 45 and 51 *available at* <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/4cad275a8b5509ed8025673800503f9d?Opendocument#IIB> (accessed 26 August 2013).

With respect to women with disabilities, the CRPD under article 17 provides “[e]very person with disabilities [has] a right to respect for his or her physical and mental integrity on an equal basis with others.”

The Committee on the Rights of Persons with Disabilities has noted its concern that forced or coerced medical treatment would violate the right to physical and mental integrity under article 17. In its concluding observations to Tunisia, the Committee on the Rights of Persons with Disabilities recommended that Tunisia “incorporate into the law the abolition of surgery and treatment without the full and informed consent of the patient” to ensure it was in line with the requirements under article 17.¹⁷⁶

Mandatory HIV testing of vulnerable women as a violation of the right to liberty and security of person finds support in international guidelines. The International Guidelines on HIV/AIDS and Human Rights note that “compulsory HIV testing can constitute a deprivation of liberty and a violation of the right to security of person” and that “respect for the right to physical integrity requires that testing be voluntary and that no testing be carried out without informed consent”.¹⁷⁷

3.9 Freedom from Cruel, Inhuman and Degrading Treatment

Several international human rights treaties protect the right not to be subjected to cruel, inhuman or degrading treatment or punishment (CIDT) or torture.¹⁷⁸ They include the ICCPR under article 7; the CAT under article 16(1); and the CRPD under article 15(1).

While there is no specific definition of what constitutes CIDT, it has been held to cover a broad range of acts. In its General Comment on article 7, the HRC has stated that the purpose of the article is to protect both dignity and the physical and mental integrity of the individual.¹⁷⁹ It further explains that “[t]he prohibition in article 7 relates not only to acts that cause physical pain but also acts that cause mental suffering to the victim...” and that the prohibition applies to patients in medical institutions.¹⁸⁰

This means that violations of women’s SRHR that cause harm, whether physical or mental, may also violate the right to protection from cruel, inhuman or degrading treatment or punishment.¹⁸¹

¹⁷⁶ Concluding Observations of the Committee on the Rights of Persons with Disabilities: Tunisia 5th Session U.N. Doc. CRPD/C/TUN/CO/1 (2011) at para 29 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/427/92/PDF/G1142792.pdf?OpenElement> (accessed 26 August 2013).

¹⁷⁷ International Guidelines on HIV/AIDS and Human Rights *supra* note 67 at para 135.

¹⁷⁸ Article 7 of the ICCPR, article 16(1) of the CAT and article 15(1) of CRPD.

¹⁷⁹ Human Rights Committee: General Comment No 20 Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) 44th Session UN Doc HRI/GEN/1/Rev.1 at 30 (1992) at paras 2 available at <http://www.refworld.org/docid/453883fb0.html> (accessed 26 August 2013).

¹⁸⁰ *Id* at para 5.

¹⁸¹ **See** “Protecting Rights: Litigating Cases of HIV Testing and Confidentiality of Status” *supra* note 24 for more information on mandatory HIV testing as a breach of the right to protection from cruel, inhuman or degrading treatment or punishment.

More specifically, the provision against cruel, inhuman or degrading treatment or punishment includes protection from *coercive health interventions* that are undertaken without an individual's consent. Forced sterilisation and abortion has been specifically held to violate the right to protection from cruel, inhuman or degrading treatment or punishment. For instance, General Comment 28 to the ICCPR articulates specifically that forced abortion and forced sterilisation is a concern that must be addressed by States in complying with the article 7 protection from CIDT.¹⁸² A recent report by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment re-emphasised that treatment without consent and denial of medical treatment may lead to a violation of the right to be protected from torture and cruel, inhuman, or degrading treatment.¹⁸³ The report notes that:

International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender. Examples of such violations include abusive treatment and humiliation in institutional settings; involuntary sterilization; denial of legally available health services such as abortion and post-abortion care; forced abortions and sterilizations; female genital mutilation; violations of medical secrecy and confidentiality in health-care settings, such as denunciations of women by medical personnel when evidence of illegal abortion is found; and the practice of attempting to obtain confessions as a condition of potentially life-saving medical treatment after abortion.¹⁸⁴

Denial of abortion services (which also interferes with a woman's right to reproductive self-determination) has also been found to be a violation of the protection against CIDT.¹⁸⁵

¹⁸² HRC General Comment No 28 *supra* note 81 at para 11.

¹⁸³ "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez" Human Rights Council 22nd Session UN Doc A/HRC/22/53 (2013) (Report of The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez) at para 32 *available at* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf (accessed 26 August 2013). **See also** the comments of a previous special rapporteur: "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak" Human Rights Council 7th Session UN Doc A/HRC/7/3 (2008) at para 38 *available at* <http://www.unhcr.org/refworld/docid/47c2c5452.html> (accessed 26 August 2013).

¹⁸⁴ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez *supra* note 183 at para 46.

¹⁸⁵ *Id.*

Case Examples: Denial of Legally Available Health Services Such As Abortion and Post-Abortion Care

In the case of *Karen Noelia Llantoy Huamán v Peru*,¹⁸⁶ a minor who was carrying a foetus with a fatal anomaly was denied an abortion. The HRC found a violation of article 7 of the ICCPR, reasoning that the complainant suffered mental distress due to being denied a therapeutic abortion.¹⁸⁷

Similarly, in *LMR v Argentina*,¹⁸⁸ the HRC found that the State Party's omission, in failing to guarantee LMR's right to a termination of pregnancy, as provided under the law when her family so requested, "caused LMR physical and mental suffering constituting a violation of article 7 of the ICCPR that was made especially serious by the victim's status as a young girl with a disability".¹⁸⁹ LMR, a young woman with a mental disability, sought an abortion after suffering a rape. Under the domestic law, she was entitled to an abortion provided her disability was diagnosed and her legal representative gave consent.¹⁹⁰ However, she was unable to access a legal abortion as the original hospital where she sought treatment refused to assist her and then the judiciary issued an order against her getting an abortion.¹⁹¹ By the time the judicial decision was overturned, the hospital staff refused the abortion on the grounds that she was too late in her pregnancy.¹⁹²

The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment notes that some women may experience multiple forms of discrimination on the basis of their sex and other status or identity and recognised that women from ethnic and racial minorities, women from marginalised communities and women with disabilities are particularly targeted for involuntary sterilisation "because of discriminatory notions that they are 'unfit' to bear children is an increasingly global problem."¹⁹³ Protection of minority and marginalised groups has thus been identified as a critical component of the right to be free from cruel, inhuman and degrading treatment.¹⁹⁴ In affirming this, the Committee against Torture further noted that women are particularly vulnerable when accessing SRH services.¹⁹⁵

¹⁸⁶ Communication No 1153/2003 UN Doc CCPR/C/85/D/1153/2003 (2005) available at <http://www1.umn.edu/humanrts/undocs/1153-2003.html> (accessed 26 August 2013).

¹⁸⁷ *Id* at para 6.3.

¹⁸⁸ Communication No 1608/2007 UN Doc CCPR/C/101/D/1608/2007 (2011) available at <http://www.esrnet.org/sites/default/files/Decision.pdf> (accessed 26 August 2013)

¹⁸⁹ *Id* at para 9.2.

¹⁹⁰ *Id* at para 2.3.

¹⁹¹ *Id* at paras 2.4- 2.5.

¹⁹² *Id* at para 2.7.

¹⁹³ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez *supra* note 183 at para 48.

¹⁹⁴ Committee Against Torture: General Comment No 2 Implementation of Article 2 by States Parties UN Doc CAT/C/GC/2 (2008) at para 21 available at <http://www.refworld.org/docid/47ac78ce2.html> (accessed 26 August 2013).

¹⁹⁵ *Id* at para 22.

3.10 Right to Life

The right to life may be implicated in cases where access to SRH services are hindered resulting in a loss of life due either to the denial of services as a result of discrimination. Article 6(1) of the ICCPR and article 10 of CRPD guarantee the right to life.

The HRC has noted that the right to life must be viewed broadly and as such, requires that countries take positive steps to protect the right to life.¹⁹⁶

The UN committees have yet to address cases of sexual and reproductive self-determination that violate the right to life, but they have addressed cases where lack of services due to discrimination has resulted in violations of the right to life. The HRC has found that restrictive abortion laws, lack of access to reproductive health services, including emergency obstetric services and high rates of maternal mortality may violate the right to life.¹⁹⁷

Similarly, the CEDAW Committee has noted that inadequate sexual and reproductive health services violate the right to life. For example, the CEDAW Committee has found that unsafe abortions violate a woman's right to life as they lead to a high likelihood of maternal mortality.¹⁹⁸ In *Pimentel v Brazil* the CEDAW Committee noted that "the lack of appropriate maternal health services has a differential impact on the right to life of women".¹⁹⁹ The HRC also found a violation of the right to life in *Karen Noelia Llantoy Huamán v Peru*, a case involving the denial of a legally available termination of pregnancy noting that "the authorities were aware of the risk to the author's life, since a gynaecologist and obstetrician in the same hospital had advised her to terminate the pregnancy, with the operation to be carried out in the same hospital. The subsequent refusal of the competent medical authorities to provide the service may have endangered the author's life."²⁰⁰

¹⁹⁶ Human Rights Committee: General Comment No 6 Article 6 (Right to Life) 66th Session UN Doc HRI/GEN/1/Rev.1 at 6 (1982) at para 5 available at <http://www.refworld.org/docid/45388400a.html> (accessed 26 August 2013).

¹⁹⁷ Concluding Observations of the Human Rights Committee: El Salvador 78th Session U.N. Doc. CCPR/CO/78/SLV (2003) at para 14 available at <http://www.unhcr.ch/tbs/doc.nsf/0/3557ff1fd8be8377c1256db200552abe?OpenDocument> (accessed 26 August 2013) **and** Concluding Observations of the Human Rights Committee: Kenya 83rd Session U.N. Doc. CCPR/CO/83/KEN (2005) at para 14 available at <http://www.unhcr.org/refworld/country,,HRC,,KEN,,456d621e2,42d16c4d4,0.htmlt> (accessed 26 August 2013) **and** Concluding Observations of the Human Rights Committee: Mali 77th Session U.N. Doc. CCPR/CO/77/MLI (2003) at para 14 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/413/09/PDF/G0341309.pdf?OpenElement> (accessed 26 August 2013).

¹⁹⁸ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Colombia 20th Session U.N. Doc. A/54/38 (1999) at para 393 available at <http://www.unhcr.ch/tbs/doc.nsf/0/0a318a243ffa4eff8025673200507f7a?OpenDocument> (accessed 26 August 2013).

¹⁹⁹ *Pimentel v Brazil supra* note 116 at para 7.6.

²⁰⁰ *Karen Noelia Llantoy Huamán v Peru supra* note 186 at para 6.2.

3.1.1 Right to Privacy

Article 17(1) of the ICCPR and article 22(1) of CRPD protect the right to privacy. The right to privacy encompasses both respect for physical privacy and privacy of an individual's medical information. Cases involving a woman's sexual and reproductive self-determination may implicate the right to privacy.

The HRC has stated that the right to privacy includes instances where women are denied the opportunity to make their own decisions about health, and need the consent of a third party like a parent or spouse for procedures such as sterilisation and “where general requirements are imposed for the sterilisation of women, such as having a certain number of children or being of a certain age or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion.”²⁰¹

In *Karen Noelia Llantoy Huamán v Peru*, the HRC found that the refusal to act in accordance with the complainant's decision to terminate her pregnancy was not justified and amounted to a violation of article 17 of the ICCPR.²⁰² Similarly, in *LMR v Argentina*, the HRC found that unnecessary judicial intervention in a request for an abortion was a violation of the petitioner's right to privacy.²⁰³ The HRC found that LMR's right to privacy under the ICCPR was violated due to the interference of the judiciary in what should be a matter between the patient and her physician.²⁰⁴

In relation to protection of an individual's medical information, protection of the right to confidentiality is furthermore seen as a core component of creating acceptable health care services in terms of the ICESCR right to health. The CESCR in paragraph 12(b) of its General Comment No. 14 acknowledges that accessibility to health information should not impair the right to have medical information treated confidentially and that all health facilities, goods and services must be designed to protect the right to confidentiality. This right has been violated in many cases related to abortions where information on a woman's health status has been made available to third parties resulting in undue pressure on the woman not to terminate a pregnancy.²⁰⁵

²⁰¹ HRC General Comment No 28 *supra* note 81 at para 20.

²⁰² *Karen Noelia Llantoy Huamán v Peru supra* note 186 at para 6.4.

²⁰³ *LMR v Argentina supra* note 188 at para 9.3.

²⁰⁴ *Id.*

²⁰⁵ **See** for example *Id* at para 2.9.

3.12 Conclusion

Numerous fundamental rights are implicated when women are denied the opportunity to decide freely on matters relating to their SRH, such as the rights to non-discrimination and equality, health, information, liberty and security of the person, freedom from cruel, inhumane and degrading treatment, privacy and life.

Though international bodies have not fully interrogated and applied all of these rights in cases of violations of reproductive self-determination, international law can still be useful in identifying the scope and nature of these fundamental rights.