

2.3. PATIENTS' RIGHTS

This section explores international protection of ten critical patients' rights:

- ▶ Liberty and security of person;
- ▶ Privacy;
- ▶ Access to information;
- ▶ Bodily integrity;
- ▶ Life;
- ▶ Highest attainable standard of mental and physical health;
- ▶ Freedom from torture and other cruel, inhuman or degrading treatment or punishment;
- ▶ Participation in public policy;
- ▶ Equality and freedom from discrimination; and
- ▶ Effective remedy.

As emphasized by the CCPR, although Article 9 enshrines “the right to liberty and security of person,” the right to liberty is separate from the right to security of person. For this reason, this chapter addresses them separately.¹

Treaty-monitoring bodies' interpretative documents have played an important role in the area of patients' rights. The CESCR, specifically, has provided the most significant international legal commentary on the rights of patients. Its interpretation of the right to the highest attainable standard of health (Article 12 of the ICESCR) in General Comment 14² has been particularly influential, despite it not being legally binding. In addition, the CESCR has frequently criticized governments' failure to devote adequate resources to health care and services for patients.

Other UN treaty-monitoring bodies have also provided significant comments on patients' rights. The CCPR has frequently cited Articles 9 (right to liberty and security of the person) and 10 (right of a person deprived of liberty to be treated with humanity and dignity) of the ICCPR to condemn the unlawful detention of mental health patients and the denial of medical treatment to detainees, respectively. It has also upheld the need to protect confidential medical information under Article 17 (right to privacy) of the ICCPR and has used Article 6 (right to life) of the ICCPR to safeguard medical treatment during pretrial detention. In addition, as detailed below, treaty-monitoring bodies concerned with monitoring racial and sex discrimination have examined equal access to health care.

Additionally, other international standards, such as the Standard Minimum Rules for the Treatment of Prisoners, can provide significant reference points regarding patients' rights. Although these standards cannot be directly enforced against states, patients and their advocates can use them to pressure governments and influence judicial and other government interpretation of treaty provisions.

It is worth noting that, as of this writing, the CESCR's individual communications mechanism had just been established. The former lack of a complaint mechanism for the CESCR hampered the treaty body's ability to examine specific violations of the ICESCR beyond the systemic failures identified in country reports. The introduction of this mechanism should provide the CESCR with an opportunity to mirror the work of its sister body, the CCPR, in developing significant case law on human rights in patient care.

¹CCPR. Draft CCPR General Comment No. 35 on Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8.

²CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000.

Right to liberty and security of person

While guaranteed under the same article as the right to liberty under the ICCPR, the right to security of person is a right in and of itself and is not limited to individuals formally deprived of liberty.³ The right to liberty protect individuals from arbitrary or unjustified physical confinement. The deprivation of liberty must be necessary and proportionate—it must be intended to either protect the individual from harming her/himself or to prevent harm to others, it must take into account less restrictive alternatives, and it must be in line with adequate procedural and substantive legal safeguards.⁴ As it relates to patients' rights, the right to liberty protects the individual from arbitrary or unjustified physical confinement on the basis of mental or physical health, such as involuntary hospitalization. The detention of an individual based on health grounds, such as quarantine and isolation, must be done in accordance with established law and must safeguard the individual's rights of due process under the law.⁵

The right to security of person safeguards the individual's freedom from bodily injury, including protection from fatal injuries and non-intentional injury.⁶ Under this right, a government must take the necessary measures to protect the individual from threats to her/his bodily integrity, regardless of whether these threats come from the government or private actors.⁷ Related rights enshrined in international human rights law include the right to freedom from torture, or other cruel, inhuman or degrading treatment; the right to privacy; and the right to the highest attainable standard of health. When it comes to violations of the physical integrity of the person, treaty bodies have opted to address them under other related rights, particularly the right to freedom from torture, cruel, inhuman, or degrading treatment. Therefore, there is little analysis emanating from treaty bodies on these issues under the right to security of person. For this reason, this section contains concluding observations and case law that focus primarily on the right to liberty.

Relevant Provisions

UDHR, Art. 3: Everyone has the right to life, liberty and security of person.

ICCPR, Art. 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

ICESCR, Art. 12: The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

CERD, Art. 5(b): States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of. . . (b) the right to security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

CRC

Art. 25: States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Art. 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social

³CCPR. Draft General Comment No. 35: Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8; CCPR. Communication No. 195/1985: Delgado Páez v. Colombia. UN Doc. CCPR/C/39/D/195/1985. July 12, 1990. paras. 5.4-5.5; CCPR. Communication No. 711/1996: Dias v. Angola. UN Doc. CCPR/C/68/D/711/1996. April 18, 2000. para. 8.3.

⁴CCPR. Communication No. 1061/2002: Fijalkowska v. Poland. UN Doc. CCPR/C/84/1061/2002. July 26, 2005; CCPR. Communication No. 1629/2007: Fardon v. Australia. UN Doc. CCPR/C/98/D/1629/2007. March 18, 2010. para 7.3; CCPR. Concluding Observations: Russian Federation. UN Doc. CCPR/C/RUS/CO/6. November 24, 2009. para. 19.

⁵CCPR. Concluding Observations: Bulgaria. UN Doc. CCPR/C/BGR/CO/3. July 25, 2011. para. 17.

⁶CCPR. Draft General Comment No. 35: Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8.

⁷CCPR. Draft General Comment No. 35: Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8; CCPR. Communication No. 1560/2007: Marcellana and Gumanoy v. Philippines. UN Doc. CCPR/C/94/D/1560/2007. November 17, 2008. para. 7.7; CCPR. Concluding Observations: Uganda. UN Doc. CCPR/CO/80/UGA. May 4, 2004. para. 12.

reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

ICRPD, Art. 14:

- (1) States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;
 - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
- (2) State Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

Art. 17: Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

ICMW

Art. 16:

- (1) Migrant workers and members of their families shall have the right to liberty and security of person.
- (4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
- (8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

Art. 17:

- (1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
- (7) Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁸

Principle 4: Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 11:

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons there for.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 13: Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

Principle 25: A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or

⁸Council for International Organizations of Medical Sciences [CIOMS] in collaboration with the WHO. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. 2002.

other authority for a second medical examination or opinion.

Principle 32:

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

International Ethical Guidelines for Biomedical Research Involving Human Subjects:⁹ Respect for persons incorporates at least two fundamental ethical considerations, namely:

- (a) respect for autonomy, which requires that those who are capable of deliberation about their personal choices should be treated with respect for their capacity for self-determination; and
- (b) protection of persons with impaired or diminished autonomy, which requires that those who are dependent or vulnerable be afforded security against harm or abuse.

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care¹⁰

Principle 9:

- (1) Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
- (2) The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
- (3) Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
- (4) The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

WMA Declaration of Lisbon on the Rights of the Patients¹¹

Principle 2. Right to Freedom of choice

- (a) The patient has the right to choose freely and change his/her physician and hospital or health service institution, regardless of whether they are based in the private or public sector.
- (b) The patient has the right to ask for the opinion of another physician at any stage.

Principle 3. Right to self-determination

- (a) The patient has the right to self-determination, to make free decisions regarding himself or herself. The physician will inform the patient of the consequences of his/her decisions.
- (b) A mentally competent adult patient has the right to give or withhold consent to any diagnostic procedure or therapy. The patient has the right to the information necessary to make his/her decisions. The patient should clearly understand the purpose of any test or treatment, what the results would imply, and what would be the implications of withholding consent.
- (c) The patient has the right to refuse to participate in research or the teaching of medicine.

...Right to liberty and security of person in the context of Mental Health

Under the right to liberty, a person is protected from arbitrary or unjustifiable detention that is solely based on mental health without judicial review.¹² Governments should ensure that the patient's views are respected in the

⁹CIOMS. International Ethical Guidelines for Biomedical Research Involving Human Subjects. 2002.

¹⁰ United Nations General Assembly. United Nations General Assembly Resolution 46/119: Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. UN Doc. A/RES/46/119. December 17, 1991.

¹¹WMA. Declaration on the Rights of the Patient. September/October 1981.

process and that the interests of the patient are represented and defended.¹³ Any patient involuntarily admitted or detained in a mental health facility also has due process rights, including the right to be informed of the grounds for her/his detention, to be detained for as short a period as is reasonably necessary, and to challenge her/his detention with a judicial body and to have counsel appointed to assist in any such challenge.¹⁴ The continuity of detention should be re-evaluated on a regular basis to ensure its necessity.¹⁵

Under this right, governments have the obligation to refrain from using coercive force or restraint of mental health patients. While relevant to this context, this right has been overshadowed by other related rights (mainly the right to freedom from torture, cruel, inhuman and degrading treatment) in addressing use of coercive force in the mental health context. Refer to sections on the “right to bodily integrity” and the “right to freedom from torture and other cruel, inhuman or degrading treatment or punishment” below.

Concluding Observations on Estonia Relating to Mental Health and the Right to Liberty

[T]he Committee is concerned at some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient’s right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions. The Committee considers that a period of 14 days of detention for mental health reasons without any review by a court is incompatible with article 9 of the [ICCPR].

The State party should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. The Committee recalls the obligation of the State party under article 9, paragraph 4, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention. The State party is invited to furnish additional information on this issue and on the steps taken to bring the relevant legislation into conformity with the Covenant.¹⁶

Cases Relating to Mental Health and the Right to Liberty

A v. New Zealand (CCPR)(1999). While affirming that treatment in a psychiatric institution against the will of a patient falls within protections of Article 9 (of the ICCPR), the Committee found no violation where the patient was detained for several years in accordance with New Zealand’s Mental Health Act as the detention was based upon the evaluation of three psychiatrists and was regularly reviewed by both a panel of psychiatrists and courts.¹⁷

Fijalkovska v. Poland (CCPR)(2002). The Committee found no violation where the patient was detained in accordance with Poland’s Mental Health Act. However, the Committee did find violations as a result of the complainant not having been provided with adequate counsel to challenge her involuntary admission and for having failed to advise the complainant of her right to challenge her involuntary admission until after she was released.¹⁸

... Right to liberty and Security of Person in the context of Infectious Diseases

The fear of the spread of infectious diseases has led governments to subject individuals suspected of being infected to forced detention, such as quarantine or forced isolation, including when the individual refuses

¹² See CCPR. Draft CCPR General Comment No. 35 on Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8; CCPR. Concluding Observations: Belgium. UN Doc. CCPR/CO/81/BEL. August 12, 2004. para. 17.

¹³ CCPR. Concluding Observations: Czech Republic. UN Doc. CCPR/C/CZE/CO/2. August 9, 2007. para. 14; CCPR. Concluding Observations: Bulgaria. UN Doc. CCPR/C/BGR/CO/3. July 25, 2011. para. 17; see also CRC Committee. General Comment No. 9: The rights of children with disabilities. UN Doc. CRC/C/GC/9. February 2, 2007. para. 48.

¹⁴ See United Nations General Assembly. United Nations General Assembly Resolution 46/119: Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. UN Doc. A/RES/46/119. December 17, 1991.

¹⁵ CCPR. Communication No. 754/1997: A v. New Zealand. UN Doc. CCPR/C/66/D/754/1997. August 3, 1999. para. 7.2; CCPR. Concluding Observations: Canada. UN Doc. CCPR/C/CAN/CO/5. April 20, 2006. para. 17.

¹⁶ CCPR. Concluding Observations: Estonia. UN Doc. CCPR/CO/77/EST. April 15, 2003. para. 10.

¹⁷ CCPR. Communication No. 754/1997: A v. New Zealand. UN Doc. CCPR/C/66/D/754/1997. August 3, 1999.

¹⁸ CCPR. Communication No. 1061/2002: Fijalkovska v. Poland. UN Doc. CCPR/C/84/1061/2002. July 26, 2005.

treatment.¹⁹ The CCPR has called on governments to ensure that such restrictive measures against individuals with infectious diseases respect the individuals' rights, including guarantees of judicial review.²⁰

As explained above, little analysis exists on the right to security of person mainly due to the fact that treaty monitoring bodies have opted to address issues of physical integrity through other related rights. Nevertheless, this right is relevant to cases where the government has applied coercive measures against an individual with infectious diseases, such as forced treatment. Refer to sections on the "right to bodily integrity" and the "right to freedom from torture and other cruel, inhuman or degrading treatment or punishment" below.

Concluding Observations on Moldova Relating to Infectious Diseases and the Right to Liberty

[T]he Committee notes with concern that, under a regulation promulgated in August 2009, persons with tuberculosis may be subjected to forcible detention in circumstances where he or she is deemed to have "avoided treatment". In particular, the regulation is unclear as to what constitutes the avoidance of treatment and fails to provide, inter alia, for patient confidentiality or for the possibility for the judicial review of a decision to forcibly detain a patient. (arts. 2, 9 and 26).

The State party should urgently review this measure to bring it into line with the [ICCPR], ensuring that any coercive measures arising from public health concerns are duly balanced against respect for patients' rights, guaranteeing judicial review and patient confidentiality and otherwise ensuring that persons with tuberculosis are treated humanely.²¹

...Right to liberty and security of person in the context of Sexual and Reproductive Health

The right to liberty protects individuals from interference intended to limit or promote their fertility and hinder their sexual autonomy—either by the state or private individuals. In addition to protecting the life and health of the individual, the right to liberty recognizes the individual's reproductive choice as well as her/his decision on how to conduct her/his sexual life.²² It requires that the government ensure that individuals have access to legal representation in court proceedings and that women in prison are provided with health care after the termination of a pregnancy.²³

As in other contexts, the right to security of person has rarely been used to address issues of sexual and reproductive health. Oftentimes, treaty monitoring bodies have analyzed such issues under the related rights to liberty, privacy, and freedom from torture, cruel, inhuman and degrading treatment. However, the right to security of person has been deemed relevant in cases where the state or private individuals threaten an individual's sexual and/or reproductive health, such as when women are subjected to forced sterilization.

Concluding Observations on Moldova Relating to Sexual and Reproductive Health and the Right to Liberty

The Committee is concerned that, despite the National Strategy for Health (2005-2015), the use of abortion as a contraceptive measure is widespread. It notes, in this respect, that the law on compulsory medical insurance, which provides for the inclusion of contraceptives in the Basic Benefits Package, has not been implemented. Furthermore, the Committee is concerned that, although abortion is not prohibited by law, there have been instances where women have been prosecuted for murder or infanticide after having had an abortion and that no after-abortion healthcare is provided to them in prison. (arts. 3, 9 and 10)

The State party should:

(a) Take steps to eliminate the use of abortion as a method of contraception by, inter alia, ensuring the provision of affordable contraception and introducing reproductive and sexual health education in school curricula and for the broader public;

(b) Consistently apply the law so that women who undergo abortions are not prosecuted for murder or infanticide;

¹⁹ OHCHR. International Guidelines on HIV/AIDS and Human Rights. July 2006. para. 105.

²⁰ CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. November 4, 2009.

²¹ CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. November 4, 2009.

²² See Rebecca Cook. International Human Rights and Women's Reproductive Health. Studies in Family Planning, Vol. 24, No. 2. March - April, 1993. p. 79.

²³ CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. November 4, 2009. para. 17; see also Inter-American Commission on Human Rights [CIDH]. Paulina Del Carmen Ramirez Jacinto v. Mexico. Case 161-02. Report No. 21/07. March 9, 2007; Inter-Am. C.H.R. OEA/Ser.L/V/II.130 Doc. 22, rev. 1. December 29, 2007.

(c) Release any women currently serving sentences on such charges; and

(d) Provide appropriate health care in prison facilities to women who have undergone abortions.²⁴

Right to Privacy

The right to privacy protects the individual from unlawful and arbitrary interference with her/his privacy—meaning that any interference must be based on law and be proportionate to the end sought.²⁵ In the context of patient care, the right can be applied to prevent undue disclosure of information on a patient’s health status, medical condition, diagnosis, prognosis, and treatment and other personal information. The gathering, holding, and sharing of personal information by a private or public actor must be regulated by law.²⁶

Moreover, interference by the government—such as administrative hurdles imposed by the judicial system—with matters that should be resolved between the physician and the patient has been considered a violation of the patient’s right to privacy.²⁷ UN treaty-monitoring bodies have underscored that accessibility to information should not impair the right to have personal health data treated with confidentiality.²⁸

Relevant Provisions

UDHR, Art. 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ICCPR, Art. 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

CRC, Art. 16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.

CRPD, Art. 22:

(1) No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honor and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

(2) State Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

ICMW, Art. 14: No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, , correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

Beijing Declaration and Platform for Action²⁹

106. By Governments, in collaboration with non- governmental organizations and employers' and workers' organizations and with the support of international institutions: . . . (f) Redesign health information, services and training for health workers so that they are gender-sensitive and reflect the user's perspectives with regard to interpersonal and communications skills and the user's right to privacy and confidentiality. These services,

²⁴ CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. November 4, 2009. para. 17.

²⁵ CCPR. CCPR General Comment No. 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation. April 8, 1988. paras. 3-4; CCPR. Communication No. 1482/2006: M. G. v. Germany. UN Doc. CCPR/C/93/D/1482/2006. September 2, 2008. para. 10.2.

²⁶ See CCPR. CCPR General Comment No. 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation. April 8, 1988. para. 10.

²⁷ CCPR. Communication No. 1482/2006: L.M.R v. Argentina. UN Doc. CCPR/C/101/D/1608/2007. March 29, 2011. para 9.3.

²⁸ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12.

²⁹ Fourth World Conference on Women. Beijing Declaration and Platform for Action. September 1995.

information and training should adopt a holistic approach. . .

Declaration of Lisbon on the Rights of the Patients (WMA)³⁰

Principle 8. Right to confidentiality

- (a) All identifiable information about a patient's health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death. Exceptionally, descendants may have a right of access to information that would inform them of their health risks.
- (b) Confidential information can only be disclosed if the patient gives explicit consent or if expressly provided for in the law. Information can be disclosed to other health care providers only on a strictly "need to know" basis unless the patient has given explicit consent.
- (c) All identifiable patient data must be protected. The protection of the data must be appropriate to the manner of its storage. Human substances from which identifiable data can be derived must be likewise protected.

Principle 10. Right to dignity

The patient's dignity and right to privacy shall be respected at all times in medical care and teaching, as shall his/her culture and values.

... Right to Privacy in the Context of Mental Health

In patient care, medical treatment or examination of a patient's mental and physical state could constitute a violation of the patient's right to privacy when it is not performed out of "therapeutic necessity."³¹ Additionally, the government must ensure that any reasons given for the disclosure of medical information on the patient's mental health is balanced with careful consideration of the patients' interests in keeping their information confidential and private.³²

Concluding Observations on the Republic of Korea Relating to Mental Health and the Right to Privacy

The Committee welcomes the State party's efforts to improve children's mental health by, inter alia, establishing 32 centers for mental health services nationwide. However, the Committee remains concerned that the overall state of child mental health in the State party has deteriorated and that the rate of depression and suicide among children has increased, especially among girls. The Committee also notes the implementation of a diagnostic tool for facilitating the early detection and prevention of suicide, but is nevertheless concerned that the diagnostic tool could negatively impact the child's right to privacy.

The Committee recommends that the State party undertake measures for the development of a child mental health-care policy based on a thorough study of the root causes of depression and suicide among children, and invest in the development of a comprehensive system of services, including mental health promotion and prevention activities, out-patient and in-patient mental health services, with a view to ensuring the effective prevention of suicidal behavior, especially among girls ... [I]n applying its diagnostic tool for the detection and prevention of suicide, the Committee recommends that the State party establish adequate safeguards for ensuring that the diagnostic tool is applied in a manner that fully respects the right of the child to privacy and to be adequately consulted.³³

... Right to Privacy in the Context of Infectious diseases

The right to privacy requires that the government ensure that information regarding individuals' health status, such as HIV status, be kept confidential. The disclosure of this information should be done with the informed consent of the patient. States should clearly define and establish guiding principles and recommendations for handling such information, as well as laws on privacy and confidentiality. They should also raise awareness of

³⁰WMA.Declaration on the Rights of the Patient. September/October 1981.

³¹CCPR.Communication No. 1482/2006: M. G. v. Germany. UN Doc. CCPR/C/93/D/1482/2006. September 2, 2008.para. 10.1.

³²CRPD.Concluding Observations: Hungary.UN Doc. CRPD/C/HUN/CO/1. October 22, 2012. paras. 48-49.

³³CRC Committee.Concluding Observations: Republic of Korea.UN Doc. CRC/C/KOR/CO/3-4. October 6, 2011. paras. 55-56.

those accessing this type of data.³⁴ Laws that interfere with this right in the interest of public health must be “in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances.”³⁵

Concluding Observations on Moldova Relating to Infectious Diseases and the Right to Privacy

The Committee is concerned that persons infected with HIV/AIDS face discrimination and stigmatization in the State party, including in the fields of education, employment, housing and health care, and that foreigners are arbitrarily subjected to HIV/AIDS tests as part of the immigration rules framework. In particular, the Committee is concerned that patient confidentiality is not always respected by health-care professionals. It is also concerned that legislation prohibits the adoption of children with HIV/AIDS, thereby depriving them of a family environment. (arts. 2, 17 and 26)

*The State party should take measures to address the stigmatization of HIV/AIDS sufferers through, inter alia, awareness-raising campaigns on HIV/AIDS, and should amend its legislation and regulatory framework in order to remove the prohibition on the adoption of children with HIV/AIDS, as well as any other discriminatory laws or rules pertaining to HIV/AIDS.*³⁶

Case Relating to Infectious Diseases and the Right to Privacy

Toonen v. Australia (CCPR)(1994). The Committee found that the laws criminalizing consensual sex between adult males “cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV” and, there fore, failed the “reasonableness test,” as the laws arbitrarily interfered with the individual’s right to privacy.³⁷

... Right to Privacy in the Context of Sexual and Reproductive Health

The need to protect the confidentiality of medical information is particularly vital in relation to sexual and reproductive health. Examinations by UN treaty-monitoring bodies in the context of right to privacy have included: (i) condemnation of a legal duty imposed on health personnel to report cases of abortions as part of a general criminalization of the procedure without exception, thereby inhibiting women from seeking medical treatment and jeopardizing their lives;³⁸ (ii) the need to investigate allegations that women seeking employment in foreign enterprises are subjected to pregnancy tests and are required to respond to intrusive personal questioning followed by the administration of ant pregnancy drugs;³⁹ and (iii) the need to address the concerns and need for confidentiality of adolescents with respect to sexual and reproductive health, including those married at a young age and those in vulnerable situations.⁴⁰

Concluding Observations on Australia Relating to Sexual and Reproductive Health and the Right to Privacy

The Committee notes as positive that the Office of the Australian Information Commissioner has issued guidelines on the application of the Australian Privacy Act on handling the personal information of children. However, the Committee is concerned that the State party does not have comprehensive legislation protecting the right to privacy of children. Furthermore, while noting that the Office of the Australian Information Commissioner is empowered to hear complaints about breaches of privacy rights under the Privacy Act 1998 (Cth), it is concerned that there are no child-specific and child-friendly mechanisms and that those available are limited to complaints made against government agencies and officers and large private organizations... Furthermore, the Committee is concerned that children receiving health services, particularly sexual and reproductive health services, are not ensured their right to privacy.

³⁴WHO European Region. Scaling up HIV testing and counselling in the WHO European Region as an essential component of efforts to achieve universal access to HIV prevention, treatment, care and support. Policy Framework. WHO/EURO 2010. p. 10.

³⁵ See CCPR. CCPR General Comment No. 16: Article 17 (Right to Privacy). The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation. April 8, 1988. para. 4; CCPR. Communication No. 488/1992: Toonen v. Australia. UN Doc. CCPR/C/50/D/488/1992. March 31, 1994. paras. 8.5-8.6.

³⁶CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. November 4, 2009. para. 12.

³⁷ CCPR. Communication No. 488/1992: Toonen v. Australia. UN Doc. CCPR/C/50/D/488/1992. March 31, 1994. paras. 8.5-8.6.

³⁸CCPR. Concluding Observations: Chile. UN Doc. CCPR/C/79/Add.104. March 30, 1999; CCPR. Concluding Observations: Venezuela. UN Doc. CCPR/CO/71/VEN. April 26, 2001.

³⁹ CCPR. Concluding Observation: Mexico. UN Doc. CCPR/C/79/Add.109. July 27, 1999. Requirement for women to have access to appropriate remedies where their equality and privacy rights had been violated.

⁴⁰CRC Committee. Concluding Observations: Djibouti. UN Doc. CRC/C/15/Add.131. June 28, 2000.

The Committee recommends that the State party consider enacting comprehensive national legislation enshrining the right to privacy. It also urges the State party to establish child-specific and child-friendly mechanisms for children complaining against breaches of their privacy and to increase the protection of children involved in penal proceedings...⁴¹

Cases Relating to Sexual and Reproductive Health and the Right to Privacy

Karen Noelia Llantoy Huamán v. Peru (CCPR)(2003). The Committee found that the doctor's refusal to terminate the pregnancy as requested by the patient, and forcing her to carry the pregnancy to term despite the existence of laws permitting the service, was not justified and constituted a violation of the patient's right to privacy.⁴²

L.N.P. v. Argentina (CCPR)(2011). The Committee found the "constant inquiries" by the social worker, medical personnel, and the court "into the author's sexual life and morality" to constitute a violation of her right to privacy as these inquiries were not relevant to her rape. The Committee recalled that interference occurs when the woman's sexual life is considered to define her rights and protections.⁴³

Right of Access to Information

The right of access to information guarantees the individual access to personal information concerning her/him, as well as medical information on her/his condition, except when this information could be harmful to her/his life or health. The government should take the necessary measures to guarantee the patient access to information about her health conditions,⁴⁴ but also ensure that access to this information does not infringe on the patient's right to keep her/his information confidential.⁴⁵ Accordingly, a government's refusal to provide the patient with access to her/his medical records has been treated as a violation of the individual's right of access to information.⁴⁶ However, a patient also has the right not to be informed, unless the disclosure of this information to the patient is needed to protect another person's life.⁴⁷

Additionally, access to information has been interpreted as an essential part of the accessibility component of the right to health.⁴⁸

Relevant Provisions

UDHR, Art. 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CRC, Art. 17: States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual, and moral well-being and physical and mental health.

ICRPD, Art. 21: States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive, and impart

⁴¹ CRC. Concluding Observations: Australia. UN Doc. CRC/C/AUS/CO/4. August 28, 2012. para. 41-42.

⁴² CCPR. Communication No. 1153/2003: Karen Noelia Llantoy Huamán v. Peru. UN Doc. CCPR/C/85/D/1153/2003. October 24, 2005.

⁴³ CCPR. Communication No. 1610/2007: L.N.P. v. Argentina. UN Doc. CCPR/C/102/D/1610/2007. August 16, 2011. para. 13.7.

⁴⁴ See UN Special Rapporteur on Freedom of Expression. Report "The Right to Freedom of Opinion and Expression." UN Doc. E/CN.4/2005/64. December 17, 2004. para. 42.

⁴⁵ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b)(iv).

⁴⁶ CCPR. Communication No. 726/1996: Zheludkov v. Ukraine. UN Doc. CCPR/C/76/D/726/1996. Views adopted October 29, 2002. Individual opinion by Ms. Cecilia Medina Quiroga (concurring).

⁴⁷ WMA. Declaration on the Rights of the Patient. September/October 1981. principle 7(d).

⁴⁸ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b)(iv).

information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by: (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.

ICMW

Art. 13(2): Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

Art. 33:

- (1) Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning: (a) Their rights arising out of the present Convention;...
- (3) Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

IAPO Declaration on Patient-Centred Healthcare,⁴⁹ **Principle 5:** Accurate, relevant, and comprehensive information is essential to enable patients and carers to make informed decisions about health care treatment and living with their condition. Information must be presented in an appropriate format according to health literacy principles considering the individual's condition, language, age, understanding, abilities, and culture.

WMA Declaration of Lisbon on the Rights of the Patients⁵⁰

Principle 7. Right to information:

- (a) The patient has the right to receive information about himself/herself recorded in any of his/her medical records, and to be fully informed about his/her health status including the medical facts about his/her condition. However, confidential information in the patient's records about a third party should not be given to the patient without the consent of that third party.
- (b) Exceptionally, information may be withheld from the patient when there is good reason to believe that this information would create a serious hazard to his/her life or health.
- (c) Information should be given in a way appropriate to the patient's culture and in such a way that the patient can understand.
- (d) The patient has the right not to be informed on his/her explicit request, unless required for the protection of another person's life.
- (e) The patient has the right to choose who, if anyone, should be informed on his/her behalf.

Principle 9. Right to Health Education:

- (a) Every person has the right to health education that will assist him/her in making informed choices about personal health and about the available health services. The education should include information about healthy lifestyles and about methods of prevention and early detection of illnesses. The personal responsibility of everybody for his/her own health should be stressed. Physicians have an obligation to participate actively in educational efforts.

... Right of access to Information in the Context of Mental Health

Mental health patients are often denied access to information about their mental health condition, including diagnosis and treatment, because of a perceived incapacity to adequately make or participate in decisions concerning their own treatment and care.⁵¹ Treaty bodies and special procedures have recognized the importance of the right of access to information in the context of mental health and have emphasized that information on the

⁴⁹IAPO.Declaration on Patient-Centred Healthcare. February 2006.

⁵⁰WMA.Declaration on the Rights of the Patient. September/October 1981.

⁵¹UN Special Rapporteur on the Right to Health. Report on "Mental Disability and the Right to Health." UN Doc. E/CN.4/2005/51. February 11, 2005. para. 46(b).

patient's mental health condition be made accessible to the patient and, in the case of children, be made accessible to the parents.⁵²

Concluding Observations on Estonia Relating to Mental Health and the Right to Access to Information

[T]he Committee is concerned by information that persons with psychosocial disabilities or their legal guardians are not [sic] often denied the right to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance (arts. 2, 10, 11, 12, 13 and 16).

The State party should:

(a) Ensure effective supervision and independent monitoring by judicial organs of any involuntary hospitalization in psychiatric institutions of persons with mental and psychosocial disabilities; and ensure that every patient, whether voluntarily or involuntarily hospitalized, is fully informed about the treatment to be prescribed and given the opportunity to refuse treatment or any other medical intervention ;...

(c) Ensure the right of persons with mental and psychosocial disabilities or their legal guardians to be sufficiently informed about criminal proceedings and charges against them, the right to a fair hearing and the right to adequate and effective legal assistance for their defense.⁵³

... Right of Access to Information in the Context of Infectious diseases

Governments should take measures to control the spread of infectious diseases through the dissemination of information, including through public information campaigns.⁵⁴ Access to information enables individuals to make informed decisions regarding their health conditions. For example, when an individual needs to decide on whether to take an HIV test, she/he should be provided with information on the voluntary nature of the test; her/his right to decline it; the fact that if the test is declined, it would not affect her/his access to services; the benefits and risks of HIV testing; and available social support.⁵⁵

Concluding Observations Libya Relating to Infectious Diseases and the Right to Access to Information

The Committee notes the establishment of the National Committee for AIDS Prevention in 1987 and other measures to address the problem of HIV/AIDS, but is concerned at the relatively high number of children afflicted by HIV/AIDS in Benghazi. The Committee is also concerned at insufficient information available in relation to adolescent health, particularly in relation to mental health issues.

The Committee recommends that the State party: ... (c) Ensure that adolescents have access to and are provided with education on adolescent health issues, in particular regarding mental health, in a sensitive manner.⁵⁶

Case Relating to Infectious Diseases and the Right of Access to Information

Tornel et al. v. Spain (CCPR)(2006). The Committee found that the prison's failure to inform the detained individual's family of his severely deteriorating condition related to his HIV-positive status constituted an arbitrary interference with the family and violated Article 17(1) of the ICCPR.⁵⁷

... Right of Access to Information in the Context of Sexual and Reproductive Health

The provision of appropriate and timely information with respect to sexual and reproductive health is particularly crucial as access to this information enables individuals to make informed decisions on the number, spacing, and

⁵²UN Special Rapporteur on the Right to Health, Report on "Mental Disability and the Right to Health." UN Doc. E/CN.4/2005/51. February 11, 2005. para. 46(b).

⁵³CAT Committee. Concluding Observations: Estonia. UN Doc. CAT/C/EST/CO/5. June 17, 2013. para. 20.

⁵⁴CESCR. Concluding Observations: Lithuania. UN Doc. E/C.12/1/Add.96. June 7, 2004; CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women: Twenty-eighth session, Twenty-ninth session. UN Doc. A/58/38 (SUPP). 2003. para. 260.

⁵⁵WHO European Region. Scaling up HIV testing and counselling in the WHO European Region as an essential component of efforts to achieve universal access to HIV prevention, treatment, care and support. Policy Framework. p. 7.

⁵⁶CRC Committee. Concluding Observations: Libya (Arab Jamahiriya). UN Doc. CRC/C/15/Add.209. July 4, 2003. paras. 37-38.

⁵⁷CCPR. Communication No. 1473/2006: Tornel v. Spain. UN Doc. CCPR/C/95/D/1473/2006. March 20, 2009. para. 7.4.

timing of their children. What is more, the right of access to information includes access to confidential and child-sensitive counseling services⁵⁸ and for adolescents, access to information without parental consent based on the adolescent's maturity level.⁵⁹ Accordingly, UN treaty-monitoring bodies have urged governments to improve access in light of increasing teenage abortions and sexually transmitted diseases,⁶⁰ including HIV/AIDS,⁶¹ with this right to access also extending to children.⁶²

Concluding Observations on Panama Relating to Sexual and Reproductive Health and the Right to Access to Information

The Committee is concerned at the State party's insufficient recognition and protection of women's sexual health and reproductive rights, in particular with regard to the delay in the debate over draft law No. 442 on sexual and reproductive health. It regrets the lack of access to information on health-care services provided to adolescent girls, particularly in rural areas, as well as the high number of early pregnancies. Furthermore, the Committee is concerned at the lack of a holistic and life-cycle approach to the health of women in the State party.

The Committee urges the State party to take the necessary steps to overcome the stalemate surrounding draft law No. 442 and to promulgate it as soon as possible. The Committee also urges the State party to improve family planning and reproductive health programmes and policies designed to give women and adolescent girls, in particular in rural areas, effective access to information on health-care services, including reproductive health-care services and contraception, in accordance with the Committee's general recommendation No. 24 on women and health and the Beijing Declaration and Platform for Action. The Committee also recommends that the State party step up its efforts to incorporate age-appropriate sex education in school curricula and organize information campaigns aimed at preventing teenage pregnancies. It further recommends that the State party undertake a holistic and life-cycle approach to women's health that includes an intercultural focus.⁶³

Case Relating to Sexual and Reproductive Health and the Right to Access to Information

A.S. v. Hungary (CEDAW Committee)(2006). The Committee found the sterilization of a Roma woman without her informed consent violated her right of access to information and her right to decide freely on the number of children under the CEDAW. The Committee recalled that "informed decision-making about safe and reliable contraceptive measures depends upon a woman having 'information about contraceptive measures and their use, and guaranteed access to sex education and family planning services.'"⁶⁴

Right to Bodily Integrity

The right to bodily integrity protects the individual from bodily injury.⁶⁵ In the patient care context, this right becomes relevant in cases of involuntary medical treatment and experimentation, among others.⁶⁶ It is not

⁵⁸CRC Committee. Concluding Observations: Oman, 2006. UN Doc. CRC/C/OMN/CO/2. September 29, 2006. para. 50(c); CRC Committee. Concluding Observations: Russian Federation. UN Doc. CRC/C/RUS/CO/3. November 23, 2005. para. 56.

⁵⁹CEDAW Committee. CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health). UN Doc. A/54/38/Rev. 1, chap. I. 1999. para. 14; CRC Committee. Concluding Observations: Austria. UN Doc. CRC/C/15/Add.98. May 7, 1999. para. 15; CRC Committee. Concluding Observations: Bangladesh. UN Doc. CRC/C/15/Add.221. October 27, 2003. para. 60; CRC Committee. Concluding Observation of the Committee on the Rights of the Child: Barbados. UN Doc. CRC/C/15/Add.103. August 24, 1999. para. 25.

⁶⁰CESCR. Concluding Observations: Lithuania. UN Doc. E/C.12/1/Add.96. June 7, 2004; CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women: Twenty-eighth session, Twenty-ninth session. UN Doc. A/58/38 (SUPP). 2003; see also CESCR. Concluding Observations: People's Republic of China (including Hong Kong and Macao). UN Doc. E/C.12/1/Add.107. May 13, 2005.

⁶¹CESCR. Concluding Observations: Chile. UN Doc. E/C.12/Add.105. November 26, 2004; see also CESCR. Concluding Observations: Cameroon. UN Doc. E/C.12/1/Add.40. December 8, 1999; see also CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women: Twenty-eighth session, Twenty-ninth session. UN Doc. A/58/38 (SUPP). 2003.

⁶²CRC Committee. Concluding Observations: Mozambique. UN Doc. CRC/C/15/Add.172. April 3, 2002; see also CRC Committee. Concluding Observations: Indonesia. UN Doc. CRC/C/15/Add.223. February 26, 2004.

⁶³CEDAW Committee. Concluding Observations: Panama. UN Doc. CEDAW/C/PAN/CO/7. February 5, 2010. para 40-41.

⁶⁴CEDAW Committee. Communication No. 4/2004: A.S. v. Hungary. UN Doc. CEDAW/C/36/D/4/2004. July 14, 2006. para. 11.2 (recalling CEDAW Committee's General Comment 21 on equality in marriage and family relations).

⁶⁵CCPR. Draft General Comment No. 35: Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8.

specifically recognized under the ICCPR or the ICESCR, but it has been interpreted to be part of related rights, including the right to freedom from torture, cruel, inhuman, and degrading treatment (ICCPR, Art. 7); the right to security of person (ICCPR, Art. 9); the right to privacy (ICCPR, Art. 17); and the right to the highest attainable standard of health (ICESCR, Art. 12). Under this right, a government must take the necessary measures to protect the individual from threats to her/his bodily integrity, regardless of whether these threats come from the government or private actors.⁶⁷ Please refer to the sections discussing the related rights.

Relevant Provisions

UDHR, Art. 3: Everyone has the right to life, liberty and security of person.

ICCPR, Art. 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

ICESCR, Art. 12: The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

CERD, Art. 5(b): States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of. . . (b) the right to security of the person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

CRC

Art. 12(1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Art. 25: States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Art. 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

ICRPD

Art. 14:

- (1) States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;...

Art. 17: Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

ICMW, Art. 16:

- (1) Migrant workers and members of their families shall have the right to liberty and security of person.
- (3) Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

⁶⁶CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 8.

⁶⁷CCPR. Draft General Comment No. 35: Article 9: Liberty and security of person. UN Doc. CCPR/C/107/R.3. January 28, 2013. para. 8; CCPR. Communication No. 1560/2007: Marcellana and Gumanoy v. Philippines. UN Doc. CCPR/C/94/D/1560/2007. November 17, 2008. para. 7.7; CCPR. Concluding Observations: Uganda. UN Doc. CCPR/CO/80/UGA. May 4, 2004. para. 12.

International Ethical Guidelines for Biomedical Research Involving Human Subjects:⁶⁸ Respect for persons incorporates at least two fundamental ethical considerations, namely:

- (a) respect for autonomy, which requires that those who are capable of deliberation about their personal choices should be treated with respect for their capacity for self-determination; and
- (b) protection of persons with impaired or diminished autonomy, which requires that those who are dependent or vulnerable be afforded security against harm or abuse.

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care⁶⁹

Principle 9:

- (1) Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
- (2) The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
- (3) Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
- (4) The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

WMA Declaration of Lisbon on the Rights of the Patients⁷⁰

Principle 2. Right to freedom of choice

- (a) The patient has the right to choose freely and change his/her physician and hospital or health service institution, regardless of whether they are based in the private or public sector.

Principle 3. Right to self-determination

- (b) The patient has the right to self-determination, to make free decisions regarding himself/herself. The physician will inform the patient of the consequences of his/her decisions.
- (c) A mentally competent adult patient has the right to give or withhold consent to any diagnostic procedure or therapy. The patient has the right to the information necessary to make his/her decisions. The patient should understand clearly what is the purpose of any test or treatment, what the results would imply, and what would be the implications of withholding consent.
- (d) The patient has the right to refuse to participate in research or the teaching of medicine.

Principle 4. The unconscious patient

- (a) If the patient is unconscious or otherwise unable to express his/her will, informed consent must be obtained whenever possible, from a legally entitled representative.
- (b) If a legally entitled representative is not available, but a medical intervention is urgently needed, consent of the patient may be presumed, unless it is obvious and beyond any doubt on the basis of the patient's previous firm expression or conviction that he/she would refuse consent to the intervention in that situation.
- (c) However, physicians should always try to save the life of a patient unconscious due to a suicide attempt.

Principle 5. The legally incompetent patient

- (a) If a patient is a minor or otherwise legally incompetent, the consent of a legally entitled representative is required in some jurisdictions. Nevertheless the patient must be involved in the decision-making to the fullest extent allowed by his/her capacity.
- (b) If the legally incompetent patient can make rational decisions, his/her decisions must be respected, and he/she has the right to forbid the disclosure of information to his/her legally entitled representative.
- (c) If the patient's legally entitled representative, or a person authorized by the patient, forbids treatment

⁶⁸ CIOMS. International Ethical Guidelines for Biomedical Research Involving Human Subjects. 2002.

⁶⁹ United Nations General Assembly. United Nations General Assembly Resolution 46/119: Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. UN Doc. A/RES/46/119. December 17, 1991.

⁷⁰ WMA. Declaration on the Rights of the Patient. September/October 1981.

which is, in the opinion of the physician, in the patient's best interest, the physician should challenge this decision in the relevant legal or other institution. In case of emergency, the physician will act in the patient's best interest.

Principle 6. Procedures against the patient's will

- (d) Diagnostic procedures or treatment against the patient's will can be carried out only in exceptional cases, if specifically permitted by law and conforming to the principles of medical ethics.

... Right to Bodily Integrity in the Context of Mental Health

The right to bodily integrity protects mental health patients from the use of coercive force or restraint. If force or restraint is used, it must be made following a “thorough and professional medical assessment” that calls for this type of intervention.⁷¹ Moreover, the government has the obligation to establish a monitoring and reporting system of mental health-care institutions.⁷² It requires the monitoring of psychiatric and other institutions to ensure that no person is placed in the institution on the basis of her/his mental disability without her/his free and informed consent.⁷³

As explained above, threats to the bodily integrity of such individuals can be address through other related rights, such as the right to security of persons and the right to freedom from torture, cruel, inhuman and degrading treatment. As in the case of the right to security of person, the state is required to monitor of psychiatric and other institutions to ensure that no person is placed in the institution on the basis of her/his mental disability without her/his free and informed consent.⁷⁴ If force or restraint is used, it must be made following a “thorough and professional medical assessment” that calls for this type of intervention.⁷⁵ Moreover, the government has the obligation to establish a monitoring and reporting system of mental health-care institutions.⁷⁶

Concluding Observations on Croatia Relating to Mental Health and the Right to Bodily Integrity

While noting the State party's statement concerning its commitment to abolish the use of enclosed restraint beds (cages/net beds) as a means to restrain mental health patients, including children, in institutions, the Committee is concerned about the current use of such beds. The Committee recalls that this practice constitutes inhuman and degrading treatment. (arts. 7, 9, 10 of the Covenant.)

The State party should take immediate measures to abolish the use of enclosed restraint beds in psychiatric and related institutions. The State party should also establish an inspection system, taking into account the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.⁷⁷

... Right to Bodily Integrity in the Context OF Infectious Diseases

The right to bodily integrity becomes particularly relevant in instances where individuals with infectious diseases are subjected to coercive measures, such as quarantine and forced treatment. In this context, states must ensure that the interests for the protection of the public's health are balanced with the individual's right to bodily integrity and that the individual is treated humanely.⁷⁸ For example, governments must consider “potential outcomes of HIV testing – including stigma, discrimination, violence and other abuse – in policy and practice.”

⁷¹CCPR.Concluding Observations: Norway.UN Doc. CCPR/C/NOR/CO/6. November 18, 2011. para. 10.

⁷²CCPR.Concluding Observations: Norway.UN Doc. CCPR/C/NOR/CO/6. November 18, 2011. para. 10; CCPR.Concluding Observations: Bulgaria.UN Doc. CCPR/C/BGR/CO/3. July 25, 2011.para. 17.

⁷³CRPD. Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors. UN Doc. HR/P/PT/17. April 2010.

⁷⁴CRPD. Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human Rights Monitors. UN Doc. HR/P/PT/17. April 2010.

⁷⁵CCPR.Concluding Observations: Norway.UN Doc. CCPR/C/NOR/CO/6. November 18, 2011. para. 10.

⁷⁶CCPR.Concluding Observations: Norway.UN Doc. CCPR/C/NOR/CO/6. November 18, 2011. para. 10; CCPR.Concluding Observations: Bulgaria.UN Doc. CCPR/C/BGR/CO/3. July 25, 2011.para. 17.

⁷⁷CCPR.Concluding Observations: Croatia.UN Doc. CCPR/C/HRV/CO/2. November 4, 2009. para. 12.

⁷⁸CCPR.Concluding Observations: Republic of Moldova.UN Doc. CCPR/C/MDA/CO/2. November 4, 2009. para. 13.

Moreover, they “must do all they can to prevent such human rights violations, both for the protection of the individual and the effectiveness of the national response to HIV.”⁷⁹

Concluding Observations on Moldova Relating to Infectious Diseases and the Right to Bodily Integrity

[T]he Committee notes with concern that, under a regulation promulgated in August 2009, persons with tuberculosis may be subjected to forcible detention in circumstances where he or she is deemed to have “avoided treatment”. In particular, the regulation is unclear as to what constitutes the avoidance of treatment and fails to provide, inter alia, for patient confidentiality or for the possibility for the judicial review of a decision to forcibly detain a patient. (arts. 2, 9 and 26).

The State party should urgently review this measure to bring it into line with the [ICCPR], ensuring that any coercive measures arising from public health concerns are duly balanced against respect for patients’ rights, guaranteeing judicial review and patient confidentiality and otherwise ensuring that persons with tuberculosis are treated humanely.⁸⁰

... Right to Bodily Integrity in the Context OF Sexual and Reproductive Health

The right to security of person safeguards the person’s right to control her/his health and body. Physical acts on the individual’s body done without her/his consent (such as forced sterilization) have been deemed “acts of violence.”⁸¹ Treaty-monitoring bodies have recognized that practices, such as genital mutilation, can infringe girls’ right to personal security and their physical and moral integrity by threatening their lives and health.⁸² In the case of forced sterilization, governments should take the necessary measures to prevent such acts, such as holding health care providers criminally liable for conducting sterilizations without the individual’s free, full, and informed consent.⁸³

Concluding Observations on the Czech Republic Relating to Sexual and Reproductive Health and the Right to Bodily Integrity

The Committee notes with concern that women, a high proportion of which being Roma women, have been subjected to coerced sterilization. It welcomes the inquiries undertaken by the Public Defender of Rights on this matter, but remains concerned that to date, the State party has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims...

The State party should take strong action, without further delay, to acknowledge the harm done to the victims...and recognize the particular situation of Roma women in this regard. It should take all necessary steps to facilitate victims’ access to justice and reparation, including through the establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public.⁸⁴

Case Relating to Sexual and Reproductive Health and the Right to Security of Person

Szjijarto v. Hungary (CEDAW Committee)(2006). The Committee found that the sterilization of a Roma woman without her informed consent amounted to a violation of Article 12 of CEDAW (among others) and underscored that “acceptable services” are those performed with the woman’s full and informed consent and reiterated the obligation of States Parties to prevent forms of coercion, such as non-consensual sterilization.⁸⁵

⁷⁹WHO European Region. Scaling up HIV testing and counselling in the WHO European Region as an essential component of efforts to achieve universal access to HIV prevention, treatment, care and support. Policy Framework. WHO/EURO 2010.p. 10.

⁸⁰CCPR.Concluding Observations: Republic of Moldova.UN Doc. CCPR/C/MDA/CO/2. November 4, 2009.

⁸¹UN 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]. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 38; Human Rights Watch [HRW]. Sterilization of Women and Girls with Disabilities: A Briefing Paper. November 10, 2011.

⁸²CEDAW Committee.Concluding Observations: Burkina Faso. UN Doc. A/55/38 (Supp). August 17, 2000. para. 261.

⁸³CAT Committee. Concluding Observations: Slovakia.UN Doc. CAT/C/SVK/CO/2. December 31, 2009. para. 10.

⁸⁴CERD.Concluding Observations: Czech Republic.UN Doc. CERD/C/CZE/CO/7. April 11, 2007. para 14.

⁸⁵CEDAW Committee. Communication No. 4/2004: Szjijarto v. Hungary. UN Doc. A/61/38. August 14, 2006. section 11.3.

Right to Life

The right to life protects the individual from the imposition of the death sentence when the process on which the judgment is based does not meet the requirements under international human rights law (ICCPR, Art. 14).⁸⁶ In addition, the right to life involves substantive obligations on the part of the state to (1) refrain from the use of actual or potentially lethal force by state officials unless absolutely necessary, and (2) protect the life of individuals at risk of harm by non-state actors. It also includes a procedural obligation on the part of the state to conduct effective investigations into deaths (other than those arising from natural causes).

The right to life is not to be interpreted narrowly and “requires that States adopt positive measures...to increase life expectancy.”⁸⁷ For example, as it relates to patient care, the right to life requires that the government always fulfill its duty to regulate and monitor private health care institutions in order to protect this right.⁸⁸

Under the right to life, the government must provide a minimum level of health services and essential medication that ensures a patient’s good health. If health care services are inadequate and lead to the patient’s death, then, depending on the circumstances, the government may be held responsible for the mismanagement of health care resources and the death of the patient.⁸⁹

Relevant Provisions

UDHR, Art. 3: Everyone has the right to life, liberty and security of person.

ICCPR, Art. 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

CRC, Art. 6:

- (1) States Parties recognize that every child has the inherent right to life.
- (4) States Parties shall ensure to the maximum extent possible the survival and development of the child.

ICRPD, Art. 10: States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

ICMW

Art. 9: The right to life of migrant workers and members of their families shall be protected by law.

Art. 28: Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

... Right to Life in the Context of Mental Health

In the context of mental health, the right to life acquires even greater importance. The government has a special duty to protect patients with mental disabilities —taking the appropriate health care measures for the protection

⁸⁶CCPR. Communication No. 1520/2006: Mwamba v. Zambia. UN Doc. CCPR/C/98/D/1520/2006. April 30, 2010. para 6.8.

⁸⁷CCPR. CCPR General Comment 6: The right to life (Art. 6). April 30, 1982. paras. 1, 5.

⁸⁸CEDAW Committee. Communication No. 17/2008: Teixeira v. Brazil. UN Doc. CEDAW/C/49/D/17/2008. September 27, 2011. para 7.4.

⁸⁹CCPR. Communication 763/1997: Lantsova v. the Russian Federation. UN Doc. CCPR/C/74/D/763/1997. March 26, 2002. para 9.2; see CCPR. Communication No. 1556/2007: Novaković v. Serbia. UN Doc. CCPR/C/100/D/1556/2007. November 2, 2010.

of patients' lives.⁹⁰This right requires the government to ensure the right of life of persons deprived of their liberty even in the absence of a request for protection.⁹¹

Concluding Observations on Australia Relating to Mental Health and the Right to Life

The Committee is concerned that the State party's level of funding for mental health continues to be substantially below that of other developed countries, with children and young persons seeking mental health services often facing limited access to and substantial delays in receiving such services. In this context, the Committee shares the concerns stated in the health study published by the Australian Institute of Health and Welfare in 2010 indicating that poor mental health is the leading health issue for children and young people and the largest contributor to the burden of disease in children aged 0-14 years (23 per cent) and young people aged 15-24 years (50 per cent). Furthermore, the Committee is concerned about the high rate of suicidal deaths among young people throughout the State party, particularly among the Aboriginal community. The Committee notes as positive that the State party's territory of Western Australia has carried out research investigating the effectiveness of drugs currently used to treat Attention Deficit Hyperactivity Disorder (ADHD) and Attention Deficit Disorder (ADD). However, the Committee remains concerned that current diagnosis procedures may not be adequately addressing the underlying mental health issues linked to it resulting in significant increases and/or erroneous prescription of psycho-stimulants to children diagnosed with ADHD and ADD which is of serious concern.

Emphasizing the importance of access to child and youth-friendly mental health support and services, the Committee recommends that the State party:

(a) Follow-up on the Australian Institute of Health and Welfare health study with measures designed to address the direct and underlying causes of the high rates of mental health problems in children and young people, focusing [sic] especially on suicides and other disorders linked to, inter alia, substance abuse, violence and inadequate quality of care in alternative care settings;

(b) Allocate specific resources for improving the availability and quality of early intervention services, training and development of teachers, counselors, health professionals and others working with children, as well as support to parents;

(c) Develop specialized health services and targeted strategies for children at particular risk of mental health problems, and their families, and ensure accessibility for all those requiring such services with due consideration to their age, sex, socio-economic background, geographical and ethnic origin, etc;

(d) In planning and implementing the above, consult with children and youth for the development of these measures while undertaking awareness-raising on mental health, with a view to ensuring better family and community support as well as to reducing the associated stigma;

(e) Carefully monitor the prescription of psycho-stimulants to children and take initiatives to provide children diagnosed with ADHD and ADD, as well as their parents and teachers, with access to a wider range of psychological, educational and social measures and treatments; and, consider undertaking the collection and analysis of data disaggregated according to the type of substance- and age with a view to monitoring the possible abuse of psycho-stimulant drugs by children.⁹²

... Right to Life in the Context of Infectious diseases

According to the CCPR, under the right to life, governments should "take all possible measures to ... increase life expectancy, especially in adopting measures to eliminate ... epidemics."⁹³ Perceived as the most basic human right, the right to life has been useful in advocating prevention and access to medicines and treatment. The right to life has played a critical role in governments' response to infectious diseases like HIV/AIDS, and continues to be used by litigants and advocates alike to pressure governments to adopt measures that are necessary for protecting the lives of persons living with HIV/AIDS.⁹⁴

⁹⁰ECtHR. *Dodov v. Bulgaria* (59548/00). April 17, 2008.

⁹¹CCPR. Communication No. 763/1997: *Lantsova v. The Russian Federation*. UN Doc. CCPR/C/74/D/763/1997. March 26, 2002. para 9.2.

⁹²CRC Committee. *Concluding Observations: Australia*. UN Doc. CRC/C/AUS/CO/4. August 28, 2012. paras. 64-65.

⁹³CCPR. CCPR General Comment 6: *The right to life* (Art. 6). April 30, 1982. para. 5.

⁹⁴See Open Society Foundations, Ford Foundation, and UNDP. *Factsheet: Human Rights & the Three Diseases*. October 5, 2011.

Concluding Observations on Uganda Relating to Infectious Diseases and the Right to Life

While the Committee takes note of the measures taken by the State party to deal with the widespread problem of HIV/AIDS, it remains concerned about the effectiveness of these measures and the extent to which they guarantee access to medical services, including antiretroviral treatment, to persons infected with HIV ([ICCPR,] art. 6).

The State party is urged to adopt comprehensive measures to allow a greater number of persons suffering from HIV/AIDS to obtain adequate antiretroviral treatment.⁹⁵

... Right to Life in the Context of Sexual and Reproductive Health

In the context of sexual and reproductive health, the right to life has been used to call for measures that safeguard the lives of individuals, particularly women resorting to unsafe abortions—one of the major causes of maternal mortality in the world. Governments have been called to adopt comprehensive abortion laws, especially in cases of rape and incest and for therapeutic reasons.⁹⁶ For example, a state should take measures to help women avoid unsafe abortions,⁹⁷ such as decriminalizing abortion, ensuring access to reproductive health services,⁹⁸ making contraceptives widely available, and establishing health care facilities in rural areas.⁹⁹

Concluding Observations on Cameroon Relating to Sexual and Reproductive Health and the Right to Life

While noting the efforts by the State party, jointly with international partners, to improve access to reproductive health services, the Committee remains concerned about high maternal mortality and about abortion laws which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health. It is also concerned about the unavailability of abortion in practice even when the law permits it, for example in cases of pregnancy resulting from rape. ([CCPR,] art. 6)

The State party should step up its efforts to reduce maternal mortality, including by ensuring that women have access to reproductive health services. In this regard, the State party should amend its legislation to effectively help women avoid unwanted pregnancies and protect them from having to resort to illegal abortions that could endanger their lives.¹⁰⁰

Case Relating to Sexual and Reproductive Health and the Right to Life

da Silva Pimentel Teixeira v. Brazil (CEDAW Committee) (2011). The Committee found that the government's failure to ensure appropriate pregnancy-related medical treatment and to provide timely emergency obstetric care to the patient (both of which were found to have led to her death) constituted a violation of the right to life.¹⁰¹

Right to the Highest Attainable Standard of Health

The right to the highest attainable standard of health (hereinafter "right to health") is the right of everyone to enjoy the highest attainable standard of both mental and physical health. The right to health requires that facilities, goods, and services be available, accessible, acceptable, and of quality. In other words, under this right, states have the obligation to make available health care facilities, goods and services in sufficient quantity and accessible to everyone physically, economically and without discrimination.¹⁰² Health facilities, goods and services must be respectful of medical ethics, culturally acceptable, scientifically and medically appropriate and of good

⁹⁵ CCPR. Concluding Observations: Uganda. UN Doc. CCPR/CO/80/UGA. May 4, 2004. CCPR. para. 14.

⁹⁶ United Nations. Report of the Human Rights Committee. UN Doc. A/67/40 (Vol. I). 2012. p. 46-47, para 15.

⁹⁷ United Nations. Report of the Human Rights Committee. UN Doc. A/65/40 (Vol. I). 2009. p. 51, para 10.

⁹⁸ United Nations. Report of the Human Rights Committee. UN Doc. A/65/40 (Vol. I). 2009. p. 94-95, para 13.

⁹⁹ United Nations. Report of the Human Rights Committee. UN Doc. A/66/40 (Vol. I). 2011. p. 28-29, para 12.

¹⁰⁰ CCPR. Concluding Observations: Cameroon. UN Doc. [CCPR/C/CMR/CO/4](#). August 4, 2010. para. 13.

¹⁰¹ CEDAW Committee. Communication No. 17/2008: Maria de Lourdes da Silva Pimentel Teixeira v. Brazil. UN Doc. CEDAW/C/49/D/17/2008. September 27, 2011. para. 7.2.

¹⁰² CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4.

August 11, 2000. para. 12; See CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Saudi Arabia. UN Doc. CEDAW/C/SAU/CO/2. April 8, 2008. paras. 33-34; CESCR. Concluding observation of the Committee on Economic, Social and Cultural Rights: Algeria. UN Doc. E/C.12/DZA/CO/4. June 7, 2010. para 20.

quality.¹⁰³ The right to health extends not only to appropriate and accessible health care but also to the underlying determinants of health, such as access to safe and potable drinking water, and adequate supply of safe food, nutrition and housing.¹⁰⁴

The ICESCR allows States Parties to “progressively realize” the right to health, recognizing the limitations that a state’s resources may have on the state’s ability to achieve the full realization of the right to health. However, it also establishes immediate obligations under which States Parties are to take “deliberate, concrete and targeted” steps towards the right’s full realization—these include ensuring that the right is “exercised without discrimination of any kind (art. 2.2).”¹⁰⁵ The CESCR has been clear in that the “progressive realization” of the right does not strip away the “meaningful content” of States Parties’ obligations. Instead, it means that States Parties have “a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of [the right to health].”¹⁰⁶ Moreover, States Parties are not allowed to take retrogressive measures, and if such measures are taken, the State Party must prove that these measures were taken “after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State Party’s maximum available resources.”¹⁰⁷

Violations of the right to health can result from both a deliberate act and a failure to act by the government.¹⁰⁸ In fact, states have been frequently condemned by the CESCR for failing to devote adequate resources to health care and services because of the obviously detrimental impact of that failure on patients.¹⁰⁹

Additionally, the right to health is inclusive and covers freedoms in addition to entitlements.¹¹⁰ Such 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 non-consensual medical treatment and experimentation.¹¹¹

Relevant Provisions

UDHR, Art. 25:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

¹⁰³ See CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12.

¹⁰⁴ See CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 4.

¹⁰⁵ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 30.

¹⁰⁶ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 31.

¹⁰⁷ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 32.

¹⁰⁸ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. paras. 46-52.

¹⁰⁹ CESCR. Concluding Observations: Uruguay. UN Doc. E/C.12/1/Add.18. December 22, 1997. Alarm expressed at fact that very low wages paid to nurses led to a low ratio of nurses to doctors (lower than 1:5), tending to diminish the quality and accessibility of medical care available to the community; see also CESCR. Concluding Observations: Republic of the Congo. UN Doc. E/C.12/1/Add.45. May 23, 2000. Grave concern expressed at decline of standard of health, due in part to ongoing financial crisis, which resulted in serious shortage of funds for public health services; CESCR. Concluding Observations: Mongolia. UN Doc. E/C.12/1/Add.47. September 1, 2000. Deteriorating health situation for population since 1990 in light of decreasing government expenditure on health from 5.8 percent of GDP in 1991 to 3.6 percent in 1998.

¹¹⁰ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 8; UN Special Rapporteur on the Right to Health. Report on “Mental and the Right to Health.” UN Doc. E/CN.4/2005/51. February 11, 2005. para. 38.

¹¹¹ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 8.

- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection..

ICESCR, Art. 12:

- (3) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- (4) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

CRC

Art. 3(3): States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Art. 24:

- (1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- (2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
(a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;... (d) To ensure appropriate pre-natal and post-natal health care for mothers.

CEDAW, Art. 12:

- (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.

ICRPD, Art. 25: States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including 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 through training and the promulgation of ethical

standards for public and private health care;

- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

ICMW

Art. 28: Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Art. 43(1)(e): Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: ...[a]ccess to social and health services, provided that the requirements for participation in the respective schemes are met...

Art. 45(1)(c): Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: [a]ccess to social and health services, provided that requirements for participation in the respective schemes are met...

Art. 70: States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

... Right to Health in the Context of Mental health

The ICESCR, along with other relevant international legal instruments,¹¹² have established that the right to health is not limited to physical health, but that it also includes the right to the highest attainable standard of mental health.¹¹³ For example, the CRC and the ICRPD have enshrined both aspects of the right and explicitly prohibit discrimination on grounds of disability. States, even those with very limited resources, are expected to adopt measures that protect this right for mental health patients, such as:

the recognition, care and treatment of mental disabilities in training curricula of all health personnel; promot[ing] public campaigns against stigma and discrimination of persons with mental disabilities; support[ing] the formation of civil society groups that are representative of mental health-care users and their families; formulat[ing] modern policies and programmes on mental disabilities; downsiz[ing] psychiatric hospitals and, as far as possible, extend community care; in relation to persons with mental disabilities, actively seek[ing] assistance and cooperation from donors and international organizations; and so on.¹¹⁴

Concluding Observations on Australia Relating to Mental Health and the Right to the Highest Attainable Standard of Health

The Committee notes with concern the insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in particular for indigenous peoples, prisoners and asylum-seekers in detention. (arts. 2, para. 2; and 12)

The Committee recommends that the State party take effective measures to ensure the equal enjoyment of the right to the highest attainable standard of mental health, including by (a) allocating adequate resources for mental health services and other support measures for persons with mental -health problems in line with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care; (b) implementing the recommendations of the

¹¹² Such instruments are not limited to human rights instruments (see e.g., [WHO Constitution](#)).

¹¹³ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000; UN Special Rapporteur on the Right to Health. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 32.

¹¹⁴ UN Special Rapporteur on the Right to Health. Report on "Mental Disability and the Right to Health." UN Doc. E/CN.4/2005/51. February 11, 2005. para. 35.

Australian Medical Association's 2008 report on indigenous health; (c) reducing the high rate of incarceration of people with mental diseases; (d) ensuring that all prisoners receive an adequate and appropriate mental health treatment when needed.¹¹⁵

... Right to Health in the Context of Infectious diseases

Under the right to health, persons suffering from infectious diseases have the right to access affordable treatment, such as antiretroviral therapy and appropriate health care services and counseling.¹¹⁶ In the context of infectious diseases, states also have the obligation to prepare, prevent and respond to the threat of emerging infectious diseases. For example, states are required to implement effective public health surveillance and reporting systems.¹¹⁷ Governments are also prohibited from discriminating against individuals based on their health status, such as HIV/AIDS and tuberculosis.¹¹⁸

Concluding Observations on Mauritania Relating to Infectious Diseases and the Right to the Highest Attainable Standard of Health

The Committee is concerned that the access to anti-retroviral-treatment (ARV) and prevention of parent to child transmission (PPTCT) services are inadequate; that testing and counseling services are insufficient; and that there is an overall lack of funds for prevention measures.

The Committee recommends, with reference to its general comment No. 3 (2003) on HIV/AIDS and the rights of the child and to the International Guidelines on HIV/AIDS and Human Rights, that the State party:

(a) Ensure the full and effective implementation of a comprehensive policy to prevent HIV/AIDS with adequate targeting of areas and groups that are the most vulnerable;

*(b) Strengthen its efforts to combat HIV/AIDS, including through awareness-raising campaigns.*¹¹⁹

... Right to Health in the Context of Sexual and Reproductive Health

UN treaty-monitoring bodies have linked maternal mortality to a "lack of comprehensive reproductive health services, restrictive abortion laws, unsafe or illegal abortion, adolescent childbearing, child and forced marriage, and inadequate access to contraceptives."¹²⁰ Moreover, the UN Human Rights Council has declared maternal mortality a human rights violation and has called on states to take the necessary measures to prevent it.¹²¹ For

¹¹⁵ CESCR. Concluding Observations: Australia. UN Doc. E/C.12/AUS/CO/4. June 12, 2009. para. 30.

¹¹⁶ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b).

¹¹⁷ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 16.

¹¹⁸ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 18.

¹¹⁹ CRC Committee. Concluding Observations: Mauritania. UN Doc. CRC/C/MRT/CO/2/Corr.1. July 21, 2009. paras. 57-58.

¹²⁰ Center for Reproductive Rights. ICPD and Human Rights: 20 years of advancing reproductive rights through UN treaty bodies and legal reform. June 2013. p. 2, citing as examples: CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Malawi. UN Doc. CEDAW/C/MWI/CO/5. February 3, 2006. para. 31; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico. UN Doc. CEDAW/C/MEX/CO/6. August 25, 2006. para. 32; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Morocco. UN Doc. CEDAW/C/MAR/CO/4. April 8, 2008. para. 30; CCPR. Concluding Observations: Chile. UN Doc. CCPR/C/CHL/CO/5. May 18, 2007. para. 8; CCPR. Concluding Observations: Madagascar. UN Doc. CCPR/C/MDG/CO/3. [May 11, 2007](#). para. 14; CCPR. Concluding Observations: Panama. UN Doc. CCPR/C/PAN/CO/3. April 17, 2008. para. 9; CRC Committee. Concluding Observations: Democratic People's Republic of Korea. UN Doc. CRC/C/15/Add.239. [July 1, 2004](#). para. 50; CRC Committee. Concluding Observations: Guatemala. UN Doc. CRC/C/15/Add.154. July 9, 2001. para. 40; CRC Committee. Concluding Observations: Haiti. UN Doc. CRC/C/15/Add.202. [March 18, 2003](#). para. 46; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Eritrea. UN Doc. CEDAW/C/ERI/CO/3. [February 3, 2006](#). para. 22; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mozambique. UN Doc. CEDAW/C/MOZ/CO/2. June 11, 2007. para. 36; CRC Committee. Concluding Observations: Sudan. UN Doc. CRC/C/15/Add.10. October 18, 1993. para. 10; CRC Committee. Concluding Observations: Chile. UN Doc. CRC/S/15/Add.173. [April 3, 2002](#). para. 41.

¹²¹ Center for Reproductive Rights. ICPD and Human Rights: 20 years of advancing reproductive rights through UN treaty bodies and legal reform. June 2013. p. 2, citing as examples: CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Malawi. UN Doc. [CEDAW/C/MWI/CO/5](#). February 3, 2006; CEDAW

example, in addition to facilitating access to contraceptives and family planning,¹²² governments are to ensure the establishment of “education and training programmes to encourage health providers to change their attitudes and be heavier in relation to adolescent women seeking reproductive health services and respond to specific health needs related to sexual violence.” Likewise, governments should develop “guidelines or protocols to ensure [reproductive] health services are available and accessible in public facilities.”¹²³

Concluding Observations on Benin Relating to Sexual and Reproductive Health and the Right to the Highest Attainable Standard of Health

While noting the efforts made by the State party to improve reproductive health care to women, the Committee remains concerned about the lack of access to adequate health care for women and girls, particularly in rural areas. It is concerned about the causes of morbidity and mortality in women, particularly the number of deaths due to illegal abortions, and about inadequate family planning services and the low rates of contraceptive use. The Committee expresses its concern that women require the permission of their husbands to obtain contraceptives and family planning services.

*The Committee recommends that the State party take measures, in accordance with general recommendation 24 on women and health, to improve and increase women’s access to health care and health-related services and information, particularly in rural areas. It calls on the State party to improve the availability of sexual and reproductive health services, including family planning, with the aim also of preventing clandestine abortions, and to make available, without requiring the permission of the husband, contraceptive services to women and girls. It further recommends that sex education be widely promoted and targeted at girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.*¹²⁴

Case Relating to Sexual and Reproductive Health and the Right to the Highest Attainable Standard of Health

da Silva Pimentel Teixeira v. Brazil (CEDAW Committee) (2011). The Committee found that the government’s failure to ensure that the activities of private institutions providing medical services are appropriate and in line with health policies and practices attributed to the death of the patient and constituted a violation of the right to health.¹²⁵

L.C. v. Peru (CEDAW Committee)(2009). The Committee found a violation of Article 12 of CEDAW where the state refused to terminate the woman’s pregnancy that put her life and health at risk. The Committee recalled that states had the obligation of taking “all appropriate measures to eliminate discrimination against women in the

Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico. UN Doc. [CEDAW/C/MEX/CO/6](#). August 25, 2006. para. 32; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Morocco. UN Doc. [CEDAW/C/MAR/CO/4](#). April 8, 2008. para. 30; CCPR. Concluding Observations: Chile. UN Doc. [CCPR/C/CHL/CO/5](#). May 18, 2007; CCPR. Concluding Observations: Madagascar. UN Doc. [CCPR/C/MDG/CO/3](#). May 11, 2007. para. 14; CCPR. Concluding Observations: Panama. UN Doc. [CCPR/C/PAN/CO/3](#). April 17, 2008. para. 9; CRC Committee. Concluding Observations: Democratic People’s Republic of Korea. UN Doc. [CRC/C/15/Add.239](#). July 1, 2004. para. 50; CRC Committee. Concluding Observations: Guatemala. UN Doc. [CRC/C/15/Add.154](#). July 9, 2001. para. 40; CRC Committee. Concluding Observations: Haiti. UN Doc. [CRC/C/15/Add.202](#). March 18, 2003. para. 46; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Eritrea. UN Doc. [CEDAW/C/ERI/CO/3](#). February 3, 2006. para. 22; CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mozambique. UN Doc. [CEDAW/C/MOZ/CO/2](#). June 11, 2007. para. 36; CRC Committee. Concluding Observations: Sudan. UN Doc. [CRC/C/15/Add.10](#). October 18, 1993. para. 10; CRC Committee. Concluding Observations: Chile. UN Doc. [CRC/S/15/Add.173](#). April 3, 2002. para. 41.

¹²²CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. paras. 14, 23, 34; CEDAW Committee. General Recommendation No. 21: Equality in marriage and family relations. UN Doc. A/49/38. 1994. para. 22; United Nations General Assembly. Interim report of the UN Special Rapporteur on the Right to Health. UN Doc. A/66/254. August 3, 2011. para. 65 (main focus: criminalization of sexual and reproductive health); CRC Committee. Concluding Observations: Australia. UN Doc. [CRC/C/15/Add.268](#). October 20, 2005. para. 46(e); CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: China. UN Doc. [CEDAW/C/CHN/CO/6](#). August 25, 2006. para. 32.

¹²³CEDAW Committee. Communication No. 22/2009: L.C. v. Peru. UN Doc. [CEDAW/C/50/D/22/2009](#). November 4, 2011. para. 9.2(b).

¹²⁴CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women. UN Doc. [A/60/38\(SUPP\)](#). 2005. para. 157.

¹²⁵CEDAW Committee. Communication No. 17/2008: Maria de Lourdes da Silva Pimentel Teixeira v. Brazil. UN Doc. [CEDAW/C/49/D/17/2008](#). September 27, 2011. para. 7.5.

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.” The Committee also emphasized that a state cannot refuse to provide “certain reproductive health services for women”—a state’s duty to “ensure, on a basis of equality between men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfill women’s rights to health care.”¹²⁶

Right to Freedom from Torture and other cruel, Inhuman OR Degrading Treatment OR PUNISHMENT

The right to freedom from torture and other cruel, inhuman or degrading treatment or punishment (TCIDT) obligates the State to prevent and protect people from, and punish acts of, cruel, inhuman or degrading treatment and torture. In fact, as a *jus cogens* norm, this right is one of the few absolute non-derogable human rights under international law—meaning that the right is “untouchable” even in exceptional circumstances, such as war or threat of war.¹²⁷ Most human rights prohibitions against torture cover abuses ranging from torture to cruel and inhuman treatment to degrading treatment. The CCPR has hesitated to sharply distinguish different types of abuse, but has indicated that distinctions are based on the nature, purpose and severity of the treatment.¹²⁸ Moreover, while the CAT defines torture under Article 1, none of the international human rights treaties define cruel, inhuman and degrading treatment. However, Manfred Nowak, former UN Special Rapporteur on TCIDT, has made the distinction. According to Nowak, the difference does not stem from the degree of “intensity of the suffering being inflicted” or the “severity of the treatment,” but rather in “the purpose of the conduct, the intention of the perpetrator and the powerlessness of the victim.”¹²⁹ Torture consists of four essential elements: an act inflicting severe pain or suffering, whether physical or mental; the element of intent; the specific purpose; and the involvement of a State official, at least by acquiescence.¹³⁰ In contrast, CIDT is “the infliction of severe pain or suffering without purpose or intention and outside a situation where a person is under the de facto control of another.”¹³¹ Juan Mendez, the current UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on Torture), has defined CIDT as “acts falling short of [the torture] definition.”¹³²

International human rights law explicitly protects patients against torture in health-care settings and requires the State to prevent, investigate, prosecute and punish violations by non-State actors.¹³³ Where a violation has occurred, the obligation to provide an effective remedy under Article 2(3)(a) of the ICCPR can include the provision

¹²⁶ CEDAW Committee. Communication No. 22/2009: L.C. v. Peru. UN Doc. CEDAW/C/50/D/22/2009. November 4, 2011. para. 8.11.

¹²⁷ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention. UN Doc. A/HRC/13/39/Add.5. February 5, 2010. paras. 42, 186.

¹²⁸ CCPR. General Comment 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment. October 3, 1992. para. 4.

¹²⁹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention. UN Doc. A/HRC/13/39/Add.5. February 5, 2010. paras. 187-188.

¹³⁰ CAT, Art. 1. See also UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention. UN Doc. A/HRC/13/39/Add.5. February 5, 2010. para. 30.

¹³¹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention. UN Doc. A/HRC/13/39/Add.5. February 5, 2010. para. 188.

¹³² UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013.

¹³³ CEDAW Committee. Communication No. 17/2008: Maria de Lourdes da Silva Pimentel Teixeira v. Brazil. UN Doc. CEDAW/C/49/D/17/2008. September 27, 2011. para. 7.5. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013. para. 24.

of appropriate medical and psychiatric care;¹³⁴ and where medical personnel participate in acts of torture, they should be held accountable and punished.¹³⁵

In his February 2013 report, the Special Rapporteur underscores the applicability of TCIDT in health-care settings, including the State's obligation to not only prevent torture inflicted by public officials, but also by doctors, health-care professionals and social workers at public or private hospitals, detention centers, and any other institutions where health care is provided.¹³⁶ The Special Rapporteur clarifies that "[m]edical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment, and if there is State involvement and specific intent, it is torture."¹³⁷ He explains that involuntary medical treatment, including forced sterilization, involuntary detention and compulsory treatment of people who use drugs, denial of pain treatment and available health services, and solitary confinement or prolonged detention of persons with mental disabilities, among others, constitute violations of the right to freedom from TCIDT. In addition to discussing the special situation of marginalized groups with respect to TCIDT in health-care settings, the Special Rapporteur highlights the obligations of states to prevent, prosecute, and redress violations of the right. Specifically, he recalls that redress shall not require that the abuse in health care settings fit the definition of torture.¹³⁸

With respect to detainees, denial to medical treatment and/or access to it when the individual is under custody can be considered cruel, inhuman or degrading treatment or punishment under international law.¹³⁹ In relation to Article 10(1), the CCPR has found a violation where a prisoner on death row was denied medical treatment¹⁴⁰ and where severe overcrowding in a pretrial detention center resulted in inhumane and unhealthy conditions, eventually leading to the detainee's death.¹⁴¹ Other examples of violations of Articles 7 and 10(1) include a case in which a detainee had been held in solitary confinement in an underground cell, was subjected to torture for three months, and was denied the medical treatment his condition required¹⁴² and a case where the combination of the size of the cells, hygienic conditions, poor diet, and lack of dental care resulted in a finding of a breach of Articles 7 and 10(1).¹⁴³

In addition, denying access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment.¹⁴⁴ Denying a detainee direct access to her/his medical records, particularly where this may have consequences for her/his treatment, can likewise constitute a breach of Article

¹³⁴ CCPR. Communication No. 684/1996: Sahadath v. Trinidad and Tobago. UN Doc. CCPR/A/57/40 (Vol. II); CCPR/C/684/1996. April 2, 2002.

¹³⁵ CAT Committee. Report of the Committee against Torture. UN Doc. A/48/44. 1993.

¹³⁶ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013. para. 24. See also CAT Committee. General Comment No.2: Implementation of Article 2 by States Parties. UN Doc. [CAT/C/GC/2](#). January 24, 2008. para. 15.

¹³⁷ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013. para. 39.

¹³⁸ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013. para. 84.

¹³⁹ United Nations Human Rights Council. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [A/HRC/10/44](#). January 14, 2009. para. 71.

¹⁴⁰ CCPR. Communication No. 527/1993: Lewis v. Jamaica. UN Doc. [CCPR/C/57/D/527/1993](#). July 18, 1996. Appointments to treat skin condition not kept over period of 2½ years; see also CCPR. Communication No. 232/1987: Pinto v. Trinidad and Tobago. UN Doc. CCPR/A/45/40 (Vol. II SUPP). July 20, 1990. The CCPR reaffirmed that the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention and that this obligation, obviously, extends to persons under the sentence of death. However, the facts did not disclose a violation where the allegations of ill treatment and lack of medical care were uncorroborated and made at a late stage in the application; CCPR. Communication No. 571/1994: Henry and Douglas v. Jamaica. UN Doc. CCPR/A/51/40 (Vol. II SUPP); [CCPR/C/57/D/571/1994](#). July 25, 1996. Keeping Henry in a cold cell after he was diagnosed for cancer breached Articles 7 and 10(1); CCPR. Communication No. 613/1995: Leehong v. Jamaica. UN Doc. CCPR/A/54/40 (Vol. II); CCPR/C/66/D/613/1995. July 13, 1999. Prisoner on death row only allowed to see a doctor once, despite sustained beatings by warders and request for medical attention.

¹⁴¹ CCPR. Communication No. 763/1997: Lantsova v. Russian Federation. UN Doc. [CCPR/C/74/D/763/1997](#). March 26, 2002.

¹⁴² CCPR. Communication No. R.14/63: Setelich/Sendic v. Uruguay. UN Doc. CCPR/A/37/40. October 28, 1981.

¹⁴³ CCPR. Communication No. 798/1998: Howell v. Jamaica. UN Doc. CCPR/A/59/40 (Vol. II); C/79/D/798/1998). October 21, 2003.

¹⁴⁴ United Nations Human Rights Council. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [A/HRC/10/44](#). January 14, 2009. paras. 71-72.

10(1).¹⁴⁵ Successive UN Special Rapporteurs on Torture have found numerous abuses of detainees' health and access to health services that amount to breaches of prohibitions against torture and/or cruel, inhuman or degrading treatment. Special Rapporteurs have noted that conditions and the inadequacy of medical services are often worse for pretrial detainees than for prisoners.¹⁴⁶ Some of the worst abuses include: failure to provide new detainees with access to a medical professional and with sanitary living conditions;¹⁴⁷ failure to segregate those with contagious diseases such as tuberculosis;¹⁴⁸ completely unacceptable quarantine procedures;¹⁴⁹ insufficient provision of food, leading in some instances to conditions approaching starvation;¹⁵⁰ and mental suffering that could amount to mental torture.¹⁵¹

Relevant Provisions

UDHR, Art. 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ICCPR

Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Art. 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

CAT

Art. 1:

- (1) For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
- (2) This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Art. 2:

- (1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- (2) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

¹⁴⁵CCPR. Communication No. 726/1996: Zheludkov v. Ukraine. UN Doc. CCPR/A/58/40 (Vol. II); [CCPR/C/76/D/726/1996](#).

October 29, 2002; see concurring opinion of Quiroga, which states that committee's interpretation of Article 10(1) relating to access to medical records is unduly narrow and that mere denial of records is sufficient to constitute a breach, regardless of consequences.

¹⁴⁶United Nations Human Rights Council. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Jordan. UN Doc. [A/HRC/33/Add.3](#). January 5, 2007; United Nations Commission on Human Rights. Report of the UN Special Rapporteur on the question of torture: Mission to Uzbekistan. UN Doc. E/CN.4/2003/68/Add.2. February 3, 2003.

¹⁴⁷United Nations Commission on Human Rights. Report of the UN Special Rapporteur: Russian Federation. UN Doc. E/CN.4/1995/34/Add.1. November 16, 1994.

¹⁴⁸United Nations Commission on Human Rights. Report of the UN Special Rapporteur: Azerbaijan. UN Doc. E/CN.4/2001/66/Add.1. November 14, 2000.

¹⁴⁹United Nations Commission on Human Rights. Report of the UN Special Rapporteur: Azerbaijan. UN Doc. E/CN.4/2001/66/Add.1. November 14, 2000; United Nations Human Rights Council. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [A/HRC/10/44/Add.3](#). February 12, 2009.

¹⁵⁰United Nations Commission on Human Rights. Report of the UN Special Rapporteur: Kenya. UN Doc. E/CN.4/2000/9/Add.4. March 9, 2000.

¹⁵¹UN Commission on Human Rights. Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: China. UN Doc. E/CN.4/2006/6/Add.6. March 10, 2006. para. 64.

(3) An order from a superior officer or a public authority may not be invoked as a justification of torture.

Art. 4:

- (1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
- (2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Art. 10:

- (1) Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Art. 13: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

Art. 14:

- (1) Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
- (2) Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Art. 16:

- (1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
- (2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

CRC

Art. 37: States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Art. 39: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

ICRPD, Art. 15:

- (1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
- (2) States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

ICMW

Art. 10: No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Art. 17(1): Migrant workers and members of their families who are deprived of their liberty shall be treated with

humanity and with respect for the inherent dignity of the human person and for their cultural identity.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁵²

Principle 1: All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6: No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Code of Conduct for Law Enforcement Officials¹⁵³

Art. 2: In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Art. 5: No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances...as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Standard Minimum Rules for the Treatment of Prisoners¹⁵⁴

Rule 22:

- (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
- (3) The services of a qualified dental officer shall be available to every prisoner.

Rule 23:

- (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
- (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

Rule 24: The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

Rule 25:

- (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
- (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Rule 26:

- (1) The medical officer shall regularly inspect and advise the director upon:

¹⁵² United Nations General Assembly. United Nations General Assembly Resolution 43/173: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. UN Doc. A/RES/43/173. December 9, 1998.

¹⁵³ United Nations General Assembly. United Nations General Assembly Resolution 34/169, annex: Code of Conduct for Law Enforcement Officials. UN Doc. A/34/46. February 5, 1980.

¹⁵⁴ United Nations. Economic and Social Council Resolution 663 C (XXIV): Standard Minimum Rules for the Treatment of Prisoners. August 30, 1955.

- (a) The quantity, quality, preparation and service of food;
 - (b) The hygiene and cleanliness of the institution and the prisoners;
 - (c) The sanitation, heating, lighting and ventilation of the institution;
 - (d) The suitability and cleanliness of the prisoners' clothing and bedding;
 - (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.
- (2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

. . . Freedom from Torture and other cruel, inhuman or degrading treatment or punishment in the Context of Mental Health

The right to freedom from torture and cruel, inhuman and degrading treatment guarantees persons with disabilities the full exercise of their legal capacities and to exercise any procedural safeguard that is at their disposition.¹⁵⁵ In fact, the CCPR has made clear that Article 10(1) of the ICCPR “applies to any person deprived of liberty under the laws and authority of the State, who is held in a prison or hospital— particularly, in a psychiatric hospital—or in a detention camp, correctional institution, or elsewhere, and that States Parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.”¹⁵⁶ The CCPR has repeatedly reaffirmed that the obligation under Article 10(1) of the ICCPR to treat individuals with respect for the inherent dignity of the human person encompasses the provision of, inter alia, adequate medical care during detention.¹⁵⁷ Often in conjunction with Article 7, it has gone on to find breaches of this obligation on numerous occasions.¹⁵⁸ Specifically, in relation to persons suffering from mental health disabilities in detention facilities (both in prisons and mental health institutions), the CCPR has required

¹⁵⁵United Nations.Report of the Human Rights Committee. UN Doc. A/65/40 (Vol. I). 2009. p. 40-41, para. 19.

¹⁵⁶ CCPR. CCPR General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10) (Annex VI, B). UN Doc. [A/47/40 \[SUPP\]](#). March 13, 1993. para. 2.

¹⁵⁷CCPR. Communication No. 256/1987: Kelly v. Jamaica. UN Doc. [CCPR/C/41/D/253/1987](#). April 8, 1991. Breach of Article 10(1), where a prisoner contracted health problems as a result of a lack of basic medical care and was only allowed out of his cell for 30 minutes each day; see also CCPR. Communication No. 255/1987: Linton v. Jamaica. UN Doc. [CCPR/C/46/D/255/1987](#). October 22, 1992. Denial of adequate medical treatment for injuries sustained during aborted escape attempt breached Articles 7 and 10(1); CCPR. Communication No. 334/1988: Bailey v. Jamaica. UN Doc. [CCPR/C/47/D/334/1988](#). December 5, 1993; CCPR. Communication No. 321/1988: Thomas v. Jamaica. UN Doc. [CCPR/C/49/D/321/1988](#). October 19, 1993; CCPR. Communication No. 414/1990: Mika Miha v. Equatorial Guinea. UN Doc. [CCPR/C/51/D/414/1990](#). July 8, 1994; CCPR. Communication No. 653/1995: Colin Johnson v. Jamaica. UN Doc. [CCPR/C/64/D/653/1995](#). October 20, 1998; CCPR. Communication No. 326/1988: Kalenga v. Zambia.. UN Doc. [CCPR/C/48/D/326/1988](#). July 27, 1993.

¹⁵⁸CCPR. Communication No. 732/1997: Whyte v. Jamaica. UN Doc. [CCPR/C/63/D/732/1997](#). July 27, 1998. Failure to treat asthma attacks and injuries sustained through beatings; see also CCPR. Communication No. 564/1993: Leslie v. Jamaica. UN Doc. [CCPR/C/63/D/564/1993](#). July 31, 1998. Lack of adequate medical treatment for beatings and stabbing on basis that Leslie was due to be executed imminently; CCPR. Communication No. 610/1995: Henry v. Jamaica. UN Doc. [CCPR/C/64/D/610/1995](#). October 20, 1995. Lack of medical treatment despite a recommendation from a doctor that prisoner be operated on; CCPR. Communication No. 647/1995: Pennant v. Jamaica. UN Doc. [CCPR/C/64/D/647/1995](#). October 20, 1998; CCPR. Communication No. 719/1996: Levy v. Jamaica. UN Doc. [CCPR/C/64/D/719/1996](#). November 3, 1998; CCPR. Communication No. 730/1996: Marshall v. Jamaica. UN Doc. [CCPR/C/64/D/730/1996](#). November 3, 1998; CCPR. Communication No. 720/1996: Morgan and Williams v. Jamaica. UN Doc. [CCPR/C/64/D/720/1996](#). November 3, 1998; CCPR. Communication No. 663/1995: Morrison v. Jamaica. UN Doc. [CCPR/C/64/D/663/1995](#). November 3, 1998; CCPR. Communication No. 775/1997: Brown v. Jamaica. UN Doc. [CCPR/C/65/D/775/1997](#). March 23, 1999; CCPR. Communication No. 590/1994: Bennett v. Jamaica. UN Doc. [CCPR/C/65/D/590/1994](#). March 25, 1999; CCPR. Communication No. 668/1995: Smith and Stewart v. Jamaica. UN Doc. [CCPR/C/65/D/668/1995](#). April 8, 1999; CCPR. Communication No. 962/2001: Mulezi v. Democratic Republic of the Congo. UN Doc. [CCPR/C/81/D/962/2001](#). July 6, 2004; CCPR. Communication No. 964/2001: Saidov v. Tajikistan. UN Doc. [CCPR/C/81/D/964/2001](#). July 8, 2004.

improvements in hygienic conditions and the provision of regular exercise and adequate treatment.¹⁵⁹ Similarly, solitary confinement or deprivation of food is considered torture, and therefore illegal.¹⁶⁰

Additionally, the CAT Committee has identified overcrowding, inadequate living conditions and lengthy confinement in psychiatric hospitals as “tantamount to inhuman or degrading treatment.”¹⁶¹ It has also condemned, in similar terms, extreme overcrowding in prisons where living and hygiene conditions would appear to endanger the health and lives of prisoners,¹⁶² in addition to lack of medical attention.¹⁶³

Concluding Observations Relating on China to Mental Health and the Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

For those involuntarily committed persons with actual or perceived intellectual and psychosocial impairments, the Committee is concerned that the “correctional therapy” offered at psychiatric institutions represents inhuman and degrading treatment. Further, the Committee is concerned that not all medical experimentation without free and informed consent is prohibited by Chinese law.

*The Committee urges the State party to cease its policy of subjecting persons with actual or perceived impairments to such therapies and abstain from involuntarily committing them to institutions. Further it urges the State party to abolish laws which allow for medical experimentation on persons with disabilities without their free and informed consent.*¹⁶⁴

Case Relating to Mental Health and the Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Williams v. Jamaica(CCPR)(1997). The Committee found that the government’s failure to adequately treat the applicant, an inmate with a mental health condition that was exacerbated by being on death row, amounted to a breach of Articles 7 and 10(1) of the ICCPR.¹⁶⁵

. . . Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Context of Infectious diseases

Under the right to freedom from torture and other cruel, inhuman or degrading treatment, the intentional transmission of an infectious disease, such as HIV/AIDS, is prohibited.¹⁶⁶ Likewise, this right requires that governments protect persons living with infectious diseases from torture and other cruel, inhuman or degrading treatment. For example, denying persons living with HIV “access to HIV-related information, education and means of prevention, voluntary testing, counseling, confidentiality and HIV-related health care and access to and voluntary participation in treatment trials could constitute cruel, inhuman or degrading treatment.”¹⁶⁷ Likewise, forced sterilization of women living with HIV could amount to cruel, inhuman or degrading treatment.¹⁶⁸

¹⁵⁹ CCPR. Concluding Observations: Bosnia and Herzegovina. UN Doc. [CCPR/C/BIH/CO/1](#). November 22, 2006.

¹⁶⁰ United Nations. Report of the Human Rights Committee. UN Doc. A/65/40 (Vol. I). 2009. p. 90, para 21.

¹⁶¹ CAT Committee. Concluding and recommendation of the Committee against Torture: Russian Federation. UN Doc. [CAT/C/RUS/CO/4](#). February 6, 2007.

¹⁶² CAT Committee. Concluding and recommendation of the Committee against Torture: Cameroon. UN Doc. [CAT/C/CR/31/6](#). February 5, 2004.

¹⁶³ CAT Committee. Concluding and recommendation of the Committee against Torture: Nepal. UN Doc. [CAT/C/NPL/CO/2](#). April 13, 2007; see also CAT. Summary record of the first part of the 418th meeting: Paraguay. UN Doc. [CAT/C/SR.418](#). January 11, 2001; see also CAT Committee. Summary record of the first part of the 471th meeting: Greece, Brazil. UN Doc. [CAT/C/SR.471](#). May 21, 2001.

¹⁶⁴ CRPD. Concluding Observations: China. UN Doc. CRPD/C/CHN/CO/1. October 15, 2012. para 27-28.

¹⁶⁵ CCPR. Communication No. 609/1995: Williams v. Jamaica. UN Doc. [CCPR/C/61/D/609/1995](#). November 4, 1997.

¹⁶⁶ United Nations Commission on Human Rights. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [E/CN.4/2004/56](#). December 23, 2003. paras. 52-53.

¹⁶⁷ United Nations Commission on Human Rights. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [E/CN.4/2004/56](#). December 23, 2003. para. 54 (citing *HIV/AIDS and Human Rights: International Guidelines*, United Nations publication, Sales No. E.98.XIV.1, United Nations, New York and Geneva, 1998, para. 130); see also paras. 56-57 on access to medical care and treatment.

¹⁶⁸ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. A/HRC/22/53. February 1, 2013. paras. 48, 71; see UN Special Rapporteur on the Right to Health. Report. UN Doc. A/64/272. August 10, 2009. para. 55.

Additionally, failing to segregate inmates with infectious diseases (such as tuberculosis) in prisons has been considered a violation of this right.¹⁶⁹ At the same time, persons suffering from infectious diseases may be more vulnerable to ill treatment.¹⁷⁰ They are likely to be denied access to information, prevention, testing, treatment and support.¹⁷¹

Concluding Observations on China Relating to Infectious Diseases and the Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

While the Committee notes that the Special Rapporteur on the question of torture has found the availability of medical care in the detention facilities he visited to be generally satisfactory (E/CN.4/2006/6/Add.6, para. 77), it also notes with concern new information provided about inter alia the lack of treatment for drug users and people living with HIV/AIDS and regrets the lack of statistical data on the health of detainees (art. 11).

The State party should take effective measures to keep under systematic review all places of detention, including existing and available health services. Furthermore, the State party should take prompt measures to ensure that all instances of deaths in custody are independently investigated and that those responsible for such deaths resulting from torture, ill-treatment or wilful negligence are prosecuted. The Committee would appreciate a report on the outcome of such investigations, where completed, and about what penalties and remedies were provided.¹⁷²

Case Relating to Infectious Diseases and the Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

McCallum v. South Africa (CCPR)(2010). The Committee found the government in violation of Article 7 where a prisoner is forced to strip in front of multiple other inmates, is severely beaten (dislocating his jaw and front teeth), is sexually degraded (including anal penetration by a police baton), is exposed to bodily fluids (including urine and fecal matter) and is denied HIV testing, medical treatment, and communication with legal counsel and family after the assault. Despite letters to a number of government officials, the author was unable to obtain HIV testing and, while police promised an investigation of the incident, no official action was taken.¹⁷³

... Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Context of Sexual and Reproductive Health

Under the right to freedom from torture and other cruel, inhuman or degrading treatment, a state's failure to provide access to abortion services where the pregnancy would pose a risk on the woman's life or health, results from rape or incest, or where the fetus exhibits severe abnormalities, constitutes a violation of this right.¹⁷⁴ Likewise, forced castration or sterilization has been treated as a breach of this right.¹⁷⁵ Harmful traditional

¹⁶⁹ See United Nations Commission on Human Rights. Report of the UN Special Rapporteur: Azerbaijan. UN Doc. [E/CN.4/2001/66/Add.1](#). November 14, 2000; United Nations Human Rights Council. Reports of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [A/HRC/10/44/Add.3](#). February 12, 2009.

¹⁷⁰ United Nations Commission on Human Rights. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [E/CN.4/2004/56](#). December 23, 2003. para.61.

¹⁷¹ United Nations Commission on Human Rights. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. UN Doc. [E/CN.4/2004/56](#). December 23, 2003. para. 61.

¹⁷² CAT Committee. Concluding Observations: China. UN Doc. [CAT/C/CHN/CO/4](#). December 12, 2008. para. 12

¹⁷³ CCPR. Communication No. 1818/2008: McCallum v. South Africa. UN Doc. [CCPR/C/100/D/1818/2008](#). November 2, 2010. paras. 6.2-6.4.

¹⁷⁴ CCPR. Communication No. 1153/2003: K.L. v. Peru. UN Doc. [CCPR/C/85/D/1153/2003](#). November 22, 2005. para. 7; CCPR. Communication No: 1608/2007: L.M.R v. Argentina. UN Doc. [CCPR/C/101/D/1608/2007](#). April 28, 2011. para. 9.2; CRC Committee. Concluding Observations: Chad. UN Doc. [CRC/C/15/Add.107](#). August 24, 1999. para. 30; CRC Committee. Concluding Observations: Chile. UN Doc. [CRC/C/CHL/CO/3. April 23, 2007](#). para. 56; CRC Committee. Concluding Observations: Costa Rica. UN Doc. [CRC/C/CRI/CO/4](#). June 17, 2011. para. 64(c); CCPR. Concluding Observations: Guatemala. UN Doc. [CCPR/C/GTM/CO/3](#). April 19, 2012. para. 20; ESCR. Concluding Observations: Dominican Republic. UN Doc. [E/C.12/DOM/CO/3. November 26, 2010](#). para. 29; ESCR. Concluding Observations: Chile. UN Doc. [E/C.12/1/Add.105. November 26, 2004](#). para. 53.

¹⁷⁵ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Report on health-care settings. UN Doc. [A/HRC/22/53](#). February 1, 2013. paras. 46, 48; United Nations. Report of the Human Rights Committee. UN Doc. [A/65/40 \(Vol. I\)](#). 2009. p. 20, para. 20.

practices, such as female genital mutilation, have been considered cruel, inhuman and degrading treatment, and states are required to implement measures that prevent such practices.¹⁷⁶

Concluding Observations on Chad Relating to Sexual and Reproductive Health and the Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

*The Committee expresses its serious concern at the high prevalence of sexual and gender-based violence, including FGM, rape and domestic violence in the State party. It is deeply concerned that violence against women is accompanied by a culture of silence and impunity that has impeded the investigation, prosecution and punishment of sexual and gender-based violence perpetrators, regardless of their ethnic group, for acts committed during conflict and post-conflict times. In this context, it also notes with concern that the vast majority of cases of domestic and sexual violence remain under-reported due to cultural taboos and the victims' fear of being stigmatized by their communities. It is further concerned that at least 45% of women in Chad have been subjected to FGM and it deeply regrets the lack of implementation of the Law on Reproductive Health (2002), which prohibits FGM, early marriages, domestic and sexual violence. Likewise, the Committee regrets the lack of information on the impact of the measures and programmes in place to reduce incidences of all forms of violence against women and girls. The Committee is also concerned about the availability of social support services, including shelters, for the victims.*¹⁷⁷

Case Relating to Sexual and Reproductive Health and the Right to Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

L.M.R v. Argentina (CCPR)(2011). The Committee found an Article 7 violation where a young mentally impaired woman became pregnant after being raped. Despite judicial authorization for an abortion, no hospital was willing to undertake the procedure – due in part to pressure from religious groups, to which Argentinian authorities failed to respond. The woman was forced to resort to an illegal abortion at a later stage in her pregnancy, resulting in psychological harm, including post-traumatic stress disorder.¹⁷⁸

Right to Participation in Public Policy

The right to participation in public policy has been treated as an underlying determinant of health,¹⁷⁹ and in the context of health services, it is the right and opportunity of every person to participate in political processes and policy decisions affecting their health and wellbeing at the community, national and international levels.¹⁸⁰ This opportunity must be meaningful, supported and provided to all citizens without discrimination. The right extends to participation in decisions about the planning and implementation of health care services, appropriate treatments, and public health strategies.

The CESCR has called for countries to adopt “a national public health strategy and plan of action” to be “periodically reviewed, on the basis of a participatory and transparent process.”¹⁸¹ In addition, “[p]romoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.”¹⁸²

Relevant Provisions

UDHR, Art. 21:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen

¹⁷⁶United Nations.Report of the Human Rights Committee.UN Doc. A/67/40 (Vol. I). 2012. p. 62, para. 9.

¹⁷⁷CEDAW Committee.Concluding Observations: Chad.UN Doc. [CEDAW/C/TCD/CO/1-4](#).October 21, 2011. para. 22.

¹⁷⁸CCPR. Communication No. 1608/2007: L.M.R v. Argentina.UN Doc.CCPR/C/101/D/1608/2007.April 28, 2011. para. 9.2.

¹⁷⁹Halabi, Sam. Health and Human Rights Journal.Volume 11, No 1. p. 51

¹⁸⁰CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 11.

¹⁸¹CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000.para. 43(f).

¹⁸²CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 54.

representatives.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ICCPR, Art. 25(a): Every citizen shall have the right and the opportunity, without ... distinctions ... [t]o take part in the conduct of public affairs, directly or through freely chosen representatives..

ICESCR, Art. 12:

- (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ...
 - (i) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (ii) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

CEDAW

Art. 7(b): State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: ... (b) [t]o participate in the formulation of government policy and the implementation thereof.

Art. 14(2)(a): The right of rural women to participate in development planning.

ICRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (3) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice; ...

Declaration of Alma-Ata,¹⁸³ Art. IV: The people have the right and the duty to participate individually and collectively in the planning and implementation of their health care.

IAPO Declaration on Patient-Centred Healthcare¹⁸⁴

Principle 2. Choice and Empowerment: Patients have a right and responsibility to participate, to their level of ability and preference, as a partner in making health care decisions that affect their lives. This requires a responsive health service which provides suitable choices in treatment and management options that fit in with patients' needs, and encouragement and support for patients and carers that direct and manage care to achieve the best possible quality of life. Patients' organizations must be empowered to play meaningful leadership roles in supporting patients and their families to exercise their right to make informed health care choices.

Principle 3. Patient involvement in health policy: Patients and patients' organizations deserve to share the responsibility of health care policy-making through meaningful and supported engagement in all levels and at all points of decision-making, to ensure that they are designed with the patient at the center. This should not be restricted to health care policy but include, for example, social policy that will ultimately impact on patients' lives.

¹⁸³International Conference on Primary Health Care. Declaration of Alma-Ata. September 6, 1978.

¹⁸⁴International Alliance of Patients' Organizations [IAPO]. Declaration on Patient-Centred Healthcare. February 2006. See also IAPO's Policy Statement on Patient Involvement.

... Right to Participation in public policy in the Context of Mental Health

The right to participation in public policy entitles individuals with intellectual disabilities or mental health problems to participate in public life on an equal basis with others, directly or through a chosen representative.¹⁸⁵ In fact, the participation of persons with mental disabilities “in decision-making processes that affect their health and development, as well as in every aspect of service delivery, is an integral part of the right to health.”¹⁸⁶ States are to ensure that persons with mental disabilities are involved “at all stages of the development, implementation and monitoring of legislation, policies, programmes and services relating to mental health and social support, as well as broader policies and programmes, including poverty reduction strategies, that affect them.”¹⁸⁷ Care and support providers, as well as family, should also be involved in the process.¹⁸⁸

However, while physical disabilities do not justify restrictions on this right, “mental incapacity may be a ground for denying a person the right to vote or to hold office.”¹⁸⁹ As of this writing, the CRPD has not issued its interpretation of Article 29 of the ICRPD outlining the article’s scope of protection of this right.

Concluding Observations on China Relating to Mental Health and the Right to Participation in Public Policy

The Committee is concerned about the disqualification from voting of all persons who are found to be incapable, by reason of their mental, intellectual or psychosocial disabilities of managing and administering their property and affairs under section 31(1) of the Legislative Council Ordinance and section 30 of the District Councils Ordinance (arts. 2, 25 and 26).

*Hong Kong, China, should revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relation to their ability to vote, taking account of article 25, of the Covenant and article 29 of the Convention on the Rights of Persons with Disabilities.*¹⁹⁰

In this instance, the human rights in patient care connection is the right to influence public policy on health care issues, including issues relating to mental, intellectual, or psychosocial disabilities.

... Right to Participation in public policy in the Context of Infectious diseases

Persons living with infectious diseases, such as HIV/AIDS have the right to meaningful participation in designing and implementing policies that may impact them.¹⁹¹ States have been called to engage civil society, including patient groups, in the “formulation and implementation of public policies.”¹⁹² As individuals who are most affected by public policies aimed at protecting the public’s health from infectious diseases, their engagement is crucial to creating comprehensive and successful public policy that not only protects the health of the larger community, but also respects the human rights of these individuals.

¹⁸⁵FRA. The right to political participation of persons with mental health problems and persons with intellectual disabilities. October 2010.

¹⁸⁶UN Special Rapporteur on the Right to Health. Report on Mental Disability and the Right to Health. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 59; see WHO. Montreal Declaration of Intellectual Disabilities. 2004.

¹⁸⁷UN Special Rapporteur on the Right to Health. Report on Mental Disability and the Right to Health. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 60.

¹⁸⁸UN Special Rapporteur on the Right to Health. Report on Mental Disability and the Right to Health. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 60.

¹⁸⁹CCPR. General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25). UN Doc. [CCPR/C/21/Rev.1/Add.7](#). July 12, 1996. para. 10.

¹⁹⁰CCPR. Concluding Observations on the third periodic report of Hong Kong, China. UN Doc. [CCPR/C/CHN-HKG/CO/3](#). April 29, 2013. para. 24.

¹⁹¹See Declaration of the Paris AIDS Summit. December 1, 1994; UNAIDS. UNAIDS Policy Brief: The Greater Involvement of People Living with HIV (GIPA). March 2007. p. 1.

¹⁹²See Declaration of the Paris AIDS Summit. December 1, 1994.

Concluding Observations on Suriname Relating to Infectious Diseases and the Right to Participation in Public Policy

The Committee is concerned about the situation of rural women...who are disadvantaged by poor infrastructure, limited markets, obstacles in availability and accessibility of agricultural land and agricultural credit, low literacy rates, ignorance of existing regulations, lack of services and environmental pollution. It notes with concern the serious absence of specific policies in all these areas, including on family planning and preventing the spread of sexually transmitted diseases, including HIV. The Committee is also concerned that women's work in rural areas is not considered productive labour and that they are hardly represented at all in local government bodies...

The Committee urges the State party to give full attention to the needs of rural women...to ensure that they benefit from policies and programmes in all areas, in particular access to health, education, social services and decision-making...¹⁹³

... Right to Participation in public policy in the Context of Sexual and Reproductive Health

The right to participation in public policy is essential to protecting the sexual and reproductive health of women. The participation of the populations most affected by policies related to sexual and reproductive health helps to ensure that their needs, such as those related to family planning and access to contraceptives, are met. In addition to granting them a sense of ownership, the involvement of affected individuals can make the policies and implementation efforts more culturally appropriate and thereby increase access to individuals.¹⁹⁴

Concluding Observations on Morocco Relating to Sexual and Reproductive Health and the Right to Participation in Public Policy

The Committee is particularly concerned about the situation of rural women, their lack of participation in decision-making processes and their difficulty in accessing health care, public services, education, justice, clean water and electricity, which impairs seriously the enjoyment of their social, economic and cultural rights. The Committee is also concerned about the lack of data on the de facto situation of rural women.

The Committee recommends that the State party take temporary special measures, in accordance with article 4, paragraph 1, of the Convention, to ensure that rural women enjoy their political, social, economic and cultural rights without any discrimination, especially with regard to access to education and health care facilities. It also recommends that they are fully integrated in the formulation and implementation of all sectoral policies and programmes.¹⁹⁵

Right to Equality and Freedom from Discrimination

The right to equality and freedom from discrimination is crucial to the enjoyment of the right to health. Health care services and treatment must be accessible and provided without discrimination (in intent or effect) based on health status, race, ethnicity, age, sex, sexuality, sexual orientation, gender identity, disability, language, religion, national origin, income or social status.¹⁹⁶ The CESCR has stated that health facilities, goods, and services have to be accessible to everyone without discrimination "and especially to the most vulnerable and marginalized sections of the population."¹⁹⁷ In particular, such health facilities, goods and services "must be affordable for all," and "poorer households should not be disproportionately burdened with health expenses as compared to richer

¹⁹³ CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women. UN Doc. [A/57/38\(SUPP\)](#). 2002. paras. 65-66.

¹⁹⁴ CRF and UNFPA. Briefing Paper: The Right to Contraceptive Information and Services for Women and Adolescents. 2011. p. 24.

¹⁹⁵ CEDAW Committee. Concluding comments of the Committee on the Elimination of Discrimination against Women: Morocco. UN Doc. [CEDAW/C/MAR/CO/4](#). April 8, 2008. paras. 32-33.

¹⁹⁶ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b)(i), 18; CESCR. CESCR General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/GC/20. July 2, 2009. para. 32; CRC Committee. CRC General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child. UN Doc. CRC/GC/2003/4. July 1, 2003. para. 6.

¹⁹⁷ CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b).

households.”¹⁹⁸It is worth highlighting that the protection from racial discrimination has been widely considered an obligation *erga omnes* under international law—meaning that even if a state has not ratified any convention prohibiting racial discrimination, it has a legal obligation to prohibit racial discrimination.¹⁹⁹

Additionally, international discrimination law has distinguished direct discrimination from indirect discrimination, both of which are prohibited. Direct discrimination refers to discriminatory measures that has an intent to discriminate—it is “less favorable or detrimental” to an individual or group of individuals based on a “prohibited characteristic or ground such as race, sex or disability.”²⁰⁰ Indirect discrimination refers to “a practice, rule, requirement or condition [that] is neutral on its face” but has a negative and disproportionate impact on a group of individuals without justification.²⁰¹ This type of discrimination includes stereotyping and acts of stigmatization. Therefore, while direct discrimination is defined by the *purpose* of the measure, indirect discrimination is defined the *effect* of the measure. For a more discussion on the issue, refer to Interights’ “Non-Discrimination in International Law: A Handbook for Practitioners.”²⁰²

Under this right, states have an obligation to prohibit and eliminate discrimination on all grounds and ensure equality to all in relation to access to health care and the underlying determinants of health.²⁰³ States should also recognize and provide for differences and specific needs of groups that experience particular health challenges, such as higher mortality rates or vulnerability to specific diseases.²⁰⁴ The CESCR has urged particular attention to the needs of “ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS.”²⁰⁵ The CERD has recommended that the states that are party to the convention—as appropriate to their specific circumstances—ensure that they respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.²⁰⁶ In fact, according to the CESCR, states are to ensure that health facilities, goods and services are available, accessible, acceptable, of good quality and applicable to all sectors of the population, including migrants.²⁰⁷ Similarly, the CRC Committee has emphasized that all children be afforded “sustained and equal access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services on a basis of non-discrimination.”²⁰⁸

UN treaty bodies have frequently condemned states for failing to ensure equal access to medical services (often due to a lack of sufficient resources) to marginalized and vulnerable groups. These groups have included indigenous people living in extreme poverty;²⁰⁹ refugees of a particular nationality;²¹⁰ children, older persons, and

¹⁹⁸CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b).

¹⁹⁹Timo Makkonen. *Equal in Law, Unequal in Fact: Racial and Ethnic Discrimination and the Legal Response Thereto in Europe*. Boston: Martinus Nijhoff Publishers, 2012. p. 117.

²⁰⁰Interights. *Non-Discrimination in International Law: A Handbook for Practitioners*. 2011. 18.

²⁰¹Interights. *Non-Discrimination in International Law: A Handbook for Practitioners*. 2011. 18.

²⁰²Interights. *Non-Discrimination in International Law: A Handbook for Practitioners*. 2011.

²⁰³CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 18.

²⁰⁴CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 37.

²⁰⁵CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12(b).

²⁰⁶CERD. CERD General Comment No. 30: Discrimination Against Non Citizens. UN Doc. A/59/18. October 1, 2004. para. 36.

²⁰⁷CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 12.

²⁰⁸CRC Committee. CRC General Comment No. 3: HIV/AIDS and the rights of the child. UN Doc. [CRC/GC2003/3](#). March 17, 2003. paras. 21, 28.

²⁰⁹CERD. Concluding Observations: Bolivia. UN Doc. [CERD/C/304/Add.10](#). September 27, 1996; see also CESCR. Concluding Observations: Mexico. UN Doc. E/C.12/1/Add.41. December 8, 1999. State was urged to take more effective measures to ensure access to basic health care services for all children and to combat malnutrition, especially among children belonging to indigenous groups living in rural and remote areas.

²¹⁰United Nations. Report of the Committee on the Elimination of Racial Discrimination. UN Doc. A/56/18 (SUPP). 2003. Different standards of treatment are applied to Indochinese refugees compared to those from other nationalities.

persons with physical and mental disabilities;²¹¹ and those living in rural areas where the geographical distribution of health services and personnel shows a heavy urban bias.²¹² With respect to one country alone, the CESCR noted with regret the differential treatment in providing access to health services between one group of refugees and another,²¹³ the lack of mental health services in the country,²¹⁴ and the need to “reinforce reproductive and sexual health programmes, in particular in rural areas.”²¹⁵

Relevant Provisions

UDHR, Art. 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ICCPR, Art. 26: 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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR, Article 2(2): The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant shall be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.

CERD, Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (iv) The right to public health, medical care, social security and social services.

CEDAW

Art. 12:

(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.

²¹¹ CESCR. Concluding Observations: Finland. UN Doc. [E/C.12/1/Add.52](#). December 1, 2000. Failure of certain municipalities to allocate sufficient funds to health care services, resulting in inequality with regard to levels of provision depending on the place of residence.

²¹² CESCR. Concluding Observations: Mali. UN Doc. [E/C.12/1994/17](#). December 21, 1994; see also CESCR. Concluding Observations: Guatemala. UN Doc. E/1997/22. May 17, 1996; CESCR. Concluding Observations: Paraguay. UN Doc. E/1997/22. May 14, 1996. Noting the very small number of medical and paramedical personnel in the country; also CESCR. Concluding Observations: Mongolia. UN Doc. E/2001/22. August 28, 2000. Noting the long-term deterioration in health situation and need to improve access to health care services for the poor and in rural areas.

²¹³ CESCR. Concluding Observations: Nepal, 2001. UN Doc. [E/2002/22](#). June 6, 2002. para. 545.

²¹⁴ CESCR. Concluding Observations: Nepal, 2001. UN Doc. [E/2002/22](#). June 6, 2002. para. 550.

²¹⁵ CESCR. Concluding Observations: Nepal, 2001. UN Doc. [E/2002/22](#). June 6, 2002. para. 571.

Art. 14(2)(b): States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: To have access to adequate health care facilities, including information, counselling and services in family planning.

CRC, Art. 23:

(1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

(2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

(3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

(4) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

ICRPD

Art. 1: The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Art. 12:

(1) States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

(2) States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

(3) States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

(4) States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.

Art. 25: States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.

ICMW

Art. 7: States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their

jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Art. 28: Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Art. 43:

(1) Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(2) States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

Art. 45(1)(c): Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: ...access to social and health services, provided that requirements for participation in the respective schemes are met.

Declaration of Lisbon on the Rights of the Patients (WMA),²¹⁶ Principle 1(a): Every person is entitled without discrimination to appropriate medical care.

IAPO Declaration on Patient-Centred Healthcare,²¹⁷ Principle 4: Patients must have access to the health care services warranted by their condition. This includes access to safe, quality and appropriate services, treatments, preventive care and health promotion activities. Provision should be made to ensure that all patients can access necessary services, regardless of their condition or socio-economic status. For patients to achieve the best possible quality of life, health care must support patients' emotional requirements, and consider non-health factors such as education, employment and family issues which impact on their approach to health care choices and management.

WMA Resolution on Medical Care for Refugees.²¹⁸ Physicians have a duty to provide appropriate medical care regardless of the civil or political status of the patient, and governments should not deny patients the right to receive, nor should they interfere with physicians' obligation to administer, adequate treatment; and Physicians cannot be compelled to participate in any punitive or judicial action involving refugees or IDPs or to administer any non-medically justified diagnostic measure or treatment, such as sedatives to facilitate easy deportation from the country or relocation; and Physicians must be allowed adequate time and sufficient resources to assess the physical and psychological condition of refugees who are seeking asylum.

... Right to Equality and Freedom from Discrimination in the Context of Mental Health

The right to equality and freedom from discrimination protects individuals with mental disabilities from various forms of stigma and discrimination. For example, those with mental disabilities often face discrimination in accessing general health care services, or stigmatizing attitudes from service providers, which may dissuade them

²¹⁶WMA. Declaration on the Rights of the Patient. September/October 1981.

²¹⁷IAPO. Declaration on Patient-Centred Healthcare. February 2006.

²¹⁸WMA. Resolution on Medical Care for Refugees. 50th World Medical Assembly. October 1998.

from seeking care in the first place. The right to equality and freedom from discrimination prohibits stigma from leading to the inappropriate institutionalization of persons with mental disabilities against their will. Under this right, decisions to isolate or segregate persons with mental disabilities, including through unnecessary institutionalization, are inherently discriminatory and contrary to the right of community integration enshrined in international standards. Isolation in itself can also deepen stigma surrounding mental disability.²¹⁹

Freedom from discrimination on the basis of disability is at the core of the ICRPD—without it, persons with disabilities are not able to enjoy all of their human rights and fundamental freedoms. Under Article 25, States Parties must “take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.” States Parties must also ensure that health professionals “provide care of the same quality to persons with disabilities as to others, including 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 through training and the promulgation of ethical standards for public and private health care.”²²⁰

Other international treaties and regional treaties, such as the ICRPD and the CRC, prohibit discrimination on grounds of disability.²²¹ The ICESCR does not explicitly refer to disability as a prohibited ground of discrimination, but interpretative documents adopted by the CESCR have interpreted the ICESCR as prohibiting discrimination on this ground.²²² In fact, the CESCR has defined disability-based discrimination as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.”²²³ It has gone on to emphasize the need “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.”²²⁴ The CESCR has also criticized governments for providing inadequate medical care provided to low-income patients and urged states to subsidize expensive drugs required by chronically ill and mentally ill patients.²²⁵

Concluding Observations on China Relating to Mental Health and Right to Equality and Freedom from Discrimination

The Committee is concerned about the reported persistence of discrimination against persons with physical and mental disabilities, especially in terms of employment, social security, education and health.

*The Committee recommends that the State party adopt effective measures to ensure equal opportunities for persons with disabilities, especially in the fields of employment, social security, education and health, to provide for more appropriate living conditions for persons with disabilities and to allocate adequate resources for improving the treatment of, and care for, persons with disabilities. The Committee requests the State party to provide detailed information in its second periodic report on the measures undertaken with regard to persons with physical and mental disabilities.*²²⁶

... Right to Equality and Freedom from Discrimination in the Context of Infectious diseases

The right to equality and freedom from discrimination protects a person infected with a communicable disease, such as HIV/AIDS or tuberculosis, from discrimination. Treaty-monitoring bodies have emphasized the importance of ensuring that those infected with particular diseases, such as HIV/AIDS, should not be the subject of

²¹⁹UN Special Rapporteur on the Right to Health. Report on Mental Disability and the Right to Health. UN Doc. E/CN.4/2005/51. February 11, 2005. paras. 52-56.

²²⁰ICRPD. Article 25(f).

²²¹Convention on the Rights of the Child. Article 2.

²²²UN Special Rapporteur on the Right to Health. Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc. E/CN.4/2005/51. February 11, 2005. para. 31.

²²³CESCR. CESCR General Comment No. 5: Persons with disabilities. December 9, 1994. para. 15.

²²⁴CESCR. CESCR General Comment No. 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4. August 11, 2000. para. 26.

²²⁵CESCR. Concluding Observations: People’s Republic of China (including Hong Kong and Macao). UN Doc. [E/C.12/1/Add.107](#). May 13, 2005; see also CESCR. Concluding Observations: Russian Federation. UN Doc. E/C.12/1/ADD.94. December 12, 2003. Committee criticizes Russia for frequent failure of hospitals and clinics in poor regions to stock essential drugs.

²²⁶CESCR. Concluding Observations: People’s Republic of China (including Hong Kong and Macao). UN Doc. [E/C.12/1/Add.107](#). May 13, 2005. paras. 16, 47.

discrimination and stigmatized as a result of their medical condition.²²⁷ States have an obligation to protect persons suffering from an infectious disease from discrimination or stigmatization in fields of education, employment, housing and health care. This may be accomplished, for example, through awareness-raising campaigns on HIV/AIDS or by amending legislation or regulatory frameworks that are discriminatory in intent or effect.²²⁸

Concluding Observations on Moldova Relating to Infectious Diseases and the Right to Equality and Freedom from Discrimination

The Committee is concerned that persons infected with HIV/AIDS face discrimination and stigmatization in the State party, including in the fields of education, employment, housing and health care, and that foreigners are arbitrarily subjected to HIV/AIDS tests as part of the immigration rules framework. In particular, the Committee is concerned that patient confidentiality is not always respected by health-care professionals. It is also concerned that legislation prohibits the adoption of children with HIV/AIDS, thereby depriving them of a family environment. (arts. 2, 17 and 26)

*The State party should take measures to address the stigmatization of HIV/AIDS sufferers through, inter alia, awareness-raising campaigns on HIV/AIDS, and should amend its legislation and regulatory framework in order to remove the prohibition on the adoption of children with HIV/AIDS, as well as any other discriminatory laws or rules pertaining to HIV/AIDS.*²²⁹

Case Relating to Infectious Diseases and the Right to Equality and Freedom from Discrimination

Toonen v. Australia (CCPR)(1994). The Committee found that discriminating on the basis of sexual orientation constitutes “sex” discrimination and that criminalization of consensual sex between adult males was not a reasonable measure to prevent spread of HIV/AIDS.²³⁰

. . . Right to Equality and Freedom from Discrimination in the Context of Sexual and Reproductive Health

Women and young people continue to suffer from unequal access to health services, a situation that frequently leads to high mortality rates.²³¹ Both groups, particularly women living in rural areas²³² and especially vulnerable groups of children (such as girls, indigenous children, and children living in poverty), will often experience multiple types of discrimination, requiring specific targeted measures and sufficient budgetary allocations.²³³ To ensure equality between men and women in accessing health care, the CESCR has stated that the ICESCR requires, at a minimum, the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on the basis of gender. This requirement includes, inter alia, addressing the ways in which gender roles affect access to determinants of health, such as water and food; the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health care workers to deal with women's health issues.²³⁴

Concluding Observations on Estonia Relating to Sexual and Reproductive Health and the Right to Equality and Freedom from Discrimination

The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans, the high incidence of unintended pregnancies

²²⁷ CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women. UN Doc. A/56/38 (SUPP). 2001; see also CESCR. Concluding Observations: Russian Federation. UN Doc. E/2004/22. November 28, 2003.

²²⁸ CCPR. Concluding Observations: Zimbabwe. UN Doc. CCPR/C/79/Add.89. April 6, 1998.

²²⁹ CCPR. Concluding Observations: Republic of Moldova. UN Doc. CCPR/C/MDA/CO/2. October 29, 2009.

²³⁰ CCPR. Communication No. 488/1992: Toonen v. Australia. UN Doc. CCPR/C/50/D/488/1992. April 4, 1994. para. 8.7.

²³¹ CESCR. Concluding Observations: Peru. UN Doc. E/1998/22. May 16, 1997. para. 145; see also CESCR. Concluding Observations: Ukraine. UN Doc. E/2002/22. August 29, 2001. Noting deterioration in the health of the most vulnerable groups, especially women and children, and in the quality of health services. Committee urges state to ensure that its commitment to primary health care is met by adequate allocation of resources and that all persons, especially from the most vulnerable groups, have access to health care.

²³² CEDAW Committee. Report of the Committee on the Elimination of Discrimination against Women. UN Doc. [A/55/38](#). 2000.

²³³ CRC Committee. Concluding Observations: Bolivia. UN Doc. [CRC/C/16](#). March 5, 1993.

²³⁴ CESCR. CESCR General Comment 16: The equal right of men and women to enjoyment of all economic, social, and cultural rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2005/4. August 11, 2005.

and greater abortion rates affecting African American women, and the growing disparities in HIV infection rates for minority women (art. 5 (e) (iv)).

The Committee recommends that the State party continue its efforts to address persistent racial disparities in sexual and reproductive health, in particular by:

(i) Improving access to maternal health care, family planning, pre- and post- natal care and emergency obstetric services, *inter alia*, through the reduction of eligibility barriers for Medicaid coverage;

(ii) Facilitating access to adequate contraceptive and family planning methods; and

(iii) Providing adequate sexual education aimed at the prevention of unintended pregnancies and sexually-transmitted infections.²³⁵

Cases Relating to Sexual and Reproductive Health and the Right to Equality and Freedom from Discrimination

L.N.P. v. Argentina (CCPR)(2011). The Committee found discrimination both on the basis of ethnicity and gender under Article 26 where a 15-year-old member of an ethnic minority was sexually assaulted, was kept waiting for many hours before being seen, was roughly examined and was tested to determine whether she was a virgin, although this was irrelevant to investigating the attack. At trial, she was not informed of her right to appear as a plaintiff, no translation was provided, testimony by other members of her ethnic group was discounted as “nonsensical” and as motivated by ethnic animosity, and her three attackers were ultimately acquitted in an opinion that cited the victim’s sexual promiscuity as a key factor.²³⁶

L.C. v. Peru (CEDAW Committee)(2009). The Committee found a violation of Article 12 of CEDAW where the state refused to terminate the woman’s pregnancy that put her life and health at risk. The Committee recalled that states had the obligation of taking “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.” The Committee also emphasized that a state cannot refuse to provide “certain reproductive health services for women”—states must “ensure, on a basis of equality between men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfil women’s rights to health care.”²³⁷

Right to an Effective Remedy

The right to an effective remedy requires that remedies for human rights violations be accessible and effective, and they must also adhere to “the special vulnerability of certain categories of person.”²³⁸ Accordingly, as explained by the CCPR, this right requires states to establish judicial and administrative mechanisms to ensure that human rights violations are effectively addressed at the domestic level.²³⁹ The right also entails at least compensatory relief and preventative measures.²⁴⁰ Although a remedy generally entails appropriate compensation, “reparation can, where appropriate, involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, and actions to bring to justice the perpetrators of human rights violations.”²⁴¹ Relevant to the

²³⁵ CERD. Concluding Observations: United States of America. UN Doc. CERD/C/USA/CO/6. May 8, 2008. para. 33.

²³⁶ CCPR. Communication No. 1610/2007: L.N.P. v. Argentina. UN Doc. CCPR/C/102/D/1610/2007. August 16, 2011. para. 13.7.

²³⁷ CEDAW Committee. Communication No. 22/2009: L.C. v. Peru. UN Doc. CEDAW/C/50/D/22/2009. November 4, 2011. para. 8.11.

²³⁸ CCPR. CCPR General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant. May 26, 2004. para. 15.

²³⁹ CCPR. CCPR General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant. May 26, 2004. para. 15.

²⁴⁰ CCPR. CCPR General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant. May 26, 2004. para. 15.

²⁴¹ CCPR. General Comment No. 31 [80]: The nature of the general legal obligation imposed on States Parties to the Covenant. UN Doc. CCPR/C/21/Rev.1/Add.13. May 26, 2004. para. 16.

context of patient care, the CESCR has made clear that states have the obligation to ensure that effective remedies are available for violations of economic, social and cultural rights.²⁴²

The Torture Convention enshrines the right to an effective remedy in its own separate provision (Art. 14). However, the ICCPR has linked the right to an effective remedy to the right to fair trial. Article 14 of the treaty includes both a right to compensation and judicial guarantees, such access to court. It requires that the state ensure determination of the right to a remedy by a competent judicial, administrative, or legislative authority. The state must protect “alleged victims if their claims are sufficiently well-founded to be arguable under the [ICCPR].”²⁴³

Relevant Provisions

ICCPR

Art. 2(3): Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Art. 14:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

ICESCR, Art. 2(1): Each state party to the present covenant undertakes to take steps, individually and through international assistance and cooperation, especially in economic and technical matters, to the maximum extent allowed by its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including, particularly, the adoption of legislative measures...

CAT, Art. 14(1): Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

... Right to an Effective Remedy in the Context of Mental Health

In highlighting the difficulties that patients of mental health could face in challenging violations of their rights, including in health care settings, treaty bodies have underscored the states’ obligation to ensure that the necessary procedural and substantive safeguards are in place to protect these individuals, including the ability to access courts and full exercise their right to an effective remedy.²⁴⁴

²⁴² CESCR. Concluding Observations: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories. UN Doc. E/C.12/GBR/CO/5. June 12, 2009. para. 13.

²⁴³ CCPR. Communication No. 972/01: George Kazantzis v. Cyprus. UN Doc. CCPR/C/78/D/972/2001. September 13, 2003. para. 6.6.

²⁴⁴ CCPR. Concluding Observations: Bulgaria. UN Doc. CCPR/C/BGR/CO/3. para. 17; CESCR. Concluding Observations: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories. UN Doc. E/C.12/GBR/CO/5. June 12, 2009. para. 35.

Concluding Observations on Bulgaria Relating to Mental Health and the Right to an Effective Remedy

The Committee remains concerned that persons with mental disabilities do not have access to adequate procedural and substantive safeguards to protect themselves from disproportionate restrictions in their enjoyment of rights guaranteed under the Covenant. In particular, the Committee is concerned that persons deprived of their legal capacity have no recourse to means to challenge violations of their rights, that there is no independent inspection mechanism of mental health institutions and that the system of guardianship often includes the involvement of officials of the same institution as the confined individual (arts. 2, 9, 10, 25 and 26).

The State party should:

(a) Review its policy of depriving persons with mental disabilities of their legal capacity and establish the necessity and proportionality of any measure on an individual basis with effective procedural safeguards, ensuring in any event that all persons deprived of their legal capacity have prompt access to an effective judicial review of the decisions;

(b) Ensure that persons with mental disabilities or their legal representatives are able to exercise the right to effective remedy against violations of their rights, and consider providing less restrictive alternatives to forcible confinement and treatment of persons with mental disabilities;...²⁴⁵

Case Relating to Mental Health and the Right to an Effective Remedy

Williams v. Jamaica (CCPR)(1997). The Committee found that the government's failure to adequately treat the applicant, an inmate with a mental health condition that was exacerbated by being on death row, amounted to a breach of Articles 7 and 10(1) of the ICCPR. The Committee concluded that the individual was "entitled to an effective remedy, including in particular to appropriate medical treatment."²⁴⁶

... Right to an Effective Remedy in the Context of Infectious Diseases

The right to an effective remedy has been invoked to protect the individuals with infectious diseases as marginalized populations that are stigmatized based on their health status. Treaty monitoring bodies, namely the CESCR, has expressed concern over the obstacles faced by such individuals in accessing the judicial system and have their claims be effectively addressed.²⁴⁷ The CESCR has also called on states to address deleterious prison conditions leading to high rates of infectious diseases, like tuberculosis, among inmates by providing them with medical treatment and improved detention conditions.²⁴⁸

Concluding Observations on India Relating to Infectious Diseases and the Right to an Effective Remedy

The Committee is deeply concerned that in spite of the Constitutional guarantee of non-discrimination as well as the criminal law provisions punishing acts of discrimination, widespread and often socially-accepted discrimination, harassment and/or violence persist against members of certain disadvantaged and marginalized groups, including women, scheduled castes and scheduled tribes, indigenous peoples, the urban poor, informal sector workers, internally-displaced persons, religious minorities such as the Muslim population, persons with disabilities and persons living with HIV/AIDS. The Committee is also concerned about the obstacles faced by the victims in accessing justice, including the high costs of litigation, the long delays in court proceedings and the non-implementation of court decisions by government authorities....

The Committee ... urges the State party to step up efforts to remove obstacles faced by victims of discrimination when seeking redress through the courts.²⁴⁹

Case Relating to Infectious Diseases and the Right to an Effective Remedy

Tornel et al. v. Spain (CCPR)(2006). The Committee concluded that the prison's failure to inform the detained individual's family of his severely-deteriorating condition related to his HIV-positive status constituted an arbitrary

²⁴⁵ CCPR. Concluding Observations: Bulgaria. UN Doc. CCPR/C/BGR/CO/3. para. 17.

²⁴⁶ CCPR. Communication No. 609/1995: Williams v. Jamaica. UN Doc. [CCPR/C/61/D/609/1995](#). November 4, 1997.

²⁴⁷ CESCR. Concluding Observations: India. UN Doc. E/C.12/IND/CO/5. August 8, 2008. para. 13.

²⁴⁸ CESCR. Concluding Observations: Ukraine. UN Doc. E/C.12/UKR/CO/5. January 4, 2008. paras. 49, 52.

²⁴⁹ CESCR. Concluding Observations: India. UN Doc. E/C.12/IND/CO/5. August 8, 2008. para. 13.

interference with the family and violated Article 17(1) of the ICCPR. The Committee found that the state had the obligation to provide the victims with effective remedy, including compensation.²⁵⁰

... Right to an Effective Remedy in the Context of Sexual and Reproductive Health

The right to an effective remedy and its corresponding state obligations have been invoked in a number of sexual and reproductive health contexts. Treaty monitoring bodies have established that cases of involuntary sterilization require that states investigate, prosecute, and provide redress to the victims, including compensation.²⁵¹ Concerned with the inability of involuntary sterilization victims to obtain redress, the CAT Committee has called on states to take the necessary measures to “investigate promptly, impartially and effectively” any instance of an alleged involuntary sterilization of Roma women, to extend the period of time allowed for victims to file complaints, and to hold those involved accountable in order to provide effective remedy to the victims.²⁵² Likewise, the CCPR has been clear on the importance of the state obligation to provide redress to victims of sexual violence.²⁵³

Concluding Observations on Czech Republic Relating to Sexual and Reproductive Health and the Right to an Effective Remedy

The Committee is concerned about the absence of statistical data concerning compensation to victims of torture and ill-treatment, including victims of involuntary sterilization and surgical castration as well as ill-treatment in medical and psychiatric settings, violent attacks against ethnic minorities, trafficking and domestic and sexual violence. It is also concerned about the time limits set for filing complaints (arts. 14 and 16).

The Committee recommends that the State party ensure that victims of torture and ill-treatment are entitled to and provided with redress and adequate compensation, including rehabilitation, in conformity with article 14 of the Convention. It recommends that the State party provide it with statistical data on the number of victims, including victims of involuntary sterilization and surgical castration as well as ill-treatment in medical and psychiatric settings, violent attacks against ethnic minorities, trafficking and domestic and sexual violence, who have received compensation and other forms of assistance. It also recommends the extension of the time limit for filing claims.²⁵⁴

Case Relating to Sexual and Reproductive Health and the Right to an Effective Remedy

da Silva Pimentel Teixeira v. Brazil (CEDAW Committee) (2011). The Committee found that the government’s failure to ensure appropriate pregnancy-related medical treatment and to provide timely emergency obstetric care to the patient (both of which were found to have led to her death) constituted a violation of the right to life. The Committee concluded that the state violated Articles 12 and 2(c) by failing to provide a system that could adequately ensure judicial protection and remedies for the victim.²⁵⁵

²⁵⁰CCPR. Communication No. 1473/2006: Tornel v. Spain. UN Doc. CCPR/C/95/D/1473/2006. March 20, 2009. para. 7.4.

²⁵¹CRC Committee. Concluding Observations: Mozambique. UN Doc. CRC/C/15/Add.172. April 2, 2002. paras. 38-39.

²⁵²CAT Committee. Concluding Observations: Czech Republic. UN Doc. CAT/C/CZE/CO/4-5. May 14-15, 2012. para. 12.

²⁵³CAT Committee. Concluding Observations: Costa Rica. UN Doc. CAT/C/CRI/CO/2. July 7, 2008. para. 19; CEDAW Committee. Concluding Observations: Tanzania. UN Doc. CEDAW/C/TZA/CO/6. July 16, 2008. para. 120; CRC Committee. Concluding Observations: Lebanon. UN Doc. CRC/C/LBN/CO/3. June 8, 2006. paras. 47-48.

²⁵⁴CAT Committee. Concluding Observations: Czech Republic. UN Doc. CAT/C/CZE/CO/4-5. May 14-15, 2012. para. 13.

²⁵⁵CEDAW Committee. Communication No. 17/2008: Maria de Lourdes da Silva Pimentel Teixeira v. Brazil. UN Doc. CEDAW/C/49/D/17/2008. September 27, 2011. para. 7.2.