

2.4. PROVIDERS' RIGHTS

Health care providers play a critical role in addressing the abuses that take place in health care settings. As such, the application of the human rights framework to patient care implies that the interests of both patients and health care providers are to be protected. If providers are unable to fully exercise their rights, they may be deterred or made powerless to effectively prevent abuses of patients.

Numerous international treaties and conventions include rights that are designed to protect workers and ensure safe and healthy work environments. The UN and its agencies, including the International Labor Organization, have developed some of these international labor standards and monitor their implementation. This section presents several standards and how they have been interpreted in relation to three key rights for health care providers. These include the right to (i) work in decent conditions; (ii) freedom of association and assembly, including association with trade unions and the right to strike; and (iii) due process and related rights to receive a fair hearing and an effective remedy, protection of privacy and reputation, and freedom of expression and information.

Part I of this section covers the right to work in decent conditions, including the right to work and the right to fair pay and safe working conditions. Part II discusses the right to freedom of association. Part III explores the right to due process and related rights. Each section begins with a discussion of the significance of that particular right for health providers and is followed by relevant standards from various UN legal instruments and UN treaty-monitoring bodies' concluding observations and case law to exemplify potential violations.

Finally, it is worth noting that relevant standards from the 1998 UN Human Rights Defenders Declaration underscore the fact that health care providers, in addition to enjoying the same core rights as patients, are defenders of rights in their daily work.

Right to Work in decent conditions

Article 7 of the ICESCR guarantees the individual's right to the enjoyment of just and favorable conditions of work, in particular the right to safe working conditions. The right to work, a component of the right to work in decent conditions, is enshrined under Article 6 and protects every individual's right to be able to work, allowing her/him to live in dignity.¹ Article 8 of the ICESCR enshrines the collective right to work, which includes the right to form trade unions, join the trade union of her/his choice, and "the right of trade unions to function freely" (see section "Trade Unions and the Right to Strike" below).² The CESCR has underscored that these three articles are interdependent.

Right to Work

The right to work guarantees that, in law and in practice, men and women are given equal access to jobs at all levels and all occupations and that includes vocational training and guidance programs.³ This right requires the State to ensure that neither itself nor others (such as private companies or other non-state actors) unreasonably or

¹CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 1

²CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 2.

³CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 23

in a discriminatory way prevent a person from earning a living or practicing her/his profession.⁴ The individual must not be deprived from work unfairly.⁵ Also, this right protects foreign workers who are employed in a State with valid work permits from being unlawfully deported.⁶

Importantly, UN treaty-monitoring bodies have clarified that there is no “absolute and unconditional right” that requires an individual be provided with work or the occupation of one's choice. States must, however, refrain from unduly hindering the ability of individuals to freely pursue their chosen careers.⁷ Furthermore, states are required to ensure the fair treatment of migrant workers, a requirement that is particularly relevant for medical professionals, who are often recruited from other countries to staff hospitals and clinics.⁸ The ICMW emphasizes states' obligations to foreign-born employees.⁹ The concern over the migration of medical professionals is driven in part by the poor remuneration that they receive in some countries.

Right to Fair Pay and Safe Working Conditions

The right to "the enjoyment of just and favorable conditions of work," as enshrined under Article 7(a) of the ICESCR, requires that the government guarantee fair wages and equal pay for work of equal value, among other requirements.¹⁰ Under this right, workers who are not covered by collective bargaining are protected.¹¹ It also applies to all workers with disabilities, whether they work in sheltered facilities or in the open labor market. Workers with disabilities may not be discriminated against with respect to wages or other conditions if their work is equal to that of nondisabled workers. States Parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labor protection or for paying below-minimum wages.¹² Article 3 of the ICESCR provides for the equal right of men and women to the enjoyment of the rights enshrined in the treaty. Therefore, when read with Article 7, this right requires that the State identify and eliminate the underlying causes of pay differentials, such as gender-based job evaluation.¹³ The State must take measures to eliminate discrimination against non-citizen workers in relation to working conditions and work requirements.¹⁴ Workers should not face discrimination in employment on the grounds of political opinion.¹⁵ The State must also develop regulations to penalize and remedy sexual harassment in the workplace.¹⁶

⁴CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. paras. 6, 23, and 25

⁵CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 4

⁶CERD. Communication No. 8/1996: B. M. S. v. Australia. UN Doc. CERD/C/54/D/8/1996. May 10, 1999.

⁷CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 6.

⁸CESCR. CESCR General Comment No. 18: The Right to work. UN Doc. E/C.12/GC/18. February 6, 2006. para. 18.

⁹International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7.

¹⁰CESCR. 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. para. 24.

¹¹CESCR. Concluding Observations: Suriname. UN Doc. E/1996/22. December 12, 1996.

¹²See ICRPD, specifically arts. 8, 9, 27. See also CESCR. CESCR General Comment No. 5: Persons with disabilities. December 9, 1994. para. 25.

¹³CESCR. 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. para. 24.

¹⁴CERD. CERD General Comment No. 30: Discrimination Against Non Citizens. October 1, 2004. paras. 33–35.

¹⁵CESCR. Concluding Observations: Germany. UN Doc. E/C.12/1993/17. January 5, 1994.

¹⁶CEDAW Committee. Report of the Committee: Argentina. UN Doc. A/52/38/Rev.1. 1997. part. II; see also CEDAW Committee. Report of the Committee: Cuba. UN Doc. A/55/38. June 19, 2000. part. II; CEDAW Committee. CEDAW General Recommendation No.24: Article 12 of the Convention (Women and Health). UN Doc. A/54/38/Rev. 1.1999. part. I.

This right also protects the individual from working conditions that are harmful to the individual's health and wellbeing. It establishes limits on the duration of the working day and sets a minimum level of weekly rest,¹⁷ as well as prohibits failure to pay medical staff for extended periods of work.¹⁸ Medical staff cannot be subjected to low wages and substandard working conditions in hospitals.¹⁹ With respect to women, this right establishes special protection against harmful types of work during pregnancy and requires the provision of paid maternity leave.²⁰ Finally, this right requires that the State reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.²¹

Relevant Provisions

UDHR, Art. 23(1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

ICESCR

Art. 6(1): The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Art. 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

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 ...
 - 1. [t]he improvement of all aspects of environmental and industrial hygiene....

ICERD, Art. 5(e)(i): 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

¹⁷CESCR.Concluding Observations: Suriname.UN Doc. E/1996/22. December 12, 1996.

¹⁸CRC Committee.Concluding Observations: Solomon Islands.UN Doc. CRC/C/132. October 23, 2003.

¹⁹CESCR.Concluding Observations: Georgia.UN Doc. E/2003/22. November 29, 2000.

²⁰CEDAW Committee. CEDAW General Recommendation No.24: Article 12 of the Convention (Women and Health). UN Doc. A/54/38/Rev. 1.1999. para. 28.

²¹CESCR. 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. para. 24.

the enjoyment of the following rights: ...

(e) Economic, social and cultural rights, in particular: ...

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration...

ICRPD

Article 8 - Awareness-raising:

1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
 - b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
 - c. To promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

- a. Initiating and maintaining effective public awareness campaigns designed:
 - i. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market...

Article 9 – Accessibility:

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces...

Article 27 - Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and

- starting one's own business;
 - g. Employ persons with disabilities in the public sector;
 - h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - j. Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

ILO Occupational Safety and Health Convention, 1981 (No. 155),²² Art. 4:

- (1) Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.
- (2) The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

ILO Occupational Health Services Convention, 1985 (No. 161),²³ Art. 3: Each Member undertakes to develop progressively occupational health services for all workers, including those in the public sector and the members of production co-operatives, in all branches of economic activity and all undertakings. The provision made should be adequate and appropriate to the specific risks of the undertakings. ...

ILO Promotional Framework for Occupational Safety and Health Convention, 2006(No. 187),²⁴ Art. 2(1): Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

Provisions related to nursing staff

ILO Nursing Personnel Convention, 1977(No. 149)²⁵

Art. 2

(1) Each Member which ratifies this Convention shall adopt and apply, in a manner appropriate to national conditions, a policy concerning nursing services and nursing personnel designed, within the framework of a general health programme, where such a programme exists, and within the resources available for health care as a whole, to provide the quantity and quality of nursing care necessary for attaining the highest possible level of health for the population.

(2) In particular, it shall take the necessary measures to provide nursing personnel with— (a) education and training appropriate to the exercise of their functions; and (b) employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. (3) The policy mentioned in paragraph 1 of this Article shall be formulated in consultation with the employers' and workers' organisations concerned, where such organisations exist. (4) This policy shall be co-ordinated with policies relating to other aspects of health care and to other workers in the field of health, in consultation with the employers' and

²²International Labor Organization [ILO].Occupational Safety and Health Convention, 1981 (No. 155). August 11, 1983.

²³ILO.Occupational Health Services Convention, 1985 (No. 161). February 17, 1985.

²⁴ILO.Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). February 20, 2009.

²⁵ILO. Nursing Personnel Convention, 1977 (No. 149). July 11, 1979.

workers' organisations concerned.

Art. 6:

Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields: (a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work; (b) weekly rest; (c) paid annual holidays; (d) educational leave; (e) maternity leave; (f) sick leave; (g) social security.

Art. 7: Each Member shall, if necessary, endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out.

Provisions related to women

ICESCR

Art 10(2): Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

Art. 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

CEDAW

Art .11:

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) the right to work as an inalienable right of all human beings; ...
- (c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;...
- (f):[t]he right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

(2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

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.

Provisions related to migrant workers

CERD, Art. 5(e)(i): 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 rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

ICMW

Art. 25:

- (1) Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:
 - (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;
 - (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.
- (2) It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.
- (3) States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

Art. 51: Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

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.

Concluding Observations on Suriname Relating to the Right to Work in Decent Conditions

*The Committee recommends that legislation be enacted to protect workers who are not covered by collective bargaining agreements, in order to ensure them a minimum wage, health and maternal benefits, safe working conditions, and other guarantees that meet international standards for conditions of work. In this connection, the Committee recommends that assistance from ILO be sought. Furthermore, the Committee encourages the Government to extend such protection also to immigrant workers.*²⁶

Case Relating to the Right to Working Decent Conditions

B.M.S. v. Australia(CERD)(1999).An Indian doctor failed to pass several exams in order to obtain permanent medical registration in Australia. The Committee did not find the examination and quota system to be discriminatory, given that all overseas-trained doctors were subjected to it, irrespective of their race. The Committee found no violation of Article 5 of the ICERD.²⁷

Right to Freedom of Association and Assembly

The right to freedom of association and assembly protects the association from the government's unjustifiable refusal to register it.²⁸ This right works to ensure that the procedural formalities that associations of workers must undergo in order to be formally recognized are not too burdensome.²⁹ For example, the CCPR has called on governments to refrain from restricting the right to freedom of association through processes that could deny registration to an individual for purposes of joining or forming an association.³⁰ This right also requires allowing men and women to organize and join workers' associations that address their specific concerns.³¹ As it relates to providers, such as hospital personnel, they are entitled to join organizations for the promotion and defense of workers' interests without previous authorization.³²

Workers' right to form, join and run associations without undue interference is critical to their ability to effectively defend their rights. Health care professionals enjoy the same collective action rights as other employees, and even though the health sector provides an essential service, this fact only precludes its members from work stoppage under certain exceptional circumstances. Additionally, certain provisions of the UN Human Rights Defenders Declaration emphasize the role of health care providers as human rights defenders who implement and protect social rights and fundamental civil rights, such as life and freedom from torture and inhuman or degrading treatment.³³

²⁶CESCR.Concluding Observations: Suriname.UN Doc. E/1996/22. December 12, 1996.

²⁷CERD. Communication No. 8/1996: B. M. S. v. Australia. UN Doc. CERD/C/54/D/8/1996. May 10, 1999.

²⁸International Labour Organization [ILO]. Freedom of Association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. 2005; ILO. Freedom of Association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. 1996; ILO.332nd Report of the Committee on Freedom of Association.November 2003; ILO.Case No. 2225 (Bosnia and Herzegovina). Complaint date: October 18, 2002.

²⁹CCPR.Concluding Observations: Belarus. UN Doc. CCPR/C/79/Add.86. November 19, 1997; CCPR.Concluding Observations: Lithuania. UN Doc. CCPR/C/79/Add.87. November 19, 1997.

³⁰CCPR.Concluding Observations: Lebanon. UN Doc. A/52/40 (Vol. II). September 21, 1997.

³¹CESCR. 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. para. 25.

³²ILO. Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee. 2005.

³³United Nations General Assembly. General Assembly Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. UN Doc. A/RES /53/144. March 8, 1999.

Although UN jurisprudence on freedom of association has focused on the treatment of NGOs and political parties, the interpretation of the core aspects of the right can also be applied to professional associations and trade unions, which are also the subject of relevant ILO standards.

Relevant Provisions

UDHR, Art. 20:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

ICCPR

Art. 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Art. 22:

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),³⁴ Art. 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organisations of their own choosing without previous authorisation.

UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Human Rights Defenders Declaration) 1998³⁵

Art. 1: Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Art. 5: For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in nongovernmental organizations, associations or groups;

³⁴ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). July 4, 1950.

³⁵ United Nations General Assembly. General Assembly Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. UN Doc. A/RES/53/144. March 8, 1999.

(c) To communicate with non-governmental or intergovernmental organizations.

Provisions related to women

CEDAW

Art. 7(c): States 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 to participate in non-governmental organizations and associations concerned with the public and political life of the country.

Art. 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Provisions related to race

CERD, Art. 5(d)(ix): 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 [t]he right to freedom of peaceful assembly and association.

Concluding Observations on Belarus Relating to the Right to Freedom of Association and Assembly

With respect to article 22 of the Covenant, the Committee is also concerned about the difficulties arising from the registration procedures to which non-governmental organizations and trade unions are subjected. The Committee also expresses concern about reports of cases of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of the offices of certain non-governmental organizations. In this regard:

The Committee, reiterating that the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people, recommends that laws, regulations and administrative practices relating to their registration and activities be reviewed without delay in order that their establishment and free operation may be facilitated in accordance with article 22 of the Covenant.³⁶

Trade Unions and the Right to Strike

The right to freedom of association protects the individual from policies or conditions that would impact her/his ability to form associations and to bargain collectively.³⁷ It also protects the individual from reprisals for exercising free association rights and unnecessary interference in trade union activities.³⁸ Accordingly, under international

³⁶CCPR.Concluding Observations: Belarus. UN Doc. CCPR/C/79/Add.86. November 19, 1997. para. 19.

³⁷CCPR.Concluding Observations: Lebanon. UN Doc. A/52/40 (Vol. I). September 21, 1997; CCPR.Concluding Observations: Chile. UN Doc. A/54/40 (Vol. I). October 21, 1999.

³⁸CCPR.Concluding Observations: Costa Rica. UN Doc. A/54/40 (Vol. I). October 21, 1999. "Freedom of association, including the right to collective bargaining, should be guaranteed to all individuals. Labour legislation should be reviewed and, where necessary, reformed to introduce measures of protection against reprisals for attempts to form associations and trade unions and to ensure that workers have access to speedy and effective remedies"; see also CCPR. Concluding Observations: Dominican

human rights law, the existence of multiple trade unions should be lawfully guaranteed,³⁹ and the absence of enabling legislation on trade unions must be condemned.⁴⁰ The CESCR has condemned the refusal of some employers to recognize or negotiate with new “alternative” unions and some employers’ adverse actions against them, including dismissal of union activists.⁴¹ Trade union protection includes ensuring that foreign workers are not barred from holding official positions and that unions are not dissolved by the executive.⁴²

Consultation and co-operation are no substitute for the “right to strike.”⁴³ Individuals are guaranteed participation in discussions concerning the determination of minimum wages.⁴⁴ With respect to health care workers, this right guarantees those employed in public hospitals the right to enjoy the right to collective bargaining.⁴⁵ Moreover, while the “right to strike” is not explicitly mentioned under Article 22 of the ICCPR, the right to freedom of association establishes that an absolute ban on strikes by public servants who are not exercising authority in the name of the state and are not engaged in “essential services” may violate this right.⁴⁶ Nevertheless, given this “absolute ban,” complex and serious implications for the health and lives of patients can arise if medical personnel were to exercise this right.

Relevant Provisions

UDHR, Art. 23(4): Everyone has the right to form and to join trade unions for the protection of his interests.

ICCPR, Art. 22:

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

(3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would

Republic. UN Doc. A/56/40 (Vol. I). October 26, 2001; CCPR.Concluding Observations: Argentina. UN Doc. A/50/40 (Vol. I). October 3, 1995; CCPR.Concluding Observations: Guatemala. UN Doc. A/51/40 (Vol. I). April 3, 1996; CCPR.Concluding Observations: Nigeria. UN Doc. A/51/40 (Vol. I). April 3, 1996; CCPR.Concluding Observations: Bolivia. UN Doc. A/51/40 (Vol. I). April 9, 1997; CCPR.Concluding Observations: Venezuela. UN Doc. A/56/40 (Vol. I). April 2, 2001; CESCR.Concluding Observations: Jamaica. UN Doc. E/1990/23. January 22-24, 1990.

³⁹CCPR.Concluding Observations: Brazil. UN Doc. A/51/40 (Vol. I). April 13, 1997. CCPR.Concluding Observations: Rwanda. UN Doc. E/1989/22. February 13-14, 1989.

⁴⁰CCPR.Concluding Observations: Georgia. UN Doc. A/52/40 (Vol. I). September 21, 1997.

⁴¹CESCR.Concluding Observations: Russian Federation. UN Doc. [E/1998/22](#). June 20, 1998.

⁴²CCPR.Concluding Observations: Senegal. UN Doc. [CCPR/C/79/Add.82](#). November 19, 1997.

⁴³CESCR.Concluding Observations: Luxembourg, 1990. UN Doc. E/1991/23. It is questioned whether the covenant, virtually alone among applicable international human rights treaties, is considered a non-self-executing in its totality. It was observed that, by contrast, the covenant contained a number of provisions that the great majority of observers would consider to be self-executing. These included, for example, provisions dealing with nondiscrimination, the right to strike, and the right to free primary education.

⁴⁴CESCR.Concluding Observations: Uruguay. UN Doc. [E/1995/22](#). January 1, 1995.

⁴⁵ILO. 306th Report of the Committee on the Freedom of Association. 2009; ILO. Case No. 1882 (Denmark). Complaint date: May 10, 1996; see ILO. Right to Organise and Collective Bargaining Convention (No. 98). July 1, 1949.

⁴⁶CCPR.Concluding Observations: Germany. UN Doc. A/52/40 (Vol. I). September 21, 1997.

prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

ICESCR, Art. 8:

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)⁴⁷

Art. 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Art. 3:

- (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
- (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Art. 4: Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Art. 5: Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)⁴⁸

Art.1:

- (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
- (2) Such protection shall apply more particularly in respect of acts calculated to:
 - (a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

⁴⁷ILO.Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). July 4, 1950.

⁴⁸ILO.Right to Organise and Collective Bargaining Convention, 1949 (No. 98). July 1, 1949.

- (b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Art. 2(1): Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

Art. 6: This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Concluding Observations on Lebanon Relating to Trade Unions and the Right to Strike

The Committee has noted that while legislation governing the incorporation and status of associations is on its face compatible with article 22 of the Covenant, de facto State party practice has restricted the right to freedom of association through a process of prior licensing and control. The delegation itself conceded that the practice of denying that registration took place is unlawful. The Committee also regrets that civil servants continue to be denied the right to form associations and to bargain collectively, in violation of article 22 of the Covenant.⁴⁹

Right to Due Process and Related Rights

This section outlines the relevant due process standards that health care providers enjoy when commencing or responding to civil proceedings, including disciplinary matters. It does not deal with the rights of the accused in criminal proceedings. As in previous sections, this section highlights material that interprets standards related to health sector personnel. The first part of this section examines the right to a fair hearing. The second part focuses on the related right to an effective remedy.

This section also details those standards that protect the privacy rights of health care providers—in and outside the workplace—and their honor and reputation. In addition, there is a brief discussion of standards that address the right to free expression and the right to impart information. These liberties are particularly significant, as they might offer protection to whistleblowers who seek to place certain information in the public domain. This protection is important because public sector employees are often reluctant to disseminate information for fear of facing adverse consequences.

Right to a Fair Hearing

The right to a fair hearing in a civil suit encompasses: 1) equality before the courts⁵⁰ (this distinction is narrower than the right of equality before the law as the latter applies to all organs involved in the administration of justice and not just to judicial power)⁵¹ and 2) access to courts⁵² (access includes the provision of legal aid).⁵³ This right

⁴⁹CCPR.Concluding Observations: Lebanon. UN Doc. A/52/40 (Vol. I). September 21, 1997.

⁵⁰CCPR. General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. paras. 3, 7.

⁵¹CCPR. General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. para. 65.

⁵²CCPR. General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. paras. 8, 9, and 12.

⁵³CCPR. Communication No. 468/1991: Bahamonde v. Equatorial Guinea. UN Doc. CCPR/C/49/D/468/1991. November 10, 1993; CCPR. Communication No. 202/86: Avellanal v. Peru. UN Doc. CCPR/C/34/D/202/1986. October 31, 1989; CCPR. General

requires that states provide for particular causes of action "in certain circumstances" and for competent courts to determine those causes of action.⁵⁴The meaning of "suit at law" under Article 14(1) of the ICCPR continues to evolve, although regulation of the activities of a professional body and scrutiny of such regulations by the courts may fall within its scope.

Elements of a fair hearing in a civil suit include equality of arms (both parties have equal procedural access to the court),⁵⁵ respect for the principle of adversarial proceedings, preventing the passing of a judgment that makes the interested party worse off (*ex officio reformatio in pejus*), and an expeditious procedure.⁵⁶Violations of the right to a fair hearing include: refusing to allow the complainant to attend the proceedings and to have the opportunity to brief legal representatives properly,⁵⁷failing to inform the litigant of her/his appeal date until after it has taken place,⁵⁸ refusal of an administrative tribunal to admit crucial evidence⁵⁹ and failure to permit one litigant to submit comments on the other side's submissions.⁶⁰

Relevant Provisions

ICCPR

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.

Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

CERD, Art. 5(a): 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: The right to equal treatment before the tribunals and all other organs administering justice.

CEDAW, Art. 15(1): States Parties shall accord to women equality with men before the law.

Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. para. 10.

⁵⁴CCPR. Communication No. 547/1993: Mahuika v New Zealand. UN Doc. [CCPR/C/70/D/547/1993](#). November 15, 2000.

⁵⁵CCPR. General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. para. 13; see CCPR. Communication No. 757/1997: Pezoldova v. The Czech Republic. UN Doc. CCPR/C/75/D/757/1997. October 25, 2002. Concurring individual opinion of Prafullachandra Natwarlal Bhagwati "[a]s a prerequisite to have a fair and meaningful hearing of a claim, a person should be afforded full and equal access to public sources of information...."

⁵⁶CCPR. Communication No. 207/1986: Morael v. France. UN Doc. CCPR/C/36/D/207/1986. July 28, 1989; see also CCPR. Communication No. 514/1992: Fei v. Colombia. UN Doc. CCPR/C/53/D/514/1992. April 26, 1995; CCPR. General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial. UN Doc. CCPR/C/GC/32. August 23, 2007. para. 27.

⁵⁷CCPR. Communication No. 289/1988: Wolf v. Panama. UN Doc. CCPR/C/44/D/289/1988. March 26, 1992.

⁵⁸CCPR. Communication No. 532/1993: Thomas v. Jamaica. UN Doc. CCPR/C/61/D/532/1993. December 4, 1997.

⁵⁹CCPR. Communication No. 846/1999: Jansen-Gielen v. The Netherlands. UN Doc. [CCPR/C/71/D/846/1999](#). May 14, 2001. Proceedings to determine psychiatric ability to perform job.

⁶⁰CCPR. Communication No. 779/1997: Aarela and Anor v. Finland. UN Doc. [CCPR/C/73/D/779/1997](#). February 4, 1997.

Concluding Observation son Austria Relating to the Right to a Fair Hearing

The Committee notes that the State party's new Law on Equal Treatment improves the avenues of redress. However, the Committee is concerned that due to the complexity of the complaints mechanisms and of the legal framework, it may be difficult for the victims of racial discrimination to have access to the relevant procedure (art. 6). The Committee recommends that the State party take steps to simplify the procedures in such cases, to extend the national provisions on the regulation of the burden of proof in civil matters in accordance with the Convention, to ensure that the complaints against racial discrimination are processed free of charge, and to offer legal assistance to persons who need it.⁶¹

Case Relating to the Right to a Fair Hearing

Nenova v. Libya (CCPR)(2012). A team of doctors was arrested for allegedly injecting almost 400 children with HIV at the hospital. They were held in a police station incommunicado, allegedly drugged and tortured, and tried after one year of detention. The Committee considered these acts on the part of the government to constitute a violation of both Article 7 (freedom from torture) and Article 14 (right to a fair process).⁶²

Right to an Effective Remedy

The right to an effective remedy requires that remedies for human rights violations be accessible, affordable, timely and effective. Relevant to the 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.⁶³ 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."⁶⁴

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]."⁶⁵

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

⁶¹CERD.Concluding Observations: Austria.UN Doc.[CERD/C/AUT/CO/17](#). August 21, 2008.

⁶²CCPR.Communication No. 1755/2008: Nenova v. Libya. UN Doc.[CCPR/C/104/D/1755/2008/Rev.1](#). July 10, 2012.

⁶³CESCR.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.

⁶⁴CCPR. 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.

⁶⁵CCPR. Communication No. 972/01: George Kazantzis v. Cyprus. UN Doc. CCPR/C/78/D/972/2001. September 13, 2003. para. 6.6.

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.

Concluding Observations on Afghanistan Relating to the Right to an Effective Remedy

The Committee expresses grave concern that limited action has been taken by the State party to combat widespread sexual abuse and exploitation of children, and that perpetrators of such abuse enjoy impunity. The Committee also expresses deep concern that while there is a systematic failure on the part of the authorities to prosecute perpetrators of sexual abuse, child victims are very often considered and treated as offenders, and charged with offences such as debauchery, homosexuality, running away from home or zina....

The Committee calls on the State party to:

- (a) Urgently develop awareness-raising programmes and campaigns, with the involvement of children, to curb sociocultural norms that lead to sexual abuse of children, condone abusers and stigmatize child victims;*
- (b) Revise legislation in order to adequately protect all girls and boys from all forms of sexual abuse and violence, and ensure that the crime of rape is clearly defined;*
- (c) Ensure that child victims of any form of sexual abuse or exploitation are considered and treated as victims and no longer charged and detained as offenders;*
- (d) Strengthen Family Response Units and establish, as a matter of urgency, effective and child-friendly procedures and mechanisms to receive, monitor and investigate complaints;*
- (e) Ensure that perpetrators of sexual abuse and exploitation of children are brought to justice and punished with sanctions proportionate to their crimes; and*
- (f) Develop a national strategy to respond to the housing, health, legal and psychosocial needs of child victims of sexual exploitation and violence.⁶⁶*

Right to Protection of Privacy and Reputation

Under the right to protection of privacy and reputation, the integrity and confidentiality of correspondence should be guaranteed by the law and in practice. This right protects the individual from the interceptions of electronic,

⁶⁶CRC.Concluding Observations: Afghanistan.UN Doc. CRC/C/AFG/CO/1. April 8, 2011.

telephonic, telegraphic, and other forms of communication; and wiretapping and recording of conversations. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. Even with regard to interferences that conform to the ICCPR, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted.⁶⁷

The right requires that gathering and holding of personal information on computers, data banks, and other devices—whether by public authorities or by private individuals or bodies—must be regulated by law.⁶⁸ The state must provide protection under the law against any unauthorized interferences with correspondence⁶⁹ and ensure strict and independent (ideally, judicial) regulation of any such practices, including wiretapping.⁷⁰ An interference with this right can only be justified if it is lawful and not arbitrary—if it complies with an established legal procedure.⁷¹

As it relates to providers, professional duties of confidence, such as those undertaken by the medical profession, are an important aspect of the right to privacy, and any legislation that requires a medical professional to disclose her/his patients' information that should otherwise be kept confidential must specify in detail the circumstances when this requirement would take effect.⁷²

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.

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...

Right to Freedom of Expression and Information

The right to freedom of expression includes the freedom to impart information and establishes that any restrictions on the right that do not accord with acceptable limitations, such as public order or public health, could

⁶⁷CCPR. 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. 8.

⁶⁸CCPR. 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.

⁶⁹CCPR. 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. 8; CCPR. Concluding Observations: Zimbabwe. UN Doc. [CCPR/C/79/Add.89](#). April 6, 1998.

⁷⁰CCPR. Concluding Observations: Poland. UN Doc. [CCPR/C/79/Add.110](#). July 29, 1999; see also CCPR. Concluding Observations: Lesotho. UN Doc. [CCPR/C/79/Add.106](#). April 8, 1999.

⁷¹CCPR. Communication No. 450/1991: I.P. v. Finland. UN Doc. CCPR/C/48/D/450/1991. July 26, 1993; Joseph, Schultz, and Castan. The ICCPR-Cases, Materials and Commentary. 2004. p.494.

⁷²CCPR. Concluding Observations: Portugal. UN Doc. [CCPR/CO/78/PRT](#). July 5, 2003.

result in a breach.⁷³ Freedom of expression (including that of the media) can be lawfully restricted to protect the rights and reputation of others through, for example, the use of reasonable civil defamation laws.⁷⁴ While it is not clear what public health-based restrictions would be permitted, it has been suggested that prohibiting misleading information on health-threatening activities could be justified.⁷⁵

Relevant Provisions

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.

CERD, Art. 5(d)(viii): 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: The right to freedom of opinion and expression...

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders Declaration),⁷⁶ Art. 6: Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

⁷³CCPR. Communication No. 780/1997: Laptsevich v. Belarus. UN Doc. [CCPR/C/68/D/780/1997](#). April 13, 2000.

⁷⁴Joseph, Schultz, and Castan. The ICCPR-Cases, Materials and Commentary. 2004. p.541.

⁷⁵Joseph, Schultz, and Castan. The ICCPR-Cases, Materials and Commentary. 2004. p.525.

⁷⁶United Nations General Assembly. General Assembly Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. UN Doc. A/RES/53/144. December 9, 1998.