

The right to health – non-discrimination and choice – CEDAW article 12

2007 – 3- Womens' Law and Human Rights

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1. The human right to health,

-The Covenant on Social, Economic and Cultural - Rights article 12 (1)

“the highest attainable standard”

- The Committee on Social and Economic Rights, General Comment 14

-12. The obligation to make health facilities, goods and services accessible, without discrimination on the basis of class, sex:

- Physical accessibility

- Economic accessibility

- Information accessibility

- 18, 19 and 20 access on a non-discriminatory basis

- Outreach, the right to safe birth, maternal care, anti-retrovirals for pregnant women interpreted in the light of the right to life, SPR, article 6(1) (Cook p.9-12)

The CEDAW article 12

- article 12.1 – negative obligation: not to discriminate women

- article 12.2 - positive obligation: lay the foundation for women's reproductive choice

- CEDAW Committee General Recommendation 24

2. CEDAW article 12.1. and article 1 Non-discrimination

- Direct discrimination

-Making access dependent on marital status, see article 1

General Recommendation 24, 14

“States should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parent or health authorities because they are unmarried or because they are women!”

- Differential treatment based on biological difference

- General Recommendation 24, 12. States have an obligation to report how they address:

“a) biological factors that differ for women in comparison with men, such as their menstrual cyclus, the reproductive function and menopause.”

- The Norwegian Gender Equality Board, case 4/2003. The sterilization case. Differential prizing for men and women was seen as direct discrimination.

- Indirect discrimination, covert discrimination

- General Recommendation 14.20:

The Committee recommends that states integrate a gender perspective on their health related policies, planning, programme and research to promote better health to women and men. A gender-based approach recognizes that biological and socio-cultural factors play a significant role in influencing the health of women and men. The disaggregation of health and socio-economic data according to sex is seen as essential for identifying and remedying inequalities in health.

- Difference between women and men

- Systematic priority of diseases that are more common among men than those among women,

- Differences between women. General Recommendation 24.9

“Assessment of the health status and needs of women in that country take into account any ethnic, regional or community variation or practices based on religion, tradition or culture

- Health services must be organised so as to respect moral norms of physical segregation between women and men among many immigrant groups

- Bottom line given in Recommendation No.19 concerning violence against women:

20. In some states there are traditional practices perpetuated by culture and custom that are harmful to the health of women and children. These practices include dietary restriction for pregnant women, preference for male children and female circumcision or genital mutilation.

- General Recommendation no. 14 recommends that states parties:

- Take measures to eradicate the practice of female circumcision

- Include strategies to eradicate in their health policies

- Report to CEDAW on measures taken to eradicate

3. CEDAW article 12.2 – Positive obligation to lay a foundation for women’s reproductive choice..

- CEDAW article 16.1 (e), 10 (h) and 14 b
 - 10 h gives women a right to: specific educational information to health ensure the health and well being of families, including advice on family planning.”
- Access to family planning
- Access to information about family planning

3.1 What is family planning??

- Abortion
 - Article 2 of the European Convention on the human right to life
 - Application No. 8416/79. Bruggerman/Scheuten against Federal Republic of Germany
 - *Right to autonomy versus right to life. The Human Rights Commission did not state that the fetuses had an independent right but referred to article 6 n r. 5 in the UN Convention on Civil and Political Rights which state that a death penalty over a pregnant woman not can be executed.*
 - Within the margin of appreciation of the state
 - Cairo Programme of Action of the International Conference on Population and Development, 8.25,16:
 - *“In no case should abortion be promoted as a method of family planning. All Governments and relevant inter-governmental and non-governmental organization are urged to strengthen their commitment to women’s health concern deal with the health impact of unsafe abortion as a major public health concern and introduce the recourse to abortion through expanded and improved family-planning services.”*
 - Beijing Platform of Action , 97/106
 - *Steps to be taken should: “Recognize and deal with the health impact of unsafe abortions as a major public health concern, as agreed in paragraph 8.25 of the Cairo Conference*
 - CEDAW General Recommendation No. 21 – does not define family planning
 - CEDAW comments to country reports, ex. Zimbabwe p. 42:
 - *“The Committee suggests that Government review the law prohibiting abortion and provide sex education and practical family planning to both youth and adults—*
 - SPR, article 9 (1), the right to security of the person. Unsafe abortion causing maternal deaths, restrictive criminal laws (Cook p.14.15)

3.2 The right to Information about family planning

- The relation ship between CEDAW 16, 12, 10 and the International Covenant on Civil and Political Rights article 19 (3) limiting freedom of speech In the light of
 - *“.. public order, public, health and public morals..”*
- Article 10 of the European Human Rights Convention
 - *“The right of freedom of expression shall Included freedom to receive and impart Information and Ideas without Interference by public authority*
- Human Rights Committee stated that a certain margin of appreciation Is accorded to the states parties

Cases:

- The European Court of Human Rights, *Open Door and Dublin Well Women v Ireland*.

The court affirmed a right to free speech which included the dissemination of telephone numbers of British medical clinics, for medical information, including abortion information.

- The Court of Justice of the European Community, *Ireland versus Grogan*

The court stated that Europe's open borders protect the free flow of information about medical services, including information about abortion clinics.

3.3 Adolescents

Does teenagers have right to access and right to information:

CRC Article 2:

“States shall respect and ensure the rights set forth in the present Convention irrespective of race, colour, sex, language, religion..”

CRC Article 17:

“State parties 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. “

CRC Article 27:

“States parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The Child Right Committee General Comments to the Convention, no 3 and no 4

GC 3, HIV/AIDS and the rights of the child :

16. children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels.

20 . The Committee is concerned that health services are generally still insufficiently responsive to the needs of children under 18 yet, in particular adolescents. Should be rendered confidential sexual and reproductive health services and free low cost contraceptives, methods and services..

GC no 4 Adolescent health and development

28. In the light of article 3, 17 and 24 of the Convention, States parties should provide the adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy and treatment of sexually transmitted diseases, In addition States parties should ensure that they have access to appropriate information, regardless of their marital status. And whether their parents or guardian consent.

A right to reproductive and sexual education in school??

- Article 13 (1) CESCR “Education for full development” (Helleum , 50)
- Education versus religious conviction, children’s rights versus parents- authority
 - Kjeldsen Busk/Madsen case