



**REPORT OF THE CENTER FOR REPRODUCTIVE RIGHTS AND THE CENTRO DE DERECHOS HUMANOS OF THE UNIVERSIDAD DIEGO PORTALES REGARDING CHILE'S COMPLIANCE WITH ITS INTERNATIONAL OBLIGATIONS IN THE AREA OF WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS**

**NOVEMBER 10, 2008**

The Center for Reproductive Rights (CRR) is an international nongovernmental legal organization dedicated to the promotion and defense of women's reproductive rights throughout the world. The Centro de Derechos Humanos of the Universidad Diego Portales (Center for Human Rights) operates at the University Diego Portales Law School to promote an active role for the legal community, academia and civil society in monitoring and overseeing issues in the public interest such as human rights, as well as ensuring that public policies are inclusive. In accordance with Resolution 5/1 approved on June 18, 2007 by the Human Rights Council, CRR and the Center for Human Rights present this report as parties concerned with Chile's compliance with its international obligations in the field of reproductive rights.

## **1. Introduction**

Women's sexual and reproductive rights, which include the right to reproductive health and the right to reproductive self-determination, are human rights which should be respected, protected and guaranteed by the Chilean state in accordance with its international obligations.<sup>1</sup> As established by the Committee on Economic, Social and Cultural Rights (CESCR), the right to health entitles individuals to the right to enjoy the highest attainable standard of physical, mental and social well-being, and includes sexual and reproductive health.<sup>2</sup> Likewise, the right to health includes the right to receive, seek out and provide information related to health,<sup>3</sup> and further requires the elimination of all the barriers that interfere with access to health, education and information services.<sup>4</sup>

Based on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), one can infer that the right to medical attention should include access to essential sexual and reproductive health services for women, such as contraception and abortion services for cases in which the continuation of pregnancy presents a danger to

the health or life of the woman.<sup>5</sup> The failure to guarantee access to these services is a violation of women's right to equality and to be free from discrimination.<sup>6</sup>

An estimated 160,000 clandestine and unsafe abortions are performed each year in Chile.<sup>7</sup> The rate of adolescent pregnancy has risen to more than 30,000 pregnancies annually.<sup>8</sup> Direct and fair access to technologically available methods of contraception is gravely restricted.<sup>9</sup> Sexual and reproductive health services for HIV-positive women have imparted erroneous information and have performed sterilizations without informed consent.<sup>10</sup>

Noting with concern the health situation of Chilean women, the treaty monitoring bodies, in their concluding observations regarding Chile, have emphasized that state family planning policies must provide non-discriminatory access to contraceptive methods.<sup>11</sup> Chile must also eliminate the current sexual and reproductive health regulations that discriminate against women, thereby putting their lives and health at risk and creating *de facto* inequality.<sup>12</sup> Despite these recommendations, Chile has not yet taken effective action to guarantee sexual and reproductive rights, and has even taken regressive measures that violate its international obligations, specifically in the case of access to contraception.

In this report, three particularly concerning situations will be discussed with respect to the reproductive rights of Chilean women: i) the sterilization of women living with HIV/AIDS without their consent; ii) the recent decision of the Tribunal Constitucional [Constitutional Tribunal] determining that the free distribution of emergency contraception violates the right to life; and iii) the refusal of the Chilean state to comply with the recommendations from various treaty monitoring bodies that regulations governing access to abortion be liberalized.

## **2. Sterilization of women living with HIV without their consent**

In 2002, *Andrea*, a Chilean woman from the region of Hualañe, became pregnant for the first time at the age of 22. During her pregnancy she was diagnosed with HIV. *Andrea* received medical attention from Curicó Hospital, where she gave birth in November 2002 to a healthy baby. Twelve hours after the birth she was informed that the doctor had performed a tubal ligation, a forced and irreversible sterilization for which there was neither consent nor prior information. The organization Vivo Positivo has filed a complaint in the Chilean court system alleging that *Andrea's* rights have been violated, but they have yet to obtain justice.<sup>13</sup> *Andrea's* situation is representative of the rights violations experienced by HIV-positive women in Chile.

By 2005, there were a total of 15,894 reported cases of HIV/AIDS in Chile, of which 15% correspond to women.<sup>14</sup> Chile's report to the United Nations General Assembly Special Session (UNGASS) 2003-2006 establishes that: "the epidemic is mainly sexually transmitted by homosexual/bisexual men, *with a more rapid increase among women*. It prevails in particular among young adults from the least protected socio-cultural

backgrounds, and a tendency to increase among people with lower educational and occupational levels. An emerging characteristic is the increasing number of cases in rural areas, which represents a challenge in terms of prevention.”<sup>15</sup>

The Chilean government should be commended for its goal of reducing vertical transmission of the virus from 30% to 5%, as set out in its 2000 - 2010 health objectives.<sup>16</sup> However, the development of this policy can lead to the violation of women’s rights if adequate information is not provided to women; the government must guarantee that women living with HIV do not make reproductive health decisions in a coercive environment.

A 2004 correlative study by Vivo Positivo of eight regions in Chile which focused on women living with HIV/AIDS demonstrates the issue of forced sterilizations and sterilizations without consent.<sup>17</sup> According to this study, 31% of the women interviewed had been sterilized;<sup>18</sup> notably, 29% of these women had been sterilized because the health service had pressured them to do so and 12.9% had been sterilized without consent.<sup>19</sup> At the same time, Vivo Positivo reported that out of the 73% of women receiving gynecological care, 66% had received inadequate information related to the idea that women with HIV should not become pregnant.<sup>20</sup> The study also revealed that this problem is more prevalent among young women living with HIV:

“The youngest women have been sterilized through pressure by health services at a rate of 35%, while older women have been sterilized at a rate of only 18.2%. Similarly, the youngest women represent a higher percentage of sterilizations without consent, at a rate of 15%, a percentage which decreases to 9.1% for adult women.”<sup>21</sup>

The International Guidelines on HIV/AIDS and Human Rights, set out by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS,<sup>22</sup> summarize the international human rights standards for the treatment and prevention of HIV/AIDS. The Guidelines establish that the forced sterilization of women with HIV is a violation of their right to be free from discrimination,<sup>23</sup> as well as the right to liberty, the right to integrity of the person, the right to marriage, and the right to found a family.<sup>24</sup>

The right to free and informed consent to reproductive health services is also protected by article 10 of CEDAW, which establishes the obligation of States parties to take all measures necessary to eliminate discrimination against women and ensure “[a]ccess to specific educational information to help ensure the health and well being of families, including information and advice on family planning.”<sup>25</sup> At the same time, article 12 establishes an obligation to ensure that women receive adequate health services related to pregnancy,<sup>26</sup> and article 16 protects a woman’s right to determine the number and spacing of her children.<sup>27</sup>

In General Recommendation 24 regarding women and health, the CEDAW Committee established that acceptable health services must be “delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity...” and in this sense,

“States parties should not permit forms of coercion, such as non-consensual sterilization ... that violate women’s rights to informed consent and dignity”.<sup>28</sup> Similarly, in General Recommendation No. 19 regarding violence against women, the Committee states that “compulsory sterilization... adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”<sup>29</sup> The CESCR, in General Comment No. 14 regarding the right to the highest attainable standard of health, established that the “right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” should be included in the right to health and must be guaranteed by States parties.<sup>30</sup>

The CEDAW Committee heard the case of *AS v. Hungary*, which alleged a violation of CEDAW based on the sterilization of a Roma woman without her consent; in its decision, the Committee established that Hungary had violated articles 10, 12 and 16 of the Convention.<sup>31</sup>

Forced and coerced sterilizations violate women’s sexual and reproductive rights, as well as the international obligations of the Chilean state. These violations are aggravated when they are perpetrated against members of vulnerable groups which deserve special protection, such as women living with HIV.

## **2.1. Questions**

What measures has the State adopted to investigate the circumstances under which these sterilizations occurred and remunerate each of the affected women?

What measures is the State taking to guarantee that the practice of forced sterilization of HIV-positive women does not occur in either public or private hospitals?

What measures is the State taking to guarantee the informed and free consent for all medical interventions for HIV-positive women?

## **2.2. Recommendations**

1. Take concrete measures to monitor forced sterilization and ensure that it does not occur in either public or private hospitals. Thoroughly investigate those cases of forced sterilization which have been presented.
2. Undertake special measures to guarantee that women living with HIV receive sexual and reproductive health services which meet their necessities.

## **3. Emergency contraception in Chile**

On January 26, 2007, the Chilean government approved a new regulation from the Ministry of Health which ensured the free provision of hormonal emergency contraception by public institutions.<sup>32</sup> On April 18, 2008, however, the Constitutional

Tribunal declared that the provision of emergency contraception was unconstitutional due to its violation of the right to life of the unborn.<sup>33</sup>

This decision, in addition to its failure to recognize women's human rights and its establishment of the right to life of the unborn as absolute, discriminates against the most vulnerable sectors of the population. The decision limits access to a method of contraception for people with the least economic resources, even though access to contraception is a basic right and it is available in pharmacies for those women in more economically advantaged situations. This judicial decision violates the obligations of the Chilean state by engendering discrimination against those who cannot access contraception.

The decision establishes the possibility that emergency contraception acts as an abortifacient. However, this conclusion contradicts the scientific evidence provided by various international organizations regarding the effect of emergency contraception. The World Health Organization (WHO) defines emergency contraception (EC) as a "contraceptive method that can be used by women in the first few days following unprotected intercourse to prevent an unwanted pregnancy."<sup>34</sup> Similarly, the recent Resolution of the International Consortium of Emergency Contraception (ICEC) and the International Federation of Gynecology and Obstetrics (FIGO) demonstrates that Levonorgestrel pills have the following effects: i) inhibition or delay of an egg being released from the ovary, and ii) possible prevention of the sperm and the egg from meeting by affecting the cervical mucus or the ability of the sperm to bind to the egg.<sup>35</sup>

By declaring that the Supreme Regulatory Decree No. 48 is unconstitutional, Chile fails to comply with its obligations under CEDAW, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The decision fails to recognize women's rights to reproductive autonomy, health, nondiscrimination and the right to determine the number and spacing of children.

Article 16 of CEDAW establishes that all women have the right to "decide freely and responsibly the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."<sup>36</sup>

This right is founded on principles of personal autonomy, privacy and self-determination,<sup>37</sup> and protects individuals from public or private interference with their private decisions, such as those related to essential medical procedures or to contraception. A *positive obligation* on the part of the State is derived from these rights; this obligation entails the adoption of all necessary measures to guarantee safe access to the entire range of contraceptive methods. At the same time, the State has a *negative obligation* of non-interference with access to contraception and decisions regarding that access.<sup>38</sup>

As previously discussed, access to the complete range of sexual and reproductive health services constitutes part of the obligations derived from the right to health.<sup>39</sup> The

guarantee of adequate sexual and reproductive health services for women includes the obligation to provide the entire array of contraceptive options. The failure to provide such options for women violates the right to be free from discrimination. Among existing contraceptive options, emergency contraception constitutes a unique and particularly effective alternative; the denial of access to this alternative serves as a barrier to the enjoyment of the right to benefit from scientific advancements, which is recognized by the ICESCR.<sup>40</sup>

The importance of providing all contraceptive options, in addition to guaranteeing the right of women to reproductive self-determination, has indirect implications in terms of the right to education, as demonstrated by the high levels of adolescent pregnancy and school abandonment in Chile. According to 2006 statistics from the Chilean Institute of Reproductive Medicine, there has been a considerable increase in recent years in the percentage of adolescents who are sexually active; there has also been decrease in the average age at which young people initiate sexual relations. Additionally, the use of a contraceptive method by adolescents is directly proportional to their socioeconomic status.<sup>41</sup>

According to the WHO, adolescent pregnancy usually leads to a series of prejudicial consequences for women, as much in terms of physical health (complications during pregnancy, higher levels of maternal mortality and unsafe pregnancy) as in terms of psychological and mental consequences (dropping out from school, poverty and familial problems). Additionally, one of the most efficient solutions for the state to control the situation is to openly and fairly provide contraception. However, there are methods which are more convenient than others for adolescents, since this sector of the population is more likely to have unplanned sexual relations without using protection. Emergency contraception is a particularly viable alternative in these circumstances.<sup>42</sup>

If a population of women exists for which emergency contraception is particularly important, such as adolescents or women who have been raped, access to this form of contraception should be guaranteed for all women.

The Constitutional Tribunal's decision has regressive consequences, since Chile has been developing programs that would permit access to emergency contraception for all women who need it since 2004 and the medication has been commercially available since March 2001.

Additionally, discriminatory access to a contraceptive method such as emergency contraception leads to unwanted pregnancies. Unwanted pregnancies can result in abortions which, given their complete illegality in Chile, are conducted under unsafe and inadequate conditions, increasing the risk of maternal mortality and risking the health and lives of women, as has been pointed out on various occasions by the CEDAW Committee.<sup>43</sup>

### **3.1. Questions**

What concrete actions are being taken or are being planned by the Chilean state with the goal of guaranteeing universal and equitable access to emergency contraception?

What mechanisms exist in Chile to overcome the barrier that the Constitutional Tribunal decision on the Supreme Decree poses to the free distribution of emergency contraception?

### **3.2. Recommendations**

1. Adopt all necessary measures to universalize access to emergency contraception.
2. The Chilean government, in compliance with the recommendations of treaty monitoring bodies, should develop public health strategies to increase knowledge of contraceptive methods, placing an emphasis on emergency contraception; emergency contraception should not be considered an abortifacient, as demonstrated by the scientific community.

### **4. Chile's failure to comply with concluding observations related to the liberalization of abortion legislation**

The Chilean Penal Code criminalizes abortion under all circumstances.<sup>44</sup> This provision violates Chile's international obligations related to the respect, protection and guarantee of the rights to life, health, nondiscrimination and reproductive autonomy of women. These violations have been emphasized by different treaty monitoring bodies throughout the past ten years. Despite this fact, Chile has not adopted a single plan designed to resolve the situation and comply with the recommendations. Chile's failure to act interferes with women's enjoyment of their fundamental rights, as well as puts their life and health at risk.

In 1995, the CEDAW Committee recommended that Chile revise "the extremely restrictive legislation on abortion, taking into account the relationship between clandestine abortion and maternal mortality."<sup>45</sup> In 1999, the CEDAW Committee once again demonstrated its concern for the laws prohibiting and penalizing all forms of abortion, stating that the law "affects women's health, increases maternal mortality, and causes further suffering when women are imprisoned for violation of the law."<sup>46</sup> The Committee recommended that "the Government consider review of the laws relating to abortion with a view to their amendment, in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including the mental health, of the woman. The Committee also urges the Government to revise laws which require health professionals to report women who undergo abortions to law enforcement agencies and which impose criminal penalties on these women."<sup>47</sup> In 2006, reiterating its prior statements, the CEDAW Committee made the following recommendation:

“The Committee recommends that the State party consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion and provide them with access to quality services for the management of complications arising from unsafe abortion and to reduce maternal mortality rates, in accordance with general recommendation 24, on women and health, and the Beijing Declaration and Platform for Action.”<sup>48</sup>

The Human Rights Committee (HRC) also addressed the issue in 1999, recommending that “the law be amended so as to introduce exceptions to the general prohibition of all abortions.”<sup>49</sup> In 2007, the HRC returned to this theme, emphasizing that the abortion laws in Chile were not in concordance with article 6 of the ICCPR. In its concluding observations, the Committee stated:

“The State party should amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk. The State party should also bring its abortion laws into line with the Covenant.”<sup>50</sup>

In its 2004 concluding observations, the CESCR noted its concern for the consequences of an abortion prohibition which did not contain an exception for the health of the pregnant woman, pointing out that an estimated 34,479 women were hospitalized in 2001 due to complications from unsafe abortion.<sup>51</sup> The Committee recommended that Chile “revise its legislation and decriminalize abortion in cases of therapeutic abortions and when the pregnancy is the result of rape or incest.”<sup>52</sup>

In 2007, the Committee on the Rights of the Child (CRC) highlighted its concern regarding the penalization of abortion under all circumstances, urging Chile “to review its criminalization of the termination of pregnancies in all circumstances, including in cases of rape, incest and situations where the life of the mother is at risk.”<sup>53</sup>

This summary of the various concluding observations demonstrates the recurring and emphatic concern of the CEDAW Committee, HRC, CRC and CESCR in the face of the Chilean government’s inaction and failure to meet its obligations to respect, protect and guarantee fundamental rights such as the right to life, right to be free from discrimination and the right to health in situations where women’s life and health are at risk from pregnancy.

Below are a few representative cases which demonstrate how the lack of exceptions to Chile’s abortion law creates an unacceptable risk to the health and life of women:

- In 2002, a Chilean woman named Gladys Pavez requested the termination of her pregnancy in front of the media because it was incompatible with life. Her situation was dramatic, causing a significant controversy after which she had to retract her request and continue her pregnancy.<sup>54</sup>



- In 2003, Griselle Rojas, a 27 year old woman with two children, was diagnosed with a molar pregnancy, a diagnosis with a high probability that she would develop cancer. Additionally, the fetus had a serious malformation which was incompatible with life. Griselle's treating doctor requested that the pregnancy be terminated, but was denied even though the Medical Association had determined that the only possibility of saving her life was a therapeutic abortion. An intervention was only begun once the situation became extremely serious.<sup>55</sup>
- In 2005, a 9-year-old girl who had been raped multiple times by her mother's boyfriend became pregnant.<sup>56</sup> According to information from the Servicio Nacional de Menores (SENAME), from 2000 to 2005, 23 girls between the ages of 11 and 12 became pregnant after being raped.<sup>57</sup>
- More recently, in August 2008, Karen, a 23-year-old woman in her 22<sup>nd</sup> week of pregnancy, was diagnosed with alobar holoprosencephaly. This malformation means that the fetus, if born alive, would only survive a few days or months without gaining consciousness since its brain would not have divisions. Karen was denied a therapeutic abortion and required to continue her pregnancy.<sup>58</sup>

The failure to comply with these recommendations does not only implicate Chile's international obligations with respect to international human rights treaties (five in total), but also puts the lives and health of women at risk.

In accordance with various international instruments,<sup>59</sup> the guarantee, protection and respect for the right to life by States parties includes both positive and negative obligations. On one hand, States parties must protect individuals by refraining from exposing them to risks. On the other hand, States must take all the necessary measures to assure the enjoyment of the right to life.<sup>60</sup> In this context, the HRC has noted that States parties have a positive obligation to eliminate laws or practices which put the women's lives at risk, such as measures which restrict and prohibit abortion.<sup>61</sup> With regard to abortion more specifically, the HRC has established that the lack of access to reproductive health services such as abortion is a violation of the right to life.<sup>62</sup>

At the same time, the CEDAW Committee has noted that the classification of abortion as a crime does not prevent abortions, but rather makes them increasingly unsafe and dangerous for women.<sup>63</sup> Noting with concern the relationship between maternal mortality and illegal/unsafe abortion,<sup>64</sup> the HRC has established that the laws penalizing abortion violate the right to life<sup>65</sup> and has requested that States parties remove barriers to access, including restrictive abortion laws.<sup>66</sup> The HRC has also recommended the adoption of legal measures and policies which will assure fair access to a range of reproductive health services and information,<sup>67</sup> including access to legal and safe abortion services.<sup>68</sup>

Chile has an obligation to guarantee the right to health and to specifically guarantee the right "to the highest attainable standard of physical and mental health."<sup>69</sup> This statement involves the requirement to guarantee the enjoyment of the right to health for women, including sexual and reproductive health.<sup>70</sup> The protection of this right is also linked to the guarantee of nondiscrimination based on gender in the provision of health services.<sup>71</sup>

The CESCR has determined that the prohibition on discrimination in access to health services is an obligation of immediate effect,<sup>72</sup> as compared to the obligations which require progressive realization due to their aspirational character.<sup>73</sup> The CEDAW committee, in its interpretation of article 12, has determined that “[i]t is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”<sup>74</sup>

To guarantee the full enjoyment of women’s right to health, access to all health services should be guaranteed, including sexual and reproductive health services such as abortions. This service should be guaranteed under safe and adequate conditions, especially in cases where the life or the health of the pregnant woman is in danger due to the continuation of pregnancy. The CESCR as well as the CEDAW Committee have been emphatic in reiterating the obligation of states to eliminate barriers to the access of health services which are essential for women, such as abortion.<sup>75</sup>

#### 4.1. Questions

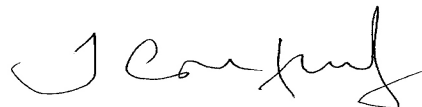
What has the Chilean state done to comply with the recommendations that the CRC, CESCR, HRC and CEDAW Committees have made since 1995? What has Chile done to liberalize the total criminalization of abortion, particularly in cases in which the life and health of the pregnant woman are put in danger by continuing the pregnancy?

#### 4.2. Recommendation

Urge the Chilean government to liberalize the legislation which criminalizes abortion under all circumstances.



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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by Chile Dec. 7, 1989) [hereinafter CEDAW]. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by Chile Feb. 10, 1972) [hereinafter ICCPR]. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 5 (ratified by Chile Feb. 10, 1972) [hereinafter ICESCR].

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<sup>2</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 11 and 21, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *General Comment No. 14*].

<sup>3</sup> *Id.*, ¶ 12(b).

<sup>4</sup> *Id.*, ¶ 21.

<sup>5</sup> CEDAW, *supra* note 1, art. 12 and 16.

<sup>6</sup> CEDAW Committee (CEDAW Comm.), *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 10, U.N. Doc. CEDAW/C/CHI/CO/4 (Aug. 25, 2006).

<sup>7</sup> Guttmacher Institute, *An Overview of Clandestine Abortion in Latin America* (1999), available at <http://www.guttmacher.org/pubs/ib12.html>.

<sup>8</sup> Biblioteca del Congreso Nacional de Chile (BCN), *Embarazo adolescente: más allá de la píldora: Causas [Adolescent Pregnancy]* (2007), available at

[http://www.bcn.cl/carpeta\\_temas/temas\\_portada.2006-10-03.7146246056/area\\_2.2007-01-31.1688944884](http://www.bcn.cl/carpeta_temas/temas_portada.2006-10-03.7146246056/area_2.2007-01-31.1688944884)

(“According to Health Ministry data, of 230,352 live births in 2004, 33,508 were to mothers aged 15 to 19 and 906 to girls under 15. In 2006 these figures increased to 38,000 and 1,080, respectively.”). In addition, the prevalence of HIV in adults aged 15 and up was 229 per 100,000 population. World Health Organization, *Core Health Indicators*, (2005), available at

[www.who.int/whosis/database/core/core\\_select\\_process.cfm?countries=chl&indicators=HIVPrevAdults](http://www.who.int/whosis/database/core/core_select_process.cfm?countries=chl&indicators=HIVPrevAdults).

<sup>9</sup> See Tribunal Constitucional de Chile [Constitutional Tribunal of Chile], *Sentencia Rol 740-07-CDS*.

<sup>10</sup> See *infra* note 17.

<sup>11</sup> CEDAW Comm., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 139 U.N. Doc. A/50/38 (Feb. 3, 1995).

<sup>12</sup> CEDAW Comm., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 10, U.N. Doc. CEDAW/C/CHI/CO/4 (Aug. 25, 2006).

<sup>13</sup> S. Araya, Head of the VivoPositivo Gender Area, *¿Derechos sexuales y reproductivos? El ejercicio de derechos y la búsqueda de la reparación. Caso de esterilización forzada en Chile [Sexual and Reproductive Rights?]*, Aug. 3 – 8, 2008.

<sup>14</sup> Ministerio de Salud: Chile, *Evolución del VIH-SIDA: 1986-2005 [The Evolution of HIV/AIDS: 1986-2005]*, 2 - 3 (2006) available at [http://epi.minsal.cl/epi/html/bolets/reportes/VIH-SIDA/Pais\\_86-05VihSida.pdf](http://epi.minsal.cl/epi/html/bolets/reportes/VIH-SIDA/Pais_86-05VihSida.pdf).

<sup>15</sup> Government of Chile, *UNGASS Report: Chile*, 5 (2006), available at

[http://data.unaids.org/pub/Report/2006/2006\\_country\\_progress\\_report\\_chile\\_en.pdf](http://data.unaids.org/pub/Report/2006/2006_country_progress_report_chile_en.pdf) (emphasis added).

<sup>16</sup> Health Ministry, Chile, *Chile: Objetivos Sanitarios 2000-2010 [Chile: Health Objectives 2000-2010]*, 195, available at [http://www.redsalud.gov.cl/temas\\_salud/temas\\_salud.html](http://www.redsalud.gov.cl/temas_salud/temas_salud.html).

<sup>17</sup> FRANCISCO VIDAL, MARINA CARRASCO, AND RODRIGO PASCAL, *MUJERES CHILENAS VIVIENDO CON VIH/SIDA: DERECHOS SEXUALES Y REPRODUCTIVOS [CHILEAN WOMEN LIVING WITH HIV/AIDS]* (2004).

<sup>18</sup> *Id.*, at 104.

<sup>19</sup> *Id.*, at 106.

<sup>20</sup> *Id.*, at 81.

<sup>21</sup> *Id.*, at 106.

<sup>22</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Program on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version*, available at [http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines\\_en.pdf](http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf).

<sup>23</sup> *Id.*, ¶ 114 (“HIV prevention and care for women are often undermined by pervasive misconceptions about HIV transmission and epidemiology. There is a tendency to stigmatize women as ‘vectors of disease,’ irrespective of the source of infection. As a consequence, women who are or are perceived to be HIV-positive face violence and discrimination in both public and in private life. Sex workers often face mandatory testing with no support for prevention activities to encourage or require their clients to wear condoms and with little or no access to health-care services. Many HIV programmes targeting women are focused on pregnant women but these programmes often emphasize coercive measures directed towards the risk of transmitting HIV to the foetus, such as mandatory pre- and post-natal testing followed by coerced abortion or sterilization. Such programmes seldom empower women to prevent perinatal transmission by prenatal prevention education and an available choice of health services and overlook the care needs of women.”).

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<sup>24</sup> *Id.*, ¶ 118 (“The right to marry and to found a family encompasses the right of ‘men and women of full age, without any limitation due to race, nationality or religion,...to marry and to found a family,’ to be ‘entitled to equal rights as to marriage, during marriage and at its dissolution’ and to protection by society and the State of the family as ‘the natural and fundamental group unit of society.’ Therefore, it is clear that the right of people living with HIV is infringed by mandatory pre-marital testing and/or the requirement of ‘AIDS-free certificates’ as a precondition for the grant of marriage licences under State laws. Secondly, forced abortions or sterilization of HIV-infected women violates the human right to found a family, as well as the right to liberty and integrity of the person. Women should be provided with accurate information about the risk of perinatal transmission to support them in making voluntary, informed choices about reproduction.”).

<sup>25</sup> CEDAW, *supra* note 1, art. 10(1)(h).

<sup>26</sup> *Id.*, art. 12(2).

<sup>27</sup> *Id.*, art. 16(1)(e).

<sup>28</sup> CEDAW Comm., *General Recommendation No. 24: Women and Health*, ¶ 22, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter *General Recommendation No. 24*].

<sup>29</sup> CEDAW Comm., *General Recommendation No. 19: Violence Against Women*, ¶ 22, U.N. Doc. HRI/GEN/1/Rev.1 (1992) [hereinafter *General Recommendation No. 19*].

<sup>30</sup> *General Comment 14*, *supra* note 2, ¶ 8.

<sup>31</sup> A.S. v. Hungary, *Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, ¶ 11.2 - 11.5, U.N. Doc. CEDAW/C/36/D/4/2004 (Feb. 12, 2004). As discussed, article 10(h) guarantees access to appropriate information and advice about family planning. Article 12 guarantees adequate services related to sexual and reproductive health. Article 16 protects the right to determine the number and spacing of children. See *supra* note 1.

<sup>32</sup> Decreto Supremo Reglamentario 48 [Supreme Regulatory Decree 48], Ministry of Health (Jan. 26, 2007).

<sup>33</sup> Tribunal Constitucional [Constitutional Tribunal], Sentencia Rol 740-07-CDS.

<sup>34</sup> World Health Organization, *Emergency Contraception: A Guide for Service Delivery*, 7 (2004), available at [http://whqlibdoc.who.int/hq/1998/WHO\\_FRH\\_FPP\\_98.19.pdf](http://whqlibdoc.who.int/hq/1998/WHO_FRH_FPP_98.19.pdf). The WHO also states that emergency contraception pills “do not terminate pregnancy and thus do not constitute abortion.” *Id.*, at 20.

<sup>35</sup> International Consortium for Emergency Contraception (ICEC) and International Federation of Gynecology & Obstetrics, *Statement on Mechanism of Action*, (2008) available at <http://www.igo.org/docs/International%20consortium%20for%20emergency%20contraception%20statement.pdf>.

<sup>36</sup> CEDAW, *supra* note 1, art. 16(e) (emphasis added).

<sup>37</sup> ICCPR, *supra* note 1, art. 1; ICESCR, *supra* note 1, art. 1; CEDAW, *supra* note 1, art. 12 and 16.

<sup>38</sup> *General Comment No. 14*, *supra* note 2, ¶ 34, 35, and 37 (expressly stating that States have a specific legal obligation to refrain from limiting access to contraceptives, thus providing the basis for the right to the full range of available contraceptive methods).

<sup>39</sup> *Id.* “The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.” *Id.*, ¶ 11.

<sup>40</sup> ICESCR, *supra* note 1, art 15.

<sup>41</sup> Ximena Luengo, Ana Zepeda and Soledad Díaz, *Embarazos en Adolescentes: Últimos datos disponibles [Adolescent Pregnancy: Most Recent Data]*, Instituto Chileno de Medicina Reproductiva (2006) available at <http://www.icmer.org/pdfs/presentaciones/EmbarazosEnAdolescentes2006.pdf>. In 1994, 33 percent of adolescents aged 15 to 19 engaged in sexual relations. This figure increased to 42.1 percent in 2000. Half of all adolescents have sex during ages 15 to 19. While 82 percent of adolescents from affluent backgrounds use at least one contraceptive method, only 47 percent of adolescents from low-income backgrounds do so. *Id.*

<sup>42</sup> Department of Child and Adolescent Health and Development, World Health Organization, *Adolescent Pregnancy: Issues in Adolescent Health and Development*, 64 (2004), available at [http://whqlibdoc.who.int/publications/2004/9241591455\\_eng.pdf](http://whqlibdoc.who.int/publications/2004/9241591455_eng.pdf).

<sup>43</sup> HRC, *Concluding Observations of the Human Rights Committee: Bolivia*, ¶ 22, U.N. Doc. CCPR/C/79/Add.74 (May 1, 1997); HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999); HRC, *Concluding Observations of the Human Rights Committee: Colombia*, ¶ 24, U.N. Doc. CCPR/C/79/Add.76 (May 5, 1997); HRC, *Concluding Observations of the Human Rights Committee: Costa Rica*, ¶ 11, U.N. Doc. CCPR/C/79/Add.107 (April 8, 1999); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); HRC, *Concluding Observations of the Human Rights Committee: Mongolia*, ¶ 8(b), U.N. Doc. CCPR/C/79/Add.120 (April 25, 2000); HRC, *Concluding Observations of the Human Rights Committee: Paraguay*, ¶ 219, U.N. Doc. A/50/40 (Feb. 4, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 15, 21, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, HRC, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999); HRC, *Concluding Observations of the Human Rights Committee: Senegal*, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (Nov. 19, 1997); HRC, *Concluding Observations of the Human Rights Committee: Sudan*, ¶ 10, U.N. Doc. CCPR/C/79/Add.85 (Nov. 19, 1997); HRC, *Concluding Observations of the Human Rights Committee: United Republic of Tanzania*, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (Aug. 18, 1998); HRC, *Concluding Observations of the Human Rights Committee: Zambia*, ¶ 9, U.N. Doc. CCPR/C/79/Add.62 (April 3, 1996).

<sup>44</sup> CÓDIGO PENAL [PENAL CODE] art. 342 (“Whoever deliberately performs an abortion shall be subject to: 1. High imprisonment in the lowest degree, if abortion is forcibly performed. 2. Minor imprisonment in the highest degree if abortion is otherwise performed without the pregnant woman’s consent, even if no force is used. 3. Minor imprisonment in the medium degree, if abortion is performed with the pregnant woman’s consent.”).

<sup>45</sup> CEDAW Comm., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 158, U.N. Doc. A/50/38 (Feb. 3, 1995).

<sup>46</sup> CEDAW Comm., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 228, U.N. Doc. A/54/38 (1999).

<sup>47</sup> *Id.*, ¶ 229.

<sup>48</sup> CEDAW Comm., *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Chile*, ¶ 20, U.N. Doc. CEDAW/C/CHI/CO/4 (Aug. 25, 2006).

<sup>49</sup> HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999) (“The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. The legal duty imposed upon health personnel to report on cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated.”).

<sup>50</sup> HRC, *Concluding Observations of the Human Rights Committee (HRC): Chile*, ¶ 8, U.N. Doc. CCPR/C/CHL/CO/5 (May 18, 2007).

<sup>51</sup> CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Chile*, ¶ 26, U.N. Doc. E/C.12/1/Add.105 (Dec. 1, 2004).

<sup>52</sup> *Id.* ¶ 53.

<sup>53</sup> Committee on the Rights of the Child (CRC), *Concluding Observation of the Committee on the Rights of the Child: Chile*, ¶ 56, U.N. Doc. CRC/C/CHL/CO/3 (April 23, 2007).

<sup>54</sup> Law School, Diego Portales University, *Informe Anual sobre Derechos Humanos en Chile 2003: Hechos de 2002 [Annual Report of Human Rights in Chile 2003]*, 292-293 (2003) available at [http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe\\_03/07.pdf](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_03/07.pdf).

<sup>55</sup> Law School, Diego Portales University, *Informe Anual sobre Derechos Humanos en Chile 2004: Hechos de 2003 [Annual Report of Human Rights in Chile 2004]*, 227 – 228 (2004), available at [http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe\\_04/07.pdf](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_04/07.pdf).

<sup>56</sup> See *Piden aborto terapéutico para niña embarazada de 9 años [Request for a therapeutic abortion for a nine year old girl]*, MUJERES HOY, Jan. 12, 2005, <http://www.mujereshoy.com/secciones/2757.shtml>.

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<sup>57</sup> *Id.*

<sup>58</sup> See Ana María Sanhueza, “*Necesito un aborto terapéutico*” [“*I need a therapeutic abortion*”], THE CLINIC, <http://www.theclinic.cl/2008/11/01/necesito-un-aborto-terapeutico/>.

<sup>59</sup> Universal Declaration of Human Rights, G.A. Res. 217A, art. 3, U.N. Doc. A/810 (Dec. 10, 1948); ICCPR, *supra* note 1, art. 6; Organization of American States, American Convention on Human Rights, art. 4(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

<sup>60</sup> See HRC, *General Observation No. 28: Equality of rights between men and women*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (Mar. 29, 2000); HRC, *General Observation No. 6: The Right to Life (Art. 6)*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.1 (April 30, 1982) [hereinafter *General Observation No. 6*]. See also *General Recommendation No. 19*, *supra* note 29, ¶ 4.

<sup>61</sup> HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 8, U.N. Doc. CCPR/C/CHL/CO/5 (May 18, 2007); HRC, *Concluding Observations of the Human Rights Committee: El Salvador*, ¶ 14, U.N. Doc. CCPR/CO/78/SLV (Aug. 22, 2003). See also the dissenting vote in *K.L. v. Peru*, a case reviewed by the HRC involving a young woman who was refused a legal therapeutic abortion although she was carrying an anencephalic fetus. The HRC wrote that several of the claimant’s rights had been violated. The dissenting vote held: “It is not only taking a person’s life that violates article 6 of the Covenant but also placing a person’s life in grave danger.” HRC, *Karen Noelia Llantoy Huamán v. Peru*, Communication No. 1153/2003: Dissenting vote by Human Rights Committee member Hipólito Solari Yrigoyen, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005).

<sup>62</sup> HRC, *Concluding Observations of the Human Rights Committee: Venezuela*, ¶ 19, U.N. Doc. CCPR/CO/71/VEN (April 26, 2001) (“The criminalization of all non-therapeutic abortions raises serious issues... The State party is under a duty to take measures to ensure the right to life (art. 6) of pregnant women who decide to terminate their pregnancies, including by amending the law to establish exceptions to the general prohibition against non-therapeutic abortions. The State Party must protect the confidential nature of medical information.”); HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (April 26, 2001); HRC, *Concluding Observations of the Human Rights Committee: Kuwait*, ¶ 16, U.N. Doc. CCPR/CO/69/KWT (July 27, 2000); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 15, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999); HRC, *Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, ¶ 18, U.N. Doc. CCPR/CO/70/TTO (Nov. 3, 2000).

<sup>63</sup> CEDAW Comm., *Concluding Observations of the CEDAW Committee: Peru*, ¶ 339, U.N. Doc. CEDAW/C/1998/II/L.1/Add.7 (July 10, 1998).

<sup>64</sup> HRC, *Concluding Observations of the Human Rights Committee: Bolivia*, ¶ 22, U.N. Doc. CCPR/C/79/Add.74 (May 1, 1997); HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999); HRC, *Concluding Observations of the Human Rights Committee: Colombia*, ¶ 24, U.N. Doc. CCPR/C/79/Add.76 (May 5, 1997); HRC, *Concluding Observations of the Human Rights Committee: Costa Rica*, ¶ 11, U.N. Doc. CCPR/C/79/Add.107 (April 8, 1999); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); HRC, *Concluding Observations of the Human Rights Committee: Mongolia*, ¶ 8(b), U.N. Doc. CCPR/C/79/Add.120 (April 25, 2000); HRC, *Concluding Observations of the Human Rights Committee: Paraguay*, ¶ 219, U.N. Doc. A/50/40 (Feb. 4, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 15, 21, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, HRC, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999); HRC, *Concluding Observations of the Human Rights Committee: Senegal*, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (Nov. 19, 1997); HRC, *Concluding Observations of the Human Rights Committee: Sudan*, ¶ 10, U.N. Doc. CCPR/C/79/Add.85 (Nov. 19, 1997); HRC, *Concluding Observations of the Human Rights Committee: United Republic of Tanzania*, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (Aug. 18, 1998); HRC, *Concluding Observations of the Human Rights Committee: Zambia*, ¶ 9, U.N. Doc. CCPR/C/79/Add.62 (April 3, 1996).

<sup>65</sup> HRC, *Concluding Observations of the Human Rights Committee: Chile*, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (Mar. 30, 1999); HRC, *Concluding Observations of the Human Rights Committee: Costa Rica*, ¶ 11, U.N. Doc. CCPR/C/79/Add.107 (April 8, 1999); HRC, *Concluding Observations of the Human Rights Committee: Ecuador*, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (Aug. 18, 1998); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 15, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999); HRC, *Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, ¶ 18, U.N. Doc. CCPR/CO/70/TTO (Nov. 3, 2000); HRC, *Concluding Observations of the Human Rights Committee: United Republic of Tanzania*, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (Aug. 18, 1998).

<sup>66</sup> HRC, *Concluding Observations of the Human Rights Committee: Argentina*, ¶ 14, U.N. Doc. CCPR/CO/70/ARG (Nov. 3, 2000); HRC, *Concluding Observations of the Human Rights Committee: Ecuador*, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (Aug. 18, 1998); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 22, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, HRC, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999); HRC, *Concluding Observations of the Human Rights Committee: Senegal*, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (Nov. 19, 1997); HRC, *Concluding Observations of the Human Rights Committee: Trinidad y Tobago*, ¶ 18, U.N. Doc. CCPR/CO/70/TTO (Nov. 3, 2000); HRC, *Concluding Observations of the Human Rights Committee: United Republic of Tanzania*, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (Aug. 18, 1998).

<sup>67</sup> HRC, *Concluding Observations of the Human Rights Committee: Argentina*, ¶ 14, U.N. Doc. CCPR/CO/70/ARG (Nov. 3, 2000); HRC, *Concluding Observations of the Human Rights Committee: Ecuador*, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (Aug. 18, 1998); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 22, U.N. Doc. CCPR/C/79/Add.72 (Nov. 18, 1996); HRC, *Concluding Observations of the Human Rights Committee: Peru*, ¶ 20, U.N. Doc. CCPR/CO/70/PER (Nov. 15, 2000); HRC, *Concluding Observations of the Human Rights Committee: Poland*, ¶ 11, HRC, U.N. Doc. CCPR/C/79/Add.110 (July 29, 1999).

<sup>68</sup> HRC, *Concluding Observations of the Human Rights Committee: Argentina*, ¶ 14, U.N. Doc. CCPR/CO/70/ARG (Nov. 3, 2000); HRC, *Concluding Observations of the Human Rights Committee: Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001).

<sup>69</sup> ICESCR, *supra* note 1, art. 12(1).

<sup>70</sup> *General Comment No. 14, supra* note 2. “The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.” *Id.*, ¶ 11.

<sup>71</sup> *Id.*, ¶ 21.

<sup>72</sup> *Id.*, ¶ 30. “In General Comment No. 3, the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care. Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, (28) the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee's view, these core obligations include at least the following obligations: (a) To ensure the right of access to health facilities, goods and services on a nondiscriminatory basis, especially for vulnerable or marginalized groups; (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone; (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs; (e) To

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ensure equitable distribution of all health facilities, goods and services; (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.” *Id.*, ¶ 43.

<sup>73</sup> *Id.*, ¶ 21.

<sup>74</sup> CEDAW, *General Recommendation No. 24*, *supra* note 28, ¶ 11.

<sup>75</sup> *General Comment No. 14*, *supra* note 2, ¶ 21 (“The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”). *See also General Recommendation No. 24*, *supra* note 28, ¶ 14.