

Core Documents

relating to sexual and
reproductive rights and health
for lesbian, gay, bisexual and
transgendered people

1 The right to health in the International Bill of Human Rights

The right to health is enshrined in the **International Bill of Human Rights** which includes the **Universal Declaration of Human Rights** (1948), the **International Covenant on Civil and Political Rights** (ICCPR, 1966, into force since 1976) and the **International Covenant on Economic, Social and Cultural Rights** (ICESC, 1966, into force since 1976).

Although sexual orientation or Sexual and Reproductive Health and Rights are not referred to directly, it is understood they are included, as the fundamental right to health exists for every member of the human family.

1.1 The Universal Declaration of Human Rights Art. 25.1

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

The full text of the Universal Declaration is reproduced in

Core document 10

<http://unesdoc.unesco.org/images/0014/001466/146628m.pdf>

This webpage, from the 31 May 2006 (the 40th anniversary of the creation of the International Covenant on Economic, Social and Cultural Rights) lists the major international and regional instruments for Human Rights. It also provides an interesting snapshot of which instruments of the 192 member States have signed under the following headings: prevention of discrimination, genocide, terrorism, torture, slavery, aliens, workers, women, children and combatants,

1.2 The International Covenant on Economic, Social and Cultural Rights

The full text of the International Covenant on Economic, Social and Cultural Rights is reproduced in

Core document 11

http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

The full text of the **ICESCR** is reproduced here. This webpage from the Office of the High Commissioner for Human Rights acts as a portal for other OHCHR pages.

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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:*
 - (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
 - (b) *The improvement of all aspects of environmental and industrial hygiene;*
 - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

Interpretation of the ICESCR

As mentioned earlier, the *right to health* is different from the right to be healthy. This conclusion follows the definition of health and the *right to health* given by international institutions. Indeed, the Preamble of the World Health Organization's Constitution states that:

'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'

The right to health embraces a series of socio-economic factors. This is confirmed by the **General Comment No. 14** (2000) made by the Committee of Economic, Social and Cultural Rights (CESCR) on the International Covenant on Economic, Social and Cultural Rights (ICESCR). Indeed, with respect to the article 12.1 of the ICESCR mentioned above, the CESCR underline that *"the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health"*

The full text of General Comment No.14 is reproduced in **Core document 12**

[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument)

This **General Comment No. 14** is an important reference source for the interpretation of the ICESCR

In **General Comment No 14**, the Committee on Economic, Social and Cultural Rights (CESCR) suggests a broader interpretation of the article 2.2 of the ICESCR, which does not explicitly mention discrimination on the ground of sexual orientation:

Paragraph 18 - ...the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.

The right to health is broader than the right to be healthy and includes a wide range of components, involving different kinds of obligations for States. General Comment No. 14 identifies some core

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obligations, which are of immediate relevance for States. With respect to discrimination:

Paragraph 43a - 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. 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 non-discriminatory basis, especially for vulnerable or marginalized groups.

Concerning HIV/AIDS:

Paragraph 44 (a-e) - The Committee also confirms that the following are obligations of comparable priority:

(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

(b) To provide immunization against the major infectious diseases occurring in the community;

(c) To take measures to prevent, treat and control epidemic and endemic diseases;

(d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;

(e) To provide appropriate training for health personnel, including education on health and human rights.

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The International Covenant on Civil and Political Rights

<http://www.ohchr.org/english/law/ccpr-one.htm>

The full text of the **ICCPR** is reproduced here. This webpage from the Office of the High Commissioner for Human Rights acts as a portal for other OHCHR pages.

Although the ICCPR does not mention explicitly the right to health, it is recognized due to the definition of the right to health mentioned earlier that elements of the enjoyment of the right to attain the highest standard of physical and mental health are implicit in a number of civil rights.

Some examples are:

Art.1.2

All peoples may, for their own ends, freely dispose of their natural wealth and resources [...]. In no case may a people be deprived of its own means of subsistence.

Art. 7

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

Art. 17, par. 1

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.

Art 19, par. 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

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Art. 23, par. 3

No marriage shall be entered into without the free and full consent of the intending spouses.

www.ilgaeurope.org/.../file/Sweden%20%20Sex%20Orient%20and%20Gend%20ID%20issues%20in%20development.pdf

Sexual Orientation and Gender Identity Issues in Development

A Study of Swedish policy and administration of Lesbian, Gay, Bisexual and Transgender issues in international development cooperation (2005). This paper is an excellent resource from the Swedish International Development Cooperation Agency (SIDA). **Chapter 7** makes particular reference to changes made to the understanding and application of the International Covenant on Civil and Political Rights.