



This guide was compiled by students of the LLM/MPhil (Human Rights and Democratisation in Africa) programme at the Centre for Human Rights, University of Pretoria, South Africa



**A guide to the General Comments on article 14(1)(d) and (e)
of the Protocol to the African Charter on Human and Peoples'
Rights on the Rights of Women in Africa**



What is included in the General Comments?

The General Comments begin with an introduction which is followed by the normative content of article 14(1)(d)&(e). This is where the meaning of the provisions is interpreted. The next sections outline the general and specific obligations of states with respect to these provisions, The General Comments note that even though the provisions concern sexually transmitted infections generally, including HIV/AIDS, that the focus of the General Comments is on HIV/AIDS because of the disproportionate effect that the virus has on women in Africa.

What are some key aspects of the normative content?

Article 14(1)(d): the right to self-protection and the right to be protected from HIV and sexually transmitted infections

There are not different obligations with respect to providing for the right to self-protection or the right to be protected but instead, this provision requires states to create an environment that empowers women. These rights are also linked to other women's rights including equality and non-discrimination, life, dignity, health, self-determination, privacy, and the right to be free from all forms of violence.

Article 14(1)(e): the right to be informed on one's health status and the health status of one's partner

The right to be informed on one's health status does only refer to information on one's HIV status, but it includes the rights of women to access information about their health. It also includes pre- and post-test, counseling. This right should be applicable to all women irrespective of their marital status, age, social status and economic conditions.

The decision to disclose one's health status and the health status of one's partner should be made in line with the following international standards:

- The HIV-positive person in question has been thoroughly counseled;
- Counseling of the HIV-positive person has failed to achieve appropriate behavioural changes;
- The HIV-positive person has refused to notify, or consent to the notification of his/her partner(s);
- A real risk of HIV transmission to the partner(s) exists;
- The HIV positive person is given reasonable advance notice;
- The identity of the person is not revealed to the partner(s), if practicable, otherwise identity is revealed;
 - Follow-up is provided to ensure support to those involved, as necessary;
 - The person providing HIV treatment, care or counseling services has ensured that the person living with HIV is not at risk of physical violence resulting from the notification.

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What are the general obligations of state parties in respect of article 14 (1) (d) and (e)?

Article 14(1)(d)&(e) imposes four sets of general obligations on states parties namely: to respect, protect, promote and fulfil.

What are some of the specific obligations under article 14(1)(d) included in the General Comments?

Access to information and education

States must:

- Guarantee information and education on sex, sexuality, HIV, sexual and reproductive rights which address taboos and misconceptions, roles of men and women in society, stereotypes of men and women harmful to health and well being in simple local languages.
- Ensure that education reaches women and girls in all areas of society including inclusion in curricula and to women out of school.
- Provide appropriate pre-service and on going in service training to educators and health workers.

Enabling legal and policy framework

States must:

- Create a legal and policy framework on women's right to equality, non-discrimination and self-protection allowing the control of their reproductive choices, HIV prevention and protection choices.
- Establish accountability mechanisms, and develop implementation guidelines and monitoring and evaluation frameworks.
- Enact laws to address HIV and other sexually transmitted infections.
- Take immediate action to remove discriminatory laws and policies where they exist.

What are some of the specific obligations under article 14(1)(e) included in the General Comments?

Access to information and education

In addition to meeting the obligations in article 14(1)(d), states must:

- Ensure that pre-and post test counselling is provided for HIV testing;
- Ensure that information on one's health status held by authorities is subject to strict rules of data protection and confidentiality.

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Sexual and reproductive health procedures, technologies and services

States must:

- Guarantee the availability, accessibility and affordability of comprehensive and quality procedures, evidence based technologies and services for the medical monitoring of sexual and reproductive health;
- Ensure access to sexual and reproductive health services including access to HIV prevention methods, female condoms, microbicides, prevention of mother to child transmission, post exposure prophylaxis to all women without discrimination;
- Eliminate economic and geographical barriers to sexual and reproductive health of women;
- Integrate women centred prevention methods with other health care services;
- Provide training for healthcare workers on, amongst others, non-discrimination, confidentiality, respect for dignity, autonomy and informed consent in the context of sexual and reproductive health services for women;
- Ensure that testing is not used as a condition for access to other health services, including treatment, contraception, abortion, medical examination, pre- and post-natal services, or any other reproductive health care;
- Ensure that these procedures, technologies and services are available in a manner that complies with ethical standards, is confidential, voluntary and obtained with informed consent;
- Ensure further and ongoing research;
- Fund and empower public health authorities to provide a comprehensive range of services for the prevention and treatment of every person's sexual and reproductive health.

Barriers to sexual and reproductive health rights

States must:

- Eliminate barriers to women and girls' enjoyment of sexual and reproductive health by addressing gender disparities, harmful traditional and cultural practices, patriarchal attitudes, and discriminatory laws and policies. To this end, states should collaborate with the relevant stakeholders;
- Eliminate economic and geographic barriers to women's access to health services.

What if states fail to comply with the obligations above?

Failure to comply with these provisions will amount to violation of the Protocol on women's rights. States must include consideration of these protocol in the periodic reports submitted to the African Commission.

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A guide to the General Comments on article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

What is the Protocol to the African Charter on Human and Peoples' Rights of Women and why is article 14(1)(d) & (e) important?

The Women's Protocol is a complementary legal document to the African Charter on Human and Peoples' Rights which was adopted by the African Commission in 2003 and entered into force in 2005. Its main aim is to expand the substantive protection of women's rights in Africa by enumerating the rights of women and the corresponding obligations of state parties. The justification for the emergence of this Protocol was largely based upon concerns regarding the non-enforcement of protection for women's human rights in the existing international and regional legal framework.

Article 14 of the Protocol provides for health and reproductive rights. Article 14(1)(d) provides for the right to self-protection and to be protected against sexually transmitted infections including HIV/AIDS. Article 14(1)(e) provides for the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices. This is the first time a legally binding international human rights instrument recognizes HIV as a women's human rights issue.

What is a general comment?

Generally, treaties are written in broad terms and they often use ambiguous wording such as 'measures' and 'steps' in regard to state obligations. As such, there is a need to articulate the precise obligations under the various human rights treaties in a formal statement, as a means of interpretation. General comments interpret specific rights provide detailed content to general provisions of human rights treaties. It also has persuasive power on decision makers in domestic legal systems and national courts. The UN treaty bodies have adopted several general comments, also referred to as general recommendations by some treaty bodies. However, the General Comments, as referred to by the African Commission on Human and Peoples' Rights, on article 14(1)(d) & (e) are a first in the African human rights system.

Why were the General Comments on article 14 (1) (d)& (e) adopted?

The General Comments were adopted in order to clarify the specific measures that states should take in order to fulfil their obligations under these provisions. It enables states parties to understand what they are required to do in order to comply with their obligations. The general comments are also to be used by states in preparing and submitting their periodic reports to the commission.

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