

# A GUIDE TO THE GENERAL COMMENTS ON ARTICLE 14 OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

**General Comment on  
article 14(1)(d) and (e) and  
General Comment No. 2 on  
article 14(1)(a), (b), (c) and (f) and  
article 14(2)(a) and (c)**

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POUR LES DROITS  
DES FEMMES AFRICAINES**

**Une force pour la liberté**



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## Introduction

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Rights Protocol, or Protocol) is a regional human rights instrument that came into force in 2005. It supplements the African Charter on Human and Peoples' Rights (African Charter). It is a comprehensive document that seeks to improve the status of all women in Africa.

The Protocol has been ratified by 36 African states. This means that 36 states have agreed to take steps to realise the rights for women that are guaranteed in the Protocol. Despite this, very few governments are taking the necessary steps towards fulfilling their commitments. One of the reasons for this is because some of these rights have been granted to women for the first time and states are not sure what is expected of them.

For example, the Protocol is the first human rights instrument that recognises HIV as a woman's human rights issue. It also provides for the right to safe abortion under certain circumstances. Since these provisions are guaranteed for the first time, and because they are so important for women in Africa, general comments were drafted and adopted to explain, in detail, the meaning of these provisions and what is required by states to realise them.

Two general comments have been adopted by the African Commission on Human and Peoples' Rights (African Commission), which together provide clarification on the meaning of article 14 on women's health and reproductive rights. The General Comments on article 14(1)(d) and (e) were adopted by the African Commission in 2012. In 2014, General Comment No. 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) was adopted.

This guide has been compiled by the Centre for Human Rights (CHR), University of Pretoria, with the generous support of Solidarity for African Women's Rights (SOAWR), Equality Now and the Sigrid Rausing Trust.

This guide is important to:

- Create awareness of both of the General Comments on article 14 of the Protocol.
- Assist state parties to the Protocol to better understand the specific commitments to respect and promote women's health and reproductive rights as provided in article 14.
- Support advocacy by civil society organisations to hold states accountable to their obligations under article 14 of the Protocol.

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## What does article 14 say?

Article 14 of the Protocol promotes and protects women's health and reproductive rights. It says that:

### **1. State parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:**

- a) The right to control their fertility;
- b) The right to decide whether to have children, the number of children and the spacing of children;
- c) The right to choose any method of contraception;
- d) The right to self-protection and to be protected against sexually transmitted infections (STIs) including HIV/AIDS;
- e) The right to be informed on one's health status and on the health status of one's partner(s) particularly if affected with sexually transmitted infections (STIs) including HIV/AIDS in accordance with internationally recognised standards and best practices;
- f) The right to have family planning education.

### **2. State parties shall take all appropriate measures to:**

- a) Provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
- b) Establish and strengthen existing prenatal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breastfeeding;
- c) Protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape and incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

## Why is article 14 important?

Women in Africa have the right to the highest attainable standard of health. This includes reproductive health. However, there are many factors in Africa that prevent women from fully enjoying their health and reproductive rights. These factors can include certain discriminatory laws, traditions as well as religious or cultural beliefs.

Some women face discrimination on the basis of their HIV status. Women are more vulnerable to being infected with HIV. Fifty-nine per cent of people living with HIV in Africa are women. In Sub-Saharan Africa, young women aged 15 to 24 years are as much as eight times more likely than men to be living with HIV. It is very important therefore, that article 14 of the Protocol provides for women's rights in the context of HIV.

Article 14 is also important because it gives women the right to abortion under certain circumstances. More African women die as a result of abortions or abortion related issues compared to the rest of the world. Every year, over 6 million women in Africa risk their lives with unsafe abortions. About 29,000 women die because they are unable to get to the hospital or access the necessary health services. Unsafe abortion is one of the main causes of maternal mortality and morbidity.

## What are general comments and why are they necessary for article 14?

General Comments are used to explain the meaning of certain rights and to clarify the steps that governments must take to realise the rights. There are two general comments that have been adopted by the African Commission. Each of these general comments explain the meaning of certain provisions of article 14 on health and reproductive rights and list very specific measures to be taken by state parties.

## The General Comments on article 14(1)(d) and (e)

The General Comments on article 14(1)(d) and (e) were adopted by the African Commission in October 2012. They focus on those provisions in article 14 relating to HIV.

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## What are the key aspects and content of the General Comments on article 14(1)(d) and (e)?

Under article 14(1)(d) women have the right to self-protection and to be protected against sexually transmitted infections including HIV/AIDS.

This provision requires state parties to provide a legal and social environment that is supportive and empowering for women. Conditions should be created that enable women to be protected from HIV infection.

Women's right to self-protection and to be protected against sexually transmitted infections including HIV is linked to the rights of women to be able to access information, education and reproductive health services. It is also linked to the rights to life, equality and non-discrimination, dignity, privacy, health as well as the right to be free from all forms of violence. When these rights are violated, women are more vulnerable to sexually transmitted infections including HIV.

Under article 14(1)(e) women have 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 recognised standards and best practices.

This provision gives women not only the right to be informed about their HIV status but this right also extends to women having adequate, reliable and complete information about their health without any form of discrimination. This also includes the right for women to be properly counselled before and after testing.

Women also have the right to information on the health status of their partner which is important to make informed decisions about their own health. This information may be obtained through a third party such as a health personnel or if the person involved volunteers the information.

When disclosing the HIV status of another person, caution must be exercised where there might be potential threats such as violence which is sometimes experienced by women in such situations.

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Disclosing one's HIV status is encouraged but it should not be mandatory for any woman to divulge her HIV status or any other information regarding her health. In cases of HIV, the health personnel can decide whether to inform a patient's partners. This decision should depend on the nature of the case and be in line with international standards and principles. These principles include:

- Whether the HIV positive person has been counselled.
- The counselling has not achieved the expected change in behaviour of the patient.
- The HIV positive patient has refused to open up about his/her status to his/her sexual partner. The patient is also refusing to give his/her consent to allowing his/her partner to be informed on his or her status.
- There is a real threat of infecting the patient's partner(s).
- The HIV positive person is given reasonable notice ahead.
- The patient's identity is not disclosed if possible otherwise the identity has to be revealed.
- Follow up is ensured to provide much needed support to those involved.
- The person providing treatments, care and counselling has ensured that the HIV positive person is not at risk of any violence as a result of the disclosure.

### **What are some of the specific steps that states can take to guarantee the rights under article 14(1)(d) and (e)?**

To guarantee the rights under article 14(1)(d) and (e) states need to take specific steps including:

- **To provide a conducive legal and political environment that will ensure that these particular provisions are realised.**

This means state parties must ensure that women are treated equally with men and ensure that women are not discriminated against on any grounds. This would allow women to be protected as well as to protect themselves from sexually transmitted infections including HIV. State parties must take proactive steps to remove any existing discriminatory laws and policies.

- **To ensure women have access to information and education on HIV.**

Women must be accurately informed about sex, sexuality, HIV, health and reproductive rights. Common misconceptions, taboos, myths, stereotypical and prejudicial beliefs relating to HIV as well as other health and reproductive issues should be addressed.

Health workers and educators must be properly trained including on how to provide adequate counselling for women before and after HIV testing.



In addition, state parties should guarantee that information and data on women's health and reproductive status would be treated as confidential. There should be strict rules on data protection and confidentiality.

- To ensure women have access to health and reproductive services.

State parties need to guarantee that women have access to health and reproductive services. For example, women should be able to access HIV prevention methods, post-exposure prophylaxis, female condoms, and microbicides without discrimination. This also means that women are not forced to test their HIV status in order to be able to access these services or any other health and reproductive services.

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State parties should promote HIV prevention methods. For example, women should be encouraged to use female condoms. These prevention methods should then be combined with the health and reproductive services. It is necessary for state parties to commit to providing the adequate funding and empowerment for public health workers. This would ensure that these workers provide these health and reproductive services in such a way as to offer treatment and prevention services.

- To ensure availability, accessibility and affordability of quality reproductive health procedures, technologies and services.

State parties need to guarantee that sufficient and good quality procedures and evidence based technologies on health and reproductive services are available, accessible, acceptable and affordable. For example, women should be able to easily access HIV testing centres as well as other screenings that might affect a woman's reproductive health. Medical monitoring and evaluation of health and reproductive services as well as continuous research on HIV and other sexually transmitted infections should be encouraged.

State parties need to ensure that health workers are properly trained to respect the reproductive rights of women. Procedures, technologies, health and reproductive services should be provided in line with ethical standards. This means that these services are provided to women with their informed consent and are voluntary as well as confidential.

## General Comment No. 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c)

General Comment No. 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) was adopted by the African Commission in 2014. This general comment highlights specific actions that states need to take in order to guarantee the rights for women under these provisions of article 14.

## What are the key aspects and content of the General Comments on article 14(1)(a), (b), (c) and 14(2)(a), (b), (c)?

Under article 14(1)(a), (b) and (c) women have the right to control their fertility, to decide whether to have children, the number of children and the spacing of children and the right to choose any method of contraception.

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These rights are linked and allow women to make personal decisions and choices that affect their body and their lives without undue interference from states. These provisions require state parties to remove barriers including traditional practices, religious beliefs, unfriendly laws and attitudes that would prevent women from being able to make these personal decisions.

Women should not be deprived of access to family planning or contraception services by health care workers. An individual health worker may object to offer treatment to a woman but state parties must ensure that other health workers are available to offer treatment.

A health worker cannot refuse to offer treatment to a woman in need of emergency care on the basis of conscience or religion.

Under article 14(1)(f) women have the right to have family planning education.

This provision requires state parties to take the necessary steps to ensure that women are given proper, accurate and complete education and information about their right to health and health options including choosing any method of contraception that not only suits them but that is also convenient.

State parties should:

- Provide well-trained health care workers and competent educators who share accurate and complete information on family planning and contraceptive methods.
- Ensure that information on family planning and contraception is easy to understand using different means of communication including mobile phones, internet as well as print and electronic media.

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- Create room for relevant and competent health institutions and civil society organisations to assist in providing much needed information and education on family planning and contraception to women.

Under article 14(2)(a) state parties must provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.

Quality reproductive health services must be available and accessible to women especially in the rural areas without discrimination on any grounds. These health services must be affordable and within reasonable distances. State parties must provide comprehensive and holistic reproductive health services that respect women and their rights. State parties must enact laws that would allow women to complain and get compensated when they have been denied any health and reproductive services. There should also be clearly laid down rules and timelines for resolving complaints.

State parties must have a national health plan that would carefully outline reproductive health services according to internationally recognised standards and instruments.

Under article 14(2)(b) state parties must establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breastfeeding.

Women must be healthy before, during and after pregnancy as well as while they are breastfeeding. Also, women must have access to balanced and nutritious foods during these periods.

Under article 14(2)(c) state parties must protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape and incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or foetus.



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Women have the right to medical abortion and should have the freedom to access health services without discrimination. This means women should not be prosecuted or punished for an abortion. Health workers also cannot be prosecuted or punished for providing health services such as abortion or giving emergency care after an abortion. They are under no obligation to report cases of women who have undergone abortions.

Women must not be forced to confess if they need emergency medical treatment after they have performed an abortion.

State parties must ensure that women are not treated in a cruel or degrading manner when they need any reproductive health service including abortion.

## **What are some of the specific steps that states can take to guarantee the rights under article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c)?**

To realise the rights under article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c);

States need to take specific steps including:

- **To provide a conducive legal and political environment that will ensure that these particular health and reproductive rights of women are realised.**

This includes creating an environment that allows for accountability, the development of internationally recognised guidelines, the development of a monitoring and evaluation framework for women's health and reproductive rights as well as efficient redress mechanisms for women when these rights are violated.

A conducive environment allows health care services to be accessible to women without any potential negative interferences from third parties. This means that women have access to family planning and contraception methods as well as safe abortion services with their free, informed and voluntary consent. State parties must also ensure that all the health and reproductive services funded with state resources are directly linked.

Judicial and law enforcement agencies should be properly trained and sensitized to respect the human rights of women. Where there are insufficient trained doctors, midwives and other health care providers should be properly trained to perform these reproductive health services.

- To ensure women have access to information and education on family planning and contraceptive methods as well as safe abortion methods.

State parties are to take the necessary steps to ensure that women are accurately informed and educated about their health and reproductive rights.

The information and education women should have about health and reproductive rights should be provided by well-trained health care workers and competent educators who share accurate and complete information. This education should be included in the curricula of all institutions as well as available at all levels of education. This information must also be available to women outside of school.

- To guarantee access to family planning, contraception and safe abortion services.

State parties need to guarantee that family planning, contraception and safe abortion services are available, accessible, acceptable and affordable for women especially in the rural areas. Women's reproductive rights to access these services must be respected.

State parties must fund family planning, contraception and safe abortion services. These services should be linked and combined with other health and reproductive health services.

- Ensure up to date procedures, technologies and services for health and reproductive rights.

State parties are to take proactive steps to ensure that women have access to well-equipped and technologically up to date healthcare services. This includes access to a variety of contraceptive methods. This will allow women the freedom to choose the most suitable and convenient method.

State parties should ensure that safe abortion services are provided in line with internationally World Health Organisation recognised methods. Unnecessary restrictions placed on health workers who provide safe abortion services should be discouraged.

## Barriers to health and reproductive rights

Both general comments explain that states must take proactive steps to remove the barriers that hinder women from enjoying their health and reproductive rights as provided in article 14.



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In particular, states must enact appropriate and enforceable laws and policies. Where these already exist, state parties need to proactively engage non state actors to tackle obstacles such as patriarchal and harmful cultural beliefs that discriminate against women and adversely affects their health and reproductive rights.

With respect to HIV, state parties need to properly address existing obstacles using collaborative efforts to ensure women's access to HIV health services.

Concerning the right to control fertility, to access family planning, contraception and safe abortion methods, state parties must ensure that there are strong collaborative efforts with health care providers, traditional and religious leaders, civil society organisations, international and domestic non-governmental organisations, particularly women's organisations to ensure women are able to access health and reproductive services without discrimination on any ground.

## **What do the General Comments say about redress for violations?**

State parties must take steps to ensure that women can offer feedback, make complaints and seek redress when their health and reproductive rights are violated.

## **State reporting**

According to article 26(1) of the Women's Protocol state parties have a duty to submit a report to the African Commission every two years on the steps it has taken to fulfil their obligations under the Protocol.

The reports must take into account the General Comments. The African Commission will be guided by the General Comments when considering state reports.