INFORMATION FOR THE CESCR CONCERNING ITS GENERAL COMMENT ON SCIENCE AND ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

**Scientific Advances and Reproductive Rights**

Grupo de Información en Reproducción Elegida (GIRE) A.C.

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Access for all individuals to scientific advances is a fundamental means to ensure various aspects of economic, social and cultural rights. Specifically, in the field of reproductive health, innovations in technological advancement have an important role in aspects such as access to assisted reproductive technologies (ART) and safe abortion.

**Access to Scientific Advances and ART**

ART encompasses any treatments or procedures that include the manipulation of oocytes, sperm, or human embryos to achieve pregnancy.[[1]](#footnote-1) These techniques include: in vitro fertilization, embryo transfer, and egg and sperm donation. Surrogacy, on the other hand, is a contract in which a woman agrees to carry a pregnancy for another individual or couple who intends to serve as the father(s) and/or mother(s) of the child born from said pregnancy.[[2]](#footnote-2) Through ART, it is possible for those individuals who, for varied reasons, cannot achieve a pregnancy without assistance, have access to biological or genetic reproduction. These persons include same-sex couples, infertile couples or single individuals.[[3]](#footnote-3)

Access to ART implies the exercise of a series of human rights, including the right to privacy (reproductive autonomy), to form a family, and to benefit from scientific progress. In this regard, the CESCR has determined that “The failure or refusal to incorporate technological advancements and innovations in the provision of sexual and reproductive health services […] jeopardizes the quality of care”.[[4]](#footnote-4)

ART establishes a means to exercise a choice protected by the American Convention on Human Rights and other international and regional human rights instruments. In this regard, it is necessary to utilize precedents such as the judgment in the Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica case, ruled upon by the Inter-American Court of Human Rights in 2012, which recognizes that a shared life and the possibility of procreating is part of the right to found a family.[[5]](#footnote-5) The United Nations Human Rights Committee also indicates in its General Comment 19 that the possibility of procreation is part of the right to establish a family.[[6]](#footnote-6)

International experience has proven that adequate regulation of surrogacy helps protect the rights of all persons involved, particularly the surrogate, who is more vulnerable to abuse in deregulated contexts. The absence of regulation results in legal uncertainty that facilitates abuse and discrimination against people who participate in ART, a lack of protection for the health personnel involved, and even violations of the right to identity for children born under these procedures.

Because access to technological progress can contribute to guaranteeing the essential elements of availability, accessibility, quality, and acceptability for the right to reproductive health, the regulation of ART is necessary. Restrictive legal frameworks encourage services to be offered clandestinely, where the State cannot offer protections to the involved parties, monitor the conditions for consent in the contracts, nor ensure that the clinics and agencies act in accordance with the law and human rights.

As established by the Inter-American Court of Human Rights, access to ART should be permitted, without impediments to the exercise of human rights, with regulation of the necessary aspects for its implementation, formation of a health inspection system, and quality control of the institutions or qualified professionals who carry out this type of technique, so that the safety and physical integrity of the people who undergo these treatments is guaranteed.

Access to ART is also related to social justice. A study revealed that in countries where there are restrictions that prevent same-sex couples or single individuals from accessing ART, they travel to other countries to access treatments where barriers do not exist, leading to a phenomenon known as “reproductive tourism”; however, this possibility is limited to those who have the resources to do so. Moreover, GIRE has documented the existence of restrictive eligibility criteria, such as age, sex, gender, marital status and health status, to access public ART programs in Mexico.[[7]](#footnote-7)

The case of Cecilia,[[8]](#footnote-8) which GIRE accompanied, is an example of the above: when Cecilia was trying to become pregnant, she was diagnosed with primary infertility; she was 37 years old. Despite a study conducted by a geneticist stating that Cecilia’s age was not a contraindication to initiate assisted reproduction treatment, the public National Medical Center “November 20” denied her access because of a maximum age requirement of 36 years for candidates. The automatic exclusion of individuals based on criteria such as age, without having carried out a previous evaluation that determines the person’s biological and anatomical suitability, is discriminatory. Although, in the case of Cecilia, a legal stay was filed, it did not proceed because a judge considered that the legal regulation on assisted reproduction in Mexico was sufficient as established.

Although the health risks associated with ART necessitate the establishment of certain access criteria, they must be in accordance with human rights and advances in medical science and cannot be used as reasons to discriminate against people seeking access to these techniques.

**Access to Technological Advances and Abortion**

Access to safe abortion is an integral part of the right to reproductive health, in accordance with the CESCR General Comment Number 22. In this regard, ensuring the availability of adequate facilities, professionals trained in best practices and the safety, quality and accessibility of abortion services is necessary. According to the World Health Organization (WHO), abortion services must be provided at all levels of the health system, including both in the public and private sectors.[[9]](#footnote-9)

States should ensure that they have standards and guidelines based on scientific evidence, which are updated periodically, for safe abortion and for managing abortion complications. For example, surgical abortion methods that have been declared obsolete by the WHO, such as Dilation and Curettage (D&C), should not be used, replacing them with vacuum aspiration or medical methods.[[10]](#footnote-10) Even in health systems with limited resources, there must exist the possibility of providing both medication methods of abortion (through the administration of mifepristone and misoprostol) and manual vacuum aspiration.[[11]](#footnote-11) GIRE, based in Mexico, has observed that, although the restrictive framework includes only limited indications for access to legal abortion, individuals face multiple obstacles in obtaining the service, and when they manage to do so, it is common for clinics and hospitals to perform the procedure through D&C.[[12]](#footnote-12)

Finally, in the area of reproductive rights, it is essential that States have information systems disaggregated by sex, age, ethnicity and geographic location. The existence of information on reproductive issues is essential for the formulation of public policies ensuring that access to scientific advances in this area benefits vulnerable and marginalized groups.

1. International Committee for Monitoring Assisted Reproductive Technology (ICMART) and WHO, *Glossary of Terminology in Assisted Reproduction Technology (ART*), Santiago, Latin American Network for Assisted Reproduction, 2010, p. 7. [↑](#footnote-ref-1)
2. GIRE, *Surrogacy in Mexico: The Consequences of Poor Regulation*, Grupo de Información en Reproducción Elegida, 2017, Mexico, p. 9. [↑](#footnote-ref-2)
3. GIRE, *Women and Girls without Justice: Reproductive Rights in Mexico*, Grupo de Información en Reproducción Elegida, 2015, Mexico, p. 222. Available at <https://informe2015.gire.org.mx/> [↑](#footnote-ref-3)
4. United Nation, Human Rights Committee, *General Comment No. 22* *(2016), concerning the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, [E/C.12/GC/22], par. 21. [↑](#footnote-ref-4)
5. Inter-American Court of Human Rights, *Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Sentence from November 28, 2012 Series C No. 257.* [↑](#footnote-ref-5)
6. United Nations, Human Rights Committee, *General Comment No. 19, The Family (Article 23)* [HRI/GEN/1/Rev.7 at 171], 39th period of sessions (1990). [↑](#footnote-ref-6)
7. GIRE, *Surrogacy in Mexico: The Consequences of Poor Regulation*, Grupo de Información en Reproducción Elegida, 2017, Mexico. Available at <https://gestacion-subrogada.gire.org.mx/> [↑](#footnote-ref-7)
8. The full case summary can be found in GIRE*, Women and Girls, Op. Cit*. Pgs. 209-220. [↑](#footnote-ref-8)
9. *Ibid.* [↑](#footnote-ref-9)
10. *Ibid,* p. 31. [↑](#footnote-ref-10)
11. *Ibid*, p. 67. [↑](#footnote-ref-11)
12. Some similar cases can be consulted in: GIRE, *Violence without End,* 2017, Pgs. 68-83 Available at: aborto-por-violacion.gire.org.mx; GIRE*, Women and Girls, Op. Cit*., Pgs. 53-115; GIRE, *Maternity or Punishment: The Criminalization of Abortion in Mexico*, 2018 Available at: <http://criminalizacionporaborto.gire.org.mx/> and GIRE, *The Missing Piece: Reproductive Justice*, 2018 Available at: <https://justiciareproductiva.gire.org.mx/> [↑](#footnote-ref-12)