



# Human Rights Standards in Obstetric Violence

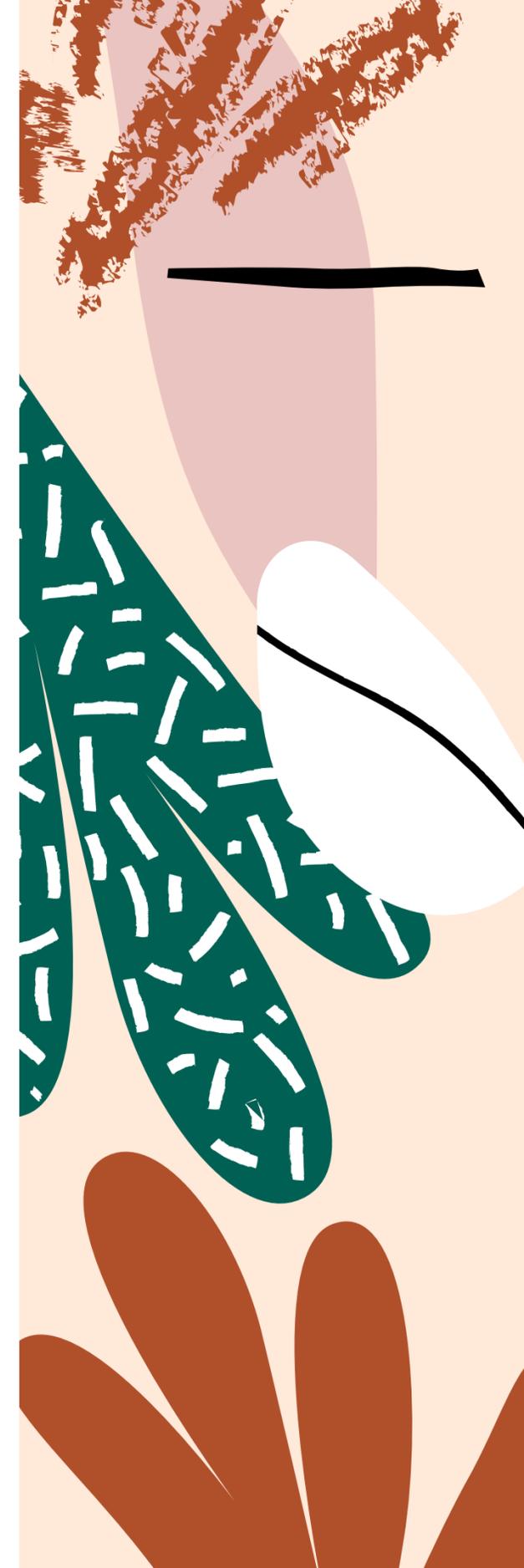
Achieng Orero, ISLA VAW Lawyer

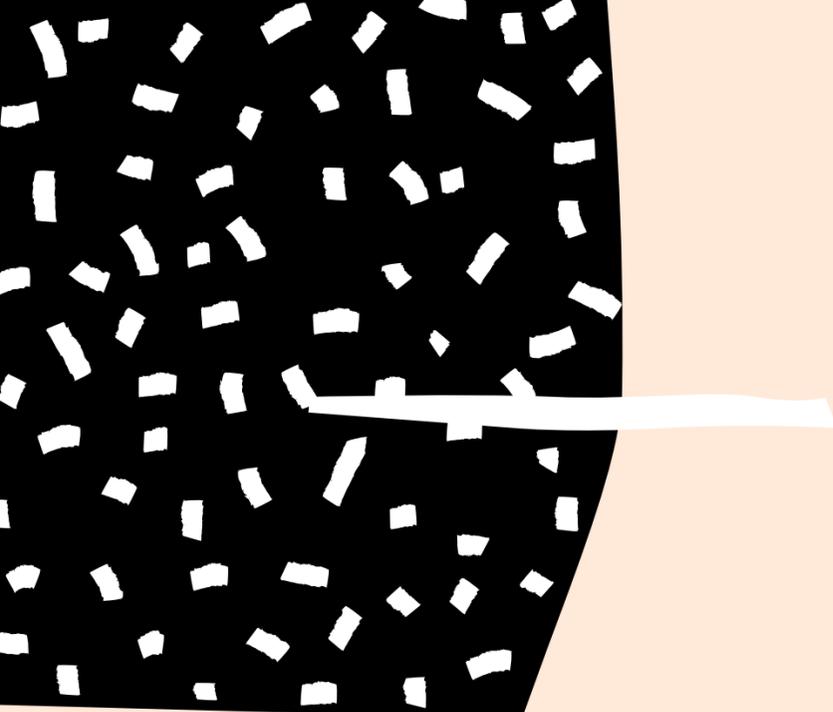
# Human Rights Standards for Litigating Obstetric Violence

- 1.The right to be free from violence**
- 2.The right to the highest attainable standard of health**
- 3.The right to equality and freedom from all forms of discrimination**
- 4.The right to dignity**
- 5.The right to information**

## CEDAW General Comment 35

Under international law, acts or omissions by non-State actors attributable to the State include the “acts or omissions of private actors empowered by the law [of that State] to exercise elements of governmental authority, including private bodies providing public services, such as healthcare or education, or operating places of detention, are considered as acts attributable to the State itself”





## 1. The right to be free from violence

Adopting the definition of VAW that is in the DEVAW, GC 19, Maputo Protocol

States parties also have an obligation under the CEDAW to pursue, **by all appropriate means and without delay**, a policy of eliminating discrimination and gender-based violence against women, including in the field of health. This is an obligation of an immediate nature and delays cannot be justified on any grounds, including economic, cultural or religious grounds.

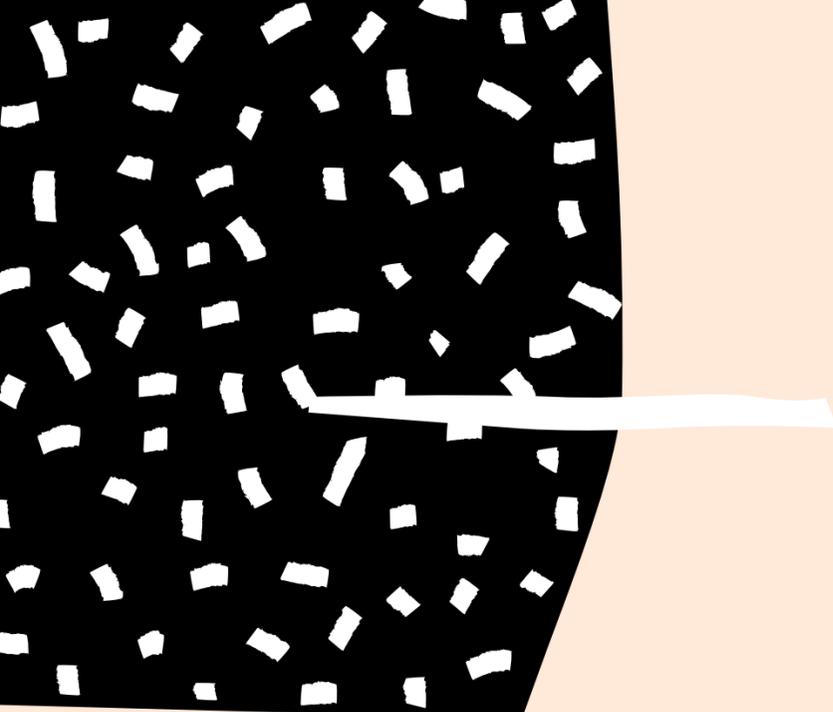
Addressing root causes; the role of the State in the prevention and response of violence



## 2. The right to health

Essential for the enjoyment of all other rights. CESCR General Comment 14 on normative content of right to health. The Availability, Accessibility, Acceptability and Quality of Health Care, Facilities, Personnel.

Minimum core obligations include the training of health personnel, access to information on health, the adoption of a national health strategy, and monitoring of health policies.



### 3. The right to equality and non-discrimination

CEDAW Article 1, Maputo Protocol Article 2

Intersecting forms of discrimination; Substantive equality

Harmful gender stereotypes

Obligations of the State: Positive and Negative

Avoiding the comparator trap, setting a substantive standard of what equal treatment

Irrelevance of Intent

### 4. The right to dignity

The UDHR, Customary International Law, Maputo Protocol Article 3

**Inherent:** The basis for an individual's entitlement to rights

**Relational:** Recognition and respect for inherent dignity relates to types of treatment that are inconsistent with inherent dignity, as proscribed by international and national law texts

**Limited State Claim:** The state is progressively required to provide existential minimum living conditions which are embodied in the second-generation social and economic human rights..



## 5. The Right to Information

Article 14(2)(a) Maputo Protocol

Intersections with the right to health:

**Informed Consent** which requires that individuals be given:

- full information about what medical treatment involves, including the
- benefits and risks, whether there are
- reasonable alternative treatments, and
- what will happen if treatment does not go ahead.

Procedures undertaken without prior informed consent may violate not only the right to information and the right to health, but also the right to individual autonomy and the right not to be subjected to inhuman treatment.

Continuous, Voluntary, Can be withdrawn at anytime

**States obligations: Legislation, policy**



# County Government of Bungoma v JOO

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## **The Right to Dignity**

Article 28 Constitution of Kenya  
Article 1 UDHR

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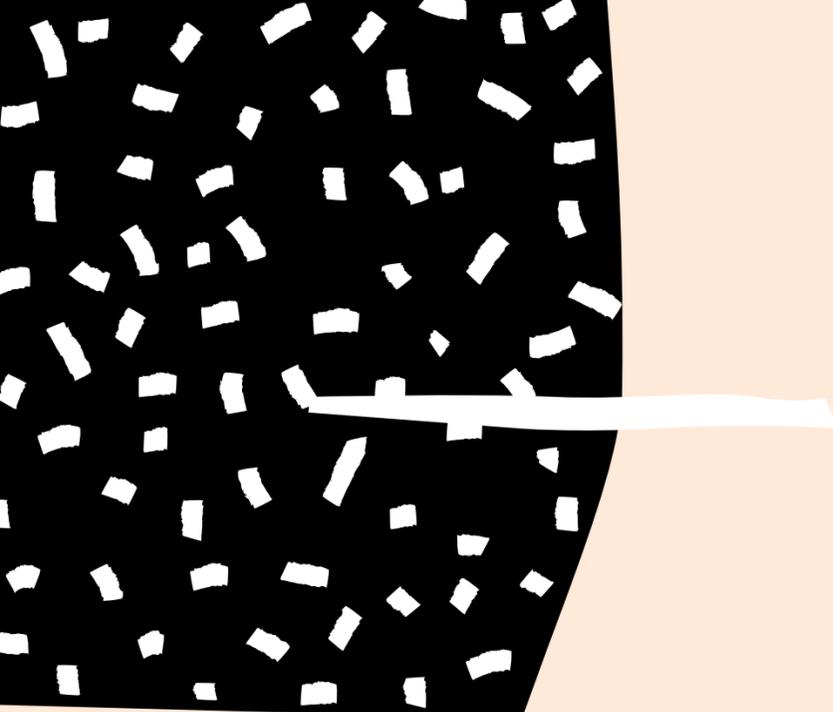
## **The Right to the Highest Attainable Standard of Health**

Article 43 of Constitution of Kenya  
Article 12 of CEDAW  
Article 10 of ICESCR  
Article 24 of Maputo Protocol

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## **The Right not to be Subjected to Cruel, Inhuman and Degrading Treatment**

Article 25 Constitution of Kenya



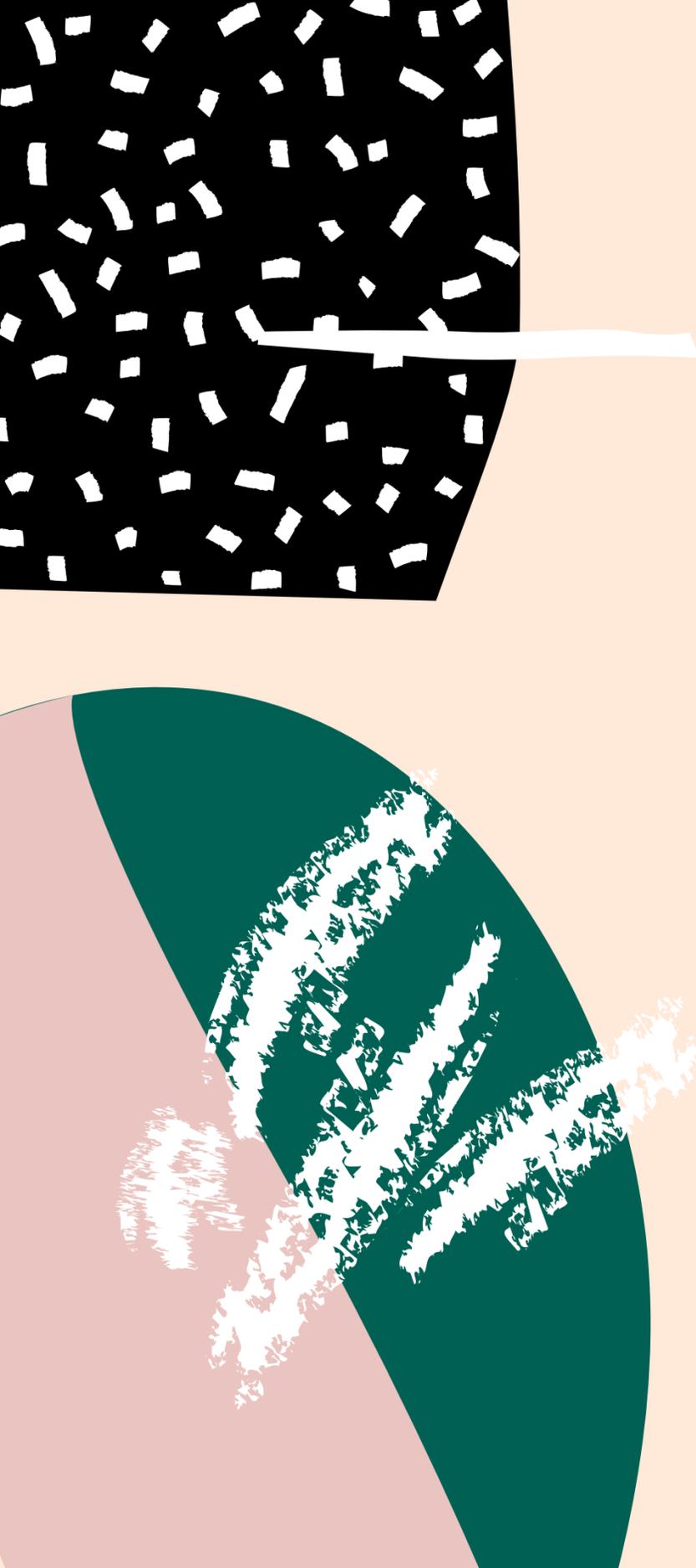
## **Minimum Core Obligations and Progressive Realization**

Respectful Maternal Care is not subject to Progressive Realization. Minimum core obligations has three elements:

- Freedom from Violence, physical or otherwise
- Freedom from discrimination during childbirth
- Dignified and respectful care

## **Human Rights based clinical protocol**

- Dignified Care
  - Freedom from Violence
  - Respectful Maternal Care which includes: Dignity, privacy and confidentiality; Informed choices; continuous support through labour and childbirth; freedom from mistreatment.
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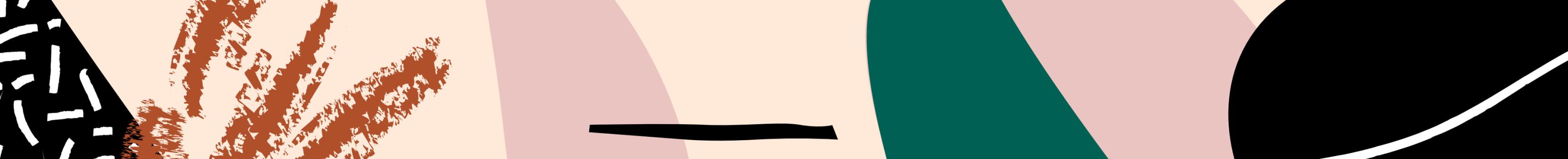


## State Obligations

Accountability for failure to effectively prevent and respond to harmful practices

35. ...Beyond providing resources to ensure quality, accessible maternal health care, the appellants were obligated to provide **clear policies** to ensure dignified, respectful health care throughout pregnancy and childbirth for all women...

Policies must not only be in place but must be implemented.



# Human Rights Standards for Strategic Litigation of Obstetric Violence

