HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
IND 14/2015:

17 November 2015

Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 24/6, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations about coerced and unsafe female sterilisation practice in Government sponsored camps, which has led to deaths and injuries of women**. We are also concerned about the **lack of accountability for such unethical and dangerous medical practices, and the lack of remedy for families and victims**.

The situation in government sterilisation camps was the subject of a previous joint allegation letter sent to your Excellency's Government on 11 March 2015 by the Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women (IND 3/2015). We regret that, to this date, we did not receive a response from your Excellency's Government addressing the serious allegations presented in the joint allegation letter.

We reaffirm our previous concerns and would like to draw your attention to new information we have received concerning the lack of accountability and adequate access to remedy, including compensation, for victims and their families in Chhattisgarh. In addition, we have received new information concerning sterilisation conditions in other

parts of the country which appear to be incompatible with national guidelines and in contravention with international human rights standards.

According to information received:

(i) Regarding sterilisation programmes, accountability and access to remedy for families of victims of sterilisation camps, including in Chhattisgarh

Female sterilisation camps are routinely established in India under state policies, where programs set targets for female sterilisations and are funded through the country's national health program. It is reported that many healthcare providers perform these sterilisation procedures under deplorable conditions. Allegedly, between 2010 and 2013, there was a monthly average of 14 deaths, 20 cases of complications, and 541 failed surgeries across the country following sterilisation procedures.

The government's predisposition toward female sterilisation over other modern forms of contraceptive methods is allegedly reflected in the national health budget. According to reports received, the 2013–2014 budget of the Population Foundation of India dedicated nearly 85% of the family planning budget to sterilisation, of which female sterilisation accounted for 97%. The government's High Level Committee on the Status of Women denounced this excessive focus on female sterilisation and stated that "the family planning programme is dominated by a single method—female sterilisation. The programme should focus to wider choices and men's participation." The same report called for improvements to the conditions under which surgeries are performed and for women to be actively involved in contraceptive selection and use.

Following the deaths of 13 women in Chhattisgarh in November 2014, addressed in our previous letters of allegations dated 11 March 2015, India's National Human Rights Commission asked for an independent investigation into these deaths on 12 November 2014. On 13 November 2014, the doctor who performed the surgeries was charged with culpable homicide. But on 4 December 2014, the Bilaspur High Court granted him bail and, according to the information received, he has not been formally held accountable since then.

Moreover, the Supreme Court of India ordered the Chhattisgarh government to compensate the victims and their families of the tragedy and take action against the doctors responsible. In response, the Chhattisgarh government affirmed that payments had been made to the families of the women who died and noted the establishment of a judicial inquiry commission. However, to date, the inquiry commission has not delivered on its promise to publish a report on the deaths in Chhattisgarh.

Similarly, the High Court of Chhattisgarh also recognized the deaths but has yet to pass any substantive orders. While the Chhattisgarh government persists that the

deaths were the result of substandard or contaminated medicines, autopsy reports demonstrated that substandard medicines could not have been the cause of death in at least seven of the deaths which were linked to infections after the medical intervention connected to the conditions in the camps.

Regarding access to remedy for victims and their families, including in Chhattisgarh, it is reported that the Ministry of Health, through a program called the Family Planning Indemnity Scheme (FPIS), provides financial and other support services for women injured by sterilisation. However, both the FPIS's financial and support services are significantly underutilized mainly due to lack of awareness and information amongst women. The sum available to compensate victims is allegedly over 2 million USD, but only half the money is being distributed. It is reported that the vast majority of women are unaware of the FPIS's existence and the services it offers.

In this connection, a leading human rights group in India found that women surveyed in New Delhi were unaware that monetary compensation was available for victims of failed surgeries. Moreover, they were also unaware that, under FPIS, women are entitled to certificates of sterilisation and discharge, as well as a copy of their consent form. This is very relevant given that, in order to obtain compensation, FPIS regulations require women or their families to provide these documents that they generally do not access to.

Once documents are provided, victims are only compensated after their local Quality Assurance Committee approves payment. It is reported that these committees are not functioning in compliance with their legal mandates. The families of women who died of sterilisation in Chhattisgarh in November 2014 obtained their compensation through an exceptional process and not through the local committee as prescribed. It is therefore unclear how long it would have taken for remedies to have been issued if they had used the prescribed mechanism through local Quality Assurance Committee.

A recent case indicates that the actual provision of compensation for sterilisation victims can be exceedingly slow in Chhattisgarh. In 2004, the High Court of Chhattisgarh confirmed a compensation order of approximately INR 180,000 for a victim who died from a negligent sterilisation procedure. The victim's family was only compensated on 1 July 2015, eleven years after she had lost her life.

Finally, major gaps between FPIS commitments and the actual provision of compensation have been documented in parts of the country. On 17 May 2015, a 25-year-old mother of two died following a sterilization procedure in Rajasthan. Despite being guaranteed INR 200,000 under FPIS, the family only received INR 50,000.

(ii) Information concerning new cases of compelled sterilisation, including deaths

In January 2015, 73 women were sterilized in four hours by a single doctor in a primary health centre in Varanasi, Uttar Pradesh. The national guidelines, the Standard Operating Procedures for Sterilization Services in Camps, state that a surgeon may perform a maximum of 30 procedures a day. In Varanasi, it is reported that the doctor aimed to complete each surgery within three minutes in an attempt to set a record. After the procedure, women in Varanasi were left to recuperate outdoors on damp ground in cold winter weather, despite the fact that national sterilization guidelines require beds for patient recovery.

The Chief Secretary of Uttar Pradesh allegedly committed to taking steps to ensure that the violations documented in Varanasi would not reoccur. However, just two months later in March 2015, a doctor in another village in Uttar Pradesh conducted 27 sterilisations in one hour.

Similarly, in January 2015 in Madhya Pradesh, a 30-year old woman died during a sterilization procedure conducted at a district hospital camp. The chief medical officer listed her cause of death as cardiac arrest, claiming she died "from fear" of incision. The government committed publically to provide compensation to the woman's family in accordance with the national guidelines.

It is also reported that in Jharkhand in January 2015, 40 women were sterilized in a single day in a camp in the Chatra district. According to reports received, the camp had no access to electricity, did not provide cots for post-operative recovery, and was so understaffed that it could not conduct preoperative screenings. Procedures were allegedly conducted under flashlight after the camp's backup generator ran out of power. In July 2015, 20 women were also reportedly denied post-operative care and access to recovery beds after receiving sterilisations in the Latehar district.

We are seriously concerned at information received indicating that that coerced and unsafe sterilization practices have not been geographically limited to the cases mentioned above. The incidents in Uttar Pradesh, Madhya Pradesh, and Jharkhand, appear to be illustrative of the situation in India and reflect an approach to population policies that infringe upon the liberty and physical integrity of individuals, in this case women. Sterilisation practice in India seems to go against fundamental rights and freedoms of women, mainly the right to life and to be free from torture, cruel, inhuman and degrading treatment, and the right to the highest attainable standard of health for all, including sexual and reproductive health and rights, which includes, the provision of high-quality contraceptive information and services.

While we do not wish to prejudge the accuracy of these allegations, grave concern is expressed at the reported continued practice of coerced and substandard sterilisation of women throughout India. Serious concern is expressed over the evidence showing that female sterilisations conditions are frequently not in compliance with national standards, and in contravention with international human rights standards.

More specifically, concern is expressed that women are generally unaware of their rights and remedies afforded to them under the FPIS. As a result, victims and their families seldom receive the full reparations they are entitled to. In addition, the mechanisms designed to compensate victims do not support access to remedy, including prompt and adequate compensation. Concern is also expressed over the lack of accountability for perpetrators, including doctors and other health personnel involved in the sterilisation procedures.

In connection with the above mentioned facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide an update on the progress of all pending judicial or other investigations that have been carried out in relation to the aforementioned cases.

3. More specifically, please indicate the measures put in place to hold perpetrators accountable and prevent impunity for these harms.

4. Please provide additional information on the judicial inquiry commission report on the deaths in Chhattisgarh that has yet been made public. When could the public expect to see the findings of the report?

5. Please provide details of measures taken to ensure that sterilisation procedures are conducted in accordance with international and national standards. Further, please indicate what efforts are in place to treat the incidents as part of a systemic problem in India.

6. Please provide details of the measures taken to ensure everyone who undergoes sterilisations enjoys the fulfilment of the protection afforded to them under the FPIS. Specifically, how are patients made aware that they are entitled to certificates of sterilisation and discharge, and that their full, free and informed consent is required?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

Given the nature, seriousness and reliability of the information and allegations received, we are considering to publicly express our concerns in the near future. In our view, this is a matter warranting immediate attention and we regret the absence of a reply to our previous letter. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Eleonora Zielinska
Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonović
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Government to the International Covenant on Economic, Social and Cultural Rights, acceded by India on 10 April 1979, and in particular to article 12 which provides that States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

In this connection, we would like to refer your Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights on article 12 of the Covenant, which indicates that States are under the obligation to respect the right to health by, inter alia, abstaining from imposing discriminatory practices relating to women's health status and needs, and that reproductive health means that women and men have the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice. Regarding the above alleged facts and concerns, we would also like to underline that safeguarding an individual's ability to exercise informed consent in health, and protecting individuals against abuses is fundamental to protecting these rights (A/64/272, para. 19).

The right to health of women is reflected in the Convention on the Elimination of All Forms of Discrimination against Women, to which India acceded on 8 July 1993. According to article 12 of the Convention, States should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. Article 16 (1) of the Convention further holds that States should take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular should ensure, on a basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

In its latest concluding observations on India (CEDAW/C/IND/CO/4-5), the CEDAW Committee expressed concern at the scant budgetary resources allocated to health services, the disparities in maternal health care, including between urban and rural areas, the limited availability and accessibility of modern forms of contraception, including emergency contraception to prevent unwanted pregnancy, the lack of information and education on reproductive and sexual health, conditional maternity benefits that exclude some women and the lack of a mechanism for universal and accurate reporting of maternal deaths. It urged the Government to review reproductive health policies to make them more inclusive, with a view to increasing high-quality maternal health services and that they effectively cover urban and rural areas. It also urged India to adopt a policy for mandatory and accurate reporting of maternal deaths, irrespective of whether the deaths occur in public or private health facilities, homes or on the way to a health facility, and to establish a system to monitor the delivery of transparent health-care services effectively.

In connection with the above alleged facts and concerns, we deem it appropriate to make reference to the Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We would like to underline that violence and violations of women's reproductive health may result either from direct State action, via harmful reproductive policies, or from State failure to meet its core obligations to promote the empowerment of women. Direct State action in violation of women's reproductive rights can be found, for example, in government regulation of population size, which can violate the liberty and security of the person if the regulation results in compelled sterilisation and coerced abortion or in criminal sanctions against contraception, voluntary sterilisation and abortion. State failure to meet its core obligations, on the other hand, can be found, for example, in a failure to effectively implement laws, which thus leaves women more vulnerable to numerous forms of violence perpetrated by private individuals and institutions (E/CN.4/1999/68/Add.4, para. 44). States should take appropriate measures to monitor reproductive health services and ensure that these services are offered without any form of discrimination, coercion or violence, and that information disseminated by health workers is comprehensive and objective (Ibid, para. 88).

In this context, we wish to draw the attention of your Government to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (Adopted by General Assembly resolution 48/104 on 20 December 1993).

International, regional and national legislative and human rights bodies are increasingly applying a human rights approach to contraceptive information and services. They recommend, among other actions, that States ensure timely and affordable access to good quality sexual and reproductive health information and services, including

contraception, which should be delivered in a way that ensures fully informed decision making, respects dignity, autonomy, privacy and confidentiality, and is sensitive to individuals' needs and perspectives.

In this connection, WHO recommends that there be no discrimination in the provision of contraceptive information and services, and that that access to comprehensive contraceptive information and services be provided equally to everyone voluntarily, free of discrimination, coercion or violence, and be based on individual choice. Regarding informed decision-making, WHO recommends the offer of evidence-based, comprehensive contraceptive information, education and counselling to ensure informed choice. Recommend every individual is ensured the opportunity to make an informed choice for their own use of modern contraception (including a range of emergency, short-acting, long-acting and permanent methods) without discrimination.[1]

The Human Rights Committee general comment No. 28 (2000), para. 11 recognizes that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender.

In light of our concern regarding the practice of compelled sterilisation generally in India, and particularly in the state of Chhattisgarh, we would like to remind your Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as codified, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. Further, Article 7 of the International Covenant on Civil and Political Rights, to which India is a party, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

We would also like to draw the attention of your Government to paragraph 2 of General Comment No. 20 of the Human Rights Committee, which provides that is the duty States party to afford everyone protection through legislative and other measures as may be necessary against the acts of torture and ill-treatment, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. (Adopted at the 44th session of the Human Rights Committee, 1992).

[1] WHO Guidance and recommendations for ensuring human rights in the provision of contraceptive information and services (2014).