

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

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Excellency,

We have the honour to address you in our capacity 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 26/5, 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 legal reform which does not appear in compliance with international human rights law and standards as it continues to restrict women and girls' right to health and physical integrity.

According to the information received:

In 2010, a Criminal Code Committee was formed by the Department of Justice to prepare a new Code of Crimes to replace the Revised Penal Code of 1930, which is currently in force. It is reported that the initial draft of Book II of the Code of Crimes prepared by the Committee provided for "justified abortions" in three specific cases, namely where: (a) the pregnancy results from rape or incest; (b) the extension of the pregnancy may endanger the life of the pregnant woman, or seriously impair her physical, mental or emotional health; or (c) a sonogram or other diagnostic test has shown that the foetus suffers from incurable disease or serious deformity. It is reported that such provisions would have modified the Revised Penal Code, which presently punishes with imprisonment the women who have abortions, the provider of abortion, including physicians and midwives, and any involved parents.

On 19 August 2014, the Department of Justice announced the completion of Book II of the Code of Crimes. Reportedly, this second version did not contain the aforementioned provisions related to “justified abortions” but continued to provide for criminal penalties for women and girls undergoing abortions under any circumstances. Further, the draft Code of Crimes increases the maximum penalty for women, if the abortion is committed by another person but with her consent, to 10 years plus a fine equivalent to between 10 and 50 times her average daily income, whereas the Revised Penal Code currently provides for a maximum penalty of six years.

The lack of exceptions on abortion has had severe adverse effects on the health of pregnant women and girls. Owing to the risk of criminal prosecution, many pregnant women and girls do not seek medical attention which their health requires, even when they face serious complications. In other cases, pregnant women and girls are compelled to resort to unsafe illegal abortions, which are reportedly a leading cause of preventable maternal deaths. The problem of women and girls suffering from complications from unsafe illegal abortion is a direct consequence of the ban. A reliable source alleged that due to the lack of exceptions on abortion in the current legislation, 90,000 women were estimated having been hospitalized for abortion complications in 2008 and over 100,000 in 2012.

It is reported that due to the risk faced by health care providers to be subject to criminal proceedings, either as accomplices or accessories, many of them refuse to provide health care services to pregnant women and girls seeking abortions, including in case of medical complications, while others threaten women and girls to report their situation to law enforcement authorities.

It is further reported that the removal of the aforementioned provisions from the Book II of the Code of Crimes took place only after one public consultation and before further consultations in other parts of the country could take place. This decision has reportedly pre-empted a national discussion about the issue.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern about the provisions of the proposed new Code of Crimes which, if adopted without the exceptions to the prohibition of abortion in the initial draft of Book II, will gravely undermine women and girls’ rights to health, including reproductive health, and to physical integrity.

In connection to the above alleged 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.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.

2. Please provide details of any measures taken to ensure that the legislation related to abortion is consistent with your obligations under relevant international human rights law.

3. Please provide details of any measures taken to ensure that the rights of women and girls to health, including access to adequate medical services, and to physical integrity are adequately protected and comply with international human rights law.

4. Kindly provide information about the public consultations already held and planned around the drafting of Book II of the Criminal Code, including dates, locations and main stakeholders invited. How will the inputs received from such consultations be fed in to the current drafting of Book II of the Criminal Code?

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to guarantee pregnant women and girls' rights to health, including reproductive health, and to physical integrity.

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.

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

Danius Puras
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

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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 to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set forth in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which the Philippines ratified on 7 June 1974. This comprises an obligation on the part of all States Parties to ensure that measures are taken to ensure that access to health services is available to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 made clear that the right to health contains both freedoms and entitlements and holds that “the freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (para. 8).

Furthermore, the Committee in General Comment No. 14 maintained that the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child, as specified in article 12.2(a) of the ICESCR, may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information. The Committee additionally highlighted the situation of women and the right to health, by pointing to the need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their lifespan. Such a strategy should include, inter alia, policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. The Committee further affirmed that “The realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”

In its concluding observations to the Philippines dated 1st December 2008, the Committee on Economic, Social and Cultural Rights “urge[d] the Philippines to adopt all appropriate measures to protect the sexual and reproductive rights of women and girls, inter alia, through measures to reduce maternal and infant mortality and to facilitate access to sexual and reproductive health services, including access to family planning, and information”. In particular, the Committee encourage[d] the State party to address, as a matter of priority, the problem of maternal deaths as a result of clandestine abortions, and consider reviewing its legislation criminalizing abortion in all circumstances (E/C.12/PHL/CO/4, para. 31).

The right to health of women is also reflected in the Convention on the Elimination of All Forms of Discrimination against Women, to which the Philippines acceded on 5 August 1981. 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 General Recommendation 24, the Committee on the Elimination of All Forms of Discrimination against Women held that “measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women”, and “the obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals” (para. 14).

In this context, the Committee on the Elimination of All Forms of Discrimination against Women also recommended in its concluding comments on the Philippines dated 28 August 2006 that the State party “consider reviewing the laws relating to abortion with a view to removing punitive provisions imposed on women who have abortions and provide them with access to quality services for the management of complications arising from unsafe abortions and to reduce women’s maternal mortality rates in accordance with the Committee’s general recommendation 24 on women and health and the Beijing Declaration and Platform for Action” (CEDAW/C/PHI/CO/6, para. 28).

The Special Rapporteur on violence against women, its causes and consequences highlighted in her report (E/CN.4/1999/68/Add.4) that acts deliberately restraining women from using contraception or from having an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, resulting in increased and preventable risks of maternal mortality and morbidity (para. 57). She further added that in countries where abortion is illegal or where safe abortions are unavailable; women suffer serious health consequences, even death. Women with unwanted pregnancies are forced to resort to life-threatening procedures when an abortion performed under appropriate conditions would otherwise be safe (para.59) Government failure to take positive measures to ensure access to appropriate health-care services that enable women to safely deliver their infants as well as to safely abort unwanted pregnancies may constitute a violation of a woman’s right to life, in addition to the violation of her reproductive rights. Furthermore, government failure to provide conditions that enable women to control their fertility and childbearing, as well as to bring voluntary pregnancies to term, constitutes a violation of a woman’s right to security of the person (para.66).

In this context, we would also like to recall the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/66/254), which reiterates that the criminalization of sexual and reproductive health services for women generates and perpetuates stigma; restricts their ability to make full use of available sexual and reproductive health-care goods, services and information; denies their full participation in society; hinders their access to healthcare services; and disempowers women. Furthermore, criminalization of abortion results in negative physical and mental health outcomes for women and may increase the likelihood of women seeking clandestine abortions.

In his report (A/HRC/22/53), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also “call[ed] upon all States to ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals. States whose domestic law authorizes abortions under various circumstances should ensure that services are effectively available without adverse consequences to the woman or the health professional.” (para. 90). He furthermore stated that international and regional human rights bodies have begun to recognize 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 (para. 46). For many rape survivors, access to a safe abortion procedure is made virtually impossible by a maze of administrative hurdles, and by official negligence and obstruction. In the landmark decision of *K.N.L.H. v. Peru*, the Human Rights Committee deemed the denial of a therapeutic abortion a violation of the individual’s right to be free from ill-treatment (para. 49). The Committee against Torture has repeatedly expressed concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment. On numerous occasions United Nations bodies have expressed concern about the denial of or conditional access to post-abortion care often for the impermissible purposes of punishment or to elicit confession. The Human Rights Committee explicitly stated that breaches of article 7 of the International Covenant on Civil and Political Rights include forced abortion, as well as denial of access to safe abortions to women who have become pregnant as a result of rape and raised concerns about obstacles to abortion where it is legal (para. 50).