

Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 capacities as Working Group on discrimination against women and girls; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/6, 42/16 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the legislative revisions proposed by the Government regarding the criminalization of termination of pregnancy.

According to the information received:

The Criminal Code currently in force contains provisions (Articles 269 and 270) according to which the pregnant woman and medical personnel face punishment of imprisonment or fine for procuring and performing abortions. The medical personnel also face "the suspension of qualifications" for up to seven years.

However, induced abortion is permitted, under the Mother and Child Health Act, in some restricted situations: when a pregnant woman or her partner suffer from health problems prescribed by Presidential Decrees; when pregnancy is a result of rape or incest; when pregnancy constitutes threat to health of the pregnant woman. The consents of a pregnant woman and her partner are required.

On 11 April 2019, the Constitutional Court ruled that the provisions in the Criminal Code penalizing abortion are unconstitutional and that the National Assembly has until the end of 2020 to revise the Criminal Code. These provisions will become null and void in the absence of any revision.

On 7 October 2020, the Government made public its proposed revisions, which entail incorporating and expanding the provisions in the Mother and Child Health Act that allow abortions on exceptional grounds into the Criminal Code. In addition to the grounds permitted under the existing "Mother and Child Health Act", social and economic ground was added. The proposed revisions include allowing abortion within 14 weeks of pregnancy by medically acknowledged doctors, and within 24 weeks on the above-mentioned exceptional grounds. Furthermore, procedural requirements are introduced in the proposed revisions: the abortion must be performed by medically recognized doctors and for abortion due to social or economic reasons, the pregnant woman has the obligation to consult with nationally designated agencies and thereafter

a period of reflection of a minimum of 24 hours. The requirement to obtain the consent from the husband or partner is to be deleted.

Furthermore, the Mother and Child Health Act would be revised to allow the doctor's refusal to perform abortion on the ground of conscientious objection and to include the requirement of the consent of parents or legal guardians in the case of minors.

We wish to commend the efforts undertaken by the Government to reform the abortion laws and welcome the progressive elements contained in the proposed revisions. Allowing voluntary termination of pregnancy within the first 14 weeks is indeed in line with the more progressive international human rights standards. The Working Group in its thematic report to the Human Rights Council on the subject of health and safety (A/HRC/32/44) recommends that States recognize women's right to be free from unwanted pregnancies, ensure access to affordable and effective family planning measures, and allow women to terminate a pregnancy on request during the first trimester or later in specific circumstances of distress. The Working Group notes that many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world. Furthermore, deleting the requirement of consent by the husband and expanding exceptional circumstances to include economic or social grounds also represent progressive developments.

While acknowledging the effort undertaken by the Government towards liberalizing the abortion laws, we are concerned about maintaining the use of the Criminal Code to regulate abortion. We wish to recall that women should never be criminalized for termination of pregnancy. International human rights mechanisms have requested States to review national legislation with a view to decriminalization of abortion through their jurisprudence, their general comments/recommendations, their concluding observations, and their reports to the HRC.¹ Specifically, in their concluding observations, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have requested the Republic of Korea to decriminalize abortion, remove punitive measures for women who undergo abortion and provide women with access to high-quality post-abortion care (CEDAW/C/KOR/CO/8; E/C.12/KOR/CO/4).

In its report on health and safety, the Working Group states that criminalization of termination of pregnancy deters health officials from carrying out safe termination of pregnancy, even where it is legal, and does grave harm to women's human rights by stigmatizing a safe and needed medical procedure. The Working Group notes that criminalizing termination of pregnancy does not reduce the need for it but only increases the number of women seeking clandestine and unsafe solutions. In countries where induced termination of pregnancy is restricted by law and/or otherwise

¹ CEDAW Committee No. 22/2009, *L.C. v. Peru*, (4 November 2011), CEDAW/ C/50/D/22/2009; European Court of Human Rights, *TYSIĄC v. POLAND*, Application no. 5410/03 (2007); Inter-American Commission on Human Rights. (2007) *Paulina del Carmen Ramirez Jacinto, Mexico, Friendly Settlement*, Report No. 21/07, Petition 161-01, 9 March 2007; CEDAW Committee, "Concluding Observations: New Zealand" (2012), CEDAW/C/NZL/CO/7; General Comment No. 14, CESCR; General Comment 36, Human Rights Committee; WGDRAW report on health and safety A/HRC/32/44; SR on the right to health A/66/254 and A/HRC/32/32

unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers and practices. This results in severe discrimination against economically disadvantaged women. The Working Group further points out that criminalization of behaviour that is attributed only to women, such as termination of pregnancy, is discriminatory per se and generates and perpetuates stigma and that the State has an immediate obligation to repeal laws and reverse policies that restrict, prohibit or criminalize termination of pregnancy and procedural barriers that restrict access to safe health services, as they discriminate against women.

In addition to the concerns about using the Criminal Code to regulate abortion, we wish to also point out that the introduction of requirements of third-party authorization from a parent or guardian, mandatory counselling and compulsory waiting periods, are contrary to international human rights standards. Moreover, conscientious objection has to be regulated in a way that it does not prevent women from exercising their access to legal abortion. These requirements, as well as unregulated conscientious objection by health practitioners, have an effect of restricting timely access to termination of pregnancy and can deter women from seeking professional medical attention, with detrimental consequences for their health and safety.

Inadequately regulated conscientious objection may constitute a barrier for women when exercising their right to have access to reproductive and sexual health services. The jurisprudence of human rights treaty bodies states that where conscientious objection is permitted, States still have an obligation to ensure that women's access to reproductive health services is not limited and that conscientious objection is a personal, not an institutional, practice. The Working Group notes in its health and safety report that a number of countries have legal guarantees that protect women in the case of conscience-based refusal of care. They include the requirement of referral to non-objecting providers, registration/written notice to the employer and/or a government body, disclosure of information to patients about the provider's status as a conscientious objector, provision of services in cases of emergency, and restriction of the right to conscientious objection to the individuals directly involved in the medical intervention and not institutions or those indirectly involved, such as pharmacists.

The Working Group recommends eliminating discriminatory barriers to access to legal termination of pregnancy that not based on medical needs, such as waiting periods and obligatory counselling and restricting conscientious objection to the direct provider of the medical intervention and allowing conscientious objection only where an alternative can be found for the patient to access treatment within the time needed for performance of the procedure (A/HRC/32/44).

In view of the aforementioned observations, we respectfully urge your Excellency's Government to take necessary measures to fully decriminalize termination of pregnancy, in accordance with international human rights norms, and adopt measures to ensure access to legal and safe abortion services. Criminal laws with respect to abortion result in a high number of deaths, poor mental and physical health outcomes, infringement of dignity and amount to violations of the obligations of States to guarantee the right to health of women and discrimination against women, particularly those who are economically and socially disadvantaged. Furthermore, information

about and access to abortion services must be available, accessible and of good quality, without discrimination. Post-abortion care must be available and accessible to all adolescent girls irrespective of the legal status of abortion. Moreover, any discriminatory barriers to women's access to safe and legal termination of pregnancy that are not based on medical needs should be removed. We remain at the disposition of your Excellency's Government to provide further clarifications and technical assistance in support of the continuous effort in the country to guarantee women's access to safe legal termination of pregnancy as a matter of women's human rights and elimination of discrimination against women.

We would appreciate it if this communication could be brought to the attention of the National Assembly.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Elizabeth Broderick

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