

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 and girls, its causes and consequences

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(Please use this reference in your reply)

24 November 2022

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 and girls, its causes and consequences, pursuant to Human Rights Council resolutions 50/18, 51/21 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **lack of access to abortion services guaranteed by law: the case of Ms. Mirela Čavajda**.

According to the information received:

In April 2022, Mirela Čavajda, a 39-year-old Croatian citizen, was six months pregnant. She undertook magnetic resonance imaging (MRI) on 20 April, when she was in the 24th week of pregnancy. During her regular gynaecological examination, a very large, advanced, and rapidly growing brain tumour was detected in the foetus, endangering its life, with a prognosis for a very low chance of survival or normal life, and potentially endangering Ms. Čavajda's life. The prognosis concluded slim chance of its survival, and that "the child would be born with severe congenital physical or mental defects."

Ms. Čavajda was not informed about the possibility of termination of pregnancy and procedure thereof, or that the foetal tumour could affect her own health. Moreover, no counselling or further guidance was provided. Her doctors claimed that abortion at this stage of pregnancy in this case was illegal in Croatia and that no commission would approve it, even though the law on termination of pregnancy provides for an abortion in the cases of foetal deformity without any time limitation, upon the approval of the relevant commission. All doctors verbally admitted that if the child survived, it would live "like a plant," but no written documentation was given on record. One of the doctors suggested that Ms. Čavajda should go to neighbouring Slovenia for the procedure as the only available option. This is because the key difference in implementation of the law between Croatia and Slovenia is that in Croatia just over half of all obstetrician-gynaecologists have filed a conscientious objection to providing abortion services (the number in Slovenia is around 10%). Moreover, in Croatia, the procedure of the termination of pregnancy in its advanced stage, which requires stopping the heart of the foetus, is apparently not performed as there are "no necessary conditions." According to the public statements by the medical establishment (HUBOL), they consider

such termination a murder.¹

Upon learning about her legal right to have the procedure conducted in Croatia after approval of a Commission on the Termination of Pregnancy of the First Instance, Ms. Čavajda visited all four public hospitals in Zagreb (all university-level teaching hospitals: KBC Zagreb (Petrova), KB Sveti Duh, KB Merkur and KBC Sestre Milosrdnice (Vinogradska)) to request a legal termination of pregnancy, which was refused by three of the obstetric departments without providing reasons. The fourth hospital, KB Sveti Duh Hospital stated they would approve Ms. Čavajda's request but that they did not have medical staff with the expertise and required technical equipment to conduct a termination of pregnancy at that stage of pregnancy. This presented a de facto refusal. Ms. Čavajda then appealed these decisions to the second instance commission. The second instance commission on the termination of pregnancy, created by the Minister of Health in an ad hoc manner, as a response to the public spotlight on the case, approved her request but did not indicate where and when she could exercise this right, as all available hospitals have claimed that such procedure could not be performed in Croatia.

In May 2022, 29 days after the first diagnosis, during which Ms. Čavajda was examined more than seven times in Croatia and Slovenia, Ms. Čavajda was able to undergo the procedure in neighbouring Slovenia and had to pay for the procedure. The cost was approximately 5000 EUR. The amount is equivalent to 5-6 average Croatian monthly salaries. In June 2022, the Minister of Health stated that the Croatian State Health Insurance Institute would reimburse Ms. Čavajda for the costs.

During her ordeal, many medical professionals and the Minister of Health made public statement exposing the details of the case and characterizing Ms. Čavajda's request as a request to murder/euthanise her child.²

Without prejudging the accuracy of these allegations, we express our most serious concern that these allegations, if confirmed, would show a persistent trend of discrimination of women and violence against them in accessing reproductive health care in Croatia. We are particularly concerned that these allegations may constitute a violation of the very core of a woman's fundamental rights to equality, physical and psychological integrity, right to health, to privacy, and to be free from cruel, inhuman or degrading treatment or punishment. We have previously addressed our concerns regarding the enjoyment of sexual and reproductive health rights in Croatia (AL CRO 1/2019). We are grateful to your Excellency's Government for its reply. However, we remain concerned about the situation of women and girls whose access to sexual and reproductive rights is restricted, reflecting also the broader findings outlined in 2021 thematic report of the Working Group on discrimination against women and girls, entitled Women's and girls' sexual and reproductive health rights in crisis (A/HRC/47/38).

Similarly, in its report on a human rights based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth or

¹ <https://www.vecernji.hr/vijesti/hubol-stvara-se-hajka-na-lijecnike-trazimo-donosenje-novog-zakona-o-pobacaju-i-prekidu-trudnoce-1586252>

² <https://narod.hr/hrvatska/prof-corusic-objasnio-kako-ce-se-usmrtiti-bebu-grgu>; <https://vlada.gov.hr/vijesti/beros-mireli-cavajdi-dopusten-prekid-trudnoce/35400>

obstetric violence the mandate of the Special Rapporteur on violence against women and girls noted that States should elaborate a national strategy on reproductive health services and childbirth in order to secure human rights based and caring and respectful treatments in the context of childbirth and other reproductive services, in line with international women's human right standards including respect privacy and confidentiality (A/74/47885).

We are especially concerned that despite the existence of article 22 of the Croatian Law on Health Measures for the Exercise of the Right to Free Decision on the Birth of Children which authorizes the legal termination of pregnancy when there are "serious health threats to the woman or foetus - on the basis of medical indications and knowledge of medical science," there is de facto prohibition of abortion in cases such as Ms. Čavajda's as the doctors incorrectly characterize it as euthanasia and no hospital performs such procedure in Croatia. Moreover, the widespread use of conscientious objection by the gynaecologists and other medical personnel results in practice in the obstruction of access to health care. In this regard, we are also concerned that the obstacles faced by Ms. Čavajda in accessing a legal termination of pregnancy reflect broader discrimination that women and girls often suffer with respect to access to health services.

In this regard, we would like to remind your Excellency's Government that the denial to access to abortion may run afoul of the State's obligations under article 16 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), article 7 of the International Covenant on Civil and Political Rights (ICCPR), and article 3 of the European Convention on Human Rights (ECHR).

The Special Rapporteur on torture emphasised that "highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or foetal impairment or to safeguard the life or health of the woman violate women's right to be free from torture and ill-treatment" (A/HRC/22/53). In such cases, the Special Rapporteur on Torture clearly noted that the "lack of legal and policy frameworks that effectively enable women to assert their right to access reproductive health services enhances their vulnerability to torture and ill-treatment" (A/HRC/7/3). In the context of torture, which explicitly requires a purposive element, the Special Rapporteur further explained that these elements "are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or nonadherence to social norms around gender and sexuality", and recognised that discrimination against women and girls "often underpins their torture and ill-treatment in health-care settings" and that "[t]his is particularly true when seeking treatments such as abortion that may contravene socialised gender roles and expectations" (A/HRC/31/57).

We regret that following its third UPR review in 2020, your Excellency's Government only noted a recommendation focused on this specific aspect of sexual and reproductive justice. The recommendation in question dealt with taking appropriate measures to guarantee women's access to legal and safe abortion in order that, for example, doctors' refusal to perform abortions based on religious beliefs does not limit the right to sexual and reproductive health of women, and that the procedure is covered by the national social security system and/or its costs are affordable for all women, regardless of their socioeconomic situation (A/HRC/46/16/Add.1 - Para. 5). We also regret the fact that the Government did not implement the concluding observations of the CEDAW Committee. In its concluding observations to Croatia

from 2015, the CEDAW Committee noted under paragraph 31, that Croatia should ensure that “the exercise of conscientious objection does not impede women’s effective access to reproductive health-care services.” The Committee also noted in paragraph 30 that, “right to abortion is being denied by hospitals on the ground of conscientious objection, even though only individual doctors are recognized as having that ‘right’ and hospitals are legally required to ensure the provisions of abortion” (CEDAW/C/HRV/CO/4-5).

Further, we are particularly concerned that to date, your Excellency’s Government has not updated the law on abortion following the 2017 Constitutional Court decision.

We are particularly alarmed that women may be discriminated against on the basis of their sex and gender when accessing reproductive health care services and attempting to exercise their legal rights, as a consequence of which they are being put in harm’s way. They are subjected to discriminatory and humiliating treatment, showing a persistence of negative stereotypes in relation to the roles and responsibilities of women in society.

If proven to be true, the above allegations would constitute not only a breach of the right to non-discriminatory access to health care services, the highest available standard of physical and mental health and the right to equality in the enjoyment of economic, social and cultural rights, including the right to health, but also a breach to her right to private life as well as the freedom from inhumane treatment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate whether any investigation has been launched and if yes, whether any disciplinary measures have been imposed to health care personnel responsible for the alleged violations.
3. Please indicate whether and if so what measures have been taken to ensure that pregnant women with a diagnosis of foetal deformity in late stages of pregnancy are able to access the abortion services in Croatia and that the law on termination of pregnancy is effectively implemented in practice.
4. Please provide detailed information on measures taken to guarantee the right of Ms. Čavajda to adequate redress and compensation for the alleged violations.

5. Please indicate whether and if so what measures have been taken to ensure that pregnant women medical data is not discussed publicly and that women who want to terminate pregnancy are not publicly denounced and shamed for their choices.
6. Please indicate the steps being taken to ensure that women's human rights, in particular, their sexual and reproductive health rights and their right to equality and non-discrimination, are duly protected in the context of healthcare in the compliance with the constitutional safeguards and international human rights standards.
7. Please specify whether your Excellency's Government is planning to adopt the new law as required by the constitutional court, and in line with the protocols for the safe termination of pregnancy in accordance with the recommendations of the World Health Organization.
8. Please specify whether your Excellency's Government is planning to draft an action plan on women's sexual and reproductive health rights.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls

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

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer, especially, to articles 2, 3, 6, 7 and 17 of the International Covenant on Civil and Political Rights (ICCPR), which protects the equality of men and women, the physical and psychological integrity, right to privacy, to be free from torture and other cruel, inhuman or degrading treatment or punishment, article 16 of the Convention against Torture (CAT), and non-discrimination; and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health both instruments ratified by Croatia on 12 October 1992. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Croatia ratified on 9 September 1992, imposes obligations in relation 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, especially in its article 12.

Criminalization of abortion and the failure to provide adequate access to services for the termination of an unwanted pregnancy constitute discrimination on the basis of sex, in contravention of article 2 of the ICCPR. In its General Comment No. 36: article 6 of the ICCPR, on the right to life, the Human Rights Committee stressed that although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl nor jeopardize their lives, subject them to physical or mental pain or suffering, discriminate against them or arbitrarily interfere with their privacy. State parties must provide safe, legal and effective access to abortion including where the pregnancy is the result of rape or incest and also should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion.

The Committee on Economic, Social and Cultural Rights interpreted article 12 in its General Comment No. 14. Article 12 imposes an obligation on States Parties to realize the right of women and girls to the highest attainable standard of health. This implies an obligation to ensure that steps are taken to ensure that access to health services is available to all, especially those in the most vulnerable or marginalized situations, without discrimination. In its General Comment No. 3, the Committee clarified that any retrogressive measures would contravene the principles of the Covenant.

In its General Comments No. 14 and 22, the Committee on Economic, Social and Cultural Rights clarified that the right to sexual and reproductive health, as an integral part of the right to health, entails a set of freedoms and entitlements. Sexual and reproductive freedoms include "the right to control one's own health and body" and "the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, in matters relating to one's own body and sexual and reproductive health." Under the right to health, the rights include unimpeded access to a range of quality sexual and reproductive health facilities, services and goods, including essential drugs, as well as programs, including access to safe abortion care, abortion drugs and quality post-abortion care.

CEDAW General Recommendation No. 24 emphasizes the duty of a State party to ensure, on a basis of equality of men and women, access to health-care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. CEDAW General Recommendation No. 35 affirms that violations of women's sexual and reproductive health and rights such as abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment (CEDAW/C/GC/35 at para. 18). In addition, in its Concluding Observations on Croatia, the CEDAW Committee expressed concerns on the lack of oversight procedures and mechanisms for ensuring adequate standards of care and the protection of women's rights during deliveries, as well as their autonomy (CEDAW/C/HRV/C/4-5).

Its report to the Human Rights Council on women's health and safety (A/HRC/32/44) and in its paper on Women's Autonomy, Equality and Reproductive Health, the Working Group on discrimination against women and girls stressed that abortion is a health care matter and access to safe and legal abortion is intrinsically linked to women and girl's right to life, health, equality, dignity and privacy. States have the obligation to respect, protect and fulfil women's right to equal access to health-care services and eliminate all forms of discrimination against women in relation to their health and safety. This obligation entails providing women with autonomous, effective and affordable access to health and ensuring that barriers to women's enjoyment of the right to the highest attainable standard of physical and mental health are dismantled, including by exercising due diligence. Denying women access to information and services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, is inherently discriminatory and prevents women from exercising control over their own bodies and lives. Furthermore, women may be denied such services through the reduction of availability and accessibility, deterrence from health care professionals and deprivation of women's autonomous decision-making capacity.

The Working Group has observed with concern that throughout their life cycle, women's bodies are instrumentalized and their biological functions and needs are stigmatized. The instrumentalization on women's bodies is often reflected on practices such as the withholding or delay in treatment, curtailment of women's autonomy and denial of respect for privacy and obstructing their access to reproductive and sexual health care. Furthermore, the legal restrictions to regulate women's control over their own bodies has been identified by the Working Group as a severe and unjustified form of State control, this can include regulations governing the provision of information related to sexual and reproductive health and termination of pregnancy. The enforcement of such provisions generates stigma and discrimination and violates women's human rights, by particularly infringing their dignity and bodily integrity and restricting their autonomy to make decisions about their own lives and health (A/HRC/32/44).

The Working Group also stated that central among women's and girls' health needs are those relating to their reproductive and sexual health. Discrimination against women in health is sometimes manifested in humiliating treatment that women may face in facilities that are dedicated exclusively to them, such as birthing facilities where, as repeatedly stressed by United Nations human rights mechanisms and WHO,

they are too often subjected to degrading and sometimes violent treatment. In some situations, failure to protect women's rights to health and safety may amount to cruel, inhuman or degrading treatment or punishment or torture, or even a violation of their right to life. The Working Group has recommended that laws, policies and practices should mandate respect for women's autonomy in their decision-making, especially regarding pregnancy, birthing and postnatal care (A/HRC/32/44).

In its reports, the Working Group on discrimination against women and girls has demonstrated the persistence of a global discriminatory cultural construction of gender, often tied to religion, and the continued reliance of States on cultural justifications for adopting discriminatory laws or for failing to respect international human rights law and standards. Within the United Nations system, the Working Group has observed that States have misused references to culture, religion and family in an effort to dilute their international obligations to fulfil women's rights and achieve gender equality. While the Working Group is committed to the principle of upholding freedom of religion or belief as human rights to be protected, it regrets the increasing challenges to gender equality in the name of religion. It joins other international human rights expert mechanisms in reiterating that freedom of religion or belief should never be used to justify discrimination against women. Women's human rights are fundamental rights that cannot be subordinated to cultural, religious or political considerations (see A/HRC/38/46).

The former Special Rapporteur on the right to health observed, in his report on the visit to Croatia in 2015, that there is a strong opposition among policymakers and within society at large towards well-established standards, instruments and mechanisms for the promotion and protection of women's sexual and reproductive health rights. He urged all stakeholders to support policies based on universal human rights principles, including those concerning sexual and reproductive health, and to reject what could be seen as conspiracy theories, which promote patriarchal gender stereotypes and undermine the role of women and girls in society (A/HRC/35/21/Add.2, para. 86). In her 2021 report to the General Assembly, the Special Rapporteur on the right to health underlined States' obligations to decriminalize abortion, to prevent unsafe abortion and to provide safe, legal and effective access to abortion, in a manner that does not result in the violation of women's rights to life and other human rights enshrined in ICCPR (A/76/172, paras. 22, 40-41). In her 2022 report to the General Assembly, the Special Rapporteur recommended the removal of all laws and policies criminalizing or otherwise punishing abortion and stressed that the WHO Abortion Care Guideline from 8 March 2022, recommends full decriminalization of abortion (A/77/197, para. 92).

We would also like to refer to the report of the Special Rapporteur on torture (A/HRC/31/57) in which he stressed that laws denying access to abortion to women victims of rape violate their right not to be subjected to torture or ill-treatment. Denying access to safe abortion and subjecting women and girls to humiliating and judgmental attitudes in such situations of extreme vulnerability would also amount to torture and ill-treatment. As stated in the report, as a consequence of their international obligations regarding the prohibition of torture, States have an affirmative obligation to reform restrictive abortion laws that perpetuate torture and ill-treatment by denying women access to abortion.

In her report on abuse and violence against women in reproductive health services, including childbirth care and obstetric violence (A/74/137), the Special

Rapporteur on violence against women and girls, its causes and consequences recommended repealing laws that criminalize abortion in all circumstances, eliminate punitive measures for women who undergo abortion, and at a minimum, legalize abortion in cases of sexual assault, rape, incest and when continuing the pregnancy poses a risk to the physical and mental health or life of the woman, and facilitate access to safe and quality post-abortion care. It also recommended withdrawing criminal prosecution and imprisonment of women who have sought emergency obstetric services, particularly for miscarriages, and removing punitive measures against physicians, so that they can provide them with the necessary medical assistance.

In a joint statement on the occasion of the high-level summit to officially launch the 2030 Agenda for Sustainable Development in September 2018, a group of international and regional human rights experts called on States, in implementing the Agenda, to seize the opportunity to recommit to and ensure the full respect, protection and fulfillment of sexual and reproductive health and rights. They stressed that States should also address acts of obstetric and institutional violence suffered by women in health care facilities, including with respect to forced or coerced sterilization procedures, refusal to administer pain relief, disrespect and abuse of women seeking healthcare and reported cases of women being hit whilst giving birth. (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>).

Regional and International Jurisprudence have regularly found the denial to access to abortion to amount to cruel, inhuman or degrading treatment or punishment. For example, in *Mellet v. Ireland and Whelan v. Ireland*, in which the applicants were denied access to abortion following a diagnosis of fatal foetal impairment, the Human Rights Committee (HRC) established that denying access to abortion care may constitute cruel, inhuman or degrading treatment. In addition, in *R.R. v. Poland*, the European Court of Human Rights found that Poland's denial of access to prenatal testing and diagnostic information during pregnancy, had caused the applicant "painful uncertainty", "acute anguish" and "humiliation" (2012).