

Mandates of 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 violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/9, 32/19, and 15/23.

Following an official country visit to the United States in 2015, the Working Group expressed concern that a number of social and political factors, including the disproportionately low representation of women in leadership, a strong religious lobby and the lack of political will to pass essential legislation has led to the constant contestation of women's reproductive rights in the country (A/HRC/32/44/Add.2).

As mentioned in a previous communication to the United States (USA 4/2015), the Working Group is concerned about measures taken by states that undermine women and girls' equal rights to health, and specifically their right to reproductive health, as well as their right to physical integrity. Such measures run contrary to international human rights standards and to the obligations undertaken by the United States, including through its ratification of the International Covenant on Civil and Political Rights (ICCPR).

In this regard, we recall that 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 ICCPR article 2.

In its report to the Human Rights Council on women's health and safety (A/HRC/32/44), the Working Group emphasized that criminalizing the termination of a

pregnancy instrumentalizes women's bodies, undercuts women's autonomy and puts their lives and health at risk. In cases of retrogressive legislation, the treatment of abortion as a criminal matter often produces collateral consequences, including the imprisonment of women who have had miscarriages. Further, the prohibition of self-induced pregnancy has discriminatory effects on economically disadvantaged women whose limited resources render them unable to access safe reproductive health services in the same manner as privileged women (paras. 79-80).

We have called upon States to repeal restrictive laws and policies on abortion, particularly considering that they have discriminatory impacts and negate women's choices about their own bodies (See "Unsafe abortion is still killing tens of thousands women around the world" – UN rights experts warn).

While not a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) nor to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United States, as signatory to both instruments, is bound to ensure that nothing is done which would defeat the object and purpose of either treaty, pending a decision on ratification. Both treaties are relevant to this matter, given that they oblige States to eliminate discrimination against women and girls (CEDAW art. 2) and to realize the right of women and girls to the highest attainable standard of health (ICESCR art.12).

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the draft Reproductive Health Act introduced in the New York State Senate on 17 January 2017, which we welcome and urge the state Senate to adopt.

The Reproductive Health Act (NYS S2796), if adopted, is legislation which would reform New York's penal and public health law regarding abortion. It was introduced in the New York State Senate on 17 January 2017 following its approval by the State Assembly in the same month, and has been proposed as a measure to guarantee women's right to access safe, legal abortion in line with the New York Constitution and the Constitution of the United States.

The Act would amend current criminal legislation in New York State which classifies 'self-abortion', or the self-induced termination of pregnancy, as a criminal act. Under current New York law, a woman who attempts to induce her own abortion at any stage is considered to have committed a Class B criminal misdemeanour and a woman who ends her own pregnancy or has an abortion performed after 24 weeks' gestation is considered to have committed a Class A criminal misdemeanour. Health care providers who perform abortions after 24 weeks are also criminally culpable.

Concerns have been raised regarding the impact that criminalization of 'self-abortion' is likely to have on low-income women, who due to limited means and reduced access to health care are most likely to seek to terminate their own pregnancies and consequently most likely to be harmed by the current legislation. In addition, there have been situations of criminalized abortion bringing, or threatening to bring, within the remit

of the penal system women who do not consent to invasive emergency medical procedures and women whose pregnancies end unintentionally, including as a result of accidents and miscarriages.

Further concerns have been raised about the anachronistic treatment of abortion in New York law, given all abortions after 24 weeks are criminalized except for those that would threaten the life of the patient. This legal framework pre-dates and does not accord with *Roe v. Wade* (41 U.S. 113 [1973]), the seminal U.S. Supreme Court decision on abortion, in which it was established that any state's abortion regulations must protect not only the life of the patient but also her health. Neither does the New York law enable the performance of later abortions in the case of severe and life-threatening foetal impairment, an additional allowance made by *Roe*.

An opinion issued on 7 September 2016 by the New York Attorney General (No. 2016-F1) highlighted these incongruences and instructed the General Counsel to the State Comptroller to interpret New York law in line with the more recent Supreme Court ruling. A more harmonized interpretation notwithstanding, the opinion of the Attorney General has reportedly inspired initiatives for legislative reform, including this one.

The bill for the Reproductive Health Act thus proposes to reform the law by decriminalizing abortion and rather treating the termination of a pregnancy within the state's public health regulations. In particular, references to 'abortion' and 'self-abortion' would be removed from the Penal Law and a statute would be added to the Public Health Law covering abortion provision. By doing so, state-wide regulation of abortion would fall under health, rather than criminal, considerations.

We welcome this proposal and urge the New York State Senate to pass the bill in order to ensure that women's rights are guaranteed in New York State. This Act would bring New York State legislation regarding abortion more closely into compliance with international human rights standards as regards the right of women to sexual and reproductive health, physical integrity and non-discrimination. It would not only deviate from the negative trend on women's reproductive rights; it would be a welcome precedent for other states in the country and a hopeful signal that much needed reform can and should be initiated.

We would like to inform you that this communication will be made available to the public on the website page of the mandate of the Working Group and will be included in the periodic communications reports of the Special Procedures to the Human Rights Council. Any response of Your Excellency's Government will also be made public in the same manner. We also reserve the right to publicly express our concerns on these matters in the future, which would indicate that we have been in contact with the Government of Your Excellency.

While awaiting a reply, we urge that all necessary interim measures be taken to guarantee women and girls' equal rights to health, including reproductive health, and to physical integrity. We also take this opportunity, duly referencing our earlier

communication (USA 4/2015), to encourage your Excellency's Government to firm its commitment to these rights through the ratification of CEDAW and ICESCR.

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

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