



30 May 2016
AI Index: IOR 40/4159/2016

The UN Human Rights Council Must Urge States to Reform Criminal Laws Punishing Women's and Girls' Sexual and Reproductive Choices

Written statement to the 32nd regular session of the UN Human Rights Council (13 June-1 July 2016)

Amnesty International welcomes the Working Group on discrimination against women in law and in practice's report on the issue of women's health and safety.¹ The report acknowledges that health and safety are interlinked, and that women's safety is an integral part of their health, as recognised by the World Health Organization's definition of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."² Women's and girls' health and safety are undermined by pervasive gender-based discrimination and violence, and by the instrumentalisation of women's bodies for cultural, political and economic purposes rooted in patriarchal traditions and harmful gender stereotypes.³

Sexual and reproductive health is a central component of health, and crucial for the promotion and protection of women's and girls' autonomy, sexual and reproductive rights and their full range of human rights. Women and girls frequently experience discrimination, coercion, violence or criminalisation, and their safety may be placed at risk, when seeking sexual and reproductive health services, or otherwise claiming their sexual and reproductive rights. Armed conflict and natural disasters also have a gender-specific, negative impact on women's and girls' health, including their sexual and reproductive health.

The report underlines States' obligation to ensure substantive equality for women and girls in the enjoyment of the right to health, which requires that women's and girls' specific health needs throughout their lifecycle are taken into account in the design of health systems.⁴ The design of health systems, policies and programmes must respect women's and girls' human rights and provide differential treatment according to their health needs, particularly their sexual and reproductive health, and with special attention to the health needs of the most marginalised women and girls.⁵

DISCRIMINATION IN ACCESS TO SERVICES

Discrimination affects women and girls' access to sexual and reproductive health services in many ways and often results in poor health outcomes. Women and girls encounter multiple economic, cultural and social barriers, such as requirements for authorization of spouses, parents or medical professionals before they can access sexual and reproductive health services and information; unregulated conscientious objection; geographical distance to the services; discriminatory treatment by healthcare providers, which

¹ Human Rights Council, *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice*, 8 April 2016, A/HRC/32/44.

² World Health Organization, *Definition of Health*, <http://www.who.int/about/definition/en/print.html>.

³ A/HRC/32/44, paras. 18, 61-62.

⁴ A/HRC/32/44, paras. 16, 18, 22.

⁵ A/HRC/32/44, paras. 42, 98, 105 (e).

may result in coercion, threats and even violence; unaffordable user fees or health insurance that does not cover sexual and reproductive healthcare, etc.

This is particularly the case for women and girls from the most marginalised groups who are affected by multiple and intersecting forms of discrimination due to their sex and gender and other factors such as ethnicity, caste, Indigenous, minority or migrant status, age, marital status, disability, gender identity or sexual orientation, or other characteristics of their identity and/or socio-economic status. Lack of political will often results in states' failure to address these additional barriers. The first step is to ensure that multiple barriers are recognised and understood, including through the collection and disaggregation of data to inform development of evidence-based programmes and policies.

CRIMINALISATION OF SEXUALITY AND REPRODUCTION

Discriminatory criminal laws and procedures, which regulate and punish women's sexuality and reproduction, also have a severe impact on women's and girls' health and safety. Amnesty International's research⁶ has documented the negative impact of criminal law on women's and girls' health and rights, such as in the case of criminalization of abortion and actions and decisions during pregnancy.

Criminalisation of abortion, such as through total abortion bans and highly restrictive laws, is discriminatory and obstructs access to life-saving health services, and puts women's and girls' health and lives at risk by compelling them to seek and undergo illegal abortions, which often result in maternal deaths and injuries.⁷ Criminalisation of abortion disproportionately affects the most marginalised women and girls who do not have the means to pay for expensive illegal abortions in private clinics or seek safe and legal abortion in another country.⁸ Women and girls can also be denied access to healthcare treatment for serious medical conditions such as cancer or lupus, for example on the grounds that treatment may damage the foetus.⁹

Women and girls who have undergone unsafe clandestine abortions and seek post-abortion care risk being reported to law enforcement officials by health professionals and can face criminal charges.¹⁰ For example, Amnesty International's research shows that in El Salvador, many women serving long-term prison sentences on pregnancy-related charges have been reported by medical providers when seeking medical care for complications of illegal abortion or miscarriages.¹¹

Threats of punishment also deter medical providers from providing post-abortion care and legal abortions due to fear of prosecution or because they are unclear on how to interpret the law.¹² The organisation's research also shows that in Ireland, abortion providers are criminalised in most cases, and the provision of abortion-related information is also heavily restricted, with a criminal penalty potentially being imposed if the provision of information is deemed to advocate or promote abortion. This deters medical providers from referring women to safe abortion services overseas, which may force them to rely on informal networks or experience dangerous delays in accessing legal abortion services.¹³

⁶ Amnesty International,

Nicaragua: The Total Abortion Ban in Nicaragua: Women's lives and health Endangered, Medical Professionals Criminalized, AMR 43/001/2009, 27 July 2009, <https://www.amnesty.org/en/documents/AMR43/001/2009/en/>, (accessed 30 May 2016); Amnesty International, *El Salvador: On the Brink of Death: Violence against Women and the Abortion Ban in El Salvador*, AMR 29/003/2014, 25 September 2015, <https://www.amnesty.org/en/documents/AMR29/003/2014/en/>, (accessed 30 May 2016); Amnesty International, *Ireland: She is not a Criminal: The Impact of Ireland's Abortion Law*, EUR 29/1597/2015, 9 June 2015, <https://www.amnesty.org/en/documents/eur29/1597/2015/en/>, (accessed 30 May 2016).

⁷ World Health Organization, *Safe abortion: technical and policy guidance for health systems*, Second edition, 2012, http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/, (accessed 30 May 2016).

⁸ Amnesty International, AMR 43/001/2009; Amnesty International, AMR 29/003/2014; Amnesty International, EUR 29/1597/2015.

⁹ Amnesty International, *El Salvador: Woman Denied Life Saving Medical Intervention*, AMR 29/001/2013, 15 April 2013, <https://www.amnesty.org/en/documents/AMR29/001/2013/en/>, (accessed 30 May 2016); Amnesty International, EUR 29/1597/2015.

¹⁰ Amnesty International, AMR 43/001/2009.

¹¹ Amnesty International, AMR 29/003/2014.

¹² Amnesty International, AMR 43/001/2009; Amnesty International, EUR 29/1597/2015.

¹³ Amnesty International, EUR 29/1597/2015.

Other criminal laws, for example “fetal assault” laws, also discourage women from seeking care and frequently impact on the women most in need of antenatal healthcare and support for healthy pregnancies. In the United States, a number of state laws criminalise pregnant women for their conduct during pregnancy, in particular for using a drug while pregnant.¹⁴ The law is frequently implemented in ways that disregard women’s right to full and informed consent to medical care. Drug tests conducted on pregnant women in healthcare settings, often without full and informed consent, are used as evidence of crime. The most marginalised women, such as those living in poverty, who already have poorer health outcomes,¹⁵ are also more likely to be subject to greater policing and surveillance. This punitive approach drives women further away from antenatal care and treatment, which they need and to which they are entitled.

Criminalization of adult consensual sex work also gravely impacts on women’s and girls’ health, security of person and autonomy. Evidence indicates that criminalisation interferes with and undermines sex workers’ right to health services and information, in particular the prevention, testing and treatment of sexually transmitted infections (STIs) and HIV. Criminalisation of sex work has been shown directly to undermine global HIV prevention efforts.¹⁶

The Committee on Economic, Social and Cultural Rights (CESCR) has recognised that criminalising consensual adult sexual activities violates States’ obligation to respect the right to sexual and reproductive health as it amounts to a legal barrier impeding access to sexual and reproductive health services.¹⁷ States have an immediate obligation to “repeal or eliminate laws, policies and practices that criminalise, obstruct or undermine [an] individual’s or particular group’s access to sexual and reproductive health facilities, services, goods and information”.¹⁸ The CESCR Committee has further confirmed that states must specifically ensure that sex workers have access to the full range of sexual and reproductive healthcare services.¹⁹

Criminalization of sex work also creates an environment where law enforcement officers and others can perpetrate violence, harassment and extortion against sex workers with impunity. The Committee on the Elimination of Discrimination against Women (CEDAW) has noted that where sex workers face the threat of criminalisation, penalization or loss of livelihood when or if they report crimes against themselves to police, their access to justice and equal protection under the law is significantly compromised, while offering impunity to perpetrators of violence and abuse against them.²⁰

Amnesty International supports the human rights principles underpinning the Working Groups’ report and its recommendations, which states should integrate as they design health policies and programmes to ensure women and girls from all backgrounds can enjoy the safety and health to which they are entitled. Therefore States should:

- Make sexual and reproductive health services available, accessible, affordable and acceptable to all women and girls, in particular those from marginalised groups;
- Remove all geographical, economic, social and cultural barriers to services and information;

¹⁴ Nina Martin, *Take a Valium, Lose Your Kid, Go to Jail*, ProPublica, 23 September 2015, www.propublica.org/article/when-the-womb-is-a-crime-scene. (accessed 30 May 2016).

¹⁵ World Health Organization, *Social determinants of health*, www.who.int/social_determinants/thecommission/finalreport/key_concepts/en/, (accessed 30 May 2016).

¹⁶ Global Commission on HIV and the Law, *Risks, Rights and Health*, July 2012, <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>, (accessed 30 May 2016); UNAIDS, *Guidance Note on HIV and Sex Work*, April 2012, http://www.nswp.org/sites/nswp.org/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en%5B1%5D_0.pdf; Amnesty International, *Amnesty International publishes policy and research on protection of sex workers’ rights*, 26 May 2016, <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>, (accessed 30 May 2016); Open Society Foundation, *Criminalizing Condoms*, July 2012, <https://www.opensocietyfoundations.org/reports/criminalizing-condoms>, (accessed 30 May 2016); Human Rights Watch, *Sex Workers at Risk*, July 2012, https://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf, (accessed 30 May 2016).

¹⁷ Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, 2 May 2016, para. 57.

¹⁸ E/C.12/GC/22, para. 49(a).

¹⁹ E/C.12/GC/22, para. 32.

- Ensure that healthcare providers respect the human rights of all women and girls, including their right to informed consent, privacy and confidentiality;
- Ensure women and girls can make autonomous decisions about their health, sexuality and reproduction, free of discrimination, coercion and violence. Violations of women's and girls' human rights cannot be justified with culture, religion or tradition;
- Take all necessary measures to address gender and other intersecting forms of discrimination, gender-based violence and harmful practices, including through combating harmful gender stereotypes and promoting women's and girls' human rights;
- Reform criminal laws and policies that punish women's and girls' sexual and reproductive actions and decisions and impinge on their personal and bodily autonomy.