



Mandate of the Working Group on the issue of discrimination against women in law and in practice

Inputs on the Human Rights Committee draft general comment No. 36 on article 6 of the International Covenant on Civil and Political Right, on the right to life (October 2017)

The Working Group on the issue of discrimination against women in law and in practice welcomes the opportunity to share its opinion on the Human Rights Committee draft general comment on article 6 of ICCPR - right to life. In a global context of severe backlashes against women's rights, as international human rights experts, we all have a pressing duty to ensure that women's hard won rights are upheld and to contribute to advancing the women's rights agenda, through the power of standard setting.

The Human Rights Committee has, in paragraph 9 of the draft general comment, undertaken to analyse State obligation with regard to termination of pregnancy. Our expert group considers that the current formulation could lead to a regressive interpretation of article 6 setting back the considerable progress made by UN human rights mechanisms¹ in recognizing women's human rights to dignity, autonomy, highest attainable standard of health and respect for private life on a basis of equality with men, without discrimination. Specifically and within the context of interpretation of the ICCPR, our expert group wishes to draw attention to the following:

The rights of women under the ICCPR to equality, dignity, and respect for private life, without discrimination

The Committee states that the “regulation of abortion must not result in violation of the right to life of a pregnant woman or her other rights under the Covenant” but then appears to limit this State obligation to exceptional cases: threat to life of the woman or causing pain or suffering in violation of the torture provisions of article 7; and to “situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment”.

Women's other rights under the Covenant include the rights to equality, to dignity, autonomy, information and bodily integrity and respect for private life, without discrimination. Our expert group would respectfully call on the Committee to clarify that the exceptional examples it specifies do not derogate from the obligation of States parties to ensure that regulation of termination of pregnancy must not violate any of these other rights.

¹ See, inter alia, CESCR General Comment 22, CEDAW General Recommendation 35, CRC General Comment 20, and also CEDAW, CESCR, CAT, CRC relevant concluding observations, Special Procedures mandate holders' reports (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, Special Rapporteur on extrajudicial, summary or arbitrary executions, Working Group on discrimination against women in law and in practice)

Women have a human right to sexual and reproductive health services, in a safe, legal, accessible and affordable manner, which is integral to the human rights binding on States under the UN treaty system. These include the right to equality, without discrimination, to dignity, autonomy, information and bodily integrity and respect for private life; and to the highest attainable standard of health, and health-care services, including those related to reproductive and sexual health; as well as the right to freedom from torture and cruel, inhuman and degrading treatment.

The right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, concerning intimate matters of physical and psychological integrity, as protected under articles 3 and 17 of the ICCPR. Further, the right to equality in the highest available standard of healthcare is also given specific protection under articles 3 and 12 of the ICESCR. This includes sexual and reproductive health including family planning.² Women also have the right to non-discrimination in access to health care services, including those related to family planning, required under article 12 of the CEDAW.

Decriminalization of voluntary termination of pregnancy

The Committee calls for decriminalization of abortion in a context of state duty “to ensure that women do not have to undertake unsafe abortions”. The Committee then appears to qualify this by giving restrictive examples: “criminal sanctions which are expected to significantly increase resort to unsafe abortion”; “criminalizing pregnancies by unmarried women”.

The choice of examples fails to address the fact that it is the criminalization of termination of pregnancy as such that deters health officials from carrying out safe termination of pregnancy, even where it is legal³, thus increasing the number of women seeking clandestine and unsafe solutions. The World Health Organization (WHO) has reported that there are approximately 22 million unsafe terminations of pregnancy annually, resulting in 47,000 deaths: “Ultimately, criminalization does grave harm to women’s health and human rights by stigmatizing a safe and needed medical procedure.”

The Committee’s citing of criminalization of pregnancies of unmarried women as a factor which forces women to seek unsafe abortions is eclectic and gives a solution only to one distinct reason amongst the many legal, cultural, social or economic reasons just as compelling which may force women to seek termination of pregnancy. Examples include pregnancies in situations of domestic violence, child marriage, extreme poverty etc. Indeed it is not possible to list a priori all the situations in which women may be forced to seek termination of pregnancy. Our expert group suggests to the Committee that in the vast majority of cases women only seek termination of pregnancy when they are forced to do so by oppressive legal, cultural, social or economic circumstances. In any case, desirable as it is to remove the causes forcing women to seek abortion, where

² See Committee on Economic, Social and Cultural Rights General Comment 14, §14, §21

³ See Working Group on discrimination against women in law and practice report on health and safety, A/HRC/32/44, 2016

States parties have failed to remove these causes, they should at the very least be required to decriminalize the resulting termination of pregnancy, as per the recommendations of various human rights mechanisms.

Furthermore, it is presently essential for the Committee to condemn the prosecutions and punishment of women or medical service providers for murder or manslaughter in the context of termination of pregnancy. Murder and manslaughter are relevant only to human persons, which in accordance with both the UDHR and the ICCPR, is a status acquired at birth⁴

Requirement of States Parties to provide access to safe abortion other than in the exceptional situations indicated

Paragraph 9 calls for States parties to provide “safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment”.

In view of the wide range of situations in which women may be forced for legal, cultural, social or economic reasons to seek termination of a pregnancy, our expert group respectfully calls on the Committee not to limit the requirement that States parties provide safe access to abortion to the situations listed in the current draft general comment which are too restrictive and do not take into account a variety of situations, in particular with regard to child and adolescent pregnancy⁵.

Furthermore, noting that many countries where women have the right to termination of pregnancy on request, supported by affordable and effective family planning measures, have the lowest abortion rates in the world, States should, as is good practice in some States, allow women to terminate a pregnancy on request during the first trimester, when the foetus is, in addition to not being endowed with personhood, also not capable of independent existence outside the woman’s body.

The right of the pregnant woman to access termination of pregnancy should not only be safe but also affordable

Even within the exceptional cases in which the Committee recognizes *the right to safe access*, the Committee does not address the obligation of States to provide not only safe but also affordable access to sexual and reproductive services and thus mitigate the severe discrimination against women in poverty which results from the refusal of many States to finance reproductive care, including termination of pregnancy.

As we stated repeatedly in our various reports and statements on this issue, and as demonstrated by WHO, in countries where induced termination of pregnancy is restricted by law and/or otherwise unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort

⁴ UN GAOR, 12th Session, Agenda Item 33, at 119 (q), UN Doc. A/3764, 1957.

⁵ Working Group on discrimination against women in law and practice report on health and safety, A/HRC/34/44, 2016

to unsafe providers and practices. This results in severe discrimination against economically disadvantaged women.

Access to information, education and contraceptive methods

Our expert group welcomes the Human Rights Committee's call to "States parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options, and to a wide range of contraceptive methods. States parties must also ensure the availability of adequate prenatal and post-abortion health care for pregnant women". Indeed, our group also insists on women's right to be free from unwanted pregnancies and ensure access to affordable and effective family planning measures

In conclusion, we would like to reiterate that much of the discrimination in access to health services and the resulting preventable ill health of women, including maternal mortality and morbidity, can be attributed to the instrumentalization of women's bodies for political, cultural, religious and economic purposes. Criminalization of termination of pregnancy is one of the most damaging ways of instrumentalizing and politicizing women's bodies and lives, subjecting them to risks to their lives or health and depriving them of autonomy in decision-making about their own bodies⁶.

⁶ Working Group on discrimination against women in law and practice report on health and safety, A/HRC/32/44, 2016