Criminal Laws and Women's Right to Health
June 20, 2012
Side Event at the 20th Session of the UN Human Rights Council

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Organizer: Action Canada for Population and Development (ACPD)

Co Sponsors: Akahatá (Argentina), Coalition of African Lesbians (South Africa), Creating Resources for Empowerment in Action (India), Egyptian Initiative for Personal Rights (Egypt), Federation for Women and Family Planning (Poland), Ipas, Sexual Rights Initiative

Speakers: Anand Grover, Special Rapporteur on the right to everyone to the highest attainable standard of physical and mental health; Saba Kidanemariam, Country Director Ipas Ethiopia**;** Maeve Taylor, Irish Family Planning Association**;** Eszter Kismödi, World Health Organization

Moderator: Virginia Bras Gomes, Former Member, UN Committee on Economic, Social and Cultural Rights

Summary: ACPD, in partnership with co-sponsoring organizations, held a side event at the 20th Session of the UN Human Rights Council focusing on criminal laws and women's right to health. The objective of the event was to provide a forum for States and stakeholders in Geneva to discuss the key findings and recommendations of the Special Rapporteur on the Right to Health's 2011 report to the General Assembly on the criminalization of sexual and reproductive health including abortion.

The Special Rapporteur's report consolidates years of analysis from health and human rights experts from all regions of the world regarding the intersection of criminal laws and abortion, control over conduct during pregnancy and delivery, contraception and family planning, education and information on sexual and reproductive health. By applying the right to health framework to these issues, the Special Rapporteur concludes that criminal laws and other restrictions regarding sexual and reproductive health violate women's right to health and obstruct the achievement of public health goals. States therefore have an obligation to remove these restrictions immediately.

The event was designed to give an overview of the Special Rapporteur's report, a country specific example from Ethiopia of how abortion law reform has improved women's right to health, a country specific example from Ireland of how the criminalization of abortion in almost all circumstances violates women's human rights to health, autonomy and dignity and the World Health Organization's data and policy guidance on the right to sexual and reproductive health. A very interesting discussion with the audience followed the presentations and focused on how the Council can incorporate the recommendations of the report into its work, examples of best practices for law reform, global trends, advocating for sexual and reproductive rights in difficult contexts and strategies for mobilization of key actors at all levels.

Approximately 50 people attended the event representing health, women's rights, sexual orientation and gender identity, and human rights civil society organizations, UNAIDS, UNFPA, UNICEF, WHO and States including Ireland, New Zealand, Norway, Canada and the Netherlands.

Overview of Presentations:

Mr. Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of mental and physical health

The Special Rapporteur began by placing the 2011 report on the criminalization of sexual and reproductive health in context as the latest in a series examining criminal laws and the right health. Previous reports focused on the right to health and the criminalization of same-sex sexual conduct, HIV transmission, drug use and sex work.

Through his work, the Special Rapporteur has found that the criminalization of human behavior is counterproductive, impedes the objectives of public health goals, impairs human dignity, interferes with autonomous decision-making and creates and perpetuates stigma. Furthermore, criminalization is often discriminatory because criminal laws tend to disproportionately punish some groups more than others. With regard to sexual and reproductive health, criminalization is actually killing women because they cannot access the health services they need. Removal of criminal laws related to sexual and reproductive health including abortion is necessary for the fulfillment of women's right to health and for the achievement of public health goals.

Mr. Grover told the audience that when the report was presented to the General Assembly in October 2011, the anticipated backlash from States did not occur. States responded positively, even those with restrictive laws on sexual and reproductive health said that while they could not accept all the elements of the report but they did support portions. States acknowledged that the report was of high quality and represented a serious attempt to change the paradigm on these issues. Some States have begun to use the report in their national parliaments as the basis for debates on reforming criminal laws related to sexual and reproductive health.

In conclusion, the Special Rapporteur recognized the active and constructive role of civil society in the process of developing and presenting the report. He was of the view that the time was now right to move forward and encouraged the audience to think more positively about how to further progress these issues forward at the UN and at the national level, including through the use of the Special Procedures complaints mechanism.

Ms. Saba Kidanemariam, Country Director Ipas Ethiopia

Ms. Kidanemariam provided an inspiring and informative overview of the abortion law reform process in Ethiopia and the positive impact it has had on women's health. In the 1980s and 1990s, Ethiopia's maternal mortality rate was one of the highest in the regions, 870-1200/100 000. 32-40% of these maternal deaths were related to unsafe abortion as the law only allowed for abortion to save a pregnant woman's life.

In 1994, Ethiopia adopted a new constitution which included an article obliging the State to protect women from laws and practices that violate their rights. Several new policies were developed following the adoption of the constitution including in relation to health, youth and women. Such policies created a favorable environment for revising or eliminating older laws which violated women's rights, including criminal laws on abortion.

Using a human rights and public health approach, a coalition of activists and health providers came together to advocate for abortion law reform which was achieved in 2004. The new law expanded the grounds for legal abortion and was broadly interpreted by the Ministry of Health in the development of protocols on safe termination which are based on the WHO safe abortion technical and policy guidance for health systems and focus on eliminating barriers to safe abortion services. Evidence from 2008 show that deaths from unsafe abortion have dropped to 6-13% of all maternal deaths and data from 400 health clinics in 2011 show a significant improvement in health seeking behavior with 70% of women who need to terminate a pregnancy accessing and receiving safe abortion services. Prior to the abortion law reform, only 30% of women who needed to terminate a pregnancy were able to access and receive safe abortion services.

Ms. Kidanemariam also spoke about how reforming the law is not sufficient to fulfill women's rights or achieve public health goals. Quality of care, access to supplies, provision of information, training of health care providers, sexuality education and empowering women to claim their rights has also played a major role in improving health outcomes related to pregnancy and women's human rights in Ethiopia.

Ms. Maeve Taylor, Irish Family Planning Association

Ms. Taylor spoke about the impact of the criminalization of abortion in Ireland where women regularly travel to another jurisdiction to access safe abortion services. Using the Special Rapporteur's report as a lens to consider abortion laws in Ireland, Ms. Taylor demonstrated how laws, policies and political positioning shift the burden of realizing the right to health away from the State and onto pregnant women, violating their fundamental human rights to autonomy, life, health, non-discrimination and dignity in the process.

Abortion is criminalized in all circumstances in Ireland except when there is a risk to the life of the pregnant woman. However, the State is unable to provide evidence of a single legal abortion ever being performed in the Republic of Ireland. The Government openly acknowledges that over 4000 women travel each year to the UK to access safe abortion services and has put a range of services in place to provide information and counseling to women who can travel abroad to avail themselves of a reproductive health service that is criminalized within its borders. This inconsistent position results in a lack of accountability and transparency in the delivery of health care, creates and perpetuates stigma by treating women who terminate pregnancies as criminals, imposes serious physical, emotional and financial hardship and disproportionately discriminates against marginalized women and girls.

Ms. Taylor concluded by suggesting that the decriminalization of abortion in Ireland has the potential to reconstruct women as subjects not objects of the law, as citizens and as rights holders.

Ms. Eszter Kismödi, World Health Organization

Ms. Kismödi presented an overview of the WHO's role in supporting the right to health, including sexual and reproductive health, and highlighted some of the key points from the WHO's updated policy guidance on safe abortion which was published on June 19, 2012.

The WHO provides evidence-based standards to assist countries and partners to build enabling legal and policy frameworks necessary to strengthen health programs and services. The WHO published its updated policy guidance on safe abortion in view of the need for evidence based practices for providing safe abortion care in order to protect the health and human rights of women. Each year approximately 50 000 women die of complications from unsafe abortion and an estimated 5 000 000 women suffer from a disability due to unsafe abortion. Over 215 million women who want to use modern contraception do not have access to it. Almost all death and disability from unsafe abortion occurs in countries where abortion is severely restricted in law and practice.

The evidence clearly states that restricting legal access to abortion does not decrease the need for abortion or result in fewer abortions. Restrictions do result in women seeking unsafe and illegal abortions which leads to increased pregnancy related death and disability and also women travelling to other jurisdictions, which causes delayed care and social inequity. Furthermore, restrictions on access to information, criminalization of contraception, unregulated conscientious objection, requiring third party consent and other restrictive practices act as barriers to safe abortion services.

Echoing the UN Secretary General's Global Strategy for Women and Children's Health, Ms. Kismödi concluded by reminding the audience that Governments have an obligation to amend their laws in line with human rights and that we must focus on women, not their illnesses, but on their health.

Discussion Summary

Interventions were made by UNAIDS, UNFPA, International Commission of Jurists, African Association of Education for Development, New Zealand and ACPD. Questions and comments included:

- How can the Human Rights Council take forward the recommendations from the report?
- Has the opposition been effective in rolling back sexual and reproductive rights through an increase in restrictive laws?
- What are the elements of best practice for law reform?
- Has international and regional jurisprudence had a positive impact at the national level?
- How are NGOs able to carry out their work in highly restrictive environments?
- UNFPA, WHO and UNAIDS presented a joint statement to the General Assembly when the Special Rapporteur's report was presented welcoming the report as an important step forward and contribution to the right to sexual and reproductive health.
- How can we creatively address different aspects of the right to safe abortion care at the political level, for example the right to information, as this strategy has been successful with other issues that are considered controversial?
- Civil society regularly submits evidence on restrictive laws and policies related to sexual and reproductive rights to the UPR process. States can use the UPR mechanism and the Special Rapporteur's report to hold States accountable for violations of women's sexual and reproductive rights.

Mr. Grover, Special Rapporteur on Health, suggested that different strategies are necessary to achieve change and at different levels. Women forced to seek out unsafe abortion are not finding a resonating voice at the UN and so we must work on community participation and access to information. It is important to consolidate networks and identify which organizations would be best placed for different activities and to work with national organizations in the countries that are targeted at the international level. States frequently say that they support these issues privately but cannot do so publicly because of domestic policy. This is quite positive as it demonstrates that there are opportunities for moving forward provided we can coordinate effectively.

Ms. Kidanemariam responded to the question on best practice for law reform by stressing the need to understand the country context, creating alliances, being very focused, identifying the key players, remaining positive and optimistic and neutralizing opposition through education, information and sensitization. Everyone said that the law could not be changed in Ethiopia because abortion is so stigmatized and politicized and yet it was changed, even in a conservative and low resource country. Small steps will lead to bigger steps.

Ms. Taylor spoke about the critical role of the women's movement in changing gender norms, advocating for women's human rights and building capacity to challenge regressive arguments. She also addressed the importance of bringing human rights language and analysis into national laws and policies. It demonstrates to policy makers that it is not just a few small organizations or groups who think the criminalization of sexual and reproductive health is a serious problem. The analysis of international human rights courts and UN treaty body monitoring committees bring an authority that can make governments pay attention and remind States that if they want to be seen as human rights champions that they need to address sexual and reproductive rights. The Human Rights Council has an important role to play in developing the human rights analysis and also keeping sexual and reproductive rights on the agenda as the UN moves through different review processes.

Ms. Kismödi recognized that changing the law can be a slow process, but we must also look at the evidence regarding how quickly things change when sexual and reproductive health services are decriminalized. Evidence from countries that have changed their laws related to sexual and reproductive health shows reduced maternal mortality and morbidity rates, less violence, more access to services and reduced stigma. Few countries are actually restricting sexual and reproductive health laws because they are looking at the public health evidence and international human rights standards and they realize that restrictions do not serve the best interests of the public. Laws exist to guarantee human rights and the Human Rights Council has a responsibility to pay attention to national laws that violate women's rights to health. The Human Rights Council also must pay attention to the positive events happening at the global level regarding sexual and reproductive health, such as the increased investment in family planning and the WHO regional workshops on the safe abortion guidance. These are happening in the context of States' obligation for the fulfillment of human rights.

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Speakers' full presentations are available on www.acpd.ca
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