



20th Session of the UN Human Rights Council

Side Event:

Criminal Law and Women's Right to Health

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The Right to Health:

The International Covenant on Economic, Social and Cultural Rights

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Right to Health:

The Convention on the Elimination of Discrimination Against Women

Article 12

1. States Parties shall take all appropriate measures 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.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Women & the Right to Health:

The Committee on Economic, Social and Cultural Rights, General Comment 14

- States must develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span.
- The right to health requires measures to improve maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.

Women & the Right to Health:

The Committee on Economic, Social and Cultural Rights, General Comment 14

- A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.
- It is also important to undertake preventive, promotional and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.

Maternal Mortality and Morbidity and the Right to Health

- The right to health requires States to ensure, as a matter of priority, reproductive, maternal (pre-natal as well as post-natal) and child health care
- The failure to reduce infant and maternal mortality rates amount to violations of the *obligation to fulfill* the right to health
- Lowering rates of maternal mortality should be a major goal of States' obligation to develop and implement a comprehensive national strategy for promoting women's right to health

Dignity and Autonomy:

Criminal laws and other legal barriers affecting sexual and reproductive health

Human Dignity

Criminal laws and other legal restrictions on sexual and reproductive health infringe upon women's dignity in a variety of ways. These laws:

- Expose women to increased physical and mental health risks
- Treat women as objects rather than subjects under the law
- Interfere with their intimate, emotional and sexual lives

Dignity and Autonomy:

Criminal laws and other legal barriers affecting sexual and reproductive health

Personal Autonomy

Women must be free to make autonomous decisions affecting their sexual and reproductive health without interference from the State in the form of criminal laws and other legal barriers:

- Women must be free to decide how many children to have and when
- Women must be free to make decisions concerning their intimate sexual and emotional lives free from state interference

Affect of criminal laws and other legal barriers affecting sexual and reproductive health

- These laws generate and perpetuate stigma surrounding women's sexual and reproductive lives.
- They dis-empower women, who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization.

Affect of criminal laws and other legal barriers affecting sexual and reproductive health

- These laws restrict women's ability to make full use of available sexual and reproductive health-care goods, services and information.
- They are discriminatory in effect, i.e., they disproportionately affect those in need of such resources—women.
 - As a result, women and girls are punished both when they abide by these laws, and are thus subjected to poor physical and mental health outcomes, and when they do not, and thus face incarceration

Affect of criminal laws and other legal barriers affecting sexual and reproductive health

- These laws distort perceptions among health-care professionals which further hinders women's access to sexual and reproductive health goods, services and information.
 - Discrimination against and stigmatization of women seeking to utilize sexual and reproductive health services is present even amongst health-care professionals as it is in society.

Restrictive Abortion Laws

Criminal laws and other legal barriers penalizing and restricting induced abortion:

- Infringe women's dignity and autonomy by severely restricting decision-making in respect of their sexual and reproductive health and intimate sexual and emotional lives, including by reducing their control over when to have children and how many.
- Generate poor physical health outcomes, resulting in preventable deaths, morbidity and ill-health, as well as negative mental health outcomes, in part because affected women risk being thrust into the criminal justice system.

Laws restricting access to family planning goods and services

- These laws disempower women and restrict their ability to make autonomous and informed choices about their sexual and reproductive health and their intimate sexual and emotional lives.
- They expose women to increased risks of maternal mortality and morbidity by restricting their access to health goods and services, which infringes upon their dignity
 - Evidence shows that access to voluntary family planning can reduce maternal deaths by between 25 and 40 per cent (World Bank)
 - Family planning also reduces the number of unsafe abortions and the perinatal transmission of HIV.

Criminalization of conduct during pregnancy

- These laws stigmatize women and treat them as objects rather than subjects under the law
- Criminalization of conduct during pregnancy impedes women's access to health-care goods, services and information for fear of prosecution
 - For example, women may not seek antenatal services if they are faced with the risk of prosecution from transmitting HIV, which poses a risk to their health and the health of the fetus, which undermines public health objectives related to HIV, because women may refuse testing entirely if they face criminal penalties for transmission.

Criminalization of conduct during pregnancy

- For example, in the United States and other jurisdictions, pregnant women have been prosecuted for various types of conduct during pregnancy, including:
 - Use of illicit drugs, under pre-existing laws relating to child abuse, attempted murder, manslaughter and criminally negligent homicide
 - Use of alcohol during pregnancy
 - Birth of stillborn babies
 - Miscarriage of a fetus
 - Failing to follow a doctor's orders
 - Failing to refrain from sexual intercourse, and concealment of the birth