Amnesty International submission to Office of the High Commissioner for Human Rights on the technical guidance on the application of a human-rights based approach to the implementation of the policies and programmes to reduce preventable maternal mortality and morbidity

Amnesty International (AI) welcomes the opportunity to provide input on the preparation of concise technical guidance on the application of a human-rights based approach to the implementation of the policies and programmes to reduce maternal mortality and morbidity. Office of the High Commissioner for Human Right’s (OHCHR) initiative in developing the concise technical guidance provides an excellent opportunity to clarify the obligations of State parties under various international human rights treaties in the context of preventable maternal mortality and morbidity.

The International Conference on Population and Development Programme of Action identified sexual health as an element of reproductive health. Paragraph 7.2 of the Programme of Action speaks of reproductive health as “a complete state of physical, psychological and social-well being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.” This requires a comprehensive approach that recognises that sexual and reproductive rights as fundamental aspects of the human-rights based approach to preventable maternal mortality and morbidity.

Preventable maternal deaths and injuries reflect violations of the rights to the highest attainable standard of physical and mental health, equality and non-discrimination and freedom from torture and cruel, inhuman or degrading treatment. They are also closely linked to and exacerbated by denial of sexual and reproductive rights and by sexual violence.

All governments are parties to international and regional human rights treaties which require them to respect, protect and fulfil these rights. There is also a comprehensive body of jurisprudence developed by the United Nations treaty monitoring bodies and the Special Procedures, which offers guidance to States on measures they need to take to comply with their relevant human rights obligations. The technical guidance should therefore build on these existing commitments and ensure that initiatives undertaken by state parties are consistent with and centred within this framework.

1. Human-rights based approach to preventable maternal mortality and morbidity requires a full range of health information and services

This technical guidance has the potential to add value to existing guidance by UN treaty monitoring bodies and others in regard of states’ obligation to take a comprehensive and integrated approach to the provision of sexual and reproductive health information and services.

As the former UN Special Rapporteur on the right to education Vernor Muñoz has noted: “There is no valid excuse for not providing people with the comprehensive sexual education

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that they need in order to lead a dignified and healthy life." The technical guidance gives OHCHR the opportunity to affirm that, likewise, there can be no justification or excuse for states for not taking appropriate steps to provide people with a comprehensive range of sexual and reproductive health information and services.

Selective approaches – for instance, those that include prevention of unwanted pregnancy and post-abortion care but neglect the provision of safe abortion services to the full extent of the law and (where necessary) legal and policy reform – violate human rights and will lead to detrimental outcomes in terms of individual’s health and decision-making power and autonomy. Equally, approaches that exclude or stigmatise some groups – for instance, girls and young women, those who are unmarried, or lesbian, gay, bisexual or transgender individuals – violate human rights.

Amnesty International’s research on laws and policies on sexual, reproductive and maternal health in different countries makes clear the need for strong guidance on non-selectivity: even where they are grounded in recognition of the resulting public health problems, many laws and policies omit or address only inadequately or in discriminatory ways issues considered politically or culturally ‘sensitive’, in disregard of the resulting human rights violations.

Governments must ensure that women and girls can exercise their rights to sexual and reproductive health, including their rights to have access to a comprehensive range of effective information and services, to be free from discrimination, violence and coercion and to make decisions regarding their sexuality and reproductive lives. These rights must be protected by law, and in particular national legislation should not infringe on rights by requiring individuals to conform to stereotyped norms and expectations, in disregard of their entitlement to make decisions regarding their sexual and reproductive lives. OHCHR should use this technical guidance as an opportunity to address the human rights dimensions of specific issues often considered ‘sensitive’ which have an impact on the realisation of rights to sexual and reproductive health. These include:

- Criminalisation of abortion, and denial of access to safe and legal abortion services and information;
- the link between sexual and reproductive health and various forms of gender-based violence including early/child marriage, marital rape, and female genital mutilation – both in terms of information and services geared towards prevention, and access to information and services (as well as other elements of redress and reparation) for victims;
- inadequate regulation of health professionals’ conscientious objection to provision of health information, services and goods as an obstacle to access;
- third party authorisation to access to information and services;
- provision of age-appropriate information and services to children and adolescents.

2. Non-discrimination and equality are central to a human-rights based approach

General Comment 14 provides for a “gender-based approach” to health (para. 20) by reflecting on human rights violations resulting from gender stereotyping and discrimination and governments’ obligation to eliminate these. Commitment to gender equality and non-discrimination on any grounds, including in particular age, marital status, and sexual orientation and gender identity, must be central to the content and implementation of states’

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maternal health programmes and strategies. OHCHR should clarify the obligations of state parties with regard to gender equality and non-discrimination that underpin sexual and reproductive health.

To broaden and deepen its analysis of non-discrimination and equal treatment in General Comment 14, OHCHR should develop its guidance grounded in an intersectional discrimination analysis, drawing out both the value-added and the principled human rights commitment inherent in the intersectional approach. As observed by the CEDAW Committee, certain groups of women, in addition to suffering from discrimination directed against them as women, also suffer from multiple forms of discrimination based on “race, ethnic or religious identity, disability, age, class, case or other factors.” Such cumulative discrimination impairs women’s access to sexual and reproductive health services and results in a higher risk of preventable maternal mortality and morbidity and of violations of a range of human rights.

Acknowledging, addressing and eradicating the impact of multiple and intersecting forms of discrimination is extremely important in the provision of healthcare. Recognition of the existence and impact of compound discrimination, however, is severely lacking in different countries around the world. The result is, for instance, that women belonging to minority communities are invisible in national level strategies to combat gender inequality and racial discrimination, and they are subjected to further discrimination.

3. Participation in health-related decision-making

In General Comment 14, the Committee highlighted the importance of the participation of the population in health-related decision-making at the community, national and international levels. Meaningful participation by those who are affected by laws, policies and programs is crucial in all spheres of decision making and implementation.

In regard to maternal health, emphasis should be put on facilitating the effective participation of those directly affected by decisions concerning sexual and reproductive health laws, policies and practices and those who have historically been excluded – and are excluded today – from relevant processes as a result of discrimination, coercion or violence.

Amnesty International’s research in Peru highlighted the need for promoting the participation of communities in topics relating to their right to health, in particular guaranteeing the participation of individuals belonging to communities of indigenous or peasant origin to ensure that health services are tailored to their cultural beliefs and are acceptable to all.

In this technical guidance OHCHR should clarify state parties’ obligation to develop institutional mechanisms to ensure participation of different stakeholders in design, implementation and monitoring and assessment of maternal health policies, programmes and strategies. It should also clarify the pre-conditions to ensure effective participation within the health system.

4. Remedies and accountability

Lack of accountability and access to effective remedies impedes realisation of sexual and reproductive rights. Often when a pregnant woman is denied access to life-saving services, there are no remedies available. There are often no procedures for individual redress such as an apology or some form of compensation in the event of maternal death or injury. Women are often also unable to complain effectively when other sexual and reproductive health information and services are denied to them.

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9 CEDAW Committee, General Recommendation No. 25, para.12; See also CESCR, General Comment 16, (34th Session, 2005), UN Doc E/C.12/2005/4, para 3.
All victims of human rights violations have a right to an effective remedy and to reparation.\(^\text{12}\) This is a recognized consequence of the duty of the state to ensure, secure and guarantee effective enjoyment of human rights,\(^\text{13}\) which includes the duty to provide effective remedies against human rights violations, and to provide reparation to victims.\(^\text{14}\) According to the UN Committee on Economic, Social and Cultural Rights any victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels.\(^\text{15}\) It has also stated, National ombudsmen, human rights commissions, consumer forums, patients’ rights associations or similar institutions should address violations of the right to health.\(^\text{16}\)

A remedy can therefore be provided by a court or another institution that acts on complaints. International law entitles all victims of human rights violations access to reparations. Reparations require that, as far as possible, the consequences of the violation are corrected. According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, reparation includes: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.\(^\text{17}\) Without access to remedies, human rights mean very little. To be effective, all remedies must be accessible, affordable and timely. In its technical guidance OHCHR should clarify the scope and application of these principles in cases of violations of sexual and reproductive rights and call on state parties to address barriers faced by women and girls in exercising their right to a remedy in cases of violations.

\(^\text{12}\) Article 2 (3) ICCPR; Article 13 CAT; Article 6 CERD; Article 8 UDHR; Principles 4-7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 27 of the Vienna Declaration and Programme of Action; Articles 13, 160-162, 165 of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Article 9 of the Declaration on Human Rights Defenders; Article 13 ECHR; Articles 7 (1) (a) and 25 ACHR; Article XVIII of the American Declaration of the Rights and Duties of Man; Article 7 (1) (a) AfrCHPR; and Article 9 Arab Charter on Human Rights.

\(^\text{13}\) Article 2 ICCPR; Article 2 CERD; Article 2 CEDAW; Article 2 CRC, Article 1 ACHR, Article 1 ECHR.


\(^\text{15}\) UN CESCR General Comment 14, para 59.

\(^\text{16}\) UN CESCR General Comment 14, para 59.

\(^\text{17}\) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005, para 18.