

**Testimony of Melissa Upreti on behalf of the United Nations Working Group on
discrimination against women in law and in practice**

before the

The New York City Council Committee on Women

concerning

Res. 84-2018

**“Resolution urging the New York State Legislature to pass and the Governor to sign the
Reproductive Health Act.”**

September 20, 2018

Thank you Council member Rosenthal, for convening this hearing today and thank you Public Advocate James for introducing the resolution before the committee.

My name is Melissa Upreti and I am a Special Mandate-holder appointed by the United Nations to examine laws and practices that discriminate against women and member of the “United Nations Working Group on discrimination against women in law and in practice,” which was established in 2010 with a mandate to focus on identifying, promoting, and exchanging views, in consultation with States and other actors, on good practices related to the elimination of laws that discriminate against women.

In 2017, the Working Group sent a letter to the United States urging the passage of the Reproductive Health Act to ensure full respect for and protection of women’s human rights. As set forth in the letter, the Working Group is concerned about measures taken by States that

undermine women and girls' equal rights to health, and specifically their right to reproductive health, as well as their right to physical integrity. Such measures run contrary to international human rights standards and to the obligations undertaken by the United States, including through its ratification of the International Covenant on Civil and Political Rights, also frequently referred to as the ICCPR.

One particularly troubling aspect of New York's current law governing abortion is that it criminalizes women who end their own pregnancies. Criminalization of abortion and the failure to provide adequate access to services for the safe termination of an unwanted pregnancy constitute discrimination on the basis of sex in contravention of Article 2 of the ICCPR.

The Working Group has called for protection of the right to safe termination of pregnancy in the context of the right to life enshrined in Article 6 of the ICCPR. The criminalization of termination of pregnancy deters health officials from carrying out safe abortion procedures, even where it is legal, thus increasing the number of women resorting to unsafe methods of pregnancy termination. Ultimately, criminalization does grave harm to women's health and human rights by stigmatizing a safe and commonly needed medical procedure. Of equal if not greater concern is the fact that such provisions deter women who have had abortions outside of a clinical setting from obtaining medical help if complications arise.

The Working Group is of the view that criminalizing the termination of a pregnancy instrumentalizes women's bodies undercuts women's autonomy and unnecessarily as well as unjustly puts their lives and health at risk. As we have seen here and across the world, the treatment of abortion as a criminal matter often produces harmful collateral consequences, including the imprisonment of women who have had miscarriages.

Criminalization of self-induced abortion raises concern about the impact on low income women who due to limited means and reduced access to health care are most likely to seek to terminate their own pregnancies and consequently most likely to be harmed by the current legislation.

The bill for the Reproductive Health Act proposes to reform the law by decriminalizing abortion and rather treating the termination of pregnancy within the state's public health regulations. In particular, references to 'abortion' and 'self-abortion' would be removed from the penal law and a statute would be added to the Public Health Law covering abortion provision. By doing so, state-wide regulation of abortion would fall under health, rather than criminal, considerations. These changes would undoubtedly be in line with international standards and contribute to the protection and fulfillment of women's human rights in New York State.

In the last few years, a number of human rights mechanisms have moved to requiring decriminalization including as an immediate obligation. Criminalization of abortion, has been deemed a form of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

There is no doubt that women's access to safe abortion is critical to their ability to realize many other fundamental human rights. The decision as to whether to continue a pregnancy or terminate it, is fundamentally and primarily the woman's decision, as it may shape her whole future personal life as well as family life and has a crucial impact on women's enjoyment of other human rights.

The right to equality and the highest available standard of healthcare and the right to non-discrimination in access to health services, including those related to sexual and reproductive

health require specific protection. Equality in the supply of health services requires a differential approach to women and men, in accordance with their biological needs and the right to safe termination of pregnancy is an equality right for women. Punitive measures must not be enforced against women seeking to make decisions about their health, safety and well-being.

We do indeed welcome this resolution and urge New York State to pass the bill in order to ensure that women's most basic human rights are guaranteed. It would not only deviate from the negative and harmful trend on women's reproductive rights, but it would be a welcome precedent for other states, as well as countries, and a hopeful signal that such reform can and should be initiated.

I thank the New York City Council and Public Advocate James for taking a stand and urging your colleagues in Albany to pass the Reproductive Health Act.