**Gender Perspectives**

**on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

**Expert Consultation**

**Center for Human Rights & Humanitarian Law, American University Washington College of Law, 5-6 November 2015**

**Panel on Reproductive Rights & Health-Care Practices, 5 November 2015**

***Intervention of France Raday, on behalf of the Working Group on the Issue of Discrimination against Women in Law and in Practice***

Sexual and reproductive health and rights (SRHR) have been a priority issue for the Working Group on Discrimination against Women in Law and in Practice (WG) in country visits, communications with Governments and public statements, alone or jointly with others. The WG’s next thematic report to the UN Human Rights Council in June 2016 will focus on women’s health and safety, including SRHR. It is on the basis of our cumulative experience that I will make the comments below.

Conceptually, the position quoted from CAT which opens the section on SRHR in the Working Paper needs to be revised. I quote: the CAT has “repeatedly expressed concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment.” This is especially true when legal and policy restrictions on abortion serve a “discriminatory purpose,” based on stereotypes about woman’s maternal role in society and assumptions that women lack the moral agency to make decisions about their sexuality and reproduction.” This in my view misses the point that withholding care that only women need – in this case access to abortion - is always discriminatory.

The conceptual approach should regard the discriminatory denial of access to health care for women and girls, including SRHR, as in itself constituting a violation of women’s human rights and, hence, in the context of the CAT analysis, a form of cruel, inhuman, or degrading treatment or punishment. This requires recognition of the fact that all the following ways of treating women and girls in access to health care including SRHR are discriminatory: withholding care that only women and girls need, e.g. access to abortion; depriving women of the right to autonomy and informed consent in health treatment , e.g. conditioning access on third party authorization, especially requiring the consent of a male guardian or husband; criminalization of procedures which are relevant only to women, e.g. prohibition of abortion; failure to provide adequate budgeting and investment in health care/research which is only required for women, e.g. prevention and treatment of breast cancer, cervical and ovarian cancer; and violation of women’s and girls’ human dignity by health service providers, especially birthing facilities.

It is important to explain that the restriction of women's autonomy especially in relation to SRHR is a manifestation of patriarchal control exercised over women's bodies and that this in itself may be considered to constitute cruel, inhuman, or degrading treatment or punishment. In addition to prohibition of abortion in all circumstances and forced abortion or forced sterilization, it may also include forced or violent procedures of birthing including unnecessary caesarian section. It may include criminalization of behavior which penalizes primarily women, such as prostitution or adultery, resulting in some countries, in the imposition of penalties which must themselves be classified as torture such as stoning and lashings. It includes performance of procedures without the woman’s consent: inter alia, FGM performed on girls and early or forced marriage.

In classifying these violations of women’s and girls’ SRHR as falling within the definition of cruel, inhuman, or degrading treatment or punishment , the ostensible purpose is to understand the full impact of these patriarchal cruelties on women’s physical and mental health and the full extent of the violation of their human dignity. It is also to bring the full legal force of the prohibition on torture to bear on prevention of these violations. Under customary international law as well as under international human rights treaties, torture or other cruel, inhuman or degrading treatment is prohibited at all times and in all circumstances. It is a non-derogable right, one of those core rights that may never be suspended, even during times of war, when national security is threatened, or during other public emergencies. This being the case, the Working Paper should go beyond its present assessment regarding the state of IHRL with regard to such violations. The Working Paper summarizes: “These same human rights bodies have affirmed that, **in circumstances where abortion is neither outlawed nor restricted by formal law**, it needs to be accessible.” Adoption of such a recommendation would void the effectiveness of the prohibition of torture or indeed the prohibition of discrimination against women, in the context of SRHR, of all content.

*The formulation which we adopted in our Statement on “*The 2030 Agenda for Sustainable Development and its implementation mark a unique opportunity to ensure full respect for sexual and reproductive health and rights which must be seized” issued on 24 September 2015 jointly with the UN Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mentalhealth, on the situation of human rights defenders, on violence against women, its causes and consequences, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples’ Rights, is as follows: “Unsafe abortion is one of the leading causes of maternal mortality and morbidity. The criminalization of or other failure to provide services that only women require, such as abortion and emergency contraception, constitute discrimination based on sex, and is impermissible. … We call on States to consider diligently the discriminatory and public health effects of laws which criminalize abortion in all circumstances, to remove punitive measures for women who undergo abortion,and at the very minimum, legalize abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the woman or the life of the woman.Moreover, women should always be provided with access to safe, quality post-abortion care.”

Expanding on this, the Working Group will need in its upcoming report on health and safety to consider whether women have the right to choose abortion on the basis of the right to equality and to control over their own bodies during the first trimester of pregnancy as in Roe v. Wade; and, after the first trimester, what the grounds for abortion should be and who should be the arbiter.

In our country visits and communications, we have expressed our concern that, particularly in the area of women’s SRHR, the law, traditionalist culture and socio-economic disadvantage frequently combine to create barriers to women’s access to information and control over their own bodies.

The most prevalent and egregious form of disenfranchisement of women is the prohibition of abortion or severe restriction of access to abortion. We have called for immediate liberalization of abortion laws in countries which prohibit abortion in all circumstances, such as Chile and Malta. We have called on countries which severely restrict access to abortion to cases in which the life of the mother is at risk to include exceptions to the prohibition of abortion for cases of rape, severe fetal impairment and risk to the health including the mental health of the pregnant woman or girl, as in Peru, Senegal, and Ireland. We have called for ensuring that the right to conscientious objection by doctors should not be allowed to deprive women of access to abortion services as in Poland and the United Sates. We have pointed out that the cost to women of prohibition of abortion includes high levels of maternal mortality, early pregnancy with its increased health risks and severe psychological distress and this affects in particular, in a discriminatory way, women who do not have the economic resources to seek private health treatment. We have made Urgent Appeals where women have been imprisoned for miscarriages on charges and convictions for murder, as in El Salvador. In some countries which have achieved progressive legislation on abortion, we have noted and called to prevent a backlash which has produced regressive policies, restricting women’s access to abortion: sic Spain and the United States.

The expert Working Group on DAW has not itself used the torture framework but will consider its usefulness as a way of emphasizing the traumatic impact of the violations of women’s and girls’ SRHR.