

8 December 2005

Dear E.U. Net work of Independent Experts on Fundamental Rights,

On behalf of ASTRA and the Center for Reproductive Rights (Center), we would like to thank you for giving us the opportunity to provide some additional information to this body on sexual and reproductive health violations occurring within European Union Member States. This letter supplements the attached letter dated 12 October 2005 and the oral intervention made by ASTRA and the Center at the NGO consultation meeting in Brussels on 17 October 2005. The discussion at this consultation focused on general issues regarding sexual and reproductive rights as human rights, access to safe and legal abortion in Poland, sexual education in Poland and Lithuania and conscientious objection in Slovakia. The information in this letter will be focusing on how other international bodies, mostly United Nations Treaty Monitoring Bodies, have recognized the human rights violations connected to reproductive health issues, specifically the violations occurring in Ireland, Poland, Malta, and Slovakia. We respectfully request that the Network address these issues in appropriate fora and in relevant reports on human rights. This letter focuses on four principle human rights concerns within the European Union Member States: 1) the failure to provide effective access to reproductive health services and information, particularly access to safe and legal abortion in Poland, Ireland, and Malta; 2) the failure to provide effective access to sexuality education which is not tainted by religious values, but instead provides students with accurate information to protect themselves from STIs such as HIV/AIDs and unwanted pregnancies and which also promotes gender empowerment and equality; 3) sterilization of Romani women; and (4) the discriminatory impact of sexual and reproductive rights violations. We also offer some conclusions on the issues and some general recommendations on working with NGOs.

*Access to Safe and Legal Abortions*¹

Most of the United Nations Treaty Monitoring bodies have expressed concern over illegal and unsafe abortions. The Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Human Rights Committee (HRC), and the Committee on Economic, Social and Cultural Rights (CESCR), have explicitly asked State parties to review legislation criminalizing abortion. They have raised issues about the accessibility of safe abortion, particularly in the cases rape. The CEDAW and HRC committees have also examined the discriminatory effects of legislation making abortion illegal. The HRC has acknowledged the discriminatory, disproportionate impact of restrictive abortion laws on poor, rural women. In the case of Ireland for example, the CEDAW committee has noted that the disparate impact on asylum seekers.²

The CEDAW and HRC have made an important connection between illegal, unsafe abortion and the high rates of maternal mortality. Both of these committees have explicitly discussed it as a violation of the right to life. Moreover, these committees have, either explicitly or implicitly, characterized high rates of maternal mortality caused by unsafe abortion as violations of women's right to life and health. And have also recommended that the State party also increase access to family planning services and information. Furthermore, CEDAW and HRC have also expressed concern over the lack of availability of abortion services due to laws allowing for conscientious objection on the part of hospital personnel. The CEDAW committee has made it clear that it considers it an infringement of women's reproductive rights when a government fails to ensure access to another provider

willing to perform the procedure and has recommended that the State party take steps to guarantee access to abortion in public hospitals. This is important as conscientious objection is increasingly becoming a barrier to women's access to reproductive health services, including abortion in some new EU Member States.

Portugal

In Portugal, abortion is restricted by law and in its application. At least 20,000 illegal abortions are performed each year. As a result of complications arising from illegal and hence, unsafe abortions, approximately 100 women have died unnecessary in the last 20 years. Moreover, at least 25 women have been prosecuted for having illegal abortions in the past couple of years. Portugal is the only country in Europe and one of the few in the world that actually punish women for seeking to fulfill their health needs. The CEDAW has repeatedly urged governments to review their laws to suspend penalties and imprisonment for those who voluntarily procure or induce abortion. It recognizes that women are deterred from seeking medical care if they fear being reported to police authorities by doctors or other medical professionals who suspect unlawful behavior. For example, in its latest concluding observation to Portugal the CEDAW committee noted the health impact that illegal abortions have and the need to improve family planning services.³ The CEDAW committee expressed concern about the restrictive abortion laws and urged the State party to “...*facilitate a national dialogue on women's right to reproductive health, including on the restrictive abortion laws. It also urges the State party to further improve family planning services, ensuring their availability to all women and men, including teenagers and young adults. It requests the State party to include information in its next report on death and/or illness related to or due to illegal abortion.*”

Ireland and Malta

Both Ireland and Malta have two of the most restrictive abortion laws in the world. Malta prohibits abortion altogether, even when a woman's life is in danger. Ireland, allows for abortion only when woman's life is at risk. Both countries deny women an abortion even if the pregnancy is the result of a rape, or where a woman's health is in danger or when her fetus is diagnosed with a serious impairment. The International Covenant on Economic, Social and Cultural Rights (ICESCR) in its 2004 concluding observations to Malta expressed concern that abortion has been classified as illegal under the law of Malta.⁴ Also, the committee recommended that Malta “...*review its legislation on abortion and consider exceptions to the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest.*” In Ireland, for example, women are forced to travel to U.K to undergo abortions, thus, only women with the means to travel are able to make the trip. In other countries with restrictive laws and practice, such as in Portugal and Malta, women are forced to terminate their pregnancy in clandestine abortion clinics, where providers are not accountable to women's health and lives and may even face prosecution. As a result, women's health is at stake, with some cases of needless deaths amongst women. In its 2000 concluding observations to Ireland the Human Rights Committee (HRC) expressed its concern regarding the “...*circumstances in which women may lawfully obtain an abortion are restricted to when the life of the mother is in danger and do not include, for example, the situations where the pregnancy is the result of rape.*”⁵ The committee recommended that the “...*State party should ensure that women are not compelled to continue with pregnancies where that is incompatible with obligations arising under the Covenant (art.7-physical*

integrity) and the General Comment No. 28 (Equality of Rights between Men and Women)." Additionally, in its concluding observations to Ireland, CEDAW has also acknowledged the problem of restrictive abortion laws.⁶ The committee reiterated its "...concern about the consequences of the very restrictive abortion laws under which abortion is prohibited except where it is established as a matter of probability that there is a real and substantial risk to the life of the mother that can be averted only by the termination of her pregnancy." The committee further urged "...State party to continue to facilitate a national dialogue on women's right to reproductive health, including on the very restrictive abortion laws. It also urges the State party to further strengthen family planning services, ensuring their availability to all women and men, young adults and teenagers." In terms of jurisprudence regarding Ireland, the European Court of Human Rights is currently in the process of rendering a decision in the case of *D. v. Ireland* for which the Court has heard oral arguments in September of this year.⁷ This case pertains to a woman who was denied an abortion despite the lethal fetal impairment. This woman is claiming that her Article 3 and Article 8 rights were violated by Ireland's restrictive abortion law. It is important to highlight a recent decision regarding abortion under the Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR). In November 2005, the Human Rights Committee (HRC), in the case of *Karen Noelia Llantoy Huamán v. Peru*, found Peru in violation of Articles 2, 7, 17 and 24 of the ICCPR when health care authorities refused to perform an abortion on Llantoy despite the fact that she was carrying an anencephalic fetus. The HRC noted that she was entitled to an abortion under the law of Peru which allows for abortion when a woman's health or life is in danger and that failure to recognize the mental effects of being forced to carry such a pregnancy to term and subsequent denial of abortion, was cruel, inhumane or degrading treatment (Article 7), was a violation of her right to privacy (Article 17) and to special protections she should have been granted as a minor (Article 24).⁸ (See information in letter dated 12 October 2005 to Network from ASTRA and the Center regarding denial of access to legal abortion in Poland)

Sexuality Education

Background

Lack of sexuality education in schools places youth in an vulnerable and sometimes life-threatening situation, where they are unable to receive the information they need to protect themselves from sexually transmitted infections, including HIV/AIDS and unwanted pregnancy. Moreover, some educational programs are biased towards religious teachings and thus only promote abstinence until marriage and do not discuss condom usage. Thus, when youth start having sex they do not have the information or sources to effectively protect themselves. This is especially troublesome given increasing HIV/AIDS rates in the region and UNAIDS recent studies showing that adolescents are the most vulnerable groups globally, including in Eastern Europe.⁹ UN Treaty Monitoring bodies have addressed all of these issues, either in their concluding observations to the states or in their general recommendations. In their acknowledgement of these issues, the Treaty Monitoring bodies have found states that states that have failed to take steps to protect the reproductive health and rights of women and adolescents that are not in compliance with treaty provisions. The CEDAW, CRC, HRC, CESCRC committees have commented on the right to sexual education and have generally framed it in the context of ensuring the right to health. All four of these committees have criticized State parties for not ensuring access to sexual education.

The CEDAW and CESCR in particular, have often discussed sexual education as a means to reduce maternal mortality, rates of abortion, adolescent pregnancies, and rates of HIV/AIDS.

Ireland

In the CEDAW committee's 1999 concluding observations to Ireland, the committee "*...urged the Government to facilitate a national dialogue on women's reproductive rights, including on the restrictive abortion laws. It also urges the Government to further improve family planning services and the availability of contraception, including for teenagers and young adults. It also urges the Government to promote the use of condoms to prevent the spread of HIV/AIDS.*"¹⁰

To reference information regarding violations around the issue of sexuality education in Lithuania and Poland, please see the Concluding Observations to Poland and Lithuania highlighted in the letter to the Network dated 12 October 2005

Forced Sterilization

Background

The Human Rights Committee in its General Conclusions 28 has specifically noted that forced sterilization would be a practice that violates article 7, torture, inhumane and degrading treatment. The CEDAW committee's General Recommendations 19 on violence against women has stated compulsory sterilization adversely affects women's physical and mental health and infringes on the right of women to decide the number and spacing of children and recommends that State party take measures to prevent coercion in regard to fertility and reproduction.

Slovakia

Reports of forced and coerced sterilization in Czech Republic have surfaced this year at the heels of the reports on the practice in Slovakia which have been confirmed by the European Commission for Human Rights Mr. Alvaro Robles in a 2003 report. While Slovakia has changed its law on sterilization, guaranteeing stricter compliance with international standards on informed consent, it has not to date ensured effective remedies for victims (recognized by CERD in its Concluding Observations on Slovakia last year). There is a case pending before the European Committee for Human Rights against Slovakia regarding this issue and also a case before the Optional Protocol of the CEDAW committee against Hungary on this practice.

The Committee on the Elimination of Racial Discrimination (CERD) in its 2004 concluding observations to Slovakia expressed concern regarding the cases of sterilization of Roma women without their informed consent.¹¹ Additionally, the Committee accepted assurances that a draft law on health care addressing the inadequacies in the system and specifying the requirement of consent for medical procedures and guaranteed access to patients' medical files has been approved by the Government and on its way to the Parliament. The Committee also recommended that "*the State party take all necessary measures to put an end to this regrettable practice, including the speedy adoption of the above-mentioned draft law on health care. Most importantly the Committee recommended that "the State party should also ensure that just and effective remedies, including compensation and apology, are granted to the victims."*

The Human Rights Committee (HRC) also expressed concern at the reports of forced and coerced sterilization of Roma women in its 2003 concluding observations to Slovakia.¹²

Furthermore, the Committee expressed regret at State party's failure to "*clearly deny or admit breaches of the principle of full and informed consent but asserts that an investigation related to maternity wards and gynecology departments of 12 hospitals did not result in findings of infringements of "medical indication" of sterilization*" after the oral consideration of the report. The Committee further expressed regret that "*the reference made, in the same submission, to "the fact that not all administrative acts were fulfilled in every case" appears to amount to an implicit admission of breaches of the requirement of informed consent (art. 7,26).*" The committee proceeded to recommend that "*the State party should adopt all necessary measures to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any instances of sterilization without full and informed consent.*"

Discrimination

It is important to note that access to reproductive health services and information, including access to safe and legal abortion services is essential to the protection of a women's right to non-discrimination and equality. Women are, in practice, more likely than men to experience personal hardships as well as social disadvantages as a result of economic, career, and other life changes when they cannot control their fertility. Where women are compelled to continue unwanted pregnancies, such consequences forcibly put women at a further disadvantage. According to CEDAW, "discrimination against women" includes laws that have, either the "effect" or the purpose of preventing women from exercising any of her human rights or fundamental freedoms on the basis of equality with men.¹³ Laws that ban abortion have just that effect and purpose. Restricting abortion has the effect of denying women access to a procedure that may be necessary for their enjoyment of their right to health. Some women suffer maternity-related injuries, such as hemorrhage or obstructed labor. Denying women access to medical services that enable them to regulate their fertility or terminate a dangerous pregnancy amounts to a refusal to provide health care that only women need.¹⁴ Women are consequently exposed to health risks not experienced by men. The CEDAW committee, in its General Recommendations 24 on Women and Health, has also clarified that states have an obligation to remove barriers, such as high fees, spousal authorization, or punitive provisions imposed on women who undergo abortions, that prevent women from access to appropriate health care. The recommendation explicitly states that "It is discriminatory for a State Party to refuse to provide legally for the performance of certain reproductive health services for women." Therefore, in certain cases restrictive abortion laws may amount to discrimination against women in and of themselves.

Conclusion:

Employing a Consistent Approach to SRHR

Since reproductive and sexual rights are comprised of intersecting and overlapping rights found in all of the principle human rights treaties and recognized by all the UN Treaty Monitoring Bodies as human rights issues, a consolidated approach by all international human rights bodies to recognizing such rights would be most effective. Reproductive and sexual rights are especially vulnerable to attack from those opposed to the full attainment of women's rights, further emphasizing the need for a unified response. Such a unified approach might be useful in addressing some of the "defenses" that commonly arise in the context of reproductive and sexual rights. For example, reproductive and sexual rights issues are often

closely linked to culture and religion and advocates frequently confront such arguments when asserting reproductive and sexual rights violations. There are other defenses that arise in this context as well, such as the progressive realization of economic and social rights depending on the availability of national resources.

Recommendations

Consultation with both domestic and international NGOs is critical to any activity undertaken by the Network. With the objective of advancing communication between the Network and NGOs regarding the issues discussed in this letter, the Center would like to set forth a few recommendations: 1) a more formalized procedure for submission of written comments by NGOs on an ongoing basis; 2) making draft versions of its report for comment by NGOs available in order to ensure more effective consultation; 3) in the case that this initiative is not already in place, we urge the Network Experts to convene such meetings at the national level to help prepare their national reports.

We look forward to improving the dialogue with the Network on these issues.

Sincerely,

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References:

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- 2 Ireland, 01/07/99, UN Doc. A/54/38, para. 185 (CEDAW)
- 3 Portugal, 07/05/02, UN Doc. A/57/38 (Part I), paras. 303-353
- 4 Malta, 14/12/04, UN Doc. E/C.12/1/Add.101, paras. 23, 41
- 5 Ireland, 24/07/00, UN Doc. A/55/40, para. 23, 24 (CCPR-HRC)
- 6 Ireland, 22/7/05, UN Doc. CEDAW/C/IRL/4-5. paras. 38-39
- 7 *D v. Ireland*, European Court of Human Rights, Application No. 26499/02
- 8 *Karen Noelia Llantoy Huamán v. Peru*, CCPR/C/85/D/1153/2003, 17 November 2005, VIEWS, Communication No. 1153/2003
- 9 UNAIDS Epidemic Update December 2005
- 10 Ireland, 01/07/99, UN Doc. A/54/38, para 185 (CEDAW)
- 11 Slovakia, 10/12/04, UN Doc. CERD/C/65/CO/7, para. 12
- 12 Slovakia, 22/08/03, UN Doc. CCPR/CO/78/SVK, para. 12
- 13 Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, art. 1, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 (*entered into force* Sept. 3, 1981).
- 14 Committee on the Elimination of Discrimination against Women *General Recommendation 24: Women and Health* (20th Sess. 1999) in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies at 244 U.N. Doc. HRI/GEN/1/Rev.5* (2001).