

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL Health (2002-7) G/SO 214 (89-15)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/22 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged denial of appropriate health care and discrimination against Ms. [REDACTED] ([REDACTED] [REDACTED], [REDACTED] city, [REDACTED] region, [REDACTED], Russian Federation) on the ground of her drug dependency and medical condition.**

According to information received:

In February 2011, Ms. [REDACTED], a person with drug dependency and living with HIV and Hepatitis C, became pregnant. During consultation with her gynecologist, Ms. [REDACTED], on 10 June 2011, Ms. [REDACTED] was told that she would give birth to an unhealthy infant and that her drug dependency would entail the loss of custody of her child. She was thus allegedly pressured into having an abortion.

Ms. [REDACTED] was allegedly directed to the head of the gynaecology unit at the city medical centre, Mr. [REDACTED], who allegedly informed her that drug addiction would not justify an abortion and that she would have to pay an additional amount to the doctor for the operation. Mr. [REDACTED] allegedly accepted to undertake the abortion for 35,000 rubles.

On 4 July 2011, Ms. [REDACTED] decided not to undergo the abortion. Mr. [REDACTED] allegedly made her understand that if she left the clinic there was no possibility of return. Due to the severe stress she had gone through and the belief that she would

be unable to receive further medical assistance, Ms. ████████ relapsed after two years of being drug-free on 11 July.

At the end of July, Ms. ████████ went to a drug treatment clinic where a doctor allegedly informed her that he was unable to provide medical assistance for drug use due to her pregnancy. According to the source, he would only accept to treat her if she had a letter from her gynaecologist, authorizing drug treatment. Ms. ████████ had to lie to her gynaecologist in order to obtain the letter and assure that she would undergo an abortion. She was admitted on 2 August and on 11 August was allegedly forced to leave the clinic since the doctor considered her to be in good health, even though she was still suffering from symptoms of withdrawal.

Following severe abdominal pain, Ms. ████████ was reportedly operated on 28 August and gave birth through caesarean to a healthy infant. By then she had lost 9 kilos and was too weak to walk.

On 20 August 2012, Ms. ████████ filed an official complaint to the Ministry of Health at the Samara region. She received a reply on 10 December, reportedly stating that while the chief of the drug treatment centre issued an official apology to her on 4 September, the medical care that had been provided to her was in full compliance with Russian legislation. Ms. ████████ filed a complaint to the district court on 29 December alleging that her rights to health, to be free from discrimination and ill-treatment had been violated. The court rejected her complaint, noting that since she had given birth to a healthy child, the provided treatment worked. On 11 March 2013, Ms. ████████ made an appeal to the regional court of Samara, which eventually decided to uphold the decisions of the previous court.

On 11 April 2013, Ms. ████████ solicited expert medical opinions concerning her medical condition and its effect on pregnancy. The experts from Canada, the United Kingdom and the United States of America reportedly concluded that the fact that her child was born healthy was in spite of the care she had received. They also noted that substitution therapy is recommended for drug dependent women during pregnancy but that this was reportedly not permitted in the Russian Federation. Furthermore, the experts confirmed that it was possible to give birth to a healthy child even when the mother is HIV and Hepatitis C positive.

Grave concerns are expressed about the inadequate treatment and discrimination Ms. ████████ allegedly suffered because of her drug dependency and medical condition. It is a further concern that the courts repeatedly found no wrongdoing by the health authorities during the treatment of Ms. ████████.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding the above mentioned allegations.

We would like to bring to your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

We further deem it appropriate to make reference to the Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against Women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We would also like to bring to your Excellency's attention to Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women – ratified on 23 January 1981 – in which States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

With regard to the right of Ms. [REDACTED] to the highest attainable standard of health, we would like to recall that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights – ratified on 16 October 1973 – which provides for the right of everyone to the enjoyment of the highest attainable

standard of mental and physical health. This creates an obligation on the part of States Parties to ensure that good quality health facilities, goods, and services are available and accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, States Parties undertake to guarantee that the rights enunciated in the Covenant “will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(2)).

We also wish to refer your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that States are under an obligation to respect, protect, and fulfill the right to health. Respecting the right to health obliges States to refrain from denying or limiting equal access for all person and abstaining from imposing discriminatory practices, especially against vulnerable groups such as people living with HIV, Hepatitis C, people dependent on drugs, and women’s health status and needs (para.34). To protect the right to health, States should make sure that third parties, including healthcare professionals within its territory, do not interfere with persons’ right to health. And States fulfill the right to health by taking all necessary legislative, administrative, and other relevant steps to enable individuals and communities to enjoy the right to health in practice. Fulfilling the right to health requires States to adopt national policies directed at ensuring the right to health of all people, especially vulnerable groups.

Moreover, both methadone and buprenorphine, used for substitution therapy, are in the WHO list of essential medicines. The State has a core obligation to make such essential medicines available on a non-discriminatory basis, especially for vulnerable or marginalized groups (para. 43). We would also like to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on the right to health (A/65/255), which notes that opioid substitution therapy (OST) is an effective, evidence-based form of treatment for drug dependence and points out that “classifying methadone and buprenorphine as illegal creates an extra barrier to accessing such drug-dependence treatments” (para.36).

Furthermore, we would also like to refer your Excellency’s Government to article 12 of the Convention on the Elimination of Discrimination for Women, ratified on 23 January 1981, which holds that “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.”

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which have been carried out in relation to the allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Is there any detailed provision in the healthcare system for pregnant women who use drugs? If there are none, have propositions for reform been considered?

4. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of health by Ms. [REDACTED].

5. Please provide information on the measures taken to provide medically appropriate treatment for, and prevent discrimination against, pregnant women living with HIV and Hepatitis C and who are dependent on drugs.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to prevent the ill-treatment of other pregnant women who use drugs or are drug dependent. In the event that an investigation would support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences