

January 24, 2016

Committee on the Convention Against Torture (CAT)
Office of the High Commissioners for Human Rights
Geneva, Switzerland

RE: Supplementary information Rwanda List of Issues on State Report scheduled for review by the CAT committee during the 60th Session of the Committee.

This shadow letter is intended to present to the Committee Against Torture (CAT) Committee Country Report Task Force a list of issues for consideration by the committee, in relation to the Rwanda state Report for consideration at the 60th session. Ipas Africa Alliance is a non-governmental organization (NGO) based in Kenya and works across Africa to increase women's ability to exercise their sexual and reproductive rights and to reduce deaths and injuries from unsafe abortion. Ipas believes that every woman has the right to the highest attainable standard of health, to safe reproductive choices and to high quality of care. With this letter we would like to draw your attention to Rwanda's violation of women's protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as a result of Rwanda's highly restrictive abortion laws.

Despite the restrictive abortion laws, there was an estimate 60,000¹ induced abortions performed in Rwanda in 2009, with an annual rate of 25 abortions per 1000 women. Following amendments to the Penal Code in 2012, women in Rwanda can access abortion under certain circumstances, that include rape, incest or forced marriage and in cases of risk to the health of the woman or the fetus. The law however requires for women seeking abortion to get judicial authorization and in the event of seeking for abortion for health reasons, an approval must be obtained from two doctors. These legal and medical barriers make it nearly impossible for women to access safe, legal abortion services in the country. Women who violate Rwanda's abortion law are liable to up to 3 years imprisonment and fine equivalent of USD \$300 (63 percent of Rwandans earn under \$1.25 a day)².

As a party to CAT, Rwanda has an obligation to prevent all forms of ill-treatment and torture within its jurisdiction³. Rwanda's restrictive abortion laws violate Articles 2 (1) and 16 (1) of the Convention which *inter alia* require each state party to take effective legislative, administrative and judicial measures to prevent the acts of torture. Torture is defined as "any act causing severe pain or suffering, whether Physical or mental" intentionally inflicted for purposes of obtaining information, punishment, intimidation, "or for any reason based on discrimination of any kind"⁴.

¹Gutmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013

² Organic Law instituting the penal code, N° 01/2012/OL of 02/05/2012, Official Gazette n° Special of 14 June 2012, Chapter III, Section 5, Articles 162–68 available at

http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Rwanda_Abortion_Law.pdf

³ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, paras 1,16

⁴ Gutmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013

In General Comment 2 the Committee recognized that the States' obligation to "prevent torture and inhuman or degrading treatment or punishment/ ill-treatment, are indivisible, interdependent and interrelated"⁵. ⁶That this obligation to prevent ill-treatment, "overlaps with and is largely congruent with the obligation to prevent torture".

Background of Rwanda abortion law

Before 1977 the abortion law in Rwanda was based on the 1940 Penal Code of the Belgian Congo⁷, that made abortion illegal with the only exception as to the save the life of the pregnant woman. In 1977, Rwanda enacted a penal code that furthered the exceptions to abortion. This law prohibited abortion but for when the continuance of the pregnancy posed a serious danger the health of the pregnant woman. The 1977 law further included administrative barriers, that required woman in need of abortion services to get a second medical opinion, who must be a State physician, or a physician approved by the State, in a public or a private hospital also approved by the State to provide the services. More recently however in June 2012, Rwanda amended the Penal Code, and Article 162 on criminal abortion further expanded the exceptions for performing an abortion to include reasons of rape, incest, forced marriage and when the pregnancy is a risk to the health of the woman and the fetus.

Therefore, for a woman to obtain a legal abortion for the reasons above, she requires certification from a "competent Court", that the pregnancy resulted from rape, incest or forced marriage. While to obtain an abortion for the reason of health, the woman is required to get permission from two doctors., and one must make a "written report in three copies". In Rwanda, as self-induced abortion is considered illegal, thus for the abortion to be legal, it must be performed by a doctor, yet there is only one doctor for every 17000 people living in Rwanda⁸.

Consequences of Unsafe abortion in Rwanda

⁹About half of all abortions performed in Rwanda are performed by untrained persons; an estimated 34% are performed by traditional healers, and 17% are self-induced abortions. Contradictorily, an estimated half of the all abortions are performed by trained health care workers without the necessary skills and many of these procedures are often done outside health facilities commonly resulting in complications. Whereas as the rate of complications may differ depending on where the abortion was performed, the complication rate of unsafe abortions is high, rating between 54–55% among poor women in both rural and urban areas, with 24000 women and girls suffering complications requiring emergency medical treatment¹⁰. This dire situation is further compounded by the cultural and religious stigma against abortion forcing women to not only risk their health but also their lives in an attempt to terminate unwanted/unintended pregnancies. Further, most women seeking safe, legal abortion services in Rwanda are unable to meet the legal

⁵ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para 3

⁶ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, paras 3

⁷ Abortion in Rwanda; Rwanda: Conditioned Legalization of Abortion Divides Society; East African Center for Law and Justice; <http://eacj.org/about-us/13-the-christian-medical-fellowship-abortion-.html>

⁸ Ministry of Health, Human Resources for Health Policy, Kigali Rwanda: Ministry of Health 2012.

⁹ Guttmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013, paras 6,7

¹⁰ Guttmacher Institute, Abortion in Rwanda; Fact Sheet, April 2013, paras 6,7

and medical requirements and thus further risk imprisonment. ¹¹Either due to lack of awareness on the law, or due to lack of access to money or other resources that would grant access to either a judge or two doctors.

In its concluding observations to Nicaragua, the Committee noted with concern that in the event of rape, a woman who seeks for abortion services, such a situation where safe, legal services would largely be inaccessible; presents “constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression”¹². The Committee further noted that women who, for the reasons mentioned above, seek an abortion face the risk of being penalized for doing so”.

Notably, by criminalizing a health service that women need is a violation of women’s right to health and protection from non-discrimination. ¹³In its General Comment 2 the committee states that “the principle of non- discrimination is a basic and general principle of the protection of human rights and fundamental to the interpretation and application of the Convention.¹⁴The Committee further notes that “non-discrimination is included within the definition of torture itself, when the Convention explicitly prohibits specifies acts when carried out “*for any reason based on discrimination of any kind....*”, adding that the mental abuse is an important factor in determining whether an act constitutes torture. The Committee on Convention on the Elimination of Discrimination Against Women did in particular speak to this issue when it examined the discriminatory effects of legislation criminalizing abortion, noting that “it is discriminatory for a State Party to refuse to provide legally for the performance of certain health services for women”¹⁵.

We commendably note some improvements in the law reducing the prison sentence from ¹⁶2-5 years to 1-3 years. We however note that such a penalty remains too harsh even for the women who are an eligible for legal abortions¹⁷. Between July 2013 and April 2014 alone, 300 women were imprisoned for illegal abortions¹⁸. Whereas the Rwanda State report does address the issue of women imprisoned for illegal abortions, the Committee in its General Comment 2 notes that ¹⁹“state reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women”, further emphasizing that “gender is a key factor”. That “the contexts in which females are at risk include the deprivation of liberty, medical treatment,

¹¹ IPAS, When Abortion is a crime: Rwanda (2015) available at <http://glihdrwanda.org/wp-content/uploads/2016/10/WHEN-ABORTIONIS-A-CRIME-IN-RWANDA.pdf>

¹² Comm. Against Torture, 42nd Session, Consideration of Reports Submitted by States Parties Under Article 19 Of The Convention, Concluding Observations of The Committee Against Torture, Nicaragua para 16

¹³ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 20

¹⁴ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 20

¹⁵ Comm. On the Elimination of Discrimination Against Women, *General Recommendation 24: Women and Health (20th Session 1999)*, in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*. at 24 para. 11

¹⁶ The Penal Code (2012), Government Gazette -REPUBLIC OF RWANDA. Arts 165- 166

¹⁷ op cit 16

¹⁸ IPAS, When Abortion is a crime: Rwanda (2015) available at <http://glihdrwanda.org/wp-content/uploads/2016/10/WHEN-ABORTIONIS-A-CRIME-IN-RWANDA.pdf>

¹⁹ Comm. Against Torture, General Comment No. 2 Implementation of Article 2 by State Parties, para, 22

particularly involving reproductive decisions, and violence by private actors in communities and homes”.

We further commend Rwanda for implementing the ²⁰Committee’s recommendation to adopt the definition of torture in ²¹conformity with the convention, as well as a recent actions of the head of state to pardon prison sentence for women convicted for abortion related charges²².

We however note these developments need to be ascertained and effected by effective “legislative administrative and judicial measures’ that ensure that women in Rwanda can access safe, legal abortion services without fear of imprisonment, abortion services.

Particularly the Human Rights Committee addresses this issue in its concluding observations to ²³Poland where the Committee reiterates its concern about the high number of clandestine abortions that may put the lives and health of women at risk, and the significant procedural and practical obstacles faced by women to access safe legal abortion. The Human Rights Committee further recommends ensuring that legislation does not prompt women to resort to clandestine abortions that put their lives and health at risk, and should further refrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women’s access to safe and legal abortion.

Restrictive abortion laws in Rwanda, make access to safe legal abortion very difficult and in turn expose women them to unsafe procedures that can be excruciatingly painful and traumatic, leaving them with lifelong injuries and often have deadly consequences. These women do so even in the fear of incarceration, even in the case of women to meet the legal requirement for a safe abortion.

We request this Committee include the following questions in the list of issues to the State of Rwanda during the 60th Session of CAT:

1. What steps will the State take to release women and girls who are imprisoned as a result of the punitive abortion laws.
2. What steps will the state take to disseminate information on the law on abortion and the grounds upon which women can access safe, legal abortion to all stakeholders, including law enforcement, doctors, nurses and the judiciary.
3. What steps will the State take to amend the abortion law and remove legal and procedural barriers that are impeding women’s ability to access safe abortion services.
4. What steps will the State take to ensure that women are able to access safe, legal abortion in all public health facilities

²⁰ Committee against Torture, 48th, 7 May–1 June 2012; Consideration of reports submitted by States parties under article 19 of the Convention; Concluding observations of the Committee against Torture, Rwanda

²¹ Committee against Torture; Consideration of reports submitted by States parties under article 19 of the Convention; Second periodic reports of States parties due in 2016; Rwanda. Submitted 9th August 2016.

²² President Kagame pardon girls arrested for abortion. Can be accessed at <http://www.irwanda24.com/?p=10495>

²³ Human Rights Committee; Concluding observations on the seventh periodic report of Poland*; The Committee considered the seventh periodic report submitted by Poland (CCPR/C/POL/7) at its 3306th and 3308th meetings (see CCPR/C/SR.3306 and 3308), held on 17 and 18 October 2016.

5. What steps will the State take to collecting data on the incidence, consequence and cost of unsafe abortion in Rwanda.

The government of Rwanda should therefore be strongly urged to ensure that the domestic laws are in conformity with the CAT and thus ensure protection of vulnerable populations in particular women and girls from situations that threaten, their rights to life, health and liberty.

We hope that the information provided in this letter will be useful to the Task Force in drafting the list of issues in relation to the review of Rwanda's compliance of the Convention at the 60th Session of the CAT Committee.

Yours Sincerely,



for

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