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Regulating Women's Bodies, Violating Women's Rights: Criminal Legislation that Contravenes the Beijing Platform for Action

Jointly submitted by: The Center for Reproductive Rights, Canadian HIV/AIDS Legal Network, Catholics for Choice, Center for Health and Gender Equity (CHANGE), Fundación para Estudio e Investigación (FEIM), International AIDS Women's Caucus, International Women's Health Coalition, Ipas, International Planned Parenthood Federation and World Population Foundation. ♦

Distinguished Commission Members:

I speak on behalf of a coalition of NGOs committed to advancing the Beijing Platform for Action (PFA). In the last fifteen years, we have seen the enactment of laws and policies that promote and protect women's human rights. However, we are deeply concerned at an alarming global trend of laws that explicitly target and/or directly or indirectly impact women's right to control their sexuality and reproduction. Through such legislation, women's rights are being violated and traditional gender norms are being reinforced, with governments strictly policing women's bodies and choices. These laws contravene the Beijing PFA and international human rights conventions such as CEDAW. This submission briefly addresses the human rights implications of legislation criminalizing access to abortion and emergency contraception, and HIV exposure and transmission.

Abortion - Every year 80 million women face unintended pregnancies, 60% of which end in abortion. Approximately 13% of maternal deaths worldwide are attributable to unsafe abortion. Nevertheless, laws in many countries highly restrict women's access to safe and legal abortions or ban abortion services altogether.¹ For example, in 2006, the Nicaraguan government imposed an absolute abortion ban, establishing prison sentences for women who obtain abortions and doctors who carry out abortions under any circumstances, including for saving a pregnant woman's life.² In Moldova, a woman was recently charged with intentional and premeditated murder after terminating a pregnancy at home, despite the country's liberal abortion law prohibiting punishment of women who undergo illegal abortions.³ Criminalizing abortion does not stop women from ending unwanted pregnancies; rather, it forces women, particularly poor women, to seek this otherwise safe medical procedure clandestinely and through dangerous means. This type of legislation violates women's rights to life, health, autonomy, information, benefits of scientific progress, equality and nondiscrimination, and to be free from cruel, inhuman or degrading treatment or punishment. It further contradicts the Beijing PFA which calls upon states to consider reviewing laws that punish women who obtain illegal abortions (PFA, ¶ 106(k)), as well as undermines women's access to post-abortion care, counseling, and education and family planning services. Treaty-monitoring bodies have also urged states parties to liberalize restrictive abortion legislation and to ensure women's access to safe, legal abortion in situations of rape and incest, and to preserve women's lives and health.

Emergency Contraception - The Beijing PFA also calls for women's access to comprehensive sexual and reproductive health information and services (PFA, ¶ 106(e)). Emergency contraception should be available as a part of family planning information and services, and is particularly important for rape and incest survivors, adolescents and young women who have no access to other forms of contraception, and women whose regular contraceptive method has failed or was not used. Alarming, there is a growing trend to criminalize EC, particularly in Latin America where EC was recently banned in Peru, Honduras and Chile. Severe restrictions on access to EC, which are generally based on flawed science and ideology, undermine women's ability to avoid unwanted pregnancies and abortions, and deny women's right to determine their number and spacing of children (PFA, ¶ 95).

HIV Exposure and Transmission - Governments are also increasingly criminalizing HIV exposure and transmission. This is the case in Guinea, Togo and Benin.⁴ Most people who transmit HIV either do so without

♦ **Supporting Organizations:** ATHENA Network, Balance Promoción para el Desarrollo u Juventud, Gestos – HIV+, Comunicação e Gênero, International Gay and Lesbian Human Rights Commission, Latin American and the Caribbean Council of AIDS Service Organizations (LACASSO), Sexuality Information and Education Council of the United States (SIECUS), World AIDS Campaign and the Youth Coalition for Sexual and Reproductive Rights.

knowledge that they are infected and transmitting the virus, or because they fear that revealing their HIV status will lead to violence, discrimination, rejection by family and friends, and other abuses.⁵ While concerns regarding the rapid spread of HIV are legitimate, prevention measures must be based on evidence and sound public policy, not fear and stigma. Legislation may be promoted as “protecting” women, but it often has the adverse effect of compromising women’s human rights. For a woman, disclosure of her HIV-positive status can lead to violence, abandonment, and loss of custody of children. If she chooses not to disclose her status, she may risk being prosecuted for knowingly transmitting HIV. In the absence of adequate sexual and reproductive health services and information, including programs to prevent vertical transmission, laws that criminalize HIV transmission punish women for government failures.⁶ The Beijing PFA specifically calls for governments to review and amend laws that contribute to women’s susceptibility to HIV and other sexually transmitted infections (PFA, ¶ 108(b)).

Call to Action

As women account for half of the world’s population, the international community has the obligation to respect, protect and fulfill women’s human rights on an equal basis with men. An essential component of this obligation is promoting women’s sexual and reproductive rights. The Beijing PFA and the MDGs are frameworks that should be adopted by countries so that they can provide women access to comprehensive sexual and reproductive health information and services, and to create enabling environments that will safeguard their health and lives. Criminal legislation on abortion, contraception, and HIV transmission poses grave threats to realizing women’s human rights. We therefore call on the governments present at this meeting to amend legislation that regulates women’s bodies through threat of criminal penalties for the exercise of their sexual and reproductive health and rights. Specifically:

- Repeal all laws and/or halt implementation of laws which permit imprisonment or any other criminal penalty for women seeking or having abortions; to ensure that individuals providing information about or advocating for safe abortion services and qualified healthcare providers providing those services do not face criminal penalties;
- Ensure that safe and legal abortion services are available, accessible, acceptable and of good quality for all women, including adolescents and girls who can bear children;
- Undertake non-criminal measures to reduce incidence of unwanted pregnancies and abortion, including promoting access to comprehensive sexuality education and sexual and reproductive health services, including contraceptives and specifically EC, which must also be available to young people;
- Ensure that the protection of women’s rights, especially the rights to autonomy, sexual and reproductive choice, equality and non-discrimination, are at the center of the response to HIV and AIDS;
- Ensure that HIV legislation and policies focus on protecting the human rights of those living with HIV, and developing comprehensive and evidence-based prevention methods, rather than introducing provisions such as criminalization of transmission which increase women’s risks and vulnerabilities.

Thank you.

¹ See generally CENTER FOR REPRODUCTIVE RIGHTS, THE WORLD’S ABORTION LAWS (2009); CENTER FOR REPRODUCTIVE RIGHTS, THE WORLD’S ABORTION LAWS – MAP (2007).

² Penal Code of the Republic of Nicaragua, as amended on September 13, 2007, art. 143.

³ See HRC, *Concluding Observations of the Human Rights Committee: Moldova*, para. 17, U.N. Doc. CCPR/C/MDA/CO/2 (2009).

⁴ See CANADIAN HIV/AIDS LEGAL NETWORK, LEGISLATION CONTAGION: THE SPREAD OF PROBLEMATIC NEW HIV LAWS IN WESTERN AFRICA, HIV/AIDS POLICY & LAW REVIEW, 9-10 (DEC. 2007).

⁵ See AIDS RIGHTS ALLIANCE FOR SOUTH AFRICA (ARASA), OPEN SOCIETY INSTITUTE, AND UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), TEN REASONS TO OPPOSE THE CRIMINALIZATION OF HIV EXPOSURE OR TRANSMISSION 3 (2008).

⁶ OPEN SOCIETY INSTITUTE, 10 REASONS TO OPPOSE THE CRIMINALIZATION OF HIV EXPOSURE OR TRANSMISSION 12-14 (2008).