

Office of the High Commissioner for Human Rights: Thematic Study on Preventable Maternal Mortality and Morbidity and Human Rights

Amnesty International welcomes the Human Rights Council's increased focus on the issue of preventable maternal mortality and morbidity, which is a central human rights issue affecting women, men and children all around the world. We hope that the thematic study will help provide a strong foundation for the Human Rights Council (the Council) to increase monitoring and strengthen implementation of the existing human rights obligations and commitments that all States have undertaken to protect women's human rights, including their rights to life, health, sexual and reproductive rights, and to guarantee non-discrimination and equality. We believe that Council also has an important role in relation to the processes set up by the General Assembly to review the progress made towards achieving the Millennium Development Goals. We recommend that the Council make a contribution on the human rights dimensions of maternal mortality to the September 2010 UNGA high-level meeting.

Identification of the human rights dimensions of preventable maternal mortality and morbidity in the existing international legal framework

When women die in pregnancy or childbirth because the government fails to take measures necessary to address the preventable causes of maternal death, the government violates women's right to life¹. Preventable maternal deaths and injuries also reflect violations of the rights to the highest attainable standard of physical and mental health², equality and non-discrimination³ and freedom from torture and cruel, inhuman or degrading treatment.⁴ They are also closely linked to and exacerbated by denial of sexual and reproductive rights⁵ and by sexual violence.⁶

All governments are parties to international and regional human rights treaties which require them to respect, protect and fulfil these rights. There is also a comprehensive body of jurisprudence developed by the United Nations treaty monitoring bodies and the Special Procedures, which offers guidance to States on measures they need to take to comply with their relevant human rights obligations. The Council should build on these existing commitments and any initiatives undertaken by the Council should be consistent with and centred within this framework.

There continues to be a wide gap in implementation by States of legal obligations and other commitments⁷ as well as recommendations made by treaty monitoring bodies to address preventable maternal mortality and morbidity. The Council is well placed to address this gap in implementation and also to foster a holistic focus on all the human rights dimensions of preventable maternal mortality and morbidity. Efforts to address maternal mortality must be grounded in a framework of gender equality and non-discrimination, which is not just a legal requirement but has been demonstrated in practice to be an essential requirement for any successful initiative to reduce maternal mortality and morbidity.⁸

Women's human rights in regard of sexuality, fertility, pregnancy, childbirth and motherhood are as much "an inalienable, integral and indivisible part of universal human rights"⁹ as the other human rights women have. No excuses must be made for violating women's human rights.¹⁰

Identification of how the Human Rights Council can add value to existing initiatives through a human rights analysis, including efforts to meet the Millennium Development Goals (MDGs) in relation to improving maternal health

Millennium Development Goal 5 on improving maternal health, with its related targets on reducing the maternal mortality ratio by three-quarters by 2015 and achieving universal access to reproductive health, is considered to be most off-track of all the MDGs.¹¹ Increased access to health services, in particular emergency obstetric care, is essential to eliminating preventable maternal mortality and morbidity. The planning and delivery of these services has to be underpinned by and consistent with governments' obligations to respect, protect and fulfil the rights to health and life and to guarantee equality and non-discrimination. This includes, among others, ensuring an equitable distribution of health facilities, goods and services, prioritising the realisation of minimum essential levels of health for all, giving priority in all policies and programmes to the most vulnerable and disadvantaged groups who face the greatest obstacles in realising their rights, providing adequate information to and ensuring the participation of affected communities in the development and delivery of health plans. In too many cases, initiatives by States and international agencies to address maternal mortality and morbidity are not sufficiently grounded in these obligations.

The lack of progress on MDG 5 starkly reflects the failure of governments to address structural human rights issues, such as denial of sexual and reproductive rights, discrimination against women, financial and other barriers encountered by women while trying to access health services, their unequal status and lack of participation in decision-making at various levels. Unless these structural human rights issues and related violations are addressed, the MDGs, even if met, will be met in a manner which masks unequal progress, discrimination and even retrogression.

For instance, Amnesty International's research on Peru has documented how indigenous and rural women face particular barriers in accessing maternal health care. These include lack of identity documents which limited women's access to health services and to schemes offering free health services, lack of information, discriminatory attitudes and low level of Quechua-language training to health professionals.¹² Similarly Amnesty International's research on Sierra Leone highlights how the inequitable distribution of health facilities within the country, combined with financial and other barriers, limits women's access to life-saving health care.¹³ Mismanagement and corruption within health facilities coupled with the lack of monitoring and accountability mechanisms and processes also creates barriers to women's access to health services and essential medicines and supplies. Our research on maternal mortality in Sierra Leone has also highlighted the link between the high risk of pregnancy-related death and ill-health for girls and the failure to enforce the legal minimum age of marriage, the prevalence of early marriage of girls (some as young as ten years), early pregnancies, married girls' powerlessness to make decisions about their sexual and reproductive health and their lack of access to education and information.¹⁴

Women's enjoyment of their sexual and reproductive rights is essential to efforts to eliminate preventable maternal mortality and morbidity. Women's reproductive rights include their right to access to reproductive health services free of the threat of criminalisation. There is a widely recognized link between efforts to reduce maternal mortality and efforts to prevent early, mis-timed, unintended and unwanted pregnancy. In order to benefit from their sexual and reproductive rights, individuals need to be able to access information on how to prevent pregnancy. Criminalising the provision of such information to young people¹⁵ violates their human rights and increases their risk of maternal death and ill-health. Amnesty International's research on Nicaragua has highlighted how the complete ban on abortion places a legal hurdle between medical professionals and the delivery of timely and appropriate reproductive and maternal health care to women and, as a result, undermines programmes intended to reduce maternal mortality and morbidity.¹⁶ In Northern Nigeria, Amnesty International found that laws which criminalise sex outside marriage expose women pregnant from a man not recognised to be their husband to be at risk of prosecution.¹⁷ As a result of such laws and the social ostracism they reflect and enshrine, women may feel unable to acknowledge their pregnancy and seek the health care they need, with an attendant risk to their own health and to the pregnancy. Activists working in defence of women's human rights and medical professionals providing sexual, reproductive and maternal health care need an enabling environment in which to carry out their work; however, but many are not offered protection against violence and threats as a consequence of their legitimate activities in defence of human rights.¹⁸

Governments and the international community should promote and foster effective implementation of the human rights obligations of States in relation to maternal mortality and morbidity. This is a legal requirement and is also essential to making any meaningful progress towards achieving MDG 5. Governments should adopt national level targets and indicators and clearly identify groups who face discrimination and disadvantage in relation to each of the goals. The collection and monitoring of disaggregated data is essential to address discrimination and disadvantaged and marginalized groups. They should also set up monitoring and accountability processes including in relation programmes and policies aimed at meeting the MDGs, to ensure that these are consistent with their human rights obligations.

Recommended options for better addressing the human rights dimension of preventable maternal mortality and morbidity throughout the United Nations system

Amnesty International recommends that the Human Rights Council:

1. Identify and agree specific policy and practical measures to strengthen implementation and monitoring of human rights obligations and commitments by States to address maternal mortality and morbidity and ensure the inter-active dialogue on the study, called for in OP7 of HRC resolution 11/8, at its 14th session in June 2010 includes an operational outcome.
2. Invite UN Agencies, programs and funds that are undertaking initiatives and activities in relation to maternal mortality and morbidity to participate in the inter-active dialogue at its 14th session.
3. Make a contribution in relation to the human rights dimensions of maternal mortality and morbidity to the September 2010 UNGA high-level meeting reviewing the progress made towards achieving the MDGs (the Summit), including by sending to

the Summit the OHCHR study as well as the outcome of the inter-active dialogue at its 14th session.

4. Invite UN Agencies, programs and funds that are undertaking initiatives and activities in relation to maternal mortality and morbidity to systematically contribute information on maternal mortality in relevant countries for consideration in the Universal Periodic Review.
5. Forward the OHCHR study and the outcome of the inter-active dialogue at its 14th session to the WHO for consideration at the 64th World Health Assembly and also as a background document for discussions in the Commission on the Status of Women on Beijing +15.

Amnesty International also recommends that:

1. Special Procedures who covers key aspects of human rights dimensions of maternal mortality and morbidity, including the Special Rapporteurs on Health, Education, Violence Against Women and the Independent Expert on Extreme Poverty, consider making a contribution to the September 2010 UNGA high-level meeting reviewing the progress made towards achieving the MDGs on how human rights can be better integrated into the MDG process.
2. OHCHR suggest ways to better integrate human rights into initiatives and activities in relation to maternal mortality and morbidity undertaken by UN Agencies, programs and funds and how it can assist in this regard.
3. States systematically address the issue of maternal mortality and morbidity in their reporting under the Universal Periodic Review processes in a holistic manner focussing on issues around right to health, discrimination and equality and sexual and reproductive rights.
4. States systematically address the issue of maternal mortality and morbidity in a holistic manner focussing on issues around right to health, discrimination and equality and sexual and reproductive rights in examinations carried out under the Universal Periodic Review.

¹ Article 6 of the International Covenant on Civil and Political Rights. The Human Rights Committee has emphasized that the “inherent right to life” should not be understood in a restrictive manner and requires States to take positive measures to ensure protection of this right. It has highlighted the obligation of State parties to take all possible measures to increase life expectancy (General Comment 6, para 5). In its concluding observations and recommendations, while monitoring States’ implementation of the Covenant and obligations in relation to the right to life, the Human Rights Committee has consistently expressed concern over high maternal mortality rates. It has recommended “So as to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care. The State party should ensure that its health workers receive adequate training. It should help women avoid unwanted pregnancies, including by strengthening its family planning and sex education programmes, and ensure that they are not forced to undergo clandestine abortions, which endanger their lives.” (See as examples Concluding Observations of the Human Rights Committee on Zambia, U.N. Doc. CCPR/C/ZMB/CO/3/CRP.1, 23 July 2007 para 18 and Concluding Observations of the Human Rights Committee on Mali, UN Doc. CCPR/CO/77/MLI, 16 April 2003, para 14).

² Article 12 of the International Covenant on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights has stated that the obligation to ensure reproductive and maternal (pre-natal as well as post-natal) health care is of comparable priority to a core obligation, which State Parties are under a duty to prioritise. This also extends to the obligation to provide appropriate training for health personnel, including education on health and human rights (General Comment 14, para 44). It has also emphasized that governments are required to “improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.” (General Comment 14, para. 14).

³ Article 12, Convention on the Elimination of Discrimination Against Women. The Committee on the Elimination of Discrimination Against Women has also affirmed that “access to health care, including reproductive health is a basic right under the Convention on the Elimination of Discrimination against

Women” (General Recommendation 24, para 1). Article 12 “requires States to eliminate discrimination against women in their access to health care services, throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period... Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women” (General Recommendation 24, para 2).

⁴ The denial of access to maternal health care can constitute a violation of the right to freedom from torture and cruel, inhuman or degrading treatment in some circumstances. The UN Committee on Economic, Social and Cultural Rights, for example, has called on Poland to “take all effective measures to ensure that women enjoy their right to sexual and reproductive health, including by enforcing the legislation on abortion and implementing a mechanism of timely and systematic referral in cases of conscientious objection.” (UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties in accordance with articles 16 and 17 of the Covenant – Concluding Observations on Poland, 20 November 2009, UN Doc E/C.12/POL/CO/5, <http://www2.ohchr.org/english/bodies/cescr/docs/co/E-C12-POL-CO-5.doc>. See also Amnesty International, Poland: Briefing to the UN Committee on Economic, Social and Cultural Rights, 43rd session, November 2009, AI Index EUR 37/002/2009, <http://www.amnesty.org/en/library/info/EUR37/002/2009/en>)

⁵ Article 16 (1) (e) of the Convention on the Elimination of Discrimination Against Women guarantees the right of women, on the basis of equality with men, to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights. The Committee on the Elimination of Discrimination Against Women has stated that “Studies such as those which emphasize the high maternal mortality and morbidity rates worldwide and the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of possible breaches of their duties to ensure women's access to health care” (General Recommendation 24, para 17). It has emphasized the obligation of States to “prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance” (General Recommendation 24, para 31 (c)). One issue that has concerned the treaty bodies is unsafe abortion which is a major cause of maternal death and ill-health. The UN Committee against Torture has expressed concern regarding the impact of the total ban on abortion in Nicaragua which led to “documented cases in which the death of a pregnant woman has been associated with the lack of timely medical intervention to save her life” and the penalisation of medical professionals for the exercise of their professional responsibilities. (UN Committee against Torture, UN Doc. CAT/C/NIC/CO/1, para 16. See also Amnesty International, Nicaragua: The impact of the complete ban of abortion in Nicaragua: Briefing to the United Nations Committee against Torture, AI Index AMR 43/005/2009, 29 April 2009, <http://www.amnesty.org/en/library/info/AMR43/005/2009/en>).

⁶ The Special Rapporteur on the Right to the Highest Attainable Standard of Health has also clarified that “The right to health, including sexual and reproductive health, encompasses both freedoms, such as freedom from discrimination, and entitlements. In the context of sexual and reproductive health, freedoms include a right to control one's health and body. Rape and other forms of sexual violence, including forced pregnancy, non-consensual contraceptive methods (e.g. forced sterilization and forced abortion), female genital mutilation/cutting (FGM/C), and forced marriage all represent serious breaches of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health.” Report of The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Commission on Human Rights, Sixtieth Session, UN Doc. E/CN.4/2004/49, 16 February 2004, paras 24 and 25.

⁷ Platform for Action, Fourth World Conference on Women, Beijing, 1995 and Program of Action, International Conference on Population and Development, Cairo, 1994.

⁸ For instance, official statistics in Peru highlighted that women with no, or only primary, education are less likely to receive prenatal care from health professionals or give birth in health centres; this is particularly true of women of indigenous origin, of whom it is calculated that more than 40 per cent have no access to education, even at basic level. Also, the lower the mother's level of education, the higher the neonatal and infant mortality rate (*Encuesta Demográfica y de Salud Familiar 2000*, INEI, May 2001). See also Save the Children, *The State of the World's Children 2009 - Maternal and Newborn Health*, <http://www.unicef.org/sowc09/docs/SOWC09-FullReport-EN.pdf>: “Improving maternal and newborn health is not simply a practical matter of making available better and more extensive maternity services. It also involves addressing and reversing the neglect of women's rights and the structural discrimination and maltreatment often suffered by girls and women.”

⁹ Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights, UN Doc. A/CONF.157/23, para. 18

¹⁰ The Convention on the Elimination of All Forms of Discrimination against Women states explicitly that any kind of excuse based on culture, tradition or religion which leads to discrimination against women is not acceptable. Article 2(f) states that: "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 to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

¹¹ See United Nations, the Millennium Development Goals Report 2009, p. 27, available at http://www.un.org/millenniumgoals/pdf/MDG_Report_2009_ENG.pdf

¹² Amnesty International, Peru: Poor and Excluded Women – Denial of the Right to Maternal and Child Health, AMR 46/004/2006, July 2006 and Peru: Fatal flaws - barriers to maternal health in Peru, AI Index AMR 46/008/2009, 9 July 2009.

¹³ Amnesty International, Sierra Leone: Out of reach – The cost of maternal health in Sierra Leone, <http://www.amnesty.org/en/library/info/AFR51/005/2009/en>

¹⁴ Amnesty International, Sierra Leone: Out of reach – The cost of maternal health in Sierra Leone, p. 10, <http://www.amnesty.org/en/library/info/AFR51/005/2009/en>

¹⁵ See Amnesty International, Indonesia: Open letter to the House of People's Representatives on the reviewing and passing of a new Criminal Code, AI Index ASA 21/022/2009, 9 November 2009, <http://www.amnesty.org/en/library/info/ASA21/022/2009/en>

¹⁶ Amnesty International, Nicaragua: The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized, AI Index AMR 43/001/2009, 27 July 2009, <http://www.amnesty.org/en/library/info/AMR43/001/2009/en>

¹⁷ See Amnesty International, The Death Penalty and Women under the Nigeria Penal Systems, AI Index: AFR 44/001/2004, 10 February 2004

¹⁸ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Article 12.2. See in this regard, Amnesty International, Nicaragua: Defending women's right to life and health: Women human rights defenders in Nicaragua, AI Doc. AMR 43/001/2008, 9 October 2008, <http://www.amnesty.org/en/library/info/AMR43/001/2008/en>, and Amnesty International, USA: Open Letter to the U.S. Department of Justice Attorney General, AI Doc. AMR 51/079/2009, 10 June 2009, <http://www.amnesty.org/en/library/info/AMR51/079/2009/en>