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“Women 2000: gender equality, development and peace for
the twenty-first century”

Statement submitted by IPAS, a non-governmental organization in consultative status with the Economic and Social Council*

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

* The present statement is issued without formal editing.



Statement

IPAS welcomes the review of challenges and achievements in implementation of the Beijing Declaration and Platform for Action 20 years after its adoption by 189 governments at the Fourth World Conference on Women in 1995. Of the many policies and practical steps still needed to improve women's and girls' lives and ensure their full participation in all spheres of society, we submit that the importance of an enabling legal environment for sexual and reproductive health and rights is paramount.

Understanding the harm caused by unsafe abortion, governments committed in the Beijing agenda for the first time ever to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions" (Para 106(k)). This mandate was strengthened in 1999 in General Recommendation 24 on Women and Health to the Convention on the Elimination of All Forms of Discrimination Against Women, which called for states, "when possible, [to amend] legislation criminalizing abortion to remove punitive provisions imposed on women who undergo abortion." United Nations Special Rapporteur on the Right to Health Anand Grover, in his 2011 report on the impact of criminal laws on access to sexual and reproductive health, recognized the harm in "barriers that interfere with individual decision-making on health-related issues and with access to health services, education and information, in particular on health conditions that only affect women and girls," and further established that "barriers arising from criminal laws and other laws and policies affecting sexual and reproductive health must therefore be immediately removed [emphasis added] in order to ensure full enjoyment of the right to health."

Gender discrimination in laws, policies, institutional frameworks and practices deprives women of their right to make independent decisions about their lives and their future. This is especially true in the areas of sexuality and reproduction. Two decades into the post-Beijing agenda, women in much of the world are still living without the legal autonomy to make decisions about their reproductive lives, in particular when faced with an unwanted pregnancy. The 2015 review must ensure that action be accelerated to repeal discriminatory laws, including laws criminalizing abortion and other areas of sexual and reproductive autonomy.

Women seeking to exercise their reproductive rights and health professionals offering safe medical care are not criminals and should not be treated as such by the law or by society. Comprehensive abortion care is an essential part of women's sexual and reproductive health care, and yet abortion is one of the only medical procedures regulated through criminal law. Criminalization of a reproductive health service that only women and girls need is discriminatory, and creates a climate of fear and stigmatization, as evidenced by harassment, surveillance, extortion and sometimes even violence, as seen in many parts of the world. Punishment for violating restrictive abortion laws ranges from fines and community service to, in some cases, long prison sentences. Additional negative repercussions of criminalizing abortion are significant:

- When women, and in some cases their healthcare providers, become targets of enforcement, they are often stripped of their rights to due process and judicial guarantees and protections.

- Women who are poor, young and uneducated are most likely to be prosecuted on abortion charges, thus violating their right to equal treatment and non-discrimination.
- Evidence shows that in some countries confessions are obtained while women are receiving care for post-abortion complications in hospitals or health-care centres, thus violating women's right to privacy and medical confidentiality.
- Women and girls who are prosecuted on abortion charges face bias and neglect in the criminal justice system.
- Enforcement of restrictive abortion laws is selective and discriminatory, with the highest burden and risk of prosecution falling on the generally poorer women who use public health systems.

In addition to removing criminal penalties, the realization of women's or girls' right to health requires the removal of all legal barriers preventing access to health services, education and information, including in the area of safe abortion. Abortion laws or policies that require spousal approval, provider and judicial authorization, and that permit providers to refuse to offer legal medical services (often under the claim of 'conscientious objection') contain harmful barriers which must be removed. One of the most significant legal barriers to abortion care for women, especially young women and adolescent girls, is mandated notification and/or consent of a third party. Such laws interfere with the private decisions of a woman or girl, do not increase communication within families, and can cause harm by delaying or denying care and driving young women to have unsafe abortions.

General Recommendation 24 on Women and Health says laws and policies must not require third-party consent: "...States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women."

Additionally, no woman should be denied abortion care because her health-care provider disapproves of her choice. Conscientious objection of a health professional must not come at the cost of a woman's choice to determine her future. Policies must ensure that if a health professional refuses to help a woman terminate a pregnancy, safeguards are in place to protect women's right to care, such as ensuring referral to a willing provider, in accordance with World Health Organization guidelines.

According to the World Health Organization, legal restrictions on abortion pose "a significant risk of death or disability." Women and girls living in developing nations bear the brunt of such challenges, as these countries are much more likely to have restrictive abortion laws.

There is evidence of incremental progress in this area but much remains to be done. According to the United Nations Department of Economic and Social Affairs Population Division, 56 countries eased restrictions on abortion laws between 1996 and 2013 in some way. Yet most such changes were modest and did not result in concrete government action to ensure service availability or improvements in women's health or reproductive autonomy. Laws in many countries remain restrictive and unsafe abortion continues: In 2013, about a third of countries still banned abortions performed to protect the life, health or mental health of the

woman; about half banned abortions even in cases of rape, incest or fetal impairment; and two-thirds continued to ban abortion for economic or social reasons or upon the woman's request.

In Africa, while twenty-eight States have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which says that State Parties should take all appropriate steps to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus," very few have made concrete changes to their laws or policies to meet this mandate.

Authoritative bodies within the United Nations human rights system have also increasingly urged governments to ensure women's ability to access safe abortion and post-abortion care in accordance with existing laws, including the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights. All have recommended that governments review legal restrictions on abortion in light of evidence of unsafe abortion's negative impact on women and girls and women's rights to health care, privacy and confidentiality, and freedom from discrimination. Additionally, international human rights authorities and bodies have established the negative effects of criminalization of abortion and the resulting violations of women's rights to equality, non-discrimination, health, privacy, information, education, and freedom from inhuman treatment and torture, and they have asked states to review laws that criminalize abortion.

"Reviewing" such discriminatory laws is no longer adequate: In order to protect the health, life, and dignity of women and girls, the 2015 Beijing review must include a commitment to immediate action to:

- Repeal laws that criminalize abortion and other issues affecting sexual autonomy and bodily integrity
- Remove barriers to women's and girls' access to sexual and reproductive health care and services, including safe abortion
- Release all women and girls and health-care professionals who are incarcerated as a result of punitive abortion laws
- Invest in effective preventive measures including comprehensive sexuality education, elimination of gender discrimination and sexual violence, and full access to all modern contraceptive methods.