RESURJ AND HIDDEN POCKETS COLLECTIVE SUBMISSION TO THE UNSR

RESURJ and Hidden Pockets Collective Submission To The United Nations Special Rapporteur (UNSR) On The Right To Health

Background

Within the framework of Human Rights Council resolution 42/16, the Special Rapporteur on the highest attainable standard of physical and mental health has identified sexuality, gender based violence and femicide as one of her priorities during her tenure (See A/HRC/47/28 paras 50-64). In compliance with her mandate and in line with this priority she has decided to devote her next thematic report to the 50th session of the Human Rights Council in June 2022 to the theme of “Violence and its impact on the right to health”.

Key questions

1. Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:

1.1. Gender based violence against women

India

India does not have statistical data around Marital Rape, as it is not recognized in the country as a criminal offence. There is a case pending in the Supreme
Court of India, challenging the exemption provided to Marital rape under section 375 of Indian Penal Code\(^1\).

1.2. Gender based violence and other forms of violence against children:

1.3. Gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity:

**Egypt**

According to a report published by Human Rights Watch\(^2\) that reflected testimonies from LGBTQ individuals who have been persecuted by the Egyptian state since 2017, forced anal and virginity tests are notorious practices carried out by security forces against LGBTQ persons in Egypt. Such violations seek viability and credibility on medical grounds to further persecute and incriminate sexual orientations and gender identities. Another sexual violation associated with sexual orientation in Egypt, is the hindered access to PEP. Access to post-exposure prophylaxis (PEP) is only available through the Ministry of Health and Population, where the preventive medication is only dispensed upon the submission of a police report of proved sexual assault. Such a process is designed with the assumption that exposure to HIV can only happen as a result to sexual assault. Tying access to sexual health services to police reports further stigmatizes people living with HIV, reinforces virginity and anal examination as part of proving sexual assault which exposes gay men and transwomen to security and state reprisals\(^3\), and unnecessarily blocks the access to sexual health services and preventive measures.

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\(^1\) Centre seeks more time from Delhi HC to formulate stand on marital rape, The Indian Express (18 January 2022)  

\(^2\) Egypt: Security Forces Abuse, Torture LGBT People, Human Rights Watch (October 2020)  

\(^3\) These inputs are based on testimonies from allies working in the frontlines in Egypt.
1.4. violence against persons with disabilities, including GBV.

Women and girls living with disabilities face multiple challenges to exercise their bodily rights and reproductive autonomy. Their wishes to have or not a pregnancy are not taken into consideration within courtrooms and healthcare settings. The Injusta Justica campaign\(^4\) platforms the specific challenges and layered violence adolescent girls living with disabilities face:

**Gabriela, Argentina, 13\(^5\)**

Gabriela is an adolescent girl who lives with an intellectual disability got pregnant as a result of rape and could not access abortion services. Until her mother took her case to court and got a ruling approving her wishes. However, the court ruling dictated forced sterilization in order to protect Gabriela from future pregnancies. On the bases of protectionism and legal guardianship, Gabriela was not offered options, nor asked to define what kind of protection she needed, if any. Gabriela’s case sheds light on the complexity formed by tying health services to court rulings, instead of adhering to service provision protocols.

**Cristina, Ecuador\(^6\)**

Cristina who is an adolescent girl living with an intellectual disability, got pregnant as a result of rape. She took her case to court when she was denied access to abortion, even though it is legal in case of rape in Ecuador. The court ruled apathetically against her needs to access abortion. Moreover, Cristina got her request to set the baby up for adoption turned down by the court, and

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\(^6\) Cristina’s case [https://www.injustajusticia.org/en/cristina](https://www.injustajusticia.org/en/cristina)
instead was forced to continue the pregnancy and look after the baby as the primary caregiver. Although abortion is legal in Cristina's case, tying access to this health service had weighed down on her instead of focusing on providing her with recovery options and services as a survivor of sexual assault.

1.7. Please share analysis and available evidence on the impact of COVID on the above

The pandemic, including state precautionary measures to contain the spread of COVID-19, had a disproportionate impact on marginalized groups across regions. Activist and advocacy groups have been extremely challenged to sustain community mobilizations and holding the frontline along with their communities because of COVID-19. The response to a global public health crisis with militarized task-forces in many countries has also affected people's access to health services and information, in specific sexual and reproductive health services.

Egypt

There has been no record on changed or increased security targeting of LGBTQI people in Egypt during the pandemic. As for access to PEP, the Ministry of Health and Population along with UNAIDS launched two hotlines to respond to queries on HIV/AIDS and COVID-19. While designating a helpline is certainly a step forward to attend to the needs of people living with HIV, however, the launch came a few months late as an add-on and not an integrated service in the national COVID-19 response. Especially when Egypt

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7 The Cost of Virtual Advocacy on the Marginalized, Our Countries Reflections, RESURJ https://resurj.org/reflection/the-cost-of-virtual-advocacy-on-the-marginalized/
8 When the Pandemic is a Portal to Militarization, Sachini Perera, GROUNDVIEWS (2020) https://groundviews.org/2020/05/30/when-the-pandemic-is-a-portal-to-militarization/
10 These inputs are based on testimonies from allies working in the frontlines in Egypt.
designated fever hospitals to testing centers for COVID-19. Moreover, the Ministry of Health and Population and UNAIDS did not promote this service and relied on communities of people living with HIV/AIDS to reach out.

Chile

In 2020, the parliament approved a bill addressing home quarantine non-compliance with prison sentences; leading to women getting arrested for breaching quarantine measures on their way to the police to report violence. Meanwhile, the Ministry of Women and Gender Equity announced an increase in the calls by women reporting domestic violence reaching 70%.

Rwanda

One of the precautionary measures taken in Rwanda to control the spread of the virus, was to pardon inmates imprisoned on minor offences through a conditional release, 50 women who were imprisoned for having an abortion were released. This is one of the examples on how the pandemic provided the political moment to rethink criminalization of abortion at national level.

India

In India -- amidst a lockdown -- a total of 3,71,503 crimes against women were recorded in 2020. Out of the total victims, 25,498 were adults, while 2,655 were below the age of 18 years. Even though crimes fell down, there seemed to be an increase in cyber crimes against women and girls.

__11__ Egypt: COVID-19 Threatens Treatment for HIV Patients

__12__ The Criminalization of a Pandemic: A Cross-Regional Feminist Analysis
https://resurj.org/resource/the-criminalization-of-a-pandemic-a-cross-regional-feminist-analysis/

__13__ Ibid

__14__ Ibid

__15__ Table 3A.3: Women and Girls Victims of Rape (Age Group -wise) - 2020
https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/TABLE%203A.3.pdf
2. Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.

**India**

In India, even though there is a law to prohibit child marriage, post covid there has been an increase in child marriages, to escape poverty and teenage pregnancies\(^\text{16}\) heightened by pandemic fears and uncertainties. There are laws to protect girls, but these laws do not factor in social and economic conditions they live under. Such laws deny girls their autonomy in making reproductive health decisions. The laws around protecting the children against sexual offences, make it difficult for young girls to access health services. Resulting in young girls not having access to adolescent friendly health services. In Prohibition of Child Marriages Act 2006\(^\text{17}\) the focus is mostly on ensuring young girls are not married off before 18 years. It is punitive in nature, and focuses on punishing people who support this marriage. The marriage is considered void ab initio, it is not considered legal, but there are no provisions to talk about girls who are already part of it.

**Guatemala**

The gap between minimum age of marriage and legal age of consent sends out confusing messaging on adolescents’ sexual and reproductive autonomy that affects their lives accordingly. Minimum age of marriage stands at 18 years old, while legal age for consent is 16 years old. Such a gap hinders adolescents’


access to reproductive health services, as many avoid the legal repercussions for their partners. Especially with the presence of staff from the prosecutor’s office and civil register, which is meant to facilitate processes and protocols, yet it stood as a challenge as captured in the Injusta Justicia campaign. In one of the cases reflecting the impact of the gap between the minimum age of marriage and legal age of consent on adolescents’ realities. For instance, in some cases where adolescents below age of 18 need to access reproductive health services, they may consider not attending to their health needs in fear of legal repercussions; consequently making adolescent girls more prone to health risks during pregnancy and childbirth.

3. Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.

India

Single women find it difficult to access medical services especially with regard to making reproductive health choices. During covid, a good number of doctors who refused to help single women in government health services to access to abortion\(^\text{19}\). Through Hidden Pockets Collective’s work with the Public health system, we have seen this happening again and again.

For young girls in India, it becomes very difficult to access services without their partners getting entrapped in the legal system due to current laws that make reporting mandatory for relationships below the age of 18 years. The young girls can't access health services, without endangering their boyfriends. Our online mailing system\(^\text{20}\) receives plenty of cases seeking help, as young girls do not know how to proceed. This further gets complicated by the fact that a bill to raise the age of marriage to 21 has been presented in Indian

\(^{19}\) Abortion in Pandemic: Reality Check at the end of 2020, Hidden Pockets Collective (December 2020) 

\(^{20}\) Adolescent Sexuality: the Age of Raging Hormones and Punishments?, Hidden Pockets Collective (December 2020)
Parliament, despite activists on the ground\textsuperscript{21}, presenting the harm such a bill brings about to the agency of young girls. This further hinders the rights of young girls who are between 18-21 years\textsuperscript{22}, now, are they girls? Are they adults? Do they need protection of laws? What happens to their consensual relationships?

Alex, Paraguay, 19, trans man

One of the cases from Paraguay highlighted by the Injusta Justicia campaign in Latin America, captures a relationship between two adolescents, one of them is a trans person. The family of the girl disapproved of this relationship and interfered to end it. This case draws on the different application of laws that are meant to protect children from sexual violence; and how they were used to incriminate a consensual relationship between two adolescents by attacking a transman's identity in the name of protecting a minor from homosexual acts, as the report was filed by the girl's family. More broadly, legal guardians and health providers attend to adolescents’ challenges and needs with a misconception of adolescence as one homogeneous group, overlooking its evolving capacity and bodily autonomy. The case in question enforces an oppressive attitude; had it not been for the trans identity of the partner, there would have been no conflict surrounding this relationship. The threat of potential two years behind bars under filed accusations, classified as statutory rape, would have not been a relevant threat in this context to cis boys and men.

\textsuperscript{21} Will raising the legal age of marriage for women to 21 will empower them?, Hidden Pockets Collective (January 2022)\nhttps://www.youtube.com/watch?v=sHM36YctoE&t=455s
\textsuperscript{22} Age of Marriage for Women: 21 is a Yes while 20 is a No?, Hidden Pockets Collective (February 2022)\nhttps://hiddenpocketscollective.org/2021/02/10/age-of-marriage-for-women-21-is-a-yes-while-20-is-a-no/
4. Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.

**Egypt, Female Genital Mutilation**

In 2021, Egypt approved amendments proposed on articles criminalizing FGM, by heightening the punishment of parents with a minimum 3 years imprisonment, and service providers with up to and 20 years. These amendments do not take into account the challenges faced by adolescents and extended family members when reporting on FGM. In some cases, family members reach out to the child protection helpline to report planned FGM, yet they reporters are taken aback when they realize their report may send their family members to prison. It is noteworthy that increasing the punishment in the absence of effective awareness raising campaigns on the dangers of FGM, contributes to parents resistance to abolishing this harmful practice in the name of preserving traditions. Especially with the potential persecution of parents, who might lack the knowledge on this harmful practice to be a violation of their daughters bodily and sexual rights. The focus on legislative positioning on FGM instead of mobilizing to shift cultures around this harmful practice.

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23 Press Release by anti-FGM taskforce against FGM in Egypt on proposed amendments to criminalizing FGM, Egyptian Initiative for Personal Rights (February 2021) [https://eipr.org/press/2021/02/%D8%A8%D9%8A%D8%A7%D9%86-%D8%B5%D8%AD%D9%81%D9%84%D9%82%D9%88%D8%A9-%D8%A7%D9%84%D8%B9%D9%85%D9%84-%D8%A7%D9%86-%D8%A7%D9%84%D8%A5%D9%86%D8%A7%D8%AB-%D9%81%D9%8A-%D9%85%D8%85%D8%B1-%D8%A8%D8%AE%D8%B5%D9%88%D8%B5-%D8%A7%D9%84%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D9%82%D8%AA%D8%B1%D8%AD%D8%A9-%D9%84%D9%84%D9%85%D9%88%D8%A7%D8%AF](https://eipr.org/press/2021/02/%D8%A8%D9%8A%D8%A7%D9%86-%D8%B5%D8%AD%D9%81%D9%84%D9%82%D9%88%D8%A9-%D8%A7%D9%84%D8%B9%D9%85%D9%84-%D8%A7%D9%86-%D8%A7%D9%84%D8%A5%D9%86%D8%A7%D8%AB-%D9%81%D9%8A-%D9%85%D8%85%D8%B1-%D8%A8%D8%AE%D8%B5%D9%88%D8%B5-%D8%A7%D9%84%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D9%82%D8%AA%D8%B1%D8%AD%D8%A9-%D9%84%D9%84%D9%85%D9%88%D8%A7%D8%AF)

practice adds more to the damage. Since its criminalization in 2008, only a handful of cases had been made public when FGM victims lose their lives to health complications. It is unclear what are the best practices in ending FGM in Egypt, as reports from the designated hotline to FGM are absent, coincidingly with the absence of data around parents’ attitudes towards this harmful practice as a result of cancelling standard Demographic Health Survey (DHS) in 2018. Increasing punishment alone is ineffective.

25 Egypt and the Bill of FGM: More Punishment, Less Data, Our Countries Reflections, RESURJ. 
ABOUT RESURJ
Realizing Sexual and Reproductive Justice (RESURJ) is a transnational membership-based feminist alliance formed in 2010 by younger feminist activists under the age of 40 from Africa, Asia, Pacific, Europe, South West Asia, and Latin America, grounded in national and regional social justice movements, who seek to realize sexual and reproductive justice (SRJ) for all. Our mission is to work as a transnational alliance of younger global South feminists grounded in diverse social justice movements to lead, create, and hold space for the realization of sexual and reproductive justice.

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