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HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

TÉLÉCOPIE · FACSIMILE TRANSMISSION

DATE: 2 February 2017

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OBJET/SUBJECT: **URGENT APPEAL FROM SPECIAL PROCEDURES**

Please find attached an urgent appeal sent by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

We would be grateful if this letter could be transmitted at your earliest convenience to His Excellency Mr. Thomas A. Shannon, Jr., Acting Secretary of State.

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Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
UA USA 1/2017

2 February 2017

Dear Mr. Allegra,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 33/9.

In this connection, I would like to bring to the attention of your Government information I have received concerning **the possibility to repeal core elements of the Affordable Care Act (ACA) with negative impacts on the right of everyone to the enjoyment of the highest attainable standards of physical and mental health in the United States, in particular those with moderate or low income and in situations of poverty or social exclusion.**

According to the information received:

On 23 March 2010, President Barack Obama signed the Patient Protection and Affordable Care Act (ACA) into law to improve the accessibility, affordability, and quality of healthcare. The Health Insurance Marketplace ("Marketplaces"), a key component of ACA, has helped users to enrol in affordable health insurance, through marketplaces, available through websites, call centres, and in-person services, where they can compare and purchase standardized health insurance with essential benefits. While the federal Government has operated marketplaces for most states, some manage their own and small businesses can use the Small Business Health Options Program (SHOP) Marketplace to provide health insurance for their employees.

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Available reliable information indicates that ACA has resulted in an estimated 20 million people gaining health insurance coverage between the passages of the law in 2012 and 2016. Between October 2013 and early 2016, gains in coverage were reported across the country, in particular amongst those with moderate and low income including individuals from different racial and ethnic groups. The uninsured rate among Black non-Hispanics dropped by more than 50 percent; among Hispanics dropped by more than 25 percent and among White non-Hispanics declined by more than 50 percent.

On 12 January 2017, the U.S. Senate voted (51 to 48) to open a budget reconciliation process that may allow repealing substantive aspects of the Affordable Care Act (ACA). Through this procedure, Congress could reform concrete aspects of ACA with federal budget implications. In particular, Congress could reform the rules that permit to repeal Medicaid expansion; the premium tax credits and cost-sharing assistance provided to people with modest income through the Marketplaces; the tax on some people who do not carry minimum creditable health insurance; and the employer responsibility requirement, which assesses a penalty on some employers whose workers obtain subsidized coverage through the Marketplaces.

Recent reports have assessed the negative impact that this reform may have on the right to health of almost 30 million people in the U.S. These reports consider that should the reconciliation bill eliminate tax credits and cost-sharing assistance (subsidies) to individuals with low and moderate income, premiums at the Marketplaces will become unaffordable and many of the people currently enrolled would drop their insurance. In addition, should the reconciliation bill eliminate the individual and employer mandates to get insurance, people will have less incentive to pay premiums (especially people who are healthy and are not eligible for premium tax credits) and therefore the average healthcare costs of enrollees in the market will increase in an estimated 20 per cent. Reports indicate that, with these reforms, 9.6 million people may become uninsured.

In addition, this situation would reportedly threaten the non-group insurance companies both inside and outside the Marketplaces with serious losses and could drive them to raise premiums by increasingly large amounts. One of the potential consequences is the virtual collapse of the market for non-group coverage, which could cause 7.3 million people to become uninsured under these circumstances.

Finally, the elimination of the Medicaid expansion may impact on approximately 12.9 million people that would lose eligibility and therefore access to healthcare.

In general, reports estimate that if those core elements of ACA are repealed, even if gradually, the number of uninsured people could increase by 29.8 million by 2019, raising the total number of uninsured people in the U.S. to 58.7 million (21 per cent of the nonelderly population), compared to 28.9 million people uninsured if the ACA remains in effect.

To present, it is unclear what are the policy, programmatic and financial measures that will replace the ACA and how the new legal framework will guarantee that people with access to health insurance in the past through ACA will be able to realise their right to health in a non-discriminatory, accessible and affordable manner.

Without wishing to prejudice the accuracy of the aforementioned information, I wish to express serious concern over the impact of these measures on the rights to the enjoyment of the highest attainable standard of physical and mental health and the right to social security of the people in the United States of America.

In this context, I would like to draw the attention of your Government to the Universal Declaration of Human Rights (UDHR). The UDHR has become a source and expression of international customary law and all States, including the United States of America, are obliged to protect and guarantee the rights enshrined therein. Article 25 of the UDHR establishes everyone's right to a standard of living adequate for the health and well-being, including food, medical care and necessary social services, and the right to security in the event of any lack of livelihood in circumstances beyond his/her control.

I would like to also draw the attention of your Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was signed by the United States of America on 5 October 1977. While your Government has not ratified the Covenant, it is obliged to refrain from acts that would defeat the Covenant's object or purpose, in conformity with article 18 of the Vienna Convention on the Law of Treaties. Article 12 of the ICESCR establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and, in its General Comment No. 14, the Committee on Economic, Social and Cultural rights indicates that States parties have, under this article, the core obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups (Para.43 (a)). Health facilities, goods and services have to be economically accessible (affordability) and payment for healthcare services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups (Para. 12).

In this connection, I would like to refer your Government to article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States of America in 1994. Under this article, States parties undertake to guarantee the right of everyone to a number of economic, social and cultural rights, without distinction as to race, colour, or national or ethnic origin. These rights include the rights to public health, medical care, social security and social services, among others.

I would also like to draw the attention to your Government to General Comment No. 14 of the Committee on Economic, Social and Cultural rights which establishes

States parties' immediate obligations in relation to the right to health, including guarantee that the right will be exercised without discrimination of any kind (ICESCR art. 2.2) and the obligation to take steps (ICESCR art. 2.1) towards the full realization of article 12. (Para.30). The Committee has stressed the progressive realization of the right to health, which means that States have a specific and continuing obligation to move as expeditiously and effectively as possible towards its realization. The Committee notes that there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible and if any deliberately retrogressive measures are taken, the State party has the burden of providing that they have been introduced after the most careful consideration of all alternatives and they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources (Para. 32).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention and would be grateful if you could kindly share this letter with the Speaker of the House of Representatives, the majority and the minority leaders at the House as well as the majority and minority leaders at the Senate. In this connection, I would appreciate your observations on the following matters:

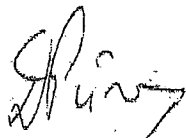
1. Please provide any additional information and/or any comment(s) you may have on the aforementioned information, concerns and allegations.
2. Please provide information on the expected impact on the right to health for all people in the United States of Americas should Congress decide to repeal the Affordable Care Act either partially or entirely.
3. Please provide details on the health policy, programmatic and financial measures that will be put in place to substitute the Affordable Care Act should it is repeal, and to ensure the realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health in a non-discriminatory, accessible and affordable manner.
4. Please provide information on how the new policy will protect the right to health of everyone's in the United States of America and guarantee the same or higher level of health coverage.

While awaiting a reply, I urge that all necessary interim measures be taken to prevent the alleged violations and, in the event that research and investigations support or suggest the allegations to be correct, to ensure adequate measure to prevent their occurrence as well as to guarantee the accountability of any person responsible of the alleged violations.

I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government to clarify the issues in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Allegra, the assurances of my highest consideration.



Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health