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HUMAN RIGHTS VERSUS LEGAL CONTROL OVER WOMEN'S REPRODUCTIVE SELF-DETERMINATION

Diya Uberoi and Maria de Bruyn

ABSTRACT

States have a duty under international human rights law to protect people's health. Nonetheless, while some health-related policies and laws protect basic human rights, others violate fundamental rights when they criminalize, prohibit, and restrict access to necessary health services. For example, laws and regulations related to protection of life from conception, contraception, actions of pregnant women, and abortion can harm women and place women and health care providers in jeopardy of legal penalization. Given the adverse consequences of punitive and restrictive laws related to pregnancy, advocates, civil society groups, human rights groups, and government institutions must work together to promote, protect, and fulfill women's fundamental reproductive rights.

INTRODUCTION

Governments are obliged under international human rights law to promote, protect, and fulfill the right to health; this includes maternal and prenatal health.¹ Governments protect people's health and well-being through measures such as national health insurance schemes, disease control programs, state funding for health facilities to provide preventive and curative care, and implementation of laws and regulations as a framework for programs and facilities. Laws are not only used to promote health, but can have a punitive role by providing penalties for actions that could possibly endanger people's health, for example, by prescribing fines, withdrawals of licenses, and incarceration for medical malpractice, or criminalizing actions such as domestic violence, rape, and incest. The intent of such laws is to deter people from engaging in these behaviors, rehabilitate offenders, or provide restitution to victims.²

Many health-related policies promote, respect, and fulfill people's human rights. However, other laws contravene basic rights when they criminalize, prohibit, or impede access to evidence-based health care services and procedures. This is particularly the case in relation to pregnancy, despite increasing international and national recognition of the need for gender equality, women's empowerment, and women's ability to manage their reproductive health. Such policies are of significant concern as they can increase women's vulnerability to abuse, violence, and health, and further disempower them.³ Many of these laws have been introduced or supported by conservative groups that do not recognize women's reproductive autonomy.⁴ Taking into consideration the need for the protection of women's reproductive health and rights, the Human Rights Council has specifically called for the implementation of a human rights based approach to policies and programs to reduce maternal mortality and morbidity.⁵

This paper describes how some laws and regulations related to pregnancy prevent women from exercising many of their basic rights. First, we discuss an increasingly used strategy to establish a context in which it becomes easier to criminalize and control actions in relation to pregnancy: the promotion of laws and constitutional amendments to maintain life before birth. Next, we describe how laws and regulations related to contraception, actions of pregnant women, and abortion can harm women and place women and health care providers in jeopardy of legal penalization. We conclude with an overview of how laws and regulations that criminalize and control women's pregnancy-related actions and impede their access to health services violate their basic human rights.

ESTABLISHING A CONTEXT TO MAINTAIN LIFE BEFORE BIRTH

In several countries, laws and constitutional amendments at the national and sub-national levels have been proposed and enacted with the aim of maintaining all life before birth, making it possible for the rights of a zygote, embryo, or fetus to trump those of a pregnant woman in certain circumstances.⁶

Some of these laws focus on "protecting life from conception" or "protecting the unborn" but lack judicial clarity regarding the concept of "conception," with some legislative sponsors giving no definition, some equating it with fertilization, and others referring to implantation of the fertilized ovum into the uterine wall, which usually can only be determined three weeks after implantation.⁷⁸

The ambiguity of such bills relates not only to definition of terms, but also to the possible consequences of enactment. For example, in 2010, the governor of the US state of Idaho vetoed a bill that would have permitted prosecution of women who lost a pregnancy due to some action of their own (for example, engaging in vigorous exercise which could be termed recklessness or criminal negligence).⁹ In 2011, a similar bill was proposed in the state of Georgia with a possible penalty of death for a woman who could not prove she had no "involvement" in the miscarriage.¹⁰ Given that up to 25% of pregnancies result in miscarriage, large numbers of women could be charged under such a law.

In other cases, proposed laws seek to accord human

and civil rights to the products of conception by granting them the legal status of "human beings" with rights equivalent to those of people who have been born (for example, laws proposed in Brazil, the Philippines, and the United States).¹¹ States nevertheless have refrained from granting rights before birth in the formulation of international human rights treaties. One example is the Convention on the Rights of the Child, which refers in Article 1 to children as human beings younger than 18 years.¹² Article 4.1 of the American Convention on Human Rights states that "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception." However, in a case brought to the Inter-American Commission on Human Rights (IACHR) in 1981, the IACHR stated that this article does not preclude governments from permitting legal abortion. They referred to the history of negotiations in drafting the Convention, in which language explicitly conferring rights on the "unborn" was rejected.¹³

In assessing national laws related to human embryos, Dickens and Cook note that: "Embryos are approached instrumentally, not by reference to any inherent characteristics that may be attributed to them outside the law," going on to state that: "In treating human embryos as property, courts recognize owners' powers of voluntary disposition."¹⁴ This has been reflected by courts, as in Brazil, where the Supreme Court rejected a petition to change the law permitting embryonic stem cell research because it allegedly violated the embryos' right to life.¹⁵ In the US state of Tennessee, the Supreme Court ruled in an embryo disposition case that: "The preembryo is due greater respect than other human tissue because of its potential to become a person and because of its symbolic meaning for many people. Yet, it should not be treated as a person, because it has not yet developed the features of personhood, is not yet established as developmentally individual, and may never realize its biologic potential."¹⁶ Supreme Courts in Austria, France, and the Netherlands have affirmed that the European Convention on Human Rights' right-to-life clause does not preclude abortion.¹⁷

Prohibition of contraception and abortion is the main aim of advocacy efforts to establish personhood and human rights before birth, especially in the United States.^{18,19} Numerous strategies have been introduced by members of faith-based and conservative groups, including lobbying of members of Congress, the gen-

eral public, or selected population groups to mobilize support for policies and legislation to promote rights before birth. The Roman Catholic Church has issued statements and lobbied in Africa, Asia, and the Americas to prohibit access to contraception, in-vitro fertilization, and abortion.²⁰ In addition to the lack of social and legal consensus regarding definitions of human beings and personhood, such laws and policies violate the rights to freedom of opinion and non-discrimination because their proponents seek to impose their personal beliefs on others through legal measures.

PROHIBITING AND IMPEDING ACCESS TO CONTRACEPTION OR FORCING A CONTRACEPTIVE METHOD ON WOMEN

Opponents of reproductive self-determination claim that modern forms of contraception are “abortifacient” because they prevent ovulation and implantation of fertilized eggs.²¹ Opponents use this argument to seek prohibitions or restrictions on modern contraceptive methods as part of advocacy efforts to ban abortion. Research has shown that contraception, including emergency contraception with hormonal pills and intrauterine devices, delays or prevents ovulation, does not prevent implantation of fertilized eggs, and does not interrupt established pregnancies.²² Such proposals, therefore, do not rely on scientific evidence; by definition contraceptives prevent pregnancy and prohibiting women’s access to it would constitute a violation of women’s right to reproductive self-determination.

In a few cases, conservative lawmakers target all modern contraception, as in the Philippines, where a municipality only allowed purchase of contraceptives—including condoms—with a medical prescription and banned all information dissemination about contraceptives.²³ Moreover, emergency contraception has been targeted for prohibition or legal restrictions in Latin American countries such as Chile, Ecuador, and Peru.²⁴ Legal restrictions that may make access difficult or impossible for some women, such as adolescents and poor and rural women, include: prohibited distribution within the public sector, requirements for a physician’s prescription, parental consent, and a minimum age for access.²⁵

Health and judicial sector officials have also invoked their authority to force women to use a particular contraceptive method. In the United States, judges

in more than 20 states have made “no procreation orders” a prerequisite for giving women charged with crimes a lighter sentence or probation; they may even dictate which contraceptive method (such as hormonal implants or permanent sterilization) the woman must use and how long she must use it (in one case, 10 years).²⁶

In Namibia, HIV-positive women were coercively sterilized when they were told that sterilization was a requirement for having a voluntary Caesarean section; in other cases, they were asked to sign consent forms while in labor.²⁷ The High Court ultimately ruled that this had occurred without their appropriate consent.^{28,29} A case in Chile, submitted to the IACHR, involved a woman living with HIV who underwent a Caesarean section and was subsequently sterilized without her consent.³⁰ In the Czech Republic and Slovakia, women of Romani ethnicity have been forcibly sterilized, with the European Court of Human Rights ruling in 2009 and 2011 that Slovakia must pay compensation to one woman as her rights to respect for private and family life and to freedom from inhuman or degrading treatment had been violated.³¹

When women are prevented from accessing modern contraception, they become vulnerable to unwanted pregnancies; in such cases, they may terminate the pregnancy unsafely or delay seeking prenatal and maternal care, which can endanger their health. Adolescents with too-early pregnancies have increased risks of maternal morbidity and mortality.³² When condoms are made inaccessible, women face further risks of contracting sexually transmitted infections (STIs).³³

LAWS AND REGULATIONS SEEKING CONTROL OVER PREGNANT WOMEN’S ACTIONS

In the United States, the 2004 Unborn Victims of Violence Act aims to reflect a legitimate interest in protecting prenatal life, but does not designate zygotes, embryos, and fetuses as holders of legal rights that take precedence over pregnant women’s rights. The Act makes it a separate offense to bring about the death or bodily injury of a “child in utero” while committing certain crimes, recognizing everything from a zygote to a fetus as an independent “victim” distinct from the woman who has been harmed.³⁴ This law has mainly focused on prosecution of third parties, but US states have sought to

expand child welfare and protection laws to encompass a pregnant woman's actions that may affect the embryo or fetus. Researchers found that between 1973 and 2005, there were 413 cases in the United States in which a woman's pregnancy was a necessary factor leading to attempted and actual deprivations of her liberty such as arrest, detention, or forced interventions. In most of these cases, state authorities alleged that the pregnant woman had used an illegal drug. National Advocates for Pregnant Women reports that more than 200 such arrests have taken place since 2005.³⁵

Denial of women's decision-making capacity during pregnancy

Some medical practitioners and health care institutions have sought to deny women the ability to make decisions about their pregnancy or medical treatments under the guise of protecting children.

In 2006, in New Jersey, a woman with a healthy pregnancy refused to sign a pre-consent form permitting a Caesarean section should it become necessary, in order to reserve her right of consent for the event that a complication ensued.³⁶ After vaginally delivering a healthy baby, the newborn infant was removed from her custody and she was charged with endangering the child's welfare for failing to agree to a Caesarean.³⁷ It was only in August 2010 that a high court reversed the decision so that she and her husband could regain custody.³⁸

In other jurisdictions (for example, Florida, Georgia, and Pennsylvania), women have also been compelled by courts to undergo Caesarean sections without their consent.³⁹ However, in Illinois, an appellate court refused to order a Caesarean section and blood transfusion for a pregnant woman, stating: "The potential impact upon the fetus is not legally relevant; to the contrary, the ... court explicitly rejected the view that the woman's rights can be subordinated to fetal rights."⁴⁰

Besides compelling women to undergo a certain type of delivery, authorities may invoke regulations to deny them medical treatments, giving primacy to the fetus's interests. In Poland, a woman with ulcerative colitis was denied medical treatment for her condition in 2004 because physicians feared that it could lead to a miscarriage; she died from sepsis and kidney failure.⁴¹

Several authors have pointed out that people are not required or forced to donate organs to save other people's lives, and that pregnant women should similarly not be forced to take measures only to maintain the life of a fetus.^{42,43}

Punitive measures regarding pregnant women's actions

A number of US states have amended or interpreted their child welfare laws to specifically address women's substance use during pregnancy.⁴⁴ From 1990 to 2006, pregnant women were prosecuted for drug use in 40 states.^{45,46}

The statutes differ considerably: in some states a pregnant woman's drug use is supposed to trigger only an evaluation of parenting ability and the provision of services, whereas in others it provides for the presumption of neglect or qualifies as a reason for confining the woman until birth or as a factor to be considered in terminating parental rights.⁴⁷ In *Whitner v. State of South Carolina*, a woman who had ingested crack cocaine during the third trimester of her pregnancy was convicted of criminal child neglect. Her case proceeded to the state Supreme Court, which found in 1997 that viable fetuses are "person[s]" under the state's criminal child endangerment statute,⁴⁸ concluding that pregnant women who use illegal drugs or engage in behavior that might endanger the fetus can be charged for child abuse and receive penalties up to 10 years in jail.⁴⁹

On the other hand, in 2008, the same Supreme Court overturned the conviction of a woman for homicide by child abuse based on the claim that her use of cocaine during pregnancy caused her to suffer a stillbirth, arguing that the state of South Carolina had failed to cite expert testimony about "recent studies showing that cocaine is no more harmful to a fetus than nicotine use, poor nutrition, lack of prenatal care, or other conditions commonly associated with the urban poor."⁵⁰ In *Robinson v. California*, the United States Supreme Court specifically overturned a California statute that treated drug addiction as a misdemeanor punishable by imprisonment on grounds that criminalizing drug addiction was cruel and unusual punishment in violation of the Eighth Amendment.⁵¹ In 2010, the Kentucky state Supreme Court ruled that a woman cannot be jailed simply because she has a substance abuse problem.⁵²

Numerous US health organizations oppose the use of criminal law to address substance use by pregnant women.⁵³ The American College of Obstetricians and Gynecologists has stated: “The relationship between maternal behavior and perinatal outcome is not fully understood, and punitive approaches threaten to dissuade pregnant women from seeking health care and ultimately undermine the health of pregnant women and their fetuses.”⁵⁴

Women may be penalized for other reasons as well. In one national survey of maternal-fetal specialists in the United States, almost half thought that pregnant women who refused medical advice should be detained in hospital.⁵⁵ In Florida, a woman with two toddlers was confined to a hospital bed during her 25th week of pregnancy in 2009 when she disagreed with her doctor’s recommendations for treating pregnancy complications; health care personnel also said that the patient had refused to stop smoking.⁵⁶ She was discharged after three days when she miscarried.^{57,58}

Accusations of child endangerment are not only brought against women who use drugs, alcohol, or tobacco. In 2010, a pregnant woman was arrested for attempted feticide in Iowa after she fell down a flight of stairs.⁵⁹ She had confided to a nurse her doubts about carrying the pregnancy to term, but said she had ultimately decided to keep the baby. Nonetheless, hospital staff reported her to the police, breaching her right to confidentiality, because they thought she might have fallen deliberately. The charges were dismissed but only after she endured three weeks of emotional and psychological stress. In 2009, a young woman in South Carolina who attempted suicide by jumping out of a window, losing the fetus, was charged with homicide; in 2011, a woman in Indiana who attempted suicide by ingesting rat poison was rescued, gave birth to a premature infant who died, and was then charged with murder.⁶⁰

When women’s actions during pregnancy are subject to control and possible prosecution, they may refrain from seeking prenatal and maternal care, avoid treatment for substance abuse problems, and suffer psychological distress. When they are imprisoned, they lose employment and a family life; when they are jailed or child custody is withdrawn, their children are

deprived of parental care.

LAWS AND REGULATIONS CRIMINALIZING AND IMPEDING ACCESS TO SAFE LEGAL ABORTION

Countries throughout the world criminalize abortion to some extent, although many allow termination of pregnancy to preserve a woman’s health and life and in cases of rape, incest, and fetal malformation.⁶¹

Even where abortion is permitted for numerous reasons, sex-selective abortion may be specifically prohibited; this is particularly the case in some Southeast Asian countries with higher than normal disparities in childhood sex ratios.⁶² Sex selection against females and imbalanced gender ratios result from societal norms that value sons more than daughters, because male offspring are expected to care for the parents later in life. In India, religious teachings indicate that only the son can perform funeral rites if the soul of the deceased is to be redeemed.⁶³ Furthermore, the existence of the dowry system further encourages couples to have sons rather than daughters.

Bans on sex-selective abortion do not prevent pregnancy terminations or address gender imbalances and gender discrimination.⁶⁴ Measures to address underlying causes for son preference can be useful, such as laws for more equitable patterns of inheritance, direct subsidies at the time of a girl’s birth, scholarship programs for girls, pension programs for families that only have daughters, and campaigns to change people’s attitudes towards girls. United Nations agencies have reiterated: “States have an obligation to ensure that these injustices are addressed without exposing women to the risk of death or serious injury by denying them access to needed services such as safe abortion to the full extent of the law. Such an outcome would represent a further violation of their rights to life and health as guaranteed in international human rights treaties, and committed to in international development agreements.”⁶⁵

When access to abortion is highly restricted, many women seek unsafe procedures to terminate their pregnancies, resulting in high rates of maternal mortality and morbidity,⁶⁶ with an estimated 47,000 women dying each year from unsafe abortions⁶⁷ and 5 million women being treated for serious medical com-

plications.⁶⁸ Chile, El Salvador, Malta, and Nicaragua have complete bans on abortion, even to save a woman's life.⁶⁹ In the Philippines, in 2008 alone, the criminal abortion law was estimated to have resulted in the deaths of at least 1000 women and complications for 90,000 more.⁷⁰ Moreover, Filipino women who sought treatment for abortion complications reported that health care workers were unwilling to provide care, or only treated them after threatening to report them to the police or harassing them verbally and physically.⁷¹ Women are indeed prosecuted and condemned to prison sentences, although medical ethics and patient confidentiality require that medical practitioners do not report women with suspected induced abortions to law enforcement officials. Such cases have been reported in Africa, Asia and Latin America, and have included women who suffered miscarriages rather than induced abortions.⁷²

Measures taken by health and legal authorities can also deny women access to legal abortions. In Poland, for example, authorities charged a mother and physician with encouraging her 16-year-old daughter to terminate a pregnancy.⁷³ In *Tysiac v Poland*, the European Court of Human Rights ruled that a woman had been unjustly denied a legal abortion when health care providers refused to terminate her pregnancy even though they believed the pregnancy could exacerbate her visual impairment.⁷⁴ In addition, the Polish government has denied women the right to the benefits of scientific progress by failing to use abortion methods recommended by the World Health Organization (WHO), such as vacuum aspiration and medication abortion, instead using the outdated and less safe method of dilatation and curettage.⁷⁵

Delays in granting judicial authorizations and a failure to establish protocols for handling requests have been noted, for example, in Botswana and Zimbabwe.^{76, 77} Introduction of clinic regulations in the US state of Mississippi have severely curtailed women's access to legal abortion.^{78, 79}

Laws permitting health care providers to invoke conscientious objection also impede women's access to legal abortion services, although legal experts assert that such providers must promptly refer women to other medical practitioners who will perform an abortion.⁸⁰ In Poland, government authorities and providers invoking conscientious objection have made it extremely difficult for women to access legal abortions.⁸¹

CRIMINALIZATION AND VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

States are obliged under international law to promote, protect, and fulfill people's fundamental rights. Nevertheless, through laws criminalizing and regulating women's reproductive behaviors, governments indirectly and directly violate women's human rights.

Rights to life and health. Laws criminalizing and impeding access to contraception, abortion, and penalizing women's actions during pregnancy affect women's and girls' rights to life and health, as they compel women to have too early, risky, or unwanted pregnancies for which they may seek unsafe abortions under life-threatening circumstances. Such laws also may encourage pregnant women to avoid prenatal care or treatment for substance use problems.

The International Covenant on Economic, Social and Cultural Rights (CESCR) specifically provides for the right to the enjoyment of the highest attainable standard of physical and mental health. The CESCR Committee's General Comment 14 explains that this right entails the provision of available, affordable, accessible, and good-quality health services, including reproductive and maternal health care provision. United Nations technical guidance on reducing preventable maternal morbidity and mortality specifically states that guaranteeing the right to health requires governments to adopt national public health strategies and plans of action that include issuing and disseminating appropriate protocols by the Ministry of Health to ensure access to legal abortion.⁸²

The Human Rights Committee, which monitors governmental compliance with the International Covenant on Civil and Political Rights (CCPR), has called upon governments to undertake measures "to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."⁸³ The Committee on the Rights of the Child has called upon governments to reduce adolescent maternal morbidity and mortality by providing access to sexual and reproductive health services, including family planning, contraception, safe abortion, and adequate and comprehensive obstetric care and counseling.⁸⁴

The UN Special Rapporteur on the right to health has further stipulated: "Criminal laws penalizing and restricting induced abortion are the paradigmatic

examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system."⁸⁵

Rights to information and the benefits of scientific progress. States have a duty to provide complete and accurate information necessary for the protection and promotion of health, including information and access to different methods of contraception and abortion, and drug and alcohol use treatment programs.⁸⁶ They must also ensure that medical protocols adhere to the standards established by international guidance organizations such as WHO, for example by replacing outdated abortion methods with safer and more modern methods.

Right to be free from inhuman, cruel, and degrading treatment or punishment. States must ensure that women are not treated inhumanely, cruelly, or in a degrading manner when they seek access to reproductive health services such as prenatal care, treatment for abortion complications, or safe legal abortion. In this context, the Committee against Torture, in its Concluding Observations to El Salvador and Nicaragua, expressed concern about the penalization of all forms of abortion.^{87,88} In ruling against Argentina for denial of a legal abortion to a mentally disabled adolescent who had been raped by her uncle, the Human Rights Committee stated that her right to freedom from inhuman and cruel treatment had been violated, and they requested that the government establish regulations to prevent future violations.⁸⁹

Rights to dignity and autonomy in decision-making. Laws and policies that limit or restrict women's access to contraception, safe legal abortion, and choices regarding prenatal and delivery care infringe upon their rights to privacy and reproductive autonomy and self-determination. As the UN Special Rapporteur on the right to health stated: "Criminal laws and other legal restrictions on sexual and reproductive health may have a negative impact on the right to health in many ways, including by interfering with human dig-

nity... [which] is fundamental to the realization of all human rights. Dignity requires that individuals are free to make personal decisions without interference from the State, especially in an area as important and intimate as sexual and reproductive health."⁹⁰ Courts in Brazil, Canada, and Germany have recognized this, especially in connection to abortion.⁹¹

Right to privacy and presumption of innocence. Laws criminalizing and impeding access to contraception and abortion and protecting fetal rights over women's rights violate women's rights to privacy and reproductive decision-making. The Human Rights Committee stated: "States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by article 17 on the basis of equality with men.... Another area where States may fail to respect women's privacy relates to their reproductive functions, for example...where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion."⁹² Courts in Argentina, Slovakia, and the US state of Florida have cited the right to privacy in rulings regarding women's access to safe abortion care.⁹³⁻⁹⁶

Article 11 of the Universal Declaration of Human Rights provides that people must be presumed innocent of a crime until proven guilty in a public trial. When women who present to health facilities for post-abortion care are reported to law enforcement officials, even when they state they have had a miscarriage, their right to presumption of innocence is violated. When health authorities detain and prosecute women for actions taken during pregnancy, they may also infringe upon this right, particularly when they do not rely on scientific evidence concerning the effects of alcohol and drugs on fetal development.⁹⁷ The UN Special Rapporteur on the independence of judges and lawyers reiterated that: "...discriminatory provisions include...criminalization of abortion, including in cases of miscarriages or threat to the life and health of the mother. The Special Rapporteur wishes to recall that by upholding discriminatory laws, judges and prosecutors become parties to the violation of the State's international obligations."⁹⁸

Rights to non-discrimination and equality. Laws regulating and criminalizing reproductive behavior directly violate principles of non-discrimination and equality

when they deny women access to services that only women need (for example, emergency contraception and abortion), or when they subordinate women's decision-making autonomy to efforts to protect an embryo or fetus.⁹⁹ Particular groups of women may be subject to discrimination in relation to pregnancy, for example, when adolescents are not allowed access to contraception, when it is particularly poor women of certain ethnic and racial backgrounds who are targeted for fetal endangerment prosecutions or abortions, and when women of specific ethnicities or health status are coerced into sterilization.

The CCPR guarantees all persons the right to equal protection of the law without discrimination based on sex, and the Convention on the Elimination of Discrimination Against Women (CEDAW) stipulates that governments must take all appropriate measures to eliminate discrimination against women in health care. The UN Committees for CCPR, CESC, CEDAW, the Convention on the Rights of the Child and the Convention against Torture have all made recommendations to governments to consider revising laws that criminalize and penalize abortion.¹⁰⁰

The UN Special Rapporteur on the right to health has further noted that: "Criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health, in order to avoid liability and out of fear of stigmatization. By restricting access to sexual and reproductive health care goods, services and information these laws can also have a discriminatory effect, in that they disproportionately affect those in need of such resources, namely women. As a result, women and girls are punished both when they abide by these laws, and are thus subjected to poor physical and mental health outcomes, and when they do not, and thus face incarceration."¹⁰¹

Right to informed consent. When pregnant women are ordered to undergo certain forms of treatment or care, or when women of specific ethnicities or health status are coercively sterilized, their right to informed consent is violated. The Human Rights Committee found that sterilization of women without their consent violates Article 7 of the CCPR. The UN Special Rapporteur on the right to health noted: "Social and legal norms limit women's independent access to sexual and reproductive health services. Evidence reveals that women are often entirely excluded from decision-making in health care.... Women have the

right to freely consent to or refuse services (including sterilization services) that are non-coercive and respectful of autonomy, privacy and confidentiality; and information provided by properly trained personnel."¹⁰²

CONCLUSION

Laws that prohibit, restrict, or impede women's access to essential pregnancy-related health services and technologies create a context in which adolescent and adult women's health and lives may be harmed, and in which multiple human rights are violated. Such laws and regulations are invoked to protect prenatal development. But governments have obligations to provide measures that promote women's autonomy, well-being, and health, simultaneously ensuring that all pregnancies are wanted and carried to term in a healthy manner. Such measures include: increasing access to modern contraceptive methods, including emergency contraception; ensuring that all women have adequate access to prenatal and maternal health care, including vaccinations, treatment for STIs, and suitable nutrition to maintain a healthy pregnancy; and providing assistance to women coping with substance abuse or problems of depression, stress caused by poverty and violence through treatment programs, and other forms of support (employment, housing) for overcoming problems faced during pregnancy.

Human rights advocates must oppose and seek revision of laws that criminalize and penalize actions during pregnancy and that impede access to needed reproductive health services. One step in this direction is to more widely publicize such violations of women's rights to raise awareness among the general public. A second step is to publicize statements on the detrimental effects that these laws have on women's reproductive health and human rights, particularly from authoritative bodies such as human rights organizations and professional medical associations. At the international level, advocates should support women whose rights have been violated through such laws by facilitating complaints to international Treaty Monitoring Committees, human rights commissions and courts, and the UN Special Procedures Division, where necessary filing suits on behalf of women to bring about judicial change at the national and regional levels.

With regard to sex-selective abortion, groups must work to ensure that campaigns and projects effectively address consequences of gender preferences and

stereotypes within societies. Stereotypes and myths concerning substance abuse and pregnancy must be exposed, while advocacy continues to increase women's access to appropriate treatment and support programs.

Given the significant impact that laws regulating pregnancy-related issues have on women's fundamental rights, civil society organizations should work with legal advocates and governmental institutions to promote the rights of pregnant women and women seeking to begin or end a pregnancy.

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