ABORTION

Human rights bodies have provided clear guidance on when there is a need to decriminalize abortion, and have emphasized that access to abortion is a matter of human rights. Ensuring access to these services in accordance with human rights standards is part of State obligations to eliminate discrimination against women and to ensure women's right to health as well as other fundamental human rights.

The majority of countries in the world provide for certain instances when abortion is legal.[1] A handful of countries have enacted complete bans on abortion. In other States, abortion is highly restricted, but there generally exists an exception for the procedure in order to save a woman's life, or in cases of rape, incest or fetal impairment. Most countries have more lenient abortion laws, allowing the procedure without restriction or with restrictions that take into account the physical and mental health of the woman as well as economic or social reasons.[2]

International human rights bodies have characterized laws generally criminalizing abortion as discriminatory and a barrier to women's access to health care. They have recommended that States remove all punitive provisions for women who have undergone abortion. These bodies have also requested that States permit abortion in certain cases.[3] Treaty body jurisprudence has clearly indicated that denying women access to abortion where there is a threat to the woman's life or health, or where the pregnancy is the result of rape or incest violates the rights to health,[4] privacy[5] and, in certain cases, to be free from cruel, inhumane and degrading treatment.[6]

That legal abortion should be safe and accessible is also a position supported by political commitments of States undertaken at the International Conference on Population and Development (ICPD), held in Cairo in 1994. At that Conference, States recognized unsafe abortion as a major public health concern, and pledged their commitment to reducing the need for abortion through expanded and improved family planning services, while at the same time recognizing that, in circumstances where not against the law, abortion should be safe.[7] The Beijing Platform for Action, which was agreed at the 1995 Fourth World Conference on Women, also affirmed this.[8] The United Nations General Assembly review and appraisal of the implementation of ICPD in 1999 further agreed that,

"in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. Additional measures should be taken to safeguard women's health."[9]

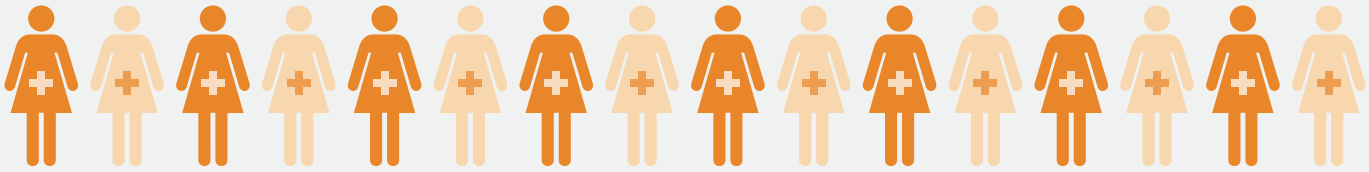
ANNUALLY, **22 MILLION UNSAFE ABORTIONS** ARE ESTIMATED TO TAKE PLACE

COMPLICATIONS FROM UNSAFE ABORTIONS ACCOUNT FOR ABOUT **47,000 PREGNANCY-RELATED DEATHS** EVERY YEAR

DEATHS DUE TO UNSAFE ABORTION ARE **ENTIRELY PREVENTABLE**

COUNTRIES WITH LESS RESTRICTIVE ABORTION LAWS GENERALLY HAD **LOWER ABORTION RATES** THAN COUNTRIES WITH HIGHLY RESTRICTIVE ABORTION LAWS

Source: WHO, Safe abortion: technical and policy guidance for health systems (2012), p. 17.



KEY ISSUES

1 CRIMINALIZATION OF HEALTH SERVICES THAT ONLY WOMEN REQUIRE, INCLUDING ABORTION, IS A FORM OF DISCRIMINATION AGAINST WOMEN

Human rights mechanisms have regularly expressed concern about criminalization of women who undergo abortions.

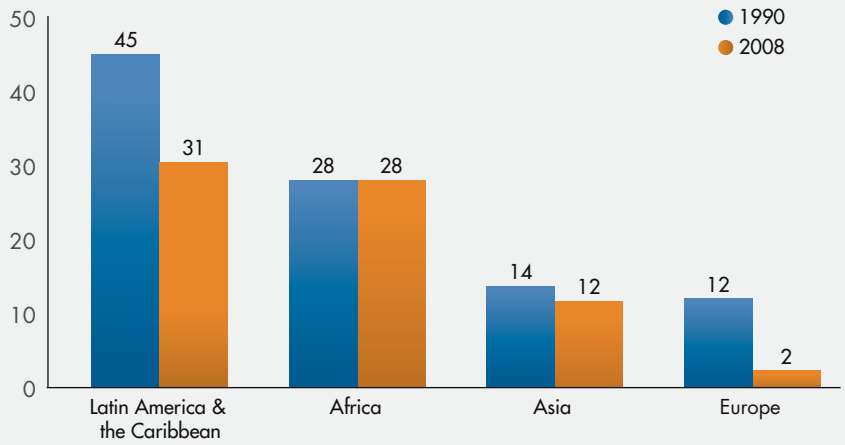
The Committee on the Elimination of Discrimination Against Women specifies that "it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women."[10] It further establishes that "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" are a barrier to women's access to health care.[11] Most recently the Committee has requested States to "remove punitive measures for women who undergo abortion."[12]

IN ITS STATEMENT ON THE ICPD BEYOND 2014 PROCESS IN FEBRUARY 2014, THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN DISTINGUISHED BETWEEN LEGALIZATION OF ABORTION IN CERTAIN CASES, AND REMOVING ALL PUNITIVE PROVISIONS. IT STATED:

"States parties should legalize abortion at least in cases of rape, incest, threats to the life and/or health of the mother, or severe foetal impairment, as well as provide women with access to quality post-abortion care, especially in cases of complications resulting from unsafe abortions. States parties should also remove punitive measures for women who undergo abortion."

Similarly, the Special Rapporteur on the right to health has argued that laws criminalizing abortion "infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health."[13] He called on States to "decriminalize abortion"[14] and "consider, as an interim measure, the formulation of policies and protocols by responsible authorities imposing a moratorium on the application of criminal laws concerning abortion."[15]

ESTIMATED NUMBER OF UNSAFE ABORTIONS PER 1000 WOMEN AGED 15–44 YEARS, 1990 AND 2008, BY MAJOR REGION



Source: World Health Organization

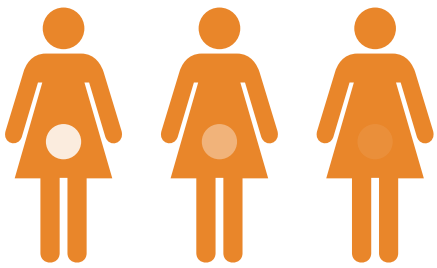
The criminalization of doctors who provide these services violates women's rights.

Human rights bodies have expressed concern about the criminalization of healthcare providers who offer abortion services. The Human Rights Committee has stated that imposing "a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion" fails to respect women's right to privacy.[16]

2 ENSURING WOMEN'S RIGHTS REQUIRES ACCESS TO ABORTION WHERE THERE IS A THREAT TO THE WOMAN'S LIFE OR HEALTH, OR WHERE THE PREGNANCY IS THE RESULT OF RAPE OR INCEST

Human rights mechanisms have requested States to legalize abortion in certain circumstances.

In its jurisprudence, the Committee on the Elimination of Discrimination Against Women has requested a State to "review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse."[17] The Human Rights Committee has also requested States to provide information on access to safe abortion services for women who have become pregnant as a result of rape.[18] In their concluding observations, treaty bodies have also recommended that States review their legislation and decriminalize abortion in cases when the pregnancy endangers the life or health of a woman,[19] and in cases of pregnancy resulting from rape or incest.[20,21] Treaty bodies have also recommended ensuring access to abortion services in cases of fetal impairment,[22] while also putting in place measures to ensure the elimination of discrimination against persons with disabilities.[23]



Concerning exceptions to abortion bans to protect the life or health of the woman, the health of the woman has been understood broadly to include mental health. In the case of a minor girl with an intellectual disability, who had become pregnant as a result of rape by her uncle, the Human Rights Committee found that the mental suffering caused to the victim by forcing her to continue with an unwanted pregnancy amounted to cruel and inhuman treatment.[24] In another case, the Committee similarly found that denying a woman an abortion where it was known that her baby would die shortly after birth caused her mental suffering, constituting cruel and inhuman treatment.[25]

THE MAPUTO PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA CALLS ON STATES PARTIES TO

"take all appropriate measures to protect the reproductive rights of women by authorising 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." (Article 14)

THE MAPUTO PROTOCOL IS THE FIRST HUMAN RIGHTS TREATY TO EXPLICITLY CALL ON STATES TO ENSURE ACCESS TO TO ABORTION IN CERTAIN CIRCUMSTANCES.

3 LEGAL ABORTION SERVICES MUST BE SAFE, ACCESSIBLE, AFFORDABLE AND OF GOOD QUALITY

Where abortion is legal, States must put in place the procedures for making these services safe and accessible to women without discrimination.

The Committee on Economic, Social and Cultural Rights has established that the right to health—which comprises reproductive and sexual health—requires health services, including legal abortion services, which are available, accessible, acceptable and of good quality.[26] The Committee on the Rights of the Child has recommended that "States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal."[27]

In many countries, abortion laws have been liberalized, but the liberalization is not accompanied by clear regulations to implement the law. In these circumstances, health care providers sometimes refuse to provide legal services. Thus legal reform alone is not enough to fulfil human rights obligations. The Committee on the Elimination of Discrimination Against Women has explained that the legal framework for access to abortion must "include a mechanism for rapid decision-making, with a view to limiting to the extent possible risks to the health of the pregnant mother, that her opinion be taken into account, that the decision be well-founded and that there is a right to appeal."[28]

States should take steps to remove barries to the provision of abortion services.

Third party authorization provisions are particularly common with respect to abortion, and other sexual and reproductive health services. The Committee on the Rights of the Child has especially emphasized the right of the child, in accordance with evolving capacities, to confidential counseling and to access to information without parental or guardian consent. It has also recommended that "States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion."[29]

Concientious objection cannot prevent women or adolescent girls from accessing health services.

States must organize health services to ensure that "the exercise of conscientious objection by health professionals does not prevent women from obtaining access to health services."[30] The Committee on the Elimination of Discrimination Against Women has stated that "if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."[31] The Committee on the Rights of the Child has also requested States to ensure that "adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections."[32]

4 STATES MUST ALWAYS PROVIDE POST-ABORTION MEDICAL SERVICES

Post-abortion medical services must always be available, safe and accessible.

The High Commissioner has explained that "regardless of the legality of abortion, humane post-abortion services must be provided, including guidance on contraceptive methods to avoid unwanted pregnancies."[33] The Special Rapporteur on torture has also called on "States to ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals."[34] Significantly, the Committee against Torture, in its Concluding Observations, has called on a State to "eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as result of illegal abortion."[35]

STATES HAVE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL WOMEN'S RIGHTS RELATED TO ABORTION SERVICES

RESPECT States should remove legal provisions which penalize women who have undergone abortion or medical practitioners who offer these services.

PROTECT States must organize their health system to ensure that women are not prevented from accessing health services by health professionals' exercise of conscientious objection. For example, where abortion is legal, if a doctor refuses to perform it, the health system must refer women to an alternative health care provider.

FULFIL States must take steps to ensure access to appropriate health-care services for women and "to eliminate such barriers to the provision of abortion services and that lead women to resort to unsafe abortions, including eliminating unacceptable delays in providing medical attention."[36]

NOTES

1 United Nations Population Division, *World Abortion Policies 2013* (providing a table of abortion policies in every country of the world).
2 Ibid.
3 Committee on the Elimination of Discrimination Against Women, Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para 36; Statement on sexual and reproductive health and rights: Beyond 2014 ICPD Review (2014).
4 Committee on the Elimination of Discrimination Against Women, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para. 8.15.
5 Human Rights Committee, *K.L. v. Peru*, CCPR/C/85/D/1153/2003, para. 6.4; *V.D.A. v. Argentina*, CCPR/C/101/D/1608/2007, para. 9.3.
6 *K.L. v. Peru*, para. 6.3; *V.D.A. v. Argentina*, para. 9.2.
7 International Conference on Population and Development, Programme of Action (1994), para. 8.25.
8 Fourth World Conference on Women, Platform for Action (1995), para. 106(k).
9 General Assembly Resolution S-21/2, Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development, A/RES/S-21/2 (1999), para. 63(iii).
10 General Recommendation 24 (1999) on women and health, para. 11.
11 Ibid., para. 14.
12 Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para. 36; Statement on sexual and reproductive health and rights: Beyond 2014 ICPD Review (2014).
13 A/66/254, para. 21.
14 Ibid., para. 65(h).
15 Ibid., para. 65(i).
16 General Comment 28 (2000) on the equality of rights between men and women, para. 20.
17 *L.C. v. Peru*, para. 9(b)(i).
18 General Comment 28, para. 11.
19 Committee on the Rights of the Child, Concluding Observations on Chad, CRC/C/15/Add.107 (1999), para. 30.
20 Human Rights Committee, Concluding Observations on Guatemala, CCPR/C/GTM/CO/3 (2012), para. 20; Panama, CCPR/C/PAN/CO/3 (2008), para. 9; Committee against Torture, Concluding Observations on Peru, CAT/C/PER/CO/4 (2006), para. 23; Committee on Elimination of Discrimination Against Women, Concluding Observations on Sri Lanka, A/57/38 (2002), para. 283.
21 Committee on the Elimination of Discrimination Against Women, Concluding Observations on Angola, CEDAW/C/AGO/CO/6 (2013), para. 32(g); Human Rights Committee, Concluding Observations on Dominican Republic, CCPR/C/DOM/CO/5 (2012), para. 15; Philippines, CCPR/C/PHL/CO/4 (2012), para. 13; Committee on the Rights of the Child, Concluding Observations on Chile, CRC/C/CHL/CO/3 (2007), para. 56; Committee on Economic, Social and Cultural Rights, Concluding Observations on Costa Rica, E/C.12/CRI/CO/4, (2008), para. 46; Chile, E/C.12/1/Add.105 (2004), para. 53; Nepal, E/C.12/1/Add.66 (2001), para. 55.
22 Committee on the Elimination of Discrimination Against Women, Concluding Observations on Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), para. 37(c); Committee on the Rights of the Child, Concluding Observations on Costa Rica, CRC /C/CRI/CO/4 (2011), para. 64(c); Committee on Economic, Social and Cultural Rights, Concluding Observations on United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (2009), para. 25.
23 Committee on the Rights of Persons with Disabilities, Concluding Observations on Austria, CRPD/C/AUT/CO/1 (2013), paras. 14-15.
24 *V.D.A. v. Argentina*, CCPR/C/101/D/1608/2007, para. 9.2.
25 *K.L. v. Peru*, CCPR/C/85/D/1153/2003, para. 6.3.
26 General Comment 14 (2000) on the right to the highest attainable standard of health, paras. 8, 12.
27 General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 70.
28 *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para. 8.17 (referencing *Tysiac v. Poland*, European Court of Human Rights).
29 General Comment 15, para. 31.
30 Office of the United Nations High Commissioner for Human Rights, Practices in adopting a human rights-based approach to the eliminate preventable maternal mortality and morbidity, A/HRC/18/27 (2011), para. 30.
31 General Recommendation 24, para. 11.
32 General Comment 15, para. 69.
33 A/HRC/18/27, para. 29.
34 A/HRC/22/53 (2013), para. 90.
35 Concluding Observations on Chile, CAT/C/CR/32/5 (2004), para. 7(m).
36 A/HRC/18/27, paras. 29-30.