

ABORTION

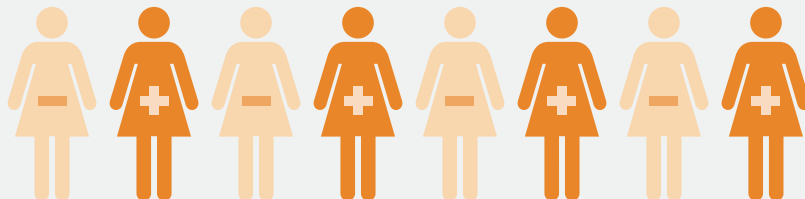


Human rights bodies have provided clear guidance on the need to decriminalize abortion. Ensuring access to these services in accordance with human rights standards is part of State obligations to eliminate discrimination against women and to ensure women's right to health as well as other fundamental 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 allow 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 pertaining to the situation of the pregnant woman.²

Treaty body jurisprudence has indicated that denying women access to abortion can amount to violations of the rights to health,³ privacy⁴ and, in certain cases, the right to be free from cruel, inhumane and degrading treatment.⁵ The Human Rights Committee has confirmed that "although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant."⁶

The need for legal abortion to be safe and accessible was also supported by States 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 exact same language on abortion was adopted by States in the Beijing Platform for Action, which was agreed at the 1995 Fourth World Conference on Women.⁸



ANNUALLY, 25 MILLION UNSAFE ABORTIONS ARE ESTIMATED TO TAKE PLACE

EACH YEAR ABOUT 7.9% OF MATERNAL DEATHS CAN BE ATTRIBUTED TO UNSAFE ABORTION, AND THE MOST AFFECTED ARE WOMEN AND GIRLS LIVING IN POVERTY AND/OR BELONGING TO MARGINALIZED GROUPS

ALMOST ALL DEATHS FROM UNSAFE ABORTION OCCUR IN COUNTRIES WHERE ABORTION IS SEVERELY RESTRICTED IN LAW AND/OR IN PRACTICE

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

Sources: World Health Organization, *Preventing Unsafe Abortion, Key Facts* (2019); World Health Organization, *Safe abortion: technical and policy guidance for health systems* (2012), p.1.

KEY ISSUES

1 DENYING ACCESS TO HEALTH SERVICES THAT ONLY WOMEN REQUIRE, INCLUDING ABORTION, IS LINKED TO DISCRIMINATION AND CAN CONSTITUTE GENDER-BASED VIOLENCE, TORTURE AND/OR CRUEL, INHUMAN AND DEGRADING TREATMENT

Human rights bodies have characterized restrictive abortion laws as a form of discrimination against women.

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."⁹

The Working Group on discrimination against women has emphasized that the "right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, involving intimate

matters of physical and psychological integrity, and is a precondition for the enjoyment of other rights."¹⁰ Similarly, the Special Rapporteur on the right to health has stated 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."¹¹

The Committee on Economic, Social and Cultural Rights has also explained that as part of the obligation to eliminate discrimination, States should address “criminalization of abortion or restrictive abortion laws.”¹² Where unsafe abortion leads to death in the context of bans on

abortion, the Special Rapporteur on extrajudicial, summary or arbitrary executions has asserted that this should be understood as a “gender-based arbitrary killing, only suffered by women, as a result of discrimination enshrined in law.”¹³

Denial of access to abortion has been identified as a form of gender-based violence against women, which can amount to torture and/or cruel, inhuman and degrading treatment.

The Committee on the Elimination of Discrimination against Women has explained that “Violations of women’s sexual and reproductive health and rights, such as criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, and forced continuation of pregnancy, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”¹⁴ The Special Rapporteur on torture and other forms of cruel, inhuman and degrading treatment or punishment has especially highlighted that “the denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill treatment.”¹⁵

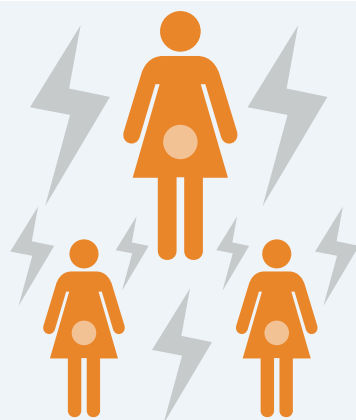
Human rights bodies have repeatedly called for the decriminalization of abortion in all circumstances.

Laws criminalizing sexual and reproductive health services, including abortion, violate the obligation of States to respect the right to sexual and reproductive health,¹⁷ as well as other human rights. Human rights mechanisms have called for these laws to be repealed or eliminated.¹⁸ In calling for the decriminalization of abortion, human rights mechanisms have recognized that such laws can target women and girls who undergo abortion, as well as service providers, and that all such laws should be removed.¹⁹

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.²⁰ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has clarified that “the practice of extracting, for prosecution purposes, confessions from women seeking emergency medical care as a result of illegal abortion in particular amounts to torture or ill-treatment.”²¹



The Committee on the Elimination of Discrimination Against Women observed that, “Criminal regulation of abortion serves no known deterrent value. When faced with restricted access women often engage in clandestine abortions including self-administering abortifacients, at risk to their life and health. Additionally, criminalisation has a stigmatising impact on women, and deprives women of their privacy, self-determination and autonomy of decision, offending women’s equal status, constituting discrimination.”¹⁶



IN TWO CASES BEFORE THE HUMAN RIGHTS COMMITTEE, TWO WOMEN WERE COMPELLED TO TRAVEL FROM THEIR HOME COUNTRY TO A NEIGHBOURING COUNTRY TO TERMINATE NON-VIABLE PREGNANCIES DUE TO AN ALMOST TOTAL PROHIBITION ON ABORTION. THE COMMITTEE FOUND THAT THESE WOMEN HAD BEEN SUBJECT TO CONDITIONS OF INTENSE PHYSICAL AND MENTAL SUFFERING THAT CONSTITUTED CRUEL, INHUMAN OR DEGRADING TREATMENT.²² THE COMMITTEE ALSO NOTED THAT THE CRIMINALIZATION OF ABORTION CREATED SHAME AND STIGMATIZED THE ACTIONS OF THE WOMEN, CONSTITUTING “A SEPARATE SOURCE OF SEVERE EMOTIONAL PAIN.”²³

2 WHERE ACCESS TO ABORTION IS RESTRICTED, THERE IS OFTEN A DISPROPORTIONATE IMPACT ON PARTICULAR GROUPS OF WOMEN AND GIRLS

The Working Group on discrimination against women has observed that “in countries where induced termination of pregnancy is restricted by law and/or otherwise unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers

and practices.” The Committee on the Elimination of Discrimination against Women has also expressed particular concern about the fact that rural women are more likely to resort to unsafe abortion than women living in urban areas, putting their lives and health at risk.²⁴ With respect to adolescents, the Committee on the

Rights of the Child has urged States “to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”²⁵

3 PREVENTING UNSAFE ABORTION IS A CORE OBLIGATION WITHIN THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH

The Committee on Economic, Social and Cultural Rights has explained that States “have a core obligation to ensure, at the very least, minimum essential levels of satisfaction of the right to sexual and reproductive health which includes measures to prevent unsafe abortion.”²⁶ Similarly, the Human Rights Committee has explained that to protect the right to life and other rights under the Covenant, restrictions on access to abortion must not “jeopardize women’s and girls’ lives, subject them to physical or mental pain or suffering..., discriminate against them or arbitrarily interfere with their privacy.”²⁷

*Legal access to abortion should be ensured in certain circumstances.*²⁸

Human rights mechanisms have expressed concern about criminal abortion laws and encouraged States to review their legislation to ensure effective and confidential access to safe legal abortion in cases when the pregnancy endangers the life or health of a pregnant woman or pregnant girl,²⁹ would cause substantial pain or suffering,³⁰ and in cases of pregnancy resulting from rape or incest.³¹ Treaty bodies have also recommended ensuring access to abortion services in cases of fetal impairment, while also putting in place measures to protect against discrimination based on disability.³²

Procedures for ensuring that abortion services are safe and accessible to women and girls without discrimination should be established.

The Committee on Economic, Social and Cultural Rights has established that the right to sexual and reproductive health requires health facilities, goods, information and services, including safe abortion and post-abortion services, which are available, accessible, acceptable and of good quality.³³ 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.”³⁴

In many countries, although abortion laws have been liberalized, this is not accompanied by clear regulations to implement the law, posing a significant barrier to access. In these circumstances, health care providers sometimes refuse to provide services that are legal. 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.”³⁵

4 POST-ABORTION MEDICAL SERVICES MUST ALWAYS BE AVAILABLE

Post-abortion medical services must always be available, safe and accessible, regardless of whether or not abortion is legal.

Human rights mechanisms have stressed that women and girls should be able to effectively seek and access post-abortion

health care in all circumstances, and on a confidential basis, without facing threats of criminal prosecution or punitive measures.⁴⁰ The Committee on Economic, Social and Cultural Rights has explained that provision of post-abortion care to those in need forms part of States core obligations under the right to sexual and reproductive health.⁴¹

Barriers to the provision of abortion services should be removed.

Mandatory waiting periods, the requirement to travel long distances or abroad, an absence of respectful care, court orders, and third party authorization and notification provisions are particularly common with respect to abortion, and other sexual and reproductive health services. Human rights mechanisms have called on States to remove such barriers.³⁶

Human rights bodies have also expressed concern about the role of international assistance in creating barriers to sexual and reproductive health services, and explained that donor states “should not impose restrictions on information or services existing in donor States.”³⁷

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.”³⁸

Human rights mechanisms have also emphasized that no woman or girl should face barriers or be deprived of any sexual and reproductive health information and services due to a refusal of care or conscientious objection by health service providers.³⁹



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



RESPECT States should remove legal provisions, including criminal laws, 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."

NOTES

- 1 United Nations Population Division and World Health Organization, Global World Abortion Policies Database.
- 2 Ibid.
- 3 Committee on the Elimination of Discrimination against Women, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para. 8.15.
- 4 Human Rights Committee, *Whelan v. Ireland*, CCPR/C/119/D/2425/2-14, para. 7.8; *Mellet v. Ireland*, CCPR/C/116/D/2324/2013, para. 7.7; *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.
- 5 *Mellet v. Ireland*, paras. 7.4-7.6; *Whelan v. Ireland*, para. 7.6; *K.L. v. Peru*, para. 6.3; *V.D.A. v. Argentina*, para. 9.2.
- 6 Human Rights Committee, General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8.
- 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). See also United Nations General Assembly Resolution, A/RES/S-21/2 (1999) on Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development, para. 63(iii).
- 9 General Recommendation 24 (1999) on women and health, para. 11.
- 10 Working Group on the issue of discrimination against women in law and in practice, A/HRC/38/46 (2018), para. 35.
- 11 Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254 (2011), paras. 21, 65.
- 12 General Comment 22 (2016), para. 34.
- 13 A/HRC/35/23 (2017), para. 94.
- 14 General Recommendation 35 (2017) on gender-based violence against women, updating general recommendation 19, para. 18.
- 15 A/HRC/31/57, para. 44.
- 16 CEDAW/C/OP.8/GBR/1 (2018), paras. 59, 42.
- 17 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 40.
- 18 Ibid., para. 49(a); Committee on the Elimination of Discrimination against Women, General Recommendation 33 (2015) on women's access to justice, para. 51(1); Committee on the Rights of the Child, General Comment 20 (2016) on the implementation of the rights of the child during adolescence, para. 60.
- 19 Working Group on the issue of discrimination against women in law and in practice, A/HRC/32/44 (2016), paras. 82, 107; Human Rights Committee, General Comment 36, para. 8.
- 20 General Comment 28 (2000) on the equality of rights between men and women, para. 20.
- 21 A/HRC/31/57 (2016), para. 44.
- 22 *Mellet v. Ireland*, para. 9; *Whelan v. Ireland*, para. 9.
- 23 *Mellet v. Ireland*, para. 3.4.
- 24 General Recommendation 34 (2016) on the rights of rural women, para. 38.
- 25 General Comment 20, para. 60.
- 26 General Comment 22, para. 49.
- 27 General Comment 36, para. 8.
- 28 Committee on Economic, Social and Cultural Rights, General Comment 22, paras. 28, 45; Human Rights Committee, General Comment 36, para. 8.
- 29 Human Rights Committee, Concluding Observations on Poland, CCPR/C/POL/CO/7 (2016) para. 24; Committee on the Rights of the Child, Concluding Observations on Chad, CRC/C/15/Add.107 (1999), para. 30.
- 30 Human Rights Committee, Concluding Observations on Jordan, CCPR/C/JOR/CO/5 (2017), para. 21.
- 31 Concluding observations on Argentina, CCPR/C/ARG/CO/5 (2016), para. 12; Concluding Observations on Bangladesh, CCPR/C/BGD/CO/1 (2017), paras. 15-16; Committee on the Elimination of Discrimination against Women, Concluding Observations on Trinidad and Tobago, CEDAW/C/TTO/CO/4-7 (2016), paras. 32-33; Concluding Observations on the Federated States of Micronesia, CEDAW/C/FSM/CO/1-3 (2017), para. 37(b); Committee on Economic, Social and Cultural Rights, Concluding Observations on Philippines, E/C.12/PHL/CO/5-6, paras. 51-52; Committee on the Rights of the Child, Concluding Observations on Bhutan, CRC/C/BTN/CO/3-5 (2017), paras. 52-53; Committee against Torture, Concluding Observations on Peru, CAT/C/PER/CO/4 (2006), para. 23. See also, A/HRC/31/57, para. 72. (b).
- 32 Joint Statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), 29 August 2018.
- 33 General Comment 14 (2000) on the right to the highest attainable standard of health, paras. 8, 12.
- 34 General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 70. See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/32 (2016), para. 113 (b).
- 35 *L.C. v. Peru*, para. 8.17 (referencing *Tysiac v. Poland*, European Court of Human Rights).
- 36 Committee on the Elimination of Discrimination against Women, General Recommendation 34, paras. 38-39; Committee on the Rights of Persons with Disabilities, General Comment 3 (2016), on women and girls with disabilities, para. 44; Working Group on Discrimination against Women, A/HRC/32/44 (2016), para. 107; Special Rapporteur on extrajudicial, summary or arbitrary executions, A/73/314 (2018), para. 53; Committee on the Elimination of Discrimination against Women, Concluding Observations on Iceland, CEDAW/C/ISL/CO/7-8 (2016), paras. 35-36; Concluding Observations on Rwanda, CEDAW/C/RWA/CO/7-9 (2017), paras. 38-39; Human Rights Committee, CCPR/C/BGD/CO/1, paras. 15-16.
- 37 Committee on Economic, Social and Cultural Rights, General Comment 22, paras 52, 41; Special Rapporteur on extrajudicial, summary or arbitrary executions, A/73/314 (2018), para 90(d).
- 38 General Comment 15, para. 31.
- 39 Committee on Economic, Social and Cultural Rights, General Comment 22, para. 43; Committee on the Elimination of Discrimination against Women, General Recommendation 24, para. 11; Committee on the Rights of the Child, General Comment 15, para. 69; Human Rights Committee, General Comment 36, para. 8.
- 40 Human Rights Committee, General Comment 36, para. 8; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53 (2013), para. 90; Practices in adopting a human rights-based approach to eliminate preventable maternal mortality and human rights, A/HRC/18/27 (2011), para. 29; Committee against Torture, CAT/C/CR/32/5 (2004), para. 7(m); Committee on the Rights of the Child, General Comment 15, para. 70; General Comment 20 para. 60.
- 41 General Comment 22, para. 49(e).