

WOMEN'S RIGHT TO SAFE AND LEGAL ABORTION SERVICES

Access to safe and legal abortion services is a critical component of women's fundamental rights, including the rights to equality, non-discrimination, autonomy, privacy, life, health, and decide on the number and spacing of one's children. Where states make abortion services inaccessible to women – either by law or in practice – they deny women reproductive autonomy by depriving them of the decision of whether or not to carry a pregnancy to term. Due to biological differences and socialized gender roles within the family and society, this has the effect of reinforcing women's inequality and marginalization. This fact sheet provides background information for the Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Committee (HRC) on advancing the human rights standards on abortion, including information on the current human rights standards surrounding abortion services; how denying women the right to make decisions about pregnancy violates their rights to autonomy and equality; and ways to strengthen the human rights standards on abortion to ensure the respect, protection, and fulfillment of women's fundamental human rights.

International human rights norms surrounding abortion

- United Nations treaty monitoring bodies (TMBs), including the Human Rights Committee (HRC) and Committee on the Elimination of Discrimination against Women (CEDAW), have elucidated the connection between restrictive abortion laws, unsafe abortion, and high rates of maternal mortality and morbidity, discussing the implications of unsafe abortion on women's rights to life and health, and urging states to review their abortion laws.¹
- TMBs have also called on states to create exceptions to restrictive abortion laws in instances where a pregnancy poses a risk to a woman's life or health,² in instances of severe fetal impairment,³ and when pregnancy results from rape or incest.⁴
- The HRC and CEDAW are the only two TMBs that have issued decisions on individual petitions pertaining to abortion. In these decisions, they have recognized that states' failure to ensure women's access to legal abortion services constitutes violations of the rights to health; privacy; non-discrimination; freedom from sex roles and stereotyping; and freedom from cruel, inhuman and degrading treatment.⁵ Other TMBs have reinforced through their concluding observations that where abortion is legal, states must ensure that it is accessible.⁶
- TMBs have also framed barriers to women's access to abortion services – including cost, waiting periods, mandatory and biased counseling, conscientious objection, and third-party authorization requirements – as potential human rights violations.⁷

Restrictive abortion laws and barriers deny women's rights to autonomy and equality

Guaranteeing women's reproductive rights is fundamental to enabling women to exercise autonomy and self-determination in their reproductive lives. Fulfillment of the rights to formal and substantive equality and non-discrimination are essential to the realization of reproductive rights. Reproductive rights are rights that predominately affect women for two primary reasons:

- **Biology:** As only women become pregnant, legal, regulatory and practical barriers denying women the ability to decide whether to carry a pregnancy to term have the impact of compelling women to become mothers, thereby undermining women's agency in crucial decisions affecting their lives and opportunities. Women must also bear the health risks of childbirth, which can result in mortality or lifelong disability.

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The World Health Organization (WHO) has made clear that “whether abortion is legally restricted or not, the likelihood that a woman will have an abortion for an unintended pregnancy is about the same” and legal restrictions on abortion “lead many women to seek services in other countries, or from unskilled providers or under unhygienic conditions, exposing them to a significant risk of death or disability.”⁸ Legal restrictions and lack of access to abortion services particularly affect women who are already burdened by inequality, as the WHO recognizes that restrictions on and unavailability of induced abortion result in unequal access to safe abortion services, disproportionately forcing poor women to seek abortion services from unsafe providers.⁹

- **Gender Discrimination, Gender Stereotyping, and Women's Traditional Roles:** Due to women's socialized role as the primary caregiver, the burden of being forced to have a child is carried disproportionately by women both in the time spent caregiving and in the resulting limitations to seeking education and employment and the ability to enter public and political life.

Restrictions on access to abortion information and services violate the rights to equality and non-discrimination, as well as myriad other human rights, including the rights to privacy, physical integrity, health, information and determine the number and spacing of one's children. Such restrictions, including restrictive abortion laws and barriers inhibiting women's access to legal abortion services – such as biased counseling, mandatory waiting periods, third-party authorization requirements, conscientious objection, limitations on information about abortion services, and limitations on abortion funding – institutionalize discriminatory stereotypes that women are not competent decision-makers and that their primary role is parenting. Such restrictions are based on the notion that women themselves are not competent to make informed, rational decisions about their bodies; in this sense, they demean women as decision-makers.¹⁰

Denying women the right to decide whether to carry a pregnancy to term or failing to enable them to effectively exercise this right nullifies women's exercise of their autonomy. The narrow exceptions to restrictive abortion laws that TMBs are currently urging states to implement are inadequate for the fulfillment of women's human rights. In order to ensure women's fundamental human rights, women themselves must have the authority to determine whether or not to carry a pregnancy to term. States must take all appropriate measures to ensure that women have the right and the necessary resources to exercise their reproductive autonomy, including liberalizing abortion laws, guaranteeing women access to safe and legal abortion services, and taking measures to address the gendered effects that parenthood has on women due to entrenched socialized roles and gender-based stereotypes.

Recommendations

CEDAW and the Human Rights Committee would make important contributions to developing and clarifying the scope of states' obligations related to reproductive rights by clearly placing these rights in the context of the rights to equality and autonomy in their jurisprudence.

- Building upon the broader concluding observations that CEDAW and the HRC have issued urging states to amend their abortion laws to be in compliance with their respective treaties,¹¹ CEDAW and the HRC should consider systematically urging states to amend their abortion laws to guarantee women's right to equality by enabling them to exercise their reproductive autonomy.

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- CEDAW and the HRC should avoid only urging states to create narrow exceptions to restrictive abortion laws, which do not fully enable women to exercise their human rights, and instead frame such recommendations to more broadly address the numerous human rights implications of restrictive abortion laws.
- To fulfill women's right to equality, CEDAW and the HRC should urge states to take all necessary measures to ensure that women do not face obstacles in accessing abortion services, including repealing discriminatory laws and policies that inhibit women's access to such services and enacting positive measures to guarantee women across all sectors of society equitable access to abortion services.

Endnotes

- ¹ See, e.g., Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Panama*, para. 43, U.N. Doc. CEDAW/C/PAN/CO/7 (2010) ("undertake a thorough investigation or study on the issue of unsafe abortions and their impact on women's health, in particular maternal mortality, to serve as a basis for legislative and policy action"); Human Rights Committee, *Concluding Observations: Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006) (The Committee reiterates its "concern about Paraguay's restrictive abortion laws, which induce women to seek unsafe, illegal abortions, at potential risk of their life and health (articles 6 and 24 of the Covenant). The State party should take effective action to reduce infant and maternal mortality by, inter alia, revising its legislation on abortion to bring it into line with the Covenant"); Committee on Economic, Social and Cultural Rights (ESCR Committee), *Concluding Observations: Sri Lanka*, para. 34, U.N. Doc. E/C.12/LKA/CO/2-4 (2010) ("The Committee urges the State party to amend abortion laws and to consider providing for exceptions to the prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest to help women not to have to resort to illegal abortions that expose them to a high risk of morbidity and mortality"); Committee against Torture (CAT), *Concluding Observations: Peru*, para. 15, U.N. Doc. CAT/C/PER/CO/5-6 (2013) ("The Committee is seriously concerned that illegal abortions are one of the main causes of high maternal mortality in the State party"); Committee on the Rights of the Child (CRC), *Concluding Observations: Liberia*, para. 66(b), U.N. Doc. CRC/C/LBR/CO/2-4 (2012) (urging the state to "Review its legislation on abortion, notably with a view to guaranteeing the best interests of pregnant teenagers and preventing teenage girls resorting to clandestine abortions at the risk of their lives").
- ² See, e.g., CEDAW Committee, *Concluding Observations: Indonesia*, para. 42, U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012) (urging the state to "decriminalize abortion in cases...where the health of the pregnant woman or girl is in danger"); Human Rights Committee, *Concluding Observations: Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012) ("The State party should review its legislation with a view to making provision for exceptions to the prohibition of abortion, such as protection of life or health of the mother"); ESCR Committee, *Concluding Observations: Nicaragua*, para. 26, U.N. Doc. E/C.12/NIC/CO/4 (2008) ("review its legislation on abortion and to study the possibility of providing for exceptions to the general prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest").
- ³ CEDAW Committee, *Concluding Observations: Sri Lanka*, para. 283, U.N. Doc. A/57/38 (2002) ("The Committee encourages the State party to reintroduce legislation to permit termination of pregnancy in cases of rape, incest and congenital abnormality of the foetus"); ESCR Committee, *Concluding Observations: Ecuador*, para. 29, U.N. Doc. E/C.12/ECU/CO/3 (2012) ("The Committee recommends that the State party amend its Criminal Code so as to establish that abortion is not an offence if the pregnancy is the result of rape ... or if the existence of congenital anomalies has been established"); CAT, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011) (expressing concern that abortion is prohibited even when the fetus is not viable and urging the state to review its legislation on abortion).
- ⁴ See, e.g., CEDAW Committee, *Concluding Observations: Pakistan*, para. 32(d), U.N. Doc. CEDAW/C/PAK/CO/4 (2013) (urging the state to "review its abortion legislation with a view to expanding the grounds under which abortion is permitted, for example, cases of rape and incest"); Human Rights Committee, *Concluding Observations: Dominican Republic*, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012) ("The Committee recommends that the State party should review its legislation on abortion and make provision for exceptions to the general prohibition of abortion for therapeutic reasons and in cases of pregnancy resulting from rape or incest"); CAT, *Concluding Observations: Peru*, para. 15(a), U.N. Doc. CAT/C/PER/CO/5-6 (2013) ("The State party should review its legislation with a view to: Amending the general prohibition for cases of therapeutic abortion and pregnancy resulting from rape and incest and provide free health coverage in cases of rape"); CRC, *Concluding Observations: Costa Rica*, para. 64(d), U.N. Doc. CRC/C/CRI/CO/4 (urging the State to "expand legal abortion in cases of rape and intra-family sexual violence").
- ⁵ See *L.C. v. Peru*, CEDAW Committee, Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); *K.L. v. Peru*, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *L.M.R. v. Argentina*, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).
- ⁶ ESCR Committee, *Concluding Observations: Kenya*, para. 33, U.N. Doc. E/C.12/KEN/CO/1 (2008) ("The Committee recommends that the State party ensure affordable access for everyone, including adolescents, to comprehensive family planning services, contraceptives and safe abortion services"); CAT, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011) (expressing concern that "despite the already existing case law allowing for abortion, no legislation is in place and that this leads to serious consequences in individual cases, especially affecting minors, migrant women, and women living in poverty (arts. 2 and 16)" and urging the state to "provide for adequate procedures to challenge differing medical opinions as well as adequate services for carrying out abortions in the State party, so that its law and practice is in conformity with the Convention").
- ⁷ See, e.g., CEDAW Committee, *Concluding Observations: Burkina Faso*, para. 276, U.N. Doc. A/55/38 (2000) (urging the state to cover abortion under social security); CEDAW Committee, *Concluding Observations: Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) (expressing concern about the state subjecting women seeking abortion services "to mandatory biased counselling and a three-day medically unnecessary waiting period; and at the increasing resort to conscientious objection by health professionals in the absence of an adequate regulatory framework" and urging the state to "ensure access to safe abortion without subjecting women to mandatory counselling and a medically unnecessary waiting period"); CAT, *Concluding Observations: Bolivia*, para. 23, U.N. Doc. CAT/C/BOL/CO/2 (expressing concern that women seeking to terminate pregnancies resulting from rape must obtain judicial authorization and urging the state to eliminate unnecessary barriers to abortion).
- ⁸ WORLD HEALTH ORGANIZATION (WHO), *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* 23 (2nd ed. 2012).
- ⁹ *Id.* at 1 & 18; see also CENTER FOR REPRODUCTIVE RIGHTS ET AL., *FULFILLING UNMET PROMISES: SECURITY AND PROTECTING REPRODUCTIVE RIGHTS AND EQUALITY IN THE UNITED STATES* (2013).

(endnotes continued)

¹⁰ For more information on how restrictions on women's access to reproductive health services perpetuate discrimination and stereotypes, see Rebecca Cook, *Human Rights and Reproductive Self Determination*, 44 THE AMERICAN UNIVERSITY LAW REVIEW 975 (1995); Simone Cusack and Rebecca Cook, *Stereotyping Women in the Health Sector: Lessons from CEDAW*, 16 WASH. & LEE J.C.R. & SOC. JUST. 47 (2009).

¹¹ See, e.g., CEDAW Committee, *Concluding Observations: Kenya*, para. 38(c), U.N. Doc. CEDAW/C/KEN/CO/7 (2011) (urging Kenya to "consider reviewing the law relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion, in line with the Committee's general recommendation No. 24, and the Beijing Declaration and Platform for Action"); Human Rights Committee, *Concluding Observations: El Salvador*, para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010) (urging El Salvador to amend its legislation on abortion to bring it into line with the Covenant).