

Crafting an Abortion Law that Respects Women’s Rights: Issues to Consider

The safety and accessibility of abortion depend largely on the laws and policies that regulate it. In drafting legislation or regulations regarding abortion, governments should make women’s human rights—their rights to reproductive autonomy, equality and health—the primary consideration. Governments should ensure that abortion is available at a woman’s request, without inquiry into her reasons. But even laws that permit abortion on broad grounds may undermine women’s choice by placing substantial procedural barriers in the way of abortion services. Examples of barriers to abortion include mandatory counseling and waiting periods, third-party consent requirements, short time limits, conscience clauses, limitations on funding, restrictions on medical personnel and facilities, and restrictions on abortion advertising. These procedural barriers are incompatible with governments’ duties to respect the human rights of women, and they should not appear in legislation or regulations affecting access to abortion.

BIASED COUNSELING REQUIREMENTS

The abortion laws of a number of countries, including Germany and Hungary, require that a pregnant woman be provided with counseling prior to undergoing an abortion.¹ Such counseling is often intended to discourage women from having abortions. At these sessions, women may be given information about sources of support for married and unmarried mothers, adoption and ways to get help with social problems resulting from pregnancy. In some contexts, providers have given pregnant women negative and unbalanced information about the risks of abortion, relying on inaccurate graphics or unsubstantiated medical claims.²

Biased mandatory counseling requirements undermine a woman’s autonomy in decision-making about matters significantly affecting her life and health.

- Patients have a right to neutral counseling prior to undergoing any medical procedure. However, counseling that is intended to discourage a woman from having an abortion provides a skewed picture of the options available to her and interferes with her right to reproductive self-determination.
- Providing information that is intended to mislead women—including suggestions of a link between abortion and breast cancer and distorted accounts of fetal size and development—is an outright violation of a woman’s right to give informed consent to a medical procedure.

WAITING PERIODS

Counseling requirements are usually accompanied by waiting periods. After undergoing counseling, women may have to wait several days before being permitted to undergo an abortion. In Belgium, for example, the waiting period is six days, and in France the period is seven days.³ During this period, women are expected to reflect upon their decision and consider their various options.

Waiting period requirements demean women and impede access to abortion.

- Underlying waiting period requirements is the prejudiced assumption that women will not engage in solemn reflection and reasoned decision-making without prompting by the state.
- In countries where women have only a limited period, after learning that they are pregnant, to meet all of the requirements for obtaining an abortion, a waiting period significantly impairs a woman's ability to access the procedure.
- Waiting periods adversely affect women who must travel long distances to counseling and medical facilities. These women may not have the financial resources to pay for accommodations during the time they are asked to reflect upon their decisions.

CONSENT AND NOTIFICATION REQUIREMENTS

A significant number of countries, including Japan and Turkey, require a married woman seeking an abortion to obtain the consent of her spouse.⁴ Numerous countries, including India and Norway, require girls under a certain age to notify or obtain the consent of a parent before having an abortion.⁵ Some countries, including Israel and Great Britain, require abortion providers to obtain approval from another doctor or group of professionals prior to performing an abortion.⁶

These consent and notification requirements significantly interfere in a pregnant woman's decision-making process.

- In addition to creating a procedural hurdle that makes abortion more difficult to access, notification requirements might deter a woman or adolescent from seeking the procedure through legal means, thereby exposing her to the risks of clandestine abortion procedures.
- Requiring providers to seek approval from other physicians makes abortion more difficult to obtain. Such a requirement also implies that abortion is a

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suspect procedure, demanding extra scrutiny. Approval requirements may stigmatize the practice and discourage practitioners from providing abortions. This could result in a shortage of providers and a decline in the quality of services.

TIME LIMITS FOR ABORTION ACCESS

Most countries that permit abortion without restriction as to reason place limits on the period during which the procedure may be obtained without a specific showing of cause. Time limits for abortion on request range from eight weeks in Guyana to the point of fetal viability in the United States and the Netherlands.⁷ Most countries set the limit at 12 to 14 weeks.⁸ Nations that permit abortion with few restrictions until a particular point in the pregnancy may allow the procedure after that point, but only under limited circumstances, such as risk to the woman's life or health or the probability of fetal impairment.

Short time limits for abortion access undermine women's choice and may put their health at risk.

- Providing only a narrow window to have an abortion in the earliest stages of pregnancy means that women can miss the chance to have the procedure without medical justification. This is particularly true in countries that force low-income women to raise money for their abortions or impose significant procedural hurdles, such as counseling requirements and waiting periods. Until France extended its time limit from 12 weeks to 14 weeks, many French women sought abortions in European countries with longer time limits.⁹
- Women forced to undergo clandestine, unsafe abortions at later stages of pregnancy face great risks to their health. Governments should ensure that qualified providers are available to assist women who need to terminate pregnancies at more advanced stages.

CONSCIENCE CLAUSES

Conscience clauses permit medical providers or institutions to refuse to provide certain health services based on religious or moral objections. They shield providers from liability for refusing to offer services that their patients are otherwise legally entitled to receive. Reproductive health-care providers most commonly invoke conscience clauses in refusing to provide abortion and contraceptive sterilization services.

Conscience clauses, when overly broad or improperly invoked, deny women access to services and violate providers' duty of care to patients.

- Health-care providers who object to performing abortions should not be exempted from providing related services such as post-abortion care. In addition, providers may not invoke conscientious objection when patients require emergency care, such as when their lives or health are at risk.
- Health-care providers who conscientiously object to abortion services must refer their patients to comparable providers who are accessible to the patient and willing to offer the procedure.
- Conscience clauses should apply to individuals, not institutions. In particular, public sector institutions operating with government funds should guarantee availability of all legal medical services.
- Health-care providers who refuse to perform reproductive health services on grounds of conscience should give notice to all patients of their unwillingness to perform such services.

SELECTIVE FUNDING

Governments that permit abortion on broad legal grounds may fund abortion only under limited circumstances. For example, governments in some countries, such as Hungary and the Czech Republic, subsidize abortions performed for medical reasons but not those deemed elective.¹⁰ Other governments pay for abortions on limited additional grounds, such as a woman's status as a minor or in cases of rape.¹¹

Abortion is a medical procedure, and it should be funded as are other medical procedures. Governments that pick and choose the circumstances under which they will fund abortions interfere with women's choices.

- Selective funding sends the message that some abortions are justified while others are not—despite the fact that they might all be legal.
- If a government chooses not to fund all procedures that are not “medically necessary,” distribution of financial assistance should be based on neutral criteria, such as a woman's income.

RESTRICTIONS ON MEDICAL FACILITIES AND PERSONNEL

The laws of many countries restrict access to abortion by specifying the types of medical facilities in which abortions may be performed and the categories of health providers that may perform the procedure. In India, for example, abortion services may be provided only in government hospitals or other authorized health-care facilities.¹² In many cases, the categories of authorized facilities and personnel are far more narrow than necessary to protect women's health.

Excessive limits on the personnel and facilities authorized to perform abortion restrict women's access to safe abortion.

- Extensive restrictions on the personnel and facilities authorized to perform first-trimester abortions may result in a shortage of providers, particularly in countries that lack an adequate medical infrastructure.
- Some abortion procedures—including manual vacuum aspiration and medication abortion—can be performed by nonphysicians in a range of medical facilities.¹³

RESTRICTIONS ON ABORTION ADVERTISING

Some countries with more liberal abortion laws, such as Greece, restrict advertising of the procedure.¹⁴ Countries that regulate abortion advertising frequently place limits on information directed at consumers but do not restrict information directed at medical professionals.

Women's right to safe and legal abortion includes the right to information about the availability of abortion services.

- Restrictions on advertising may prevent women from obtaining much-needed information about the availability of abortion services, thus denying them the opportunity to make informed choices.
- Governments that prohibit commercial advertising of medical procedures must take extra steps to ensure that information is provided to women about the availability of abortion. Such steps may include posting or distributing information about abortion in public reproductive health clinics.

ENDNOTES

- ¹ Germany: Penal Code (C.H. Beck, 1997) sec. 219; Hungary: INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, *WOMEN 2000: AN INVESTIGATION INTO THE STATUS OF WOMEN'S RIGHTS IN CENTRAL AND SOUTH-EASTERN EUROPE AND THE NEWLY INDEPENDENT STATES 199-200* (2000).
- ² This occurred in Hungary, where providers were required to give women a booklet commissioned by the Hungarian Association of Christian Doctors and funded by the Ministry of Social and Family Affairs. ED BERGS ET AL., BOOKLET BY "CRY FOR LIFE" GROUP (2001).
- ³ Belgium: Law of April 3, 1990 on the termination of pregnancy, amending art. 350 of the Penal Code, *translated in* 17 ANN. REV. OF POP. LAW 336 (Reed Boland ed., 1990); France: Code de la Santé Publique, art. 2212-5 (2004).
- ⁴ Japan: Protection of Mothers' Bodies Act, Law No. 105 of June 26, 1996, ch. III, art. 14(1,2); Turkey: Regulations concerning the administration and control of womb evacuation and sterilization, Dec. 18, 1983, art. 13(d), *reprinted in* 14 ANN. REV. OF POP. LAW 330-31 (Reed Boland ed., 1987).
- ⁵ India: Medical Termination of Pregnancy Act, Act No. 34 of 1971, Sec. 3(4), *reprinted in* 22 INT'L DIG. HEALTH LEGIS. 965 (1971); Norway: Law No. 50 of 13 June 1975 on the termination of pregnancy, *reprinted on* Annual Review of Population Law website, *available at* http://www.law.harvard.edu/programs/annual_review/ (last visited Aug. 10, 2004).
- ⁶ Israel: Penal Law 5737-1977, art. 315, A.G. Publications (1994); Great Britain: Abortion Act

- 1967 (c 87) *as amended by* Human Fertilization and Embryology Act 1990 (c37), sec. 1.
- ⁷ Guyana: Act No. 7 of 1995, June 14, 1995, *translated in* 46 INT'L DIG. HEALTH LEGIS. 479 (1995); Netherlands: E. Ketting, *Netherlands, in* ABORTION IN THE NEW EUROPE, 177, 180 (Bill Rolston & Anna Eggert eds., 1994).
- ⁸ CENTER FOR REPRODUCTIVE RIGHTS, *THE WORLD'S ABORTION LAWS 2003* (Wallchart) (2003).
- ⁹ "New Abortion Bill Would Ease Rules on Parental Consent for Minors," by Marilyn August, *Associated Press*, Oct. 4, 2000.
- ¹⁰ Note that Hungary also funds abortions for women in custody. International Planned Parenthood Federation (IPPF) European Network, *Abortion Legislation in Europe* (table) (2002) *available at* http://www.rfsu.se/files/17200-17299/file_17250.pdf (last visited Aug. 17, 2004).
- ¹¹ *Id.* See, e.g. Bulgaria and Germany on table.
- ¹² South Africa: Choice on Termination of Pregnancy Act, No. 92, Nov. 12, 1996, art. 3.
- ¹³ Traci L. Baird & Susan K. Flinn, IPAS, *MANUAL VACUUM ASPIRATION: EXPANDING WOMEN'S ACCESS TO SAFE ABORTION SERVICES 2* (2001); GYNUITY HEALTH PROJECTS, *PROVIDING MEDICAL ABORTION IN DEVELOPING COUNTRIES: AN INTRODUCTORY GUIDEBOOK 31-32* (2004).
- ¹⁴ Greece: Law No. 1609 of 28 June 1986 on voluntary termination of pregnancy, protection of women's health, and other provisions, sec. 305(1), *reprinted in* 37 INT'L DIGEST OF HEALTH LEGIS. 793 (1986).

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