

Sexual and Reproductive Rights During COVID-19 Response and Beyond

Standards from the United Nations

The potential impact of the COVID-19 pandemic on the sexual and reproductive health and rights (SRHR) of women and girls is profound. Women and girls in all regions of the world have been disproportionately affected by the pandemic and response measures, with their sexual and reproductive rights particularly at risk. Initial estimates indicate a 10% shift in abortions from safe to unsafe — a rise of approximately 3,325,000 additional unsafe abortions and 1,000 additional maternal deaths in low and middle-income countries.¹

The COVID-19 pandemic has shown where fault-lines have long existed in terms of barriers to SRHR. Access to sexual and reproductive health services has become extremely difficult in the context of restrictions on freedom of movement and as health systems have become overwhelmed. The harm caused by pre-existing, stigmatizing, and unnecessary legal and policy barriers, has been exacerbated in the COVID-19 context. These barriers include waiting periods and multiple provider authorization for abortion, prescriptions for contraceptives, restrictions on medication abortion, and parental consent requirements for access to SRH services. In addition, in some places, the situation is being instrumentalized to continue long standing efforts to restrict sexual and reproductive rights both directly and indirectly. This is done in various ways, including: through not designating abortion and other sexual and reproductive health services as essential, thereby reducing access; attempted rollback of national laws and policies, and international health and human rights standards; and through defunding of the World Health Organization (WHO) - the specialized U.N. agency that works on setting global standards on health, including sexual and reproductive health.

The UN Secretary General has said: “Human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods.”² He recognized that the pandemic is exacerbating existing human rights concerns such as limited access to sexual and reproductive health and rights, and stressed the need to mitigate the impact of the crisis on women and girls access to these services.³

The WHO has also recognized that women’s and girls’ access to essential health services, including sexual and reproductive health services, is likely to be affected by the restrictions on mobility and economic challenges faced due to COVID.⁴ The WHO has noted that such restrictions on access to services are a violation of human rights⁵ and has provided rights-based interim operational guidance on how States should maintain essential services in the context of the pandemic, including sexual and reproductive health services.⁶ The guidance notes that existing gender and social inequalities are exacerbated by the pandemic context, in part because of social norms of women and girls as caregivers.⁷ The WHO stresses the importance of addressing the particular needs of marginalized

populations including indigenous peoples, sex workers, migrants and refugees.⁸ SRHR related recommendations include:⁹

- When facility-based provision of SRH services is disrupted, prioritize digital or telemedicine health services, and self-managed interventions, while ensuring access to a trained provider if needed.
- Relax requirements for a prescription for oral or self-injectable contraception and emergency contraception, and provide multi-month supplies.
- Maintain all essential elements of antenatal care and postnatal care, with birth companions appropriately screened for COVID-19 infection, and mothers with suspected or confirmed COVID-19 encouraged to initiate and continue skin-to-skin contact and breastfeeding with appropriate precautions.
- Consider the option of using noninvasive medical methods for managing safe abortion and incomplete abortion, and take steps to meet the anticipated increase in need for medical methods of abortion.
- Facilitate access to SRH services by adolescents and consider waiving any restrictions such as age or marital status, parental or spousal consent and costs.¹⁰

1. VIEWS OF HUMAN RIGHTS EXPERTS ON SRHR AND COVID-19 RESPONSE

In the context of the COVID-19 pandemic, human rights experts have reminded States of their ongoing obligations¹¹ to provide the full range of sexual and reproductive health services on the basis of non-discrimination,¹² including access to contraception, quality and acceptable maternal health care, and safe and legal abortion, in line with international human rights standards.¹³ Moreover, they have

stressed that States must ensure that COVID-19 response plans and measures do not further exacerbate entrenched structural inequalities and inequities,¹⁴ and expressed concern that health emergencies often exacerbate pre-existing barriers such as social norms and gender-based discrimination, criminalization, and third-party authorization requirements.¹⁵

2. ISSUES IN FOCUS: ABORTION, MATERNAL HEALTH-CARE, INTERSECTIONAL FORMS OF DISCRIMINATION, HUMANITARIAN SETTINGS

A. Abortion

The COVID-19 pandemic response has highlighted that abortion is an essential service. The situation has also highlighted that limiting access to abortion based on certain grounds and refusing to provide for abortion on request, or requiring third party-authorization or notifications are not medically necessary. Such barriers are harmful, inherently arbitrary and discriminatory, and violate bodily autonomy.

Advancing human rights standards on abortion

UN human rights experts have collectively expressed concern at State authorities manipulating the COVID-19 crisis by using emergency orders to restrict women's reproductive rights, by delaying or denying access to abortion, thereby exacerbating patterns of restrictions and retrogressions in access to legal abortion care.¹⁶ In the context of the COVID-19 pandemic, the UN Working Group on Discrimination against Women and Girls has expressed concern about the increased restriction on the ability of women and girls to access essential sexual and reproductive health services,¹⁷ including due to new barriers to access to abortion services. The Committee on the Elimination of Discrimination against Women has recommended that "safe abortion and

post abortion services...must be ensured to women and girls at all times, through toll-free hotlines and easy-to-access procedures such as online prescriptions."¹⁸

In response to the pandemic, some governments have increased barriers to access to abortion by failing to recognize abortion as an essential health services, and by attempting to impose additional legal grounds for pregnant persons to access abortion.¹⁹ Other governments have taken an approach that respects sexual and reproductive rights, and relaxed regulations on medication abortion and facilitating access by telemedicine. These measures have been welcomed by human rights experts.²⁰

In a post COVID-19 world there is an opportunity to push for more specific human rights standards on abortion and increase access to abortion services for all pregnant persons, including by removing barriers to medication abortion, in line with WHO recommendations. Research indicates that most abortions occur for reasons other than the commonly legalized exceptional grounds,²¹ and exceptions-based legal frameworks do not provide sufficient guarantee of effective access to abortion services in practice, even when the grounds have been met.²² Human rights standards should more fully reflect the fact that barriers and legal grounds to access abortion are restrictive, discriminatory, and violate a woman's right to bodily autonomy. International human rights mechanisms should recommend that States legalize access to abortion on request of the pregnant person, and remove all barriers to accessing quality, affordable and acceptable care and services.

Medication abortion and self-managed medication abortion

The COVID-19 pandemic underscores the need for States to improve access to medication abortion and remove restrictions on telemedicine, as well as consider

reforming legal frameworks relating to self-managed medication abortion. These measures would help ensure that all women and girls have their sexual and reproductive rights respected, protected, and fulfilled, by increasing access to safe and legal abortion. The World Health Organization recommends self-managed medication abortion as a method of abortion for individuals who are less than 12 weeks pregnant and have “a source of accurate information and access to a health-care provider should they need or want it at any stage of the process.”²³ Self-managed care is particularly important for populations negatively affected by gender, political, cultural and power dynamics. The WHO has considered self-managed care as “among the most promising and exciting new approaches to improve health and well-being.”²⁴ Medical abortion medicines are included in the WHO Model List of Essential Medicines,²⁵ and access to them is a core obligation under the right to enjoy the highest attainable standard of health.²⁶

B. Maternal Health

The WHO has warned that risks of adverse outcomes associated with unattended childbirth outweigh the potential risks of COVID-19 transmission at health facilities, with reductions in access to essential maternal services during epidemics having a significant impact on maternal health — a decline of 10% in service coverage potentially resulting in an additional 28 000 maternal deaths.²⁷ States must guarantee all women available, accessible, acceptable, and good quality maternal health services²⁸ and ensure the ability to access these services free from discrimination, coercion, and violence.²⁹ The UN Working Group on Discrimination Against Women and Girls notes that any pandemic-related decision to separate newborns from parents in hospitals is a violation of their human rights and recommends that governments ensure access to health

Humanitarian Settings

The duty of States to respect, protect and fulfill sexual and reproductive rights continue during humanitarian crises.ⁱ The COVID-19 pandemic poses a particularly grave threat in existing humanitarian crises, and threatens to push fragile settings into new crises with already strained health systems and logistics networks, inadequate and overcrowded spaces and shelters, limited protections from gender-based violence, and insufficient hygiene and sanitation facilities and supplies. The Inter-Agency Working Group on Reproductive Health in Crises urged a rights-based approach to the incorporation of women’s and girls’ access to essential and rights-fulfilling sexual and reproductive health services during the COVID-19 public health response.ⁱⁱ The IAWG has developed a detailed set of policy recommendations on how this should be done, noting that that risks of adverse outcomes from medical complications related to sexual and reproductive health outweigh the potential risks of COVID-19 transmission at health facilities.ⁱⁱⁱ

services essential to women, including pre and post-natal care. In the context of the COVID-19 pandemic the WHO affirmed that “women have the right to a safe and positive childbirth experience, whether or not they have a confirmed COVID-19 infection.”³⁰ This includes being accompanied by a ‘companion of choice’ during labor, reflecting WHO recommendations on ensuring quality maternal and health based on the principles of autonomy, agency and choice.³¹ The WHO has also said that parents should be supported during the COVID-19 pandemic to breastfeed, hold newborns skin-to-skin and share a room with their baby.³²

C. Marginalized Groups and Intersectional Discrimination

Experts have recognized that the COVID-19 pandemic has complicated existing crises for individuals from marginalized groups or in vulnerable situations.³³ Such groups including migrants, racial and ethnic minorities, people living in poverty, persons with disabilities, women, indigenous peoples, LGBTQI+ people, and people in detention or institutions.³⁴ Human rights experts have called on governments to: refrain from actions that might exacerbate existing inequalities;

develop an intersectional response to the pandemic itself; address the specific health needs of individuals facing multiple and intersecting forms of discrimination who may be disproportionately affected by the pandemic; and avoid potential inequity in pandemic-related health policies.³⁵

The Committee on the Elimination of Discrimination Against Women has called on States to ensure that COVID-19 responses are gender-sensitive, intersectional, and address the disproportionate impact of the pandemic on women’s health.³⁶ Similarly, the Working Group on Discrimination Against Women and Girls called on States to take a gender-sensitive intersectional approach in response to COVID-19, noting that multiple and intersecting forms of discrimination interact to exacerbate structural inequalities and marginalize and disproportionately impact certain groups of women and girls.³⁷ They highlighted the particular impact on “low-income women and those belonging to racial minorities and immigrant communities,”³⁸ and reaffirmed that denying women access to information and services which only they require is inherently discriminatory and prevents women from exercising control over their own bodies and lives.³⁹ Generally,

they have welcomed steps taken by States to limit the gendered impact of the pandemic, such as authorizing the use of telemedicine for reproductive health care at home, and highlighted women’s role in reproductive work (both paid and unpaid), women’s working conditions and higher rates of gender-based violence.⁴⁰

3. RECOMMENDATIONS

States should:

- Ensure that sexual and reproductive rights are respected, protected and fulfilled as part of COVID-19 response plans, on the basis of substantive equality, taking measures to address the disproportionate impact of COVID-19 and the response measures on individuals in vulnerable situations or from marginalized groups, including those living in humanitarian settings.
- Permanently remove long-standing barriers to SRH goods, services and information, in particular those that have been exacerbated during the COVID-19 pandemic, including medically unnecessary requirements, such as unnecessary clinical visits, multiple provider authorization, waiting periods, biased counseling, and third-party consent requirements. States should remove barriers to telemedicine, and support and promote its use.
- States must also take measures to destigmatize abortion and other SRH services, ensure respect for the sexual and reproductive rights of all women and girls and giving full effect to their right to bodily autonomy as a step towards gender equality. States must also ensure all SRH services are affordable for all women and girls, particularly those living in poverty.

- Decriminalize and legalize abortion on request, including self-managed medication abortion as per WHO guidance, and take steps to ensure access to all methods of abortion for everyone who needs one.
- Guarantee pregnant people access to high quality, human rights affirming health care, including a safe and positive childbirth experience, in accordance with WHO recommendations.

UN human rights experts should:

- Explicitly recognize access to abortion as an unencumbered legal right, with no restrictions as to the pregnant person’s reason for seeking termination of the pregnancy, while continuing to highlight the minimum core obligations and non-derogable nature of sexual and reproductive rights
- Continue to emphasize the obligation for States to remove legal, procedural, practical and social barriers to SRH goods, services and information.

Endnotes

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Text Box Endnotes

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