

# Safe and Legal Abortion is a Woman's Human Right

*Each year, nearly 70 million women have unwanted pregnancies.<sup>1</sup> The impact of these pregnancies will vary immensely depending on such factors as a woman's health, family relationships, economic resources, and the availability of medical care. These and other factors will influence her decision to either carry a pregnancy to term or seek an abortion. Given the complexity of this decision, the only person equipped to make it is the pregnant woman herself.*

*Governments should respect a woman's human right to make decisions regarding her reproductive life. A woman who decides to have an abortion—as 46 million women do annually<sup>2</sup>—must have access to the facilities and care that will enable her to terminate her pregnancy safely. Governments that prosecute and punish women who have had abortions penalize women for exercising their basic rights. These rights are no less compromised when a woman who decides to terminate a pregnancy can do so only by undertaking a serious risk to her life and health.*

*International legal support for a woman's right to safe and legal abortion can be found in numerous international treaties and other instruments, and the relevant provisions of these documents are listed in Table I. The right to choose abortion has support in guarantees of life and health, freedom from discrimination, and autonomy in reproductive decision-making.*

## **WOMEN'S RIGHT TO LIFE**

The right to life is protected in multiple human rights instruments. It is widely acknowledged that in countries in which abortion is legally restricted, women seek abortions clandestinely, under conditions that are medically unsafe and therefore life-threatening. According to the World Health Organization (WHO), about 20 million women have unsafe abortions every year.<sup>3</sup> These unsafe abortions are responsible for the deaths of nearly 70,000 women annually.<sup>4</sup>

***Forcing a woman to undergo a life-threatening unsafe abortion threatens her right to life.***

- Because unsafe abortion is closely associated with high rates of maternal mortality, laws that force women to resort to unsafe procedures infringe upon women's right to life. In 2000, in interpreting Article 6.1 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee called upon states to inform the committee of "any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."<sup>5</sup>

- While the phrase "right to life" has been associated with the campaigns of those who oppose abortion, it has not been interpreted in any international setting to require restrictions on abortion. Most recently, the European Court of Human Rights, in the case of *Vo v. France*, stated that "it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purpose of Article 2 of the Convention ..." (providing that "[e]veryone's right to life shall be protected by law").<sup>6</sup> The court therefore refused to adopt a ruling that would have called into question the validity of laws permitting abortion in 39 member states of the Council of Europe.

## WOMEN'S RIGHT TO HEALTH

International law guarantees women the right to "the highest attainable standard of health."<sup>7</sup> Unsafe abortion can have devastating effects on women's health. Where death does not result from unsafe abortion, women may experience long-term disabilities, such as uterine perforation, chronic pelvic pain or pelvic inflammatory disease.

### ***Safe abortions services protect women's right to health.***

- The WHO defines "health" as "a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity."<sup>8</sup> While the right to health does not guarantee perfect health for all women, it has been interpreted to require governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health.<sup>9</sup> In the context of abortion, this right to health can be interpreted to require governments to take appropriate measures to ensure that women are not exposed to the risks of unsafe abortion. Such measures include removing legal restrictions on abortion and ensuring access to high-quality abortion services.
- The Programme of Action adopted at the United Nations International Conference on Population and Development (ICPD) in 1994 called upon governments to consider the consequences of unsafe abortion on women's health.<sup>10</sup> It states that governments should "deal with the health impact of unsafe abortion as a major public health concern."<sup>11</sup>
- At the 1995 Fourth World Conference on Women, the international community reiterated this language and urged governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions."<sup>12</sup> In addition, in a paragraph addressing research on women's health, the Platform for Action urges governments "to understand and better address the determinants and consequences of unsafe abortion."<sup>13</sup>
- In 1999, at the five-year review of the ICPD, governments approved a provision recognizing the need for greater safety and availability of abortion services. Paragraph 63(iii) states that "[I]n circumstances where abortion is not

## ***Safe and Legal Abortion is a Woman's Human Right***

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."<sup>14</sup>

### **WOMEN'S RIGHT TO NONDISCRIMINATION**

The right to gender equality is a fundamental principle of human rights law. Freedom from discrimination in the enjoyment of protected human rights is ensured in every major human rights instrument.

#### ***Denying women access to abortion is a form of gender discrimination.***

- According to the Convention on the Elimination of All Forms of Discrimination against Women, "discrimination against women" includes laws that have either the "effect" or the "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.<sup>15</sup> *Laws that ban abortion have just that effect and that purpose.*
- Restricting abortion has the *effect* of denying women access to a procedure that may be necessary for their enjoyment of their right to health. Only women must live with the physical and emotional consequences of unwanted pregnancy. Some women suffer maternity-related injuries, such as hemorrhage or obstructed labor. Denying women access to medical services that enable them to regulate their fertility or terminate a dangerous pregnancy amounts to a refusal to provide health care that only women need.<sup>16</sup> Women are consequently exposed to health risks not experienced by men.
- Laws that deny access to abortion, whatever their stated objectives, have the *discriminatory purpose* of both denigrating and undermining women's capacity to make responsible decisions about their bodies and their lives. Indeed, governments may find the potential consequences of allowing women to make such decisions threatening in some circumstances. Recognizing women's sexual and reproductive autonomy contradicts long-standing social norms that render women subordinate to men in their families and communities. It is not surprising that unwillingness to allow women to make decisions about their own bodies often coincides with the tendency to deny women decision-making roles in the areas of political, economic, social, and cultural affairs.

### **WOMEN'S RIGHT TO REPRODUCTIVE SELF-DETERMINATION**

A woman has a right to make decisions regarding her own body. Support for this right is found in a number of human rights instruments, which ensure freedom in decision-making about private matters. Such provisions include protections of the right to physical integrity, the right to decide freely and responsibly the number and spacing of one's children and the right to privacy.

***Women have the right to decide whether or not to bring a pregnancy to term.***

- When a pregnancy is unwanted, its continuation can take a heavy toll on a woman's physical and emotional well-being. Decisions one makes about one's body, particularly one's reproductive capacity, lie squarely in the domain of private decision-making. Only a pregnant woman knows whether she is ready to have a child, and governments should play no role in making that decision for her.
- Respect for a woman's right to plan her family requires governments to make abortion services legal, safe and accessible to all women. There are a number of circumstances in which abortion may be a woman's only means of exercising this right. A woman who becomes pregnant through an act of nonconsensual sex would be forced to bear a child were she denied her right to an abortion. For women who live in settings in which family planning services and education are unavailable, access to safe abortion services may be the only means of controlling their family size. Finally, contraceptive failure will inevitably occur among some of those women who regularly use contraception.

## Safe and Legal Abortion is a Woman's Human Right

Table 1

Human Rights Protected	International Legal Instruments					Regional Legal Instruments			Conference Documents		
	Universal Declaration of Human Rights <sup>18</sup>	Civil and Political Rights Covenant <sup>19</sup>	Economic, Social and Cultural Rights Covenant <sup>20</sup>	Women's Convention <sup>21</sup>	Children's Convention <sup>21</sup>	American	Banjul	European Convention on Human Rights <sup>24</sup>	Vienna <sup>25</sup>	Cairo <sup>26</sup>	Beijing <sup>27</sup>
The right to life, liberty and security	Art. 3	Art. 6.1 Art. 9.1			Art. 6.1 Art. 6.2	Art. 4.1 Art. 7.1	Art. 4 Art. 6	Art. 2.1 Art. 5.1		Prin. 1 Para. 7.3 Para. 7.17 Para 8.34	Para. 96 Para. 106 Para. 108
The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment	Art. 5	Art. 7			Art. 37	Art. 5.1 Art. 5.2	Art. 5	Art. 3	◆Para.		
The right to be free from gender discrimination	Art. 2	Art. 2.1	Art. 2.2	Art. 1 Art. 3	Art. 2.1	Art. 1 Art. 17.4	Art. 2 Art. 3 Art. 18.3	Art. 14	*Para. 18	Prin. 1 Prin. 4	Para. 214
The right to modify customs that discriminate against women				Art. 2 Art. 5	Art. 24.3				*Para. 18 ◆Para. 38 ◆Para. 49	Para. 5.5	Para. 224
The right to health, reproductive health, and family planning			Art. 10.2 Art. 12.1 Art. 12.2	Art. 10 Art. 11.2 Art. 11.3 Art. 12.1 Art. 14.2	Art. 24.1 Art. 24.2		Art. 16 Art. 18.1		◆Para. 41	Prin. 8 Para. 7.45	Para. 89 Para. 92 Para. 267
The right to privacy		Art. 17.1			Art. 16.1 Art. 16.2	Art. 11		Art. 8			Para. 106 Para. 107
The right to determine the number and spacing of one's children				Art. 16.1						Prin. 8	Para. 223

\* Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights

◆ Vienna Programme of Action

## ENDNOTES

<sup>1</sup> GLOBAL HEALTH COUNCIL, PROMISES TO KEEP: THE TOLL OF UNWANTED PREGNANCIES ON WOMEN'S LIVES IN THE DEVELOPING WORLD 3 (2002).

<sup>2</sup> WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 12 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 14; WHO, UNITED NATIONS CHILDREN'S FUND (UNICEF), UNITED NATIONS POPULATION FUND (UNFPA), MATERNAL MORTALITY IN 2000: ESTIMATES DEVELOPED BY WHO, UNICEF AND UNFPA 10 (2004).

<sup>5</sup> Human Rights Committee, *General Comment No. 28: Equality of rights between men and women* (article 3), para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>6</sup> *Vo v. France*, app. No. 53924/00, European Court of Human Rights, July 8, 2004, para. 85, available at <http://hudoc.echr.coe.int/hudoc/ViewRoot>.

120 WALL STREET  
NEW YORK, NEW YORK 10005  
TEL 917 637 3600 FAX 917 637 3666  
INFO@REPRORIGHTS.ORG  
WWW.REPRODUCTIVERIGHTS.ORG