

# HUMAN RIGHTS FRAMEWORK

**HUMAN RIGHTS AND HUMAN RIGHTS DEFENDERS.** In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which recognized the inherent dignity and human rights of every human being. In adopting the Universal Declaration, countries around the world committed to securing human rights at the national level.


Since then, the international community has recognized that protecting human rights requires the dedicated work of individuals and organizations, as well as commitments by governments. Commonly known as “human rights defenders,” these individuals put their own lives, safety, and security on the line to defend and promote the human rights of others. Recognizing the crucial role that human rights defenders play in protecting the rights of others, international law requires that governments take measures to protect and ensure defenders’ rights.

In 1998, on the 50th anniversary of the Universal Declaration, the U.N. General Assembly adopted the Declaration on Human Rights Defenders (“the Declaration”)<sup>42</sup> with the full support of the U.S.<sup>43</sup> The Declaration recognizes the central role that human rights defenders play in promoting the realization of human rights. It sets forth the rights of human rights defenders to engage in peaceful activities to promote human rights and government obligations to protect human rights defenders.

The rights and obligations in the Declaration are based on human rights standards set forth in international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the U.S. Senate in 1994.<sup>44</sup> Ratification confers an international legal obligation on the U.S. to respect, protect, and fulfill the rights contained in the treaty<sup>45</sup> and to create the conditions necessary to ensure that all persons are able to enjoy rights in practice.<sup>46</sup> The U.S. has also signed (but not ratified)

**...challenges come in many forms, from harassment and intimidation of doctors and clinics to legal restrictions that single out abortion providers.**





# REPRODUCTIVE RIGHTS INCLUDE A WOMAN'S RIGHT TO MAKE FUNDAMENTAL DECISIONS ABOUT HER LIFE AND FAMILY

several other important human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which also require that governments act to promote the realization of the human rights identified in the treaties.<sup>47</sup>

As a signatory to these treaties, the U.S. has an obligation not to take any action that would defeat their object or purpose.<sup>48</sup> In 2009, the U.S. government also issued a pledge restating its commitments to human rights, including that “The United States recognizes and upholds the vital role of civil society and human rights defenders in the protection and promotion of human rights[.]”<sup>49</sup>

**REPRODUCTIVE RIGHTS ARE HUMAN RIGHTS.** Reproductive rights include a woman’s right to make fundamental decisions about her life and family, to access the reproductive health services necessary to protect her health, and to decide whether and when to have children. Reproductive rights are based on a number of fundamental human rights, including the rights to health, life, equality, information, education and privacy, as well as freedom from discrimination.<sup>50</sup> In particular, the right to health includes “the right to attain the highest standard of sexual and reproductive health.”<sup>51</sup>

The right to reproductive health also requires that reproductive health services, goods, and supplies be made widely available, economically and physically accessible, and evidence-based.<sup>52</sup> International law provides strong support for the right to access safe abortion as a component of reproductive health-care. Because illegal and unsafe abortion leads to high rates of maternal

mortality, lack of access to abortion can threaten a woman’s right to life.<sup>53</sup> Several international bodies—including the U.N. Human Rights Committee, which monitors compliance with the ICCPR—have linked the rights to health and life and called on governments to ease restrictive abortion laws.<sup>54</sup>

International law also recognizes the right to access healthcare free from discrimination based on race or gender, as required by the International Convention on the Elimination of Racial Discrimination,<sup>55</sup> which was ratified by the U.S. in 1994, and CEDAW.<sup>56</sup> Women also have a right to information and education to ensure they are able to make informed decisions about their reproductive capacity and lives.<sup>57</sup> Moreover, in *KL v. Peru*, the Human Rights Committee found that denial of a 17-year-old’s right to receive a legal abortion violated her rights to privacy; to be free from cruel, inhuman or degrading treatment; and to special protections for minors protected by the ICCPR.<sup>58</sup> In the U.S., the constitutional right to privacy provides the framework for protection of women’s reproductive rights and the constitutional right to abortion.<sup>59</sup>

## **REPRODUCTIVE RIGHTS ACTIVISTS ARE HUMAN RIGHTS DEFENDERS.**

Women’s rights defenders include individuals who stand up to defend women’s rights, including those who put themselves at risk to enable women to exercise fundamental human rights, such as the right to reproductive health.<sup>60</sup> Following the 1998 Declaration on Human Rights Defenders, the U.N. appointed a human rights expert to encourage compliance with the Declaration and to investigate and publicize the situation of human rights defenders around the world. In 2008, this expert became known as the Special Rapporteur on Human Rights Defenders.<sup>61</sup>

The Special Rapporteur and her predecessor have called attention to a particular group of women’s rights defenders: those who assert that reproductive rights are a fundamental aspect of women’s equality.<sup>62</sup> These experts have taken action to address attacks on reproductive rights advocates targeted for campaigning against forced sterilizations and forced abortions<sup>63</sup> and coercive family planning policies.<sup>64</sup> They also have raised concern that reproductive rights advocates are often targeted for particular types of rights violations, including smear campaigns.<sup>65</sup> In addition, the Committee Against Torture, which monitors compliance with the Convention Against Torture, has also urged governments to combat systematic harassment and death threats against defenders of women’s human rights, specifically reproductive rights.<sup>66</sup> Worldwide, attacks on reproductive rights defenders vary from discriminatory government actions aimed at preventing their work, such as legislation in Ethiopia prohibiting funding to organizations that promote gender equality issues, including reproductive rights, to harassment and death threats against reproductive rights advocates in Nicaragua (see box: *Reproductive Rights Defenders in Nicaragua and the Philippines*).<sup>67</sup>

SPOTLIGHT

## Reproductive Rights Defenders in Nicaragua and the Philippines

Around the world, human rights defenders experience myriad violations based on their work advocating for reproductive rights or promoting rights through the provision of reproductive healthcare services. Many of the underlying factors that contribute to stigma and violence against abortion providers in the U.S., notably hostility to women's claims for reproductive rights, also motivate the attacks against reproductive rights defenders elsewhere. Like the U.S. government, other governments have further restricted defenders' rights rather than bolstering protection for defenders.


The government of Nicaragua banned abortion with criminal penalties even for healthcare providers who perform the procedure when necessary to save a woman's life or health. The ban endangers women's lives by deterring reproductive healthcare providers from their professional and ethical duties to treat women and to protect their lives.<sup>68</sup> The resulting stigma and marginalization of providers has spurred systematic harassment and death threats against reproductive rights advocates in Nicaragua.<sup>69</sup>

The government of Manila, the capital of the Philippines, denied renewal of a health clinic's license, forcing it to close down. The clinic was accused of violating an executive order issued by the former mayor of Manila that prohibits the distribution of contraceptives. Because of the order, organizations that have attempted to provide family planning information and services have suffered harassment, including denial of renewal of permits to operate, dismissal of government doctors who provide referrals to organizations that make contraceptives accessible to women, censorship of family planning information, and withdrawal of support for the distribution of contraceptives in health centers.<sup>70</sup>

**HEALTHCARE PROVIDERS ARE HUMAN RIGHTS DEFENDERS.** U.N. expert reports have recognized that healthcare providers can be human rights defenders where those individuals fulfill their professional duties in a way that promotes human rights, such as the right to health.<sup>71</sup> These include a diverse range of medical professionals, such as physicians treating civilians in the Occupied Territories,<sup>72</sup> a medical doctor working to provide access to healthcare for extremely marginalized communities in India,<sup>73</sup> a medical professional providing assistance to victims of torture and violence in Egypt,<sup>74</sup> and healthcare professionals assisting people living with HIV/AIDS in China.<sup>75</sup> In addition, the Inter-American Commission on Human Rights, which monitors and protects human rights in the Americas, has explicitly condemned laws that restrict the ability of healthcare professionals to provide reproductive health services because such laws directly undermine women's right to health.<sup>76</sup>

**U.S. ABORTION PROVIDERS ARE HUMAN RIGHTS DEFENDERS.** The Declaration on Human Rights Defenders makes it clear that the rights of all human rights defenders must be ensured, even where the rights they are defending are evolving or socially contested.<sup>77</sup> Although women's right to abortion is constitutionally protected in the U.S., it remains highly controversial. Because opponents of abortion cannot legally ban abortion, they resort to attacking healthcare professionals to make abortion difficult or impossible to obtain. The reproductive healthcare professionals profiled in this report—which include physicians, nurses, owners and administrators of reproductive health clinics, counselors, clinic volunteers, and outreach workers—are some of the least recognized and most vulnerable of all human rights defenders. This report documents the need for special protection and details measures that the U.S. can take to ensure the rights of these human rights defenders are respected, protected, and fulfilled in accordance with international human rights standards. •

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“ [I]n many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms are facing threats, harassment, and insecurity as a result of those activities[.] ” - Declaration on Human Rights Defenders, Article 7

## APPLICATION OF HUMAN RIGHTS FRAMEWORK TO SELECTED FINDINGS

**V**IOLETIONS OF REPRODUCTIVE RIGHTS. As is evident from the findings of this investigation, the targeting of abortion providers directly infringes on women’s fundamental human rights. These include:

- violating the **right to health** by decreasing the availability and economic and physical accessibility of abortion, a reproductive healthcare service;
- violating the **rights to health and life** by placing women at risk of seeking unsafe abortions;
- violating the **right to information** by mandating biased counseling that impacts informed decisions about care and reproduction;
- violating the **right to privacy** by interfering with the decision to have an abortion through biased counseling, mandated delays, and a failure to protect women from exposure and identification as part of the intimidation and harassment activities of protestors at abortion clinics; and
- violating the **rights to equality and freedom from discrimination** by singling out a woman’s reproductive health service—abortion—for targeted regulation and restriction and failing to reduce the stigma surrounding it.

“ I think that anyone who has dedicated part of her career to making sure that constitutional rights are upheld, anyone who has devoted herself to a position where there is some threat, believes very strongly that this is a right that needs protection.<sup>79</sup> ” - Pennsylvania clinic administrator

**RECOGNITION OF ABORTION PROVIDERS AS HUMAN RIGHTS DEFENDERS.** This report documents unequivocally that the healthcare workers interviewed for the investigation are human rights defenders. Many of the providers recognized, and asserted, their role in promoting fundamental human rights for women. As one explained, “I think that healthcare is a human right, and that abortion is healthcare. ... [T]he ability to control your reproductive destiny is essential to controlling destiny. The ability to control your body is the most basic freedom.”<sup>80</sup> Abortion providers make a significant contribution toward creating a culture of human rights in the U.S. by respecting and facilitating the exercise of the rights of women to life and health, equality and non-discrimination, information, privacy, and decision making regarding childbearing. They treat women with dignity under circumstances of stigmatization and marginalization. As a result of their dedication to women’s human rights, abortion providers are subjected to violations of their own rights as human beings and as women’s human rights defenders. These violations in turn restrict women’s ability to realize their right to reproductive healthcare, including safe abortion.

“ **Some days [I think I am a human rights defender] and some days I feel like I need defending.**<sup>81</sup> ” - El Paso, Texas clinic administrator

**IMPUNITY FOR HARASSMENT AND INTIMIDATION.** Like other human rights defenders throughout the world, abortion providers face intimidation, harassment, and violence in the course of carrying out their work, which government at all levels, contrary to its obligations, often permits with impunity.

In each of the six states included in the investigation, staff members at abortion clinics face a working environment that is insecure, threatening, and demeaning, due to the unlawful activities of abortion opponents. Despite the obligations of the government to provide specific and enhanced protection to abortion providers, local law enforcement is uninformed, unresponsive, or hostile. As a result, providers are forced to be self-reliant. While outright violence has decreased at most facilities, the legacy of past murders, bombings, arsons, and assaults is intimately known to many of those performing abortions, creating an atmosphere of fear and easy intimidation. As one physician with decades of experience declared, “I provide a service at the risk of my life.”<sup>82</sup>

Beyond verbal and physical harassment and intimidation, providers are subject to smear campaigns (for example, email barrages or home leafletting labeling a provider a “serial killer,” or television ads falsely claiming that a facility is unlicensed or fails to sterilize instruments). Abuse of the judicial system through frivolous lawsuits by protestors is another increasingly prevalent form of harassment.

“ **[W]omen’s rights are human rights, I definitely agree with that. I’ve read a lot of books and met physicians who were providing when abortion was not legal, and talked to them about septic abortions, things that they saw in that time period. We are fighting a human rights battle, because the consequences of illegal abortion are so great ... we are constantly fighting ...**<sup>83</sup> ” - Bryan, Texas clinic administrator

**DISCRIMINATORY LEGAL RESTRICTIONS ON ABORTION.** Restrictions aimed at prohibiting the exercise of providers’ right to practice a legal profession also violate defenders’ rights. Mandatory delay and biased counseling laws place burdens on providers that force them to expend time and financial resources, retain additional staff, and change the ways they practice their profession in order to comply. Physicians and clinic staff are forced to become “agents of the state” in promulgating biased or misleading information to patients, depriving women of their right to information and privacy and compromising trust in the physician-patient relationship. ASC requirements and other discriminatory facility regulations imposed only on providers of abortions reduce the availability of abortion services by making it prohibitively costly and administratively burdensome to perform abortions for the vast majority of providers. Inconsistent and arbitrary enforcement of these regulations by state health departments creates uncertainty and increases workloads for clinic staff and takes time away from patient care.

“ **I think the termination of pregnancy encompasses so many rights—body, choice, mind, voting, allowing a woman to make a decision right for her and for me to defend the decision and not judge it.**<sup>84</sup> ” - Philadelphia, Pennsylvania clinic staff member



**FAILURE TO REDUCE ABORTION-RELATED STIGMA.** By failing to address the deeply rooted stigma that surrounds abortion in both the medical and general communities, governments tacitly condone and even encourage the targeting of providers for harassment and legal restrictions on their work, and endorse gender discrimination.

Stigma itself, like those other burdens, deters both new and trained providers, reducing the availability of abortion services. In order to defend themselves, and the women they serve, abortion providers undertake extensive efforts of education, building community and institutional relationships, and patient counseling.

Failure to support these efforts by actively condemning and taking steps to address abortion-related stigma does not just harm healthcare workers. It also harms women in fundamental ways. It decreases the availability of physicians and services and reduces access to reproductive health services. It results in the segregation of one reproductive healthcare service from the mainstream healthcare system, again reducing women's ability to obtain that service. It encourages incomplete and false information about abortion and abortion providers, undermining women's ability to make decisions with informed consent. As a 36-year-old woman and mother of three stated, "[Clinic staff] give you all the information needed. ... [I]f they were to stop this, it's taking away my right. In this climate, it's very hard to raise a child. It's my human right to decide this."<sup>85</sup>

“ I know people who have tried all sorts of things to hurt themselves to end a pregnancy. ... Here they prevent you from hurting your body, they help me protect my body, and there are no judgments, they don't judge you here.”<sup>86</sup> ” - Pennsylvania woman

**DISCRIMINATORY FUNDING PROHIBITIONS AND FAILURE TO PROTECT VULNERABLE WOMEN.** Legal prohibitions on funding for abortion, such as the Hyde Amendment and similar state restrictions, single out one category of medically necessary services for elimination. These restrictions in no way promote or protect women's health and lack any evidentiary basis in medicine. In fact, they frequently curtail essential care because women have to delay abortions to raise the necessary funds. These delays result in later procedures, potentially increasing risk to the woman's health, additional financial costs for travel, additional child care and wage loss, and a higher fee for an abortion later in pregnancy. For women who are already the most vulnerable to rights violations—poor women, homeless women, minors, and those with later pregnancies—restrictions make it logistically and financially harder to obtain abortions and may deny their rights altogether. •