

BRIEFING PAPER

ABORTION WORLDWIDE: 20 YEARS OF REFORM



**CENTER
FOR
REPRODUCTIVE
RIGHTS**

ABORTION WORLDWIDE: 20 YEARS OF REFORM

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MISSION AND VISION

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

Reproductive freedom lies at the heart of the promise of human dignity, self-determination and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. The Center works toward the time when that promise is enshrined in law in the United States and throughout the world. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best reproductive healthcare available; where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.



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INTRODUCTION

In 1994, 179 countries came together to adopt the Programme of Action (PoA) of the International Conference on Population and Development (ICPD), the first international consensus document in which states recognized that reproductive rights are human rights that are already enshrined in domestic and international law. The PoA called upon governments to strengthen their commitment to women's health by addressing unsafe abortion and supporting a woman's right to make decisions about her reproductive capacity and her body.¹ Recognizing that unsafe abortion is a leading cause of maternal mortality and morbidity,² states committed in the PoA "to reduce greatly the number of deaths and morbidity from unsafe abortion,"³ and to take measures to prevent unsafe abortion, such as by expanding and improving family planning services.⁴

States agreed that where abortion is legal, it should be safe and accessible through the primary health care system⁵ and that particular attention should be paid to adolescents and young women in the prevention of unwanted pregnancies and treatment of unsafe abortions.⁶ Finally, under the PoA, states committed that "[i]n all cases, women should have access to quality services for the management of complications arising from abortion" and "[p]ost-abortion counselling, education and family-planning services should be offered promptly."⁷ While the PoA's directives on abortion are relatively narrow, the PoA has provided the framework for advocates worldwide to address unsafe abortion and promote abortion access as a human rights imperative.

One year after the PoA, the Beijing Platform for Action reaffirmed the PoA and further called upon governments to "[review] laws containing punitive measures against women who have undergone illegal abortions."⁸ At the PoA's five-year review, governments recognized the need for greater safety and availability of abortion services, asserting that "in circumstances where abortion is not 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."⁹

The PoA and subsequent international consensus documents have recognized abortion as a human rights issue and affirmed that removing legal barriers to abortion saves women's lives, promotes their health, and empowers women to make decisions crucial to their well-being. Moreover, since the PoA, human rights standards have been increasingly applied by international human rights bodies, as well as national courts, in the context of abortion. These bodies have recognized the range of human rights violations that stem from restrictive abortion laws and lack of access to safe abortion services, and called on states to ease restrictions on abortion and ensure women's access to safe and legal abortion services. The PoA also reflects a global trend toward abortion law liberalization—a trend that first gained momentum in the late 1950s and continues to accelerate across the globe.

Currently, 74 countries, representing more than 60% of the world's population, permit abortion without restriction as to reason or on broad grounds.¹⁰ During the past 20 years, more than 30 countries have liberalized their abortion laws, expanding the grounds under which women can legally access abortion services. Only a handful of countries have taken steps to legally restrict abortion or make it more difficult for women to procure abortions during this time.

This publication provides an overview of international human rights standards on abortion and identifies trends in abortion law reform within each of the world's regions. Additionally, it documents the changes to abortion laws in countries across the globe since the PoA and includes a discussion of measures to enhance or restrict access to abortion services within each region. While the legal status of abortion is only one measure of women's access to safe abortion services in any country, it is a key indicator of women's ability to enjoy their reproductive rights.



Curt Carnemark/The World Bank

The World Health Organization's Safe Abortion Guidance

In 2012, the World Health Organization (WHO) updated its *Safe Abortion: Technical and Policy Guidance for Health Systems*, which sets forth clinical guidance, legal and policy considerations, and international human rights standards on abortion. This guidance affirms that providing women across the globe with access to safe and legal abortion services is essential to realizing and protecting their fundamental human rights. It underscores that:

- Legal restrictions on abortion do not result in fewer abortions. Instead, they increase the chances that women will seek abortion services in unsafe conditions, with attendant risks to their lives and health.¹¹
- The removal of legal restrictions on abortion has shifted previously clandestine, unsafe procedures to legal and safe ones and resulted in reduced rates of maternal mortality.¹²
- Barriers to abortion access, such as restrictions on access to information or failures to ensure access to information, mandatory waiting periods and third-party authorizations – from one or more medical professionals or a hospital committee, a court, the police, a parent or guardian, or from the woman's partner or spouse – contribute to unsafe abortion. They disproportionately burden poor women, adolescents, those with little education, and women facing or at risk of domestic violence.¹³ Additionally, such barriers delay women from receiving care and demean them as competent decision-makers.¹⁴

Impact of Unsafe Abortion

- 22 million unsafe abortions are performed each year.
- Approximately 47,000 deaths and 5 million injuries each year are a result of complications from unsafe abortion.
- 98% of all unsafe abortions occur in developing countries, most of which have restrictive abortion laws.
- The WHO has estimated that nearly all of the deaths and disabilities resulting from unsafe abortion “could have been prevented through sexuality education, family planning, and the provision of safe, legal induced abortion and care for complications of abortion.”¹⁵

INTERNATIONAL HUMAN RIGHTS STANDARDS ON ABORTION

Since the adoption of the PoA, international human rights standards on abortion have been strengthened substantially, affording women far greater protection in deciding whether or not to carry a pregnancy to term. United Nations treaty monitoring bodies (UN TMBs), which oversee and provide authoritative interpretations of states' obligations under international human rights treaties, have repeatedly recognized the connection between restrictive abortion laws, high rates of unsafe abortion and maternal mortality.¹⁶ They have continually condemned absolute bans on abortion as being incompatible with international human rights norms¹⁷ and have urged states to eliminate punitive measures for women and girls who undergo abortions and for health care providers who deliver abortion services.¹⁸

UN TMBs have explicitly called on states to decriminalize and ensure access to abortion, at a minimum, when the pregnancy poses a risk to the woman's life or health, when the pregnancy results from rape or incest, and in cases of severe fetal abnormality.¹⁹ Furthermore, several UN TMBs have urged states to generally ensure women access to safe abortion services in connection with their obligation to guarantee comprehensive reproductive health services for women.²⁰ Moreover, through a series of cases addressing the denial of legal abortion services, UN TMBs have clearly indicated that denying women access to abortion services can amount to violations of the rights to health;²¹ privacy;²² and to be free from cruel, inhuman and degrading treatment.²³ Additionally, UN TMBs have urged states to interpret exceptions to restrictive abortion laws broadly to incorporate, for example, mental health conditions as a threat to women's health.²⁴

UN TMBs have also noted that where abortion services are legal, states must ensure that they are available, accessible (including affordable), acceptable, and of good quality.²⁵ UN TMBs have urged states to abolish barriers to accessing safe abortion services, such as third-party authorization requirements, including spousal authorization,²⁶ mandatory waiting periods, and biased counseling.²⁷ To ensure access to abortion, states should enact clear guidelines outlining the conditions under which abortion is legal,²⁸ and provide financial support for those who cannot afford abortion services.²⁹ Where doctors are permitted to refuse to provide services on the grounds of their religious beliefs or conscience, states should adequately regulate such refusals to ensure they do not limit women's access to reproductive health services.³⁰ Moreover, States should only permit individuals, and not institutions, to invoke conscientious objection.³¹ States must also ensure women receive confidential and adequate post-abortion care,³² which must not be conditioned upon admissions by women that will be used to prosecute them for undergoing the procedure illegally, because this may amount to cruel, inhuman, and degrading treatment.³³

Independent experts, which are appointed by the United Nations (UN) Human Rights Council to examine particular human rights issues, have similarly recognized the

harmful impact of restrictive abortion laws on women's exercise of their human rights. In a 2011 ground-breaking report, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health demonstrated that criminal laws and other legal restrictions on abortion can lead to violations of women's rights to life; health; dignity; information; freedom from cruel, inhuman and degrading treatment; and freedom from discrimination.³⁴ The report also found that such laws infringe upon women's autonomy and interfere with their sexual and reproductive health by restricting women's control over their bodies.³⁵ The special rapporteur has also indicated that criminal sanctions on abortion severely affect women's physical and mental health by compelling women to seek out illegal abortion services and highly stigmatizing abortion.³⁶ Additionally, such laws have a chilling effect on doctors, which can deter them from performing even legal abortion services.³⁷ Moreover, the Special Rapporteur on the independence of judges and lawyers has underscored the human rights implications of laws criminalizing abortion, finding that such laws discriminate against women.³⁸ The Special Rapporteurs on violence against women and on torture or other cruel, inhuman or degrading treatment or punishment have further reinforced the standards set forth by UN TMBs, by urging states to liberalize their abortion laws³⁹ and to guarantee women access to legal abortion services and post-abortion care.⁴⁰

Regional human rights bodies are also increasingly recognizing abortion as a human rights concern. For example, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) explicitly recognizes that states must ensure women the right to abortion, at a minimum, in instances of "sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."⁴¹ Additionally, through a series of cases addressing access to abortion services, the European Court of Human Rights has reaffirmed that states must ensure that where abortion is legal, it must be accessible in practice. The Court has recognized that the denial of legal abortion services can amount to violations of the right to be free from inhuman and degrading treatment and the right to respect for private life.⁴² Recognizing women's right to physical integrity and to control their own bodies, the Parliamentary Assembly of the Council of Europe has stated that the decision of whether to carry a pregnancy to term must be decided by the woman herself and has called on states to ensure women access and eliminate barriers to safe abortion services.⁴³ The Inter-American human rights system has also addressed abortion as a human rights issue. Following the denial of necessary cancer treatment to a pregnant Nicaraguan woman on the grounds that such treatment could cause an abortion, the Inter-American Commission issued precautionary measures to Nicaragua, finding that the state could not deny life- and health-saving care and calling on the state to provide the necessary medical treatment.⁴⁴ Additionally, the Inter-American Court issued provisional measures ordering El Salvador to take all necessary steps to preserve the life of a woman whose pregnancy placed her life in grave danger,⁴⁵ which under those circumstances, required termination of the pregnancy.⁴⁶

NATIONAL ABORTION LAW TRENDS AND CHANGES SINCE 1994

AFRICA

TRENDS

More than a dozen countries in Africa have liberalized their abortion laws by enumerating additional grounds under which abortion is permitted since the adoption of the ICPD PoA. Several West African francophone countries enacted laws that increase the legal availability of abortion following a series of regional meetings among government officials, legislators and other interested parties that resulted in a draft model law addressing reproductive health issues.⁴⁷ The draft law codified many of the provisions of the ICPD PoA and other international instruments.⁴⁸ Other countries have liberalized their abortion laws through constitutional or penal code reform processes. Furthermore, a few African countries have enshrined their abortion laws into their constitutions, which is not common in other regions. During this time, none of the countries in Africa have removed legal indications for abortion.

LIBERALIZATIONS

The following countries in Africa have eased legal restrictions on abortion since 1994:

1996

Abortion is permitted in **Burkina Faso** to save a woman's life and to protect her health, as well as in cases of rape, incest, or fetal impairment.⁴⁹ Previously, abortion was prohibited without any explicit exceptions.⁵⁰

Abortion is legalized in **South Africa** without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on numerous grounds.⁵¹ The former law permitted abortion only to save a woman's life, preserve her physical or mental health, or in cases of rape, incest, or fetal impairment.⁵²

2000

Guinea permits abortion to save a woman's life and to protect her health, as well as in cases of rape, incest, or fetal impairment.⁵³ Previously, abortion was permitted only to save a woman's life and to protect her health.⁵⁴



2002

Abortion is legalized in **Chad** to save a woman's life and to protect her health, as well as in cases of fetal impairment.⁵⁵ Previously, abortion was considered legal only to save a woman's life.⁵⁶

Abortion is legalized in **Mali** to save a woman's life or in cases of rape or incest.⁵⁷ Previously, abortion was considered legal only to save a woman's life.⁵⁸

2003

Benin permits abortion to protect a woman's life and health and in cases of rape, incest, or fetal impairment.⁵⁹ Previously, abortion was considered legal only to save a woman's life.⁶⁰

2004

Ethiopia amended its penal code to permit abortion to preserve a woman's life or health and in instances of rape, incest, fetal impairment, as well as where the woman is a minor, or when she has a physical or mental injury or disability.⁶¹ Previously, Ethiopia only permitted abortion to preserve a woman's life or health.⁶²

2005

Swaziland enacted a new constitution that authorized abortion to save a woman's life or to protect her physical or mental health, and in cases of rape, incest, fetal impairment, or "unlawful sexual intercourse" with a woman with a mental disability.⁶³ Previously, abortion was considered illegal under common law, with no clearly defined exceptions.⁶⁴

2006

Abortion is permitted in **Niger** to save a woman's life and health and in cases of fetal impairment.⁶⁵ Previously, abortion was prohibited without any explicit exceptions.⁶⁶

2007

Abortion is legalized in **Togo** to save a woman's life and to protect her health, as well as in cases of rape, incest, or fetal impairment.⁶⁷ Previously, although the penal code made no explicit mention of abortion, the procedure was considered illegal in most or all circumstances.⁶⁸

2010

Kenya adopted a new constitution that explicitly permits abortion to save a woman's life or health or where emergency treatment is needed.⁶⁹ Previously, abortion was only permitted to save a woman's life.⁷⁰

2012

Lesotho currently permits abortion where pregnancy poses a risk to the woman's life or health and in instances of rape, incest and fetal impairment.⁷¹ Previously, abortion was banned without any explicit exceptions.⁷²

Mauritius amended its abortion law to authorize abortion where the pregnancy poses a risk to the woman's life or her physical or mental health, in instances of fetal impairment, and where pregnancy results from rape.⁷³ Previously, abortion was banned without any explicit exceptions.⁷⁴

Abortion is now permitted in **Rwanda** when a woman becomes pregnant as a result of rape, incest or forced marriage or if the continuation of the pregnancy jeopardizes the health of the woman or the fetus.⁷⁵ Previously, abortion was only permitted to preserve the health of the woman.⁷⁶

Somalia enacted a new constitution that authorizes abortion to save the life of the woman.⁷⁷ Previously, abortion was prohibited without any explicit exceptions.⁷⁸

Enhancing Access to Safe and Legal Abortion Services

2006

Ethiopia issued regulations to clarify health sector procedures for ensuring the safe delivery of abortion services in the wake of the liberalization of its abortion law. These guidelines clearly indicate that women seeking abortion services where pregnancy results from rape shall not be subjected to evidentiary requirements or be forced to identify the perpetrator, and authorizes mid-level providers to administer certain abortion services.⁷⁹

2006-2012

Ghana developed guidelines for the implementation of the abortion law, which were first issued in 2006 and updated in 2012.⁸⁰ The guidelines made clear that women who become pregnant as a result of rape are not required to provide evidence of the assault to access abortion services.⁸¹ Similarly, women whose pregnancy threatens their mental health are not required to undergo a psychological assessment to obtain abortion services.⁸²

2008

South Africa further amended its abortion law, the Choice on Termination of Pregnancy Act, to accelerate the designation of abortion facilities and expand the pool of abortion service providers, while reducing unsafe and illegal abortions.⁸³

RESTRICTIONS

Since 1994, no countries in Africa have removed grounds for legal abortion.

In 2003, the African Union established the Maputo Protocol to enhance the realization of women's rights and to address the inequalities and discrimination faced by women.⁸⁴ The Maputo Protocol requires states to permit abortion "in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus."⁸⁵ Thirty-six of the fifty-four member states of the African Union have ratified the Maputo Protocol, although many need to take steps to effectively domesticate this treaty into their national-level abortion laws.⁸⁶

ASIA

TRENDS

Since the adoption of the ICPD PoA, several countries throughout Asia have enacted legislation authorizing abortion without restriction as to reason or expanding the grounds under which abortion is legal. During this time, only one country has eliminated a legal indication for abortion.

LIBERALIZATIONS

The following countries in Asia have eased legal restrictions on abortion since 1994:

1997

Abortion is permitted in **Cambodia** without restriction as to reason during the first 14 weeks of pregnancy, and thereafter on specific grounds.⁸⁷ The previous law permitted abortion only to save a woman's life.⁸⁸

2002

Abortion is legalized in **Nepal** without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on specific grounds.⁸⁹ However, the law prohibits abortion services if a woman seeks to terminate the pregnancy because of the sex of the fetus. Under the former law, abortion was generally prohibited, although the law included an unclear exception to criminal liability if an abortion occurred as the result of the performance of a benevolent act.⁹⁰

2004

Abortion was made legal in **Bhutan** to save a woman's life, in cases of rape or incest, or when a pregnant woman is "of unsound mental condition."⁹¹ Previously, the law on abortion was unclear, although it was generally understood to permit the procedure only to save a woman's life.⁹²

2005

Iran permits abortion to save a woman's life and, during the first four months of pregnancy, in cases of fetal impairment. Previously, abortion was prohibited without any explicit exceptions.⁹³

2009

Abortion is permitted in **Fiji** on health and socioeconomic grounds or in cases of rape, incest or fetal impairment.⁹⁴ Previously, although abortion was authorized on socioeconomic grounds, the penal code did not explicitly permit abortion in cases of rape, incest or fetal impairment.⁹⁵



2009 (continued)

Indonesia permits abortion to save the life of a woman or in cases of rape or severe fetal impairment.⁹⁶ Previously, abortion was permitted only to save a woman's life.⁹⁷

The situation in **Timor-Leste** is worth noting, although there has been no overall change in the legal status of abortion. In 2009, Timor-Leste adopted a penal code that permitted abortion to save a woman's life and health.⁹⁸ However, a month after the ratification of the penal code, it was amended to permit access to abortion only to save the life of a woman.⁹⁹ Previously, Indonesian law governed abortion in Timor-Leste. Indonesia's penal code prohibited abortion in all circumstances, but subsequent legislation permitted the procedure to save the life of a woman.¹⁰⁰ Although abortion in Timor-Leste is still only permitted to save the life of a woman, the recently adopted penal code, which explicitly codifies this life exception to the country's abortion ban, is more liberal than the previous Indonesian penal code provisions on abortion, which did not recognize any exceptions to the prohibition on abortion.

Enhancing Access to Safe and Legal Abortion Services

2002

India adopted an amendment to its abortion legislation that aimed to improve access to safe abortion facilities by decentralizing authority to approve facilities from the state level to the district level.¹⁰¹ The law, which is intended to simplify the approval process for new facilities, also increases criminal penalties for providers and facility owners who operate without approval.¹⁰²

2005

Thailand's Medical Council amended a regulation governing the medical profession's conduct with regard to abortion. The regulation provides a standard interpretation of the criminal law provision on abortion, which permits the procedure when a woman's life or health is in danger and in cases of rape.¹⁰³ According to the new regulation, "health" is defined to include mental health as well as physical health.¹⁰⁴ The regulation clarifies that abortion may be performed in public or private health facilities not only to protect a woman's life and physical health and in cases of rape, but also when a pregnancy causes harm to a woman's mental health and in cases of fetal impairment.¹⁰⁵

2009

The Supreme Court of **Nepal**, in the case of *Lakshmi Dhikta v. Nepal* ordered the Nepalese government to secure women's access to safe and affordable abortion services through a comprehensive abortion law and the creation of a scheme to cover the cost of abortions for those unable to pay.¹⁰⁶ The court grounded the importance of enabling women to access abortion services in a number of human rights, including the rights to equality, liberty, health, and self-determination. The government is currently in the process of developing a comprehensive abortion law in order to implement this judgment.

2014

Israel expanded its public funding for abortion to subsidize the cost of the procedure for women under the age of 33.¹⁰⁷

RESTRICTIONS

Only one country in Asia has imposed legal restrictions on abortion since 1994:

1996

Japan adopted an abortion and sterilization law in 1996 that removed a previous provision permitting abortion to prevent hereditary diseases, as part of reform aimed at moving the country away from its historically strong legal support for eugenics.¹⁰⁸ Abortion remains legal on health and socioeconomic grounds and in instances of rape.¹⁰⁹

EUROPE

TRENDS

When the ICPD PoA was adopted, the majority of countries across Europe already permitted abortion without restriction as to reason or on socioeconomic grounds. Since 1994, a number of countries throughout Europe have further liberalized their abortion laws or enacted measures to ensure greater access to abortion services. However, among countries that permit abortion without restriction as to reason, a trend toward the adoption of legislation or other regulations that seeks to restrict access to abortion has emerged. For instance, several countries have enacted procedural barriers, such as mandatory waiting periods and biased counseling requirements, which impede women's access to safe and legal abortion services and demean women as competent decision-makers.

LIBERALIZATIONS

1996

Abortion is permitted in **Albania** without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on specific grounds.¹¹⁰ A 1996 law confirmed a 1991 directive permitting abortion on the same grounds.¹¹¹ Prior to the reform, abortion was legal only to save a woman's life, to protect her physical and mental health, when the pregnancy resulted from rape or incest, or when the pregnant woman was below 16 years of age.¹¹²

2002

Switzerland made abortion legal without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on specific grounds.¹¹³ Previously, the law permitted abortion on broad health grounds.¹¹⁴

2007

Abortion was made legal in **Portugal** without restriction as to reason until the 10th week of pregnancy and thereafter on specific grounds.¹¹⁵ In 2010, the Constitutional Court upheld the constitutionality of the law.¹¹⁶ The previous law permitted abortion only when a woman's life or physical or mental health was in danger or in cases of rape or fetal impairment.¹¹⁷

2009

Abortion is now permitted in **Monaco** to save a woman's life or physical health and in cases of rape, incest, or fetal impairment.¹¹⁸ Previously, abortion was prohibited without any explicit exceptions.¹¹⁹



2010

Spain legalized abortion to permit it without restriction as to reason until the 14th week of pregnancy, and thereafter on specific grounds.¹²⁰ Previously, abortion was permitted only when a woman's life or physical or mental health was in danger or in cases of rape or fetal impairment.¹²¹

2012

Luxembourg amended its abortion law to permit abortion without restriction as to reason during the first 14 weeks of pregnancy and thereafter on specific grounds.¹²² Previously, the law only permitted abortion if the pregnancy threatened the woman's life or health, in cases of rape or incest, in cases of fetal impairment or for social or economic reasons.¹²³

Enhancing Access to Safe and Legal Abortion Services

2001 – 2014

France has adopted significant reforms intended to increase access to abortion services, including extending the gestational limit for procuring an abortion, eliminating the parental consent requirement, and reducing the cost of abortion services. For more information, please see the text on page 25.

2003

Denmark removed its residency requirement for procuring abortion services.¹²⁴

2007

Sweden amended its abortion law to make abortion services available to non-resident women under the same terms and conditions as apply to Swedish nationals and residents.¹²⁵

2013

Ireland enacted the Protection of Life During Pregnancy Act, codifying its highly restrictive abortion law. In the case of *Attorney General v. X*, Ireland's Supreme Court interpreted the constitution to permit abortion in cases of a substantial risk to a woman's life, including the threat of suicide.¹²⁶ While the Protection of Life During Pregnancy Act for the first time sets forth the procedure for accessing abortion services in such instances, it also includes a number of procedural barriers that women seeking abortion services in such circumstances must overcome. For example, if the threat to the woman's life stems from the risk of suicide, three doctors - an obstetrician and two psychiatrists - must certify that there is a real and substantial risk of her death that can only be averted through termination of the pregnancy.¹²⁷

France Takes Measures to Ensure Women's Access to Abortion Services

In **2001**, France extended the gestational period during which abortion is legal without restriction as to reason from 12 weeks to 14 weeks¹²⁸ and removed the parental consent requirement for minors, instead permitting minors to be accompanied by an adult of their choosing to obtain an abortion.¹²⁹

In **2012**, France changed its social security system to reimburse women for 100% of the cost of the abortion procedure,¹³⁰ whereas previously, it only covered 70% to 80% of the cost.¹³¹

Additionally, in **2014**, France amended its abortion law to remove language requiring women seeking abortion services to be "in a situation of great distress" and instead recognized that a "woman has the right to choose whether or not to continue with her pregnancy."¹³²

RESTRICTIONS

1997

The situation in **Poland** is worth noting, although there has been no "net" legal change since 1993. The law currently in force permits abortion where pregnancy threatens the life or health of the woman; when there is justified suspicion that the pregnancy resulted from an unlawful act; and in cases of fetal impairment.¹³³ When this law was adopted in 1993, it severely restricted Poland's previously liberal abortion law. Although the law was again liberalized in 1996 to permit abortion on certain social and economic grounds,¹³⁴ this revised law was invalidated the following year by the Constitutional Tribunal on the grounds that it violated the constitution's protection of the right to life of the "conceived child." As a result, in 1997, the law was amended to eliminate the social and economic grounds for abortion.¹³⁵

Restricting Access to Safe and Legal Abortion Services

2000

Hungary passed a law imposing onerous and biased counseling requirements and restricting funding for abortion to procedures performed for medical indications and in cases of rape.¹³⁶ Moreover, a new constitution that entered into force in 2012 includes a provision explicitly recognizing the protection of life from the moment of conception.¹³⁷ While this provision does not directly affect the legality of abortion, it could set the stage for future abortion restrictions.

2003 – 2013

The **Russian Federation** has adopted a slew of legislation and regulations that impede women's access to abortion services. For more information, please see accompanying text box on page 27.

2003

Latvia issued regulations that mandate biased counseling and a three-day waiting period for procuring abortion services. These regulations also require that girls younger than 16 receive the consent of a parent or guardian in order to procure an abortion.¹³⁸

2009

The **Slovak Republic** introduced several barriers in access to abortion services. These barriers include a 48-hour waiting period and the extension of the parental consent requirement to all minors.¹³⁹ Previously, the parental consent requirement applied only to adolescent girls below 16 years of age.¹⁴⁰

2010

Germany's mandatory counseling requirement and three-day waiting period for the termination of pregnancies during the first 12 weeks was extended to include terminations that occur beyond this gestational limit on grounds of fetal impairment.¹⁴¹

2013

Macedonia adopted a law requiring women to undergo mandatory biased counseling and an ultrasound examination as well as to wait 3 days prior to accessing abortion services.¹⁴²

Belarus eliminated 8 of 10 "social indications" for which women can obtain an abortion after the 12th week of pregnancy. Currently, only women who become pregnant as a result of rape or who have had their maternal rights terminated can legally access abortion services on social grounds after the 12th week of pregnancy.¹⁴³

Russia Passes a Host of Measures to Reduce Women's Access to Abortion

During the past decade, Russia has adopted a number of laws and policies that impede women's access to abortion services.

In **2003**, Russia issued a decree restricting the circumstances under which women may legally obtain abortions from the end of the 12th week until the beginning of the 22nd week of pregnancy.¹⁴⁴ In **2012**, the Russian government further reduced the "social grounds" for termination of pregnancy between 12 and 22 weeks of pregnancy, thereby only permitting abortion in cases of rape during this gestational period.

Additionally, in **2010**, Russia's Ministry of Health and Social Affairs issued guidelines on pre-abortion counseling which includes language designed to discourage women from utilizing abortion services.¹⁴⁵ In **2011**, Russia adopted legislation that requires 10% of any advertisements by abortion providers to describe the dangers of abortion to women's health and prohibits the description of abortion as a safe procedure, despite evidence to the contrary.¹⁴⁶ Subsequently, in **2013**, it passed a law entirely banning advertising of abortion.¹⁴⁷

Also in **2011**, a law was enacted requiring women who are in their 4th to 7th week of pregnancy, or 11th or 12th week of pregnancy to observe a 48-hour waiting period before undergoing abortions.¹⁴⁸ The law also imposes a 7-day waiting period on women who are in their 8th to 10th week of pregnancy. The act further permits doctors to refuse to provide abortions on grounds of conscience, without sufficient safeguards to ensure women's access to legal abortion services.



LATIN AMERICA AND THE CARIBBEAN

TRENDS

Since 1994, six countries throughout Latin America and the Caribbean have expanded the grounds under which abortion is legal. While several countries have liberalized their abortion laws through the legislative process, high courts in Latin America have increasingly relied on human rights norms and the PoA in striking down restrictions on abortion. Nevertheless, despite the regional and global trend toward the increasing liberalization of abortion laws, Latin America and the Caribbean is the only region in the world in which more than one country has amended its penal code to further restrict access to abortion services during this period.

LIBERALIZATIONS

The following countries in Latin America and the Caribbean have eased legal restrictions on abortion since 1994:

1995

Guyana enacted the Medical Termination of Pregnancy Act, which permits abortion without restriction as to reason during the initial 8 weeks of pregnancy; on broad grounds between 8 and 12 weeks of pregnancy, such as if the pregnancy results from a contraception failure or would put the woman's mental health at risk; and thereafter on specific grounds.¹⁴⁹ Previously, abortion was only permitted if the pregnancy posed a risk to the woman's life.¹⁵⁰

2004

Saint Lucia amended its abortion law to permit abortion when the pregnancy endangers the woman's life or physical or mental health, or is a result of rape or incest.¹⁵¹ Under the former law, abortion was permitted only when performed "for purposes of medical or surgical treatment of a pregnant woman."¹⁵²

2006

The Constitutional Court of **Colombia** struck down the country's absolute abortion ban on constitutional grounds. In overturning the law, the court grounded its decision in a number of human rights, including the rights to life, health, equality and nondiscrimination, liberty and freedom from violence. The court carved out exceptions to the penal code's criminalization of abortion, permitting women to terminate pregnancies if the pregnancy poses a risk to the woman's life or her physical or mental health and in cases of rape, incest, or fetal impairments incompatible with life.¹⁵³

“One of the essential components of reproductive and sexual rights is women’s right to choose freely the number and spacing of children. This is based on the principles of human dignity and the right to autonomy and intimacy, as has been recognized by various international conventions.”

– Colombian Constitutional Court, Decision C-355/2006 (2006).

2012

The National Supreme Court of **Argentina** adopted a broad interpretation of the penal code, permitting abortion in cases of rape for all women.¹⁵⁴ Previously, abortion in instances of rape was only explicitly permitted by the penal code if the woman had a mental disability.¹⁵⁵ In its ruling, the court relied on UN TMBs’ concluding observations urging Argentina to permit abortion in instances of rape for all women.¹⁵⁶

The Supreme Court of **Brazil** ruled that abortion must be permitted in cases where the fetus suffers from anencephaly – a serious birth defect where large parts of the brain and skull do not develop, resulting in the inability to survive outside the womb. The court’s decision recognized that compelling a woman to carry to term an anencephalic fetus can severely affect her mental health,¹⁵⁷ and potentially cause suffering so great that it could constitute torture.¹⁵⁸ The court further noted that compelling a woman to carry to term a pregnancy in such instances would violate women’s sexual and reproductive rights as well as their rights to dignity, liberty, self-determination, health and privacy.¹⁵⁹ Previously, abortion was only legal to save the woman’s life or in cases of rape.¹⁶⁰

2013

Uruguay enacted the Voluntary Interruption of Pregnancy Act, which permits abortion without restriction as to reason during the first 12 weeks of pregnancy, and up to the 14th week if the pregnancy results from rape.¹⁶¹ Thereafter, abortion is permitted on specific grounds.¹⁶² Previously, Uruguay’s law only permitted abortion to preserve the woman’s life or health or when the pregnancy resulted from rape.¹⁶³

Enhancing Access to Safe and Legal Abortion Services

2006

Ecuador enacted a new health code empowering public and private health service providers to administer abortions in accordance with the penal code,¹⁶⁴ which authorizes abortion when the pregnancy poses a threat to the health or life of a woman, or if the pregnancy results from the rape of a woman with a mental disability.¹⁶⁵ Furthermore, the new health code prohibits the refusal to treat women who are undergoing or have experienced a spontaneous abortion, as properly diagnosed by a professional.¹⁶⁶

2012

In its decision liberalizing the country’s abortion law, the National Supreme Court of **Argentina** made clear that women seeking abortion services who became pregnant as a result of rape cannot be required to obtain judicial

authorization in order to terminate their pregnancies. Women must be able to access abortion services on the basis of their request alone and without evidentiary requirements.¹⁶⁷

2014

Bolivia’s Constitutional Court issued a ruling invalidating the requirement that women who become pregnant as a result of rape receive judicial authorization prior to accessing abortion services.¹⁶⁸ Reflecting on the standards set forth by several UN TMBs, the court ruled that the state must guarantee women who become pregnant as a result of rape access to abortion services in order to protect their liberty, dignity, life, health, and personal integrity.¹⁶⁹

Peru enacted national guidelines on the provision of abortion services in health facilities.¹⁷⁰ The adoption of the national guidelines followed extensive international pressure on Peru to implement the general recommendations from two UNTMB decisions. These decisions recognized that the denial of legal abortion services resulted in violations of the petitioners’ human rights. The UNTMBs recommended that Peru adopt measures to guarantee women’s access to legal abortion services, among other measures.¹⁷¹

RESTRICTIONS

The following countries in Latin America and the Caribbean have imposed legal restrictions on abortion since 1994:

1998

El Salvador amended its penal code to eliminate all exceptions to its prohibition of abortion.¹⁷² Under the previous law, abortion was permitted to save a woman’s life and in cases of rape and fetal impairment.¹⁷³

2006

Nicaragua amended its penal code to eliminate all exceptions to its prohibition of abortion.¹⁷⁴ The law removed the provision of the former penal code that authorized the performance of therapeutic abortions after the approval of three physicians and with the consent of the pregnant woman’s spouse or nearest relative.¹⁷⁵

Restricting Access to Safe and Legal Abortion Services

As part of a growing trend toward the adoption of constitutional measures that recognize life from the moment of conception, **El Salvador** and the **Dominican Republic** adopted such provisions in **1999** and **2010**, respectively.¹⁷⁶ While these amendments do not directly affect the legality of abortion, they set the stage for future abortion restrictions and make liberalizations less likely.

“Protecting sexual and reproductive rights is a direct path to promoting the dignity of all human beings and a step forward in humanity’s advancement towards social justice.”

– Colombian Constitutional Court, Decision C-355/2006 (2006).

ABORTION LAW REFORM AT THE STATE-LEVEL IN FEDERAL SYSTEMS

While the vast majority of abortion laws are determined at the national level, a few countries with federal systems regulate abortion at the state level – namely, Australia, Mexico and the United States. These countries have seen a significant number of legislative changes to their state-level abortion laws during the past two decades.

AUSTRALIA

In **Australia**, four states have significantly liberalized their abortion laws during the past two decades:

1998

In **Western Australia**, abortion was made legal without restriction as to reason.¹⁷⁷ Previously, it was permitted only to save a woman's life.¹⁷⁸

2002

The state of **Australian Capital Territory**, which permits abortion on broad social and economic grounds, removed abortion from the penal code entirely.¹⁷⁹

2008

Victoria adopted a law that permits abortion without restriction as to reason during the first 24 weeks of pregnancy.¹⁸⁰ Thereafter, a medical practitioner may perform an abortion if he or she reasonably believes it appropriate, "under all the circumstances," and consults with at least one other medical practitioner who also reasonably believes that the abortion is appropriate.¹⁸¹ Previously, abortion was only permitted to protect a woman's life or mental or physical health.¹⁸²

2013

The state of **Tasmania** liberalized its abortion law, permitting this service up to 16 weeks gestation.¹⁸³ Previously, the status of abortion in Tasmania was unclear, because conflicting statutes permitted abortion where its performance was "reasonable, having regard for all the circumstances"¹⁸⁴ while also penalizing those who caused the death of a "child" before birth unless it was done to preserve the pregnant woman's life.¹⁸⁵

MEXICO

In 2007, **Mexico's** Federal District amended the penal code to permit abortion without restriction as to reason during the first 12 weeks of pregnancy.¹⁸⁶ The following year, Mexico's Supreme Court upheld the constitutionality of this law.¹⁸⁷ Previously, abortion was legal only to protect the life or health of the pregnant woman and in cases of rape and fetal impairment.¹⁸⁸ The revised legislation also requires the government to provide abortions free of charge in public health facilities.¹⁸⁹ Additionally, a number of other states in Mexico with restrictive abortion laws have added narrow grounds on which abortion is permitted or not punishable.¹⁹⁰ These include Mexico State¹⁹¹ and Morelos¹⁹² in 2000, Baja California Sur in 2005,¹⁹³ and Chihuahua in 2006.¹⁹⁴

Despite these liberalizations, in the wake of the 2007 change of the Federal District's abortion law, 16 Mexican states amended their constitutions to include protections of life prior to birth.¹⁹⁵ While these provisions do not directly affect the legality of abortion, they set the stage for potential future abortion restrictions.

UNITED STATES

Although the **United States** Supreme Court has established that states cannot limit abortion before viability,¹⁹⁶ over the past 20 years, there have been numerous amendments and additions to the abortion laws currently in force in states throughout the U.S. Several states have enacted laws and policies to increase women's access to abortion services, including by expanding the types of providers that can perform abortions and creating buffer zones to secure women's safe passage into reproductive health care facilities.¹⁹⁷ However, many more have enacted restrictions on abortion, including laws banning abortion before the point of viability; requirements that women receive biased counseling, undergo mandatory ultrasounds and observe waiting periods; restrictions on public funding for abortion services; imposition of parental notification and consent requirements; and targeted restrictions on abortion providers, which single out and impose onerous restrictions on doctors providing abortion services with the aim of reducing women's access to abortion services.¹⁹⁸

FOR MORE INFORMATION:

The World's Abortion Laws 2014 interactive map features information on the legality of abortion by country, in 199 countries around the globe. To view the interactive map, visit www.worldabortionlaws.com. A full-color poster with this information is also available. To order a copy, visit www.reproductiverights.org or email publications@reprorights.org.

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- ¹²⁴ Law on the termination of pregnancy and the law on sterilization and castration as amended by Law No. 435 of June 10, 2003, pt. A, No. 86 (2003) (Den.).
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- ¹²⁷ Protection of Life during Pregnancy Act 2013, art. 9 (2013) (Ireland).
- ¹²⁸ Law No. 2001-588 of 4 July 2001 on Voluntary Interruption of Pregnancy and on Contraception, p. 10823, art. 2 (2001) (Fr.).
- ¹²⁹ *Id.* art. 5.
- ¹³⁰ Code de la Sécurité Sociale, art. L. 322-3 (20) (2012) (Fr.).
- ¹³¹ Le décret n° 2013-248 du 25 mars 2013 relatif à la participation des assurés prévue à l'article L. 322-3 du code de la sécurité sociale (2013) (Fr.).
- ¹³² [L'article] 5 quinquies C [du projet de loi] [Article 5d of Bill C] amending Article L2212-1 de la Code de la Santé publique (2014) (Fr.) (*removing* “La femme enceinte que son état place dans une situation de détresse peut demander à un médecin l'interruption de sa grossesse” and replacing with “toute femme qui ne veut pas poursuivre sa grossesse pourrait obtenir l'IVG, sa décision n'étant liée à aucune difficulté particulière”).
- ¹³³ Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination amended as of Dec. 23, 1997, art. 4a.1 (1-3) (1997) (Pol.) (unofficial translation provided by Federation for Women and Family Planning (Warsaw, Poland)).
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