CHAPTER IV:
Abortion

While the last 30 years have seen a global trend toward liberalization of national abortion laws, many governments around the world continue to impose legal barriers to abortion services. These barriers often take the form of criminal laws that punish both providers of abortion and those who undergo the procedure. Even in contexts where laws regulating abortion are liberal, lack of clarity in the law, an absence of public funding for abortion, burdensome procedural barriers to abortion services, and providers' refusals to offer legal abortions may effectively deny women access to safe abortion services. In addition, as new technologies for abortion service delivery emerge, most governments have been slow to enable women to take advantage of them.

Abortion Facts

- Each year, nearly 70 million women have unwanted pregnancies.[1] An estimated 46 million choose to have abortions.[2]
- An estimated 68,000 women in low-income countries die each year from complications of unsafe abortion.[3] Over 40% of those deaths occur in Africa.[4]
- Unsafe abortion is responsible for 13% of all annual maternal deaths globally.[5]
- Each year, an estimated 20 million unsafe abortions are performed worldwide and 95% of these are performed in low-income countries.[6]

This chapter addresses the duty of governments to ensure women's right to decide whether to terminate a pregnancy and to have the means to do so safely. It reviews the international legal foundations of this duty and identifies its three principal components: 1) removing legal restrictions on abortion, 2) guaranteeing all women access to abortion services, and 3) ensuring access to the full range of abortion methods. The chapter provides examples of recent national developments reflecting each of these governmental responsibilities.

HUMAN RIGHTS FRAMEWORK

International legal support for a woman's right to safe and legal abortion can be found in numerous international treaties and other instruments. These rights are also ensured in many national-level constitutions.

For international legal foundations of the rights marked in bold, see Appendix B

The right to safe and legal abortion has support in **guarantees of life and health**. In countries where abortion services are prohibited by law or inadequately funded by the state, a woman who wishes to terminate a pregnancy faces a threat to

her physical, mental, and social well-being. If she turns to an untrained provider or attempts to self-induce an abortion, she may undergo an unsafe procedure with devastating effects on her physical health. The most common complications caused by unsafe abortion include incomplete abortion, infection, hemorrhage, and injury to internal organs. These complications may result in infertility, lifelong injury, or even death.

Women have a **right to reproductive self-determination**. This right is supported in international guarantees of the rights to physical integrity and privacy and protects the right to make decisions about one's body—particularly those that affect reproductive capacity. The global community has repeatedly acknowledged the right to decide freely and responsibly the number and spacing of one's children. This right entitles women access to all safe, effective means of controlling their family size, and therefore supports access to abortion.

Restrictions on access to abortion violate women's **right to freedom from discrimination**. Restrictions on abortion discriminate against women by criminalizing a health-care procedure that only women need, thus compromising their rights to health and autonomy in reproductive decision-making. The impact of abortion restrictions are felt primarily by women, who bear the physical and emotional burden of carrying an unwanted pregnancy to term or risking their lives and health by undergoing unsafe abortions.

Women's **right to enjoy the benefits of scientific progress** entitles them to the full range of technologies for the safest abortion care. As the medical and scientific communities make advances in abortion technologies, governments must seek to help all women benefit from those advances.

These legal guarantees give rise to the following governmental duties:

- **Governments should remove legal restrictions on abortion.** Liberalization of abortion laws can be incremental, with exceptions made to criminal prohibitions for certain circumstances. More sweeping liberalization can include removal of abortion from the criminal code and reinforcement of abortion rights in a national constitution. Procedural barriers, such as requirements for parental consent and early gestational limits for abortion, should be removed.

- **Governments should ensure the accessibility of abortion.** The many potential barriers to obtaining an abortion mean that governments have multiple obligations to overcome those barriers. To remove obstacles to legal abortion, governments must:
  - ❖adopt protocols to ensure that all health-care providers know how to provide safe abortion care;
  - ❖instruct women and providers about the steps they must take to comply with requirements for a legal abortion;
  - ❖ensure that lack of financial means does not impede access; and
  - ❖pass legislation and policies that clearly outline the circumstances under which providers' conscientious objection is permissible and take measures to ensure that women can still access reproductive health services.

- **Governments should take measures to approve the full range of abortion technologies, including medical abortion.** To ensure that all women have access to medical abortion in a safe setting staffed with properly trained providers, governments should officially approve medical abortion protocols and remove barriers to the regimen.

1. MEASURES TO REMOVE RESTRICTIONS ON ABORTION

Abortion has historically been addressed in national criminal codes. Many governments have liberalized their abortion laws by amending the criminal law to create exceptions to the general criminal prohibition. Thus, in many countries, abortion continues to be regarded as a crime, albeit one that is not punishable under limited circumstances. In **Nepal,** abortion has been liberalized through incremental reform of the criminal law. Because ongoing criminalization reinforces the stigma associated with the procedure and serves to discourage health-care providers from offering it, advocates for abortion rights have recommended that abortion be removed entirely from national criminal codes. **South Africa** has gone further, not only decriminalizing abortion but also recognizing an affirmative right to the procedure. In addition, procedural barriers to abortion may deny access even in countries where abortion is legal on broad grounds. In recent legislation, **France** addressed two barriers to access gestational time limits and a parental authorization requirement.

Abortion Laws Worldwide

Fifty-four countries, representing 41% of the world's population, allow women to obtain abortions without restriction to reason. While some of these countries impose procedural barriers to abortion access, such as parental authorization requirements or requirements for counseling, their abortion laws rank among the world's most liberal.

The rest of the world's nations impose varying levels of restrictiveness. The most restrictive countries are those that permit abortion only to save a woman's life or make no explicit exception to sweeping prohibitions on abortion. Seventy-two countries, representing 26% of the world's population, fall into this most restrictive category (with 34 making explicit exceptions for life-saving abortions).

The second most restrictive category includes abortion laws that permit abortion to save a woman's life and protect her physical health. Thirty-five countries, home to 10% of the world's population, fall into this category.

Twenty countries, in which nearly 3% of the world's population lives, explicitly allow abortion to preserve a woman's life, physical health, and mental health; mental health can encompass anything from the trauma of rape to socioeconomic hardship, depending on the country's definition.

Finally, 14 countries, representing 21% of the world's population, allow abortion not only to protect a woman's life and health, but also on socioeconomic grounds, which include social and financial hardship and consideration of a woman's ability to care for her family.

It is important to note that countries in every category of restrictiveness may also permit abortion on grounds of rape, incest, and fetal impairment.

Source: Center for Reproductive Rights, The World's Abortion Laws (2005).

A. Nepal Permits Abortion on Broad Grounds

Historically, abortion in Nepal was strictly prohibited except when carried out for the purpose of "welfare," although the law did not clearly state which circumstances would qualify for this exception.[7] Between 20% and 60% of obstetric and gynecological admissions at major hospitals were due to complications from unsafe abortion.[8] In addition, criminal penalties were enforced against women who allegedly had abortions, resulting in the imprisonment of young girls and women accused of terminating their pregnancies.[9] In 2002, following years of organizing and leadership by advocates for women's rights and health, Nepal significantly liberalized its abortion law to permit the procedure on broad grounds.[10]

Nepal recently amended its restrictive abortion law with the adoption of the Eleventh Amendment to the Muluki Ain (national legal code), which went into effect on September 26, 2002.[11] The Eleventh Amendment changes the homicide provisions of the national code.

Grounds on which abortion is not punishable
The amendment legalizes abortions that are performed by a government-approved physician under the following conditions:

Abortion on request
A woman may have an abortion at her request during the first 12 weeks of pregnancy. All that is required is her voluntary consent.[12]

Rape or incest
A pregnancy resulting from rape or incest may be terminated up to 18 weeks of gestation.[13]

Life, health, and fetal impairment
A woman may have an abortion at any time during the pregnancy when her life or physical or mental health is at risk, or if there is a risk of fetal impairment. To have an abortion on these grounds a woman must have the recommendation of an authorized medical practitioner and she must give her consent.[14]

No spousal consent is necessary for an abortion and the law makes no distinction between married and unmarried women.[15]

Provisions on sex-selective abortion
The law prohibits anyone from forcing, coercing, "tricking," or providing incentives to a pregnant woman to have a sex-based abortion or to determine the sex of the fetus for the purpose of abortion. Violators of these prohibitions are subject to imprisonment of one year. Anyone who performs or forces a pregnant woman to undergo a sex-selective abortion is punishable with additional imprisonment of one year.[16]

B. South African Constitution Protects the Right to Abortion

In South Africa, recognition of the right to safely terminate a pregnancy followed the fall of the racist apartheid regime in 1994. After decades of inconsistent application of South Africa's restrictive abortion law—which effectively denied safe abortion services to low-income women but not to wealthier women, who were able to pay for quality services in clinics—access to safe abortion was recognized as a matter of social justice and human rights. The Reproductive Rights Alliance, a coalition of nongovernmental organizations (NGOs) devoted to human rights, health, and development, was instrumental in bringing about the liberalization of the abortion law.[17] Successful advocacy approaches included focusing on the human rights and public health dimensions of unsafe abortions.[18] A national study of morbidity and mortality related to unsafe abortion, especially the high health-system costs of addressing complications from unsafe abortion, made a strong impact on politicians during the public hearings that were held over whether the abortion law should be liberalized.[19] South Africa's Choice on Termination of Pregnancy Act of 1996 is the most liberal abortion law in Africa.[20]

Constitutional protection of reproductive decision-making
The Bill of Rights of the 1996 Constitution of South Africa, in section 12, grants citizens "the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction and [the right] to security in and control over their body… ."[21] In addition, section 27 of the constitution provides that everyone has "the right to have access to…health care services, including reproductive health care… ."[22]

These constitutional protections are reinforced in national abortion legislation.

Grounds on which abortion is legal
The Choice on Termination of Pregnancy Act legalizes abortions that are performed under the following conditions:

Abortion on request
A woman may have an abortion at her request during the first 12 weeks of pregnancy. Abortion under these circumstances may be performed by medical practitioners or midwives.[23]

Abortion on broad indications
An abortion may be performed up to 20 weeks of gestation by a medical practitioner if she or he believes that the pregnancy poses a risk to the woman's physical or mental health, there is a substantial risk that the fetus would suffer from a severe physical or mental impairment, the pregnancy resulted from rape or incest, or continuing the pregnancy would significantly affect the social or economic circumstances of the woman.[24]

Life or fetal impairment
Abortion is available at any time if a medical practitioner, after consultation with another medical practitioner or registered midwife, believes that the continued pregnancy poses a threat to the woman's life or would result in fetal impairment or injury.[25]

C. France Reduces Procedural Barriers to Abortion

According to a representative of the French Health Ministry, the removal of parental consent requirements for abortion protects the rights and safety of minors whose physical and emotional well-being can be threatened by having to seek parental consent.[26]

In 2001, France enacted legislation that extended the gestational period in which abortion is legal without restriction from 12 weeks of pregnancy to 14 weeks. France also removed the parental consent requirement; minors who present at a health facility seeking an abortion are only required to be accompanied by an adult of their choosing.[27]

2. MEASURES TO ENSURE ACCESS TO ABORTION

Abortion legalization by itself does not guarantee access to abortion services. This is particularly true in countries where abortion has historically been criminalized and the health system is unaccustomed to providing the procedure. Health-care providers must receive protocols and training on abortion procedures, as was done in **Ethiopia** following a recent legal reform. In addition, in order for incremental liberalizations of restrictive abortion laws to have an effect, governments must give health-care providers guidance on how to interpret narrow exceptions to legal prohibitions on abortion. This guidance can take the form of regulations to implement abortion reform, such as those adopted by the **Federal District of Mexico**. The district took additional measures to address access to abortion, recognizing that where funding for abortions for low-income women is not guaranteed, relatively few women will be able to take advantage of legal abortion services. Finally, it addressed conscientious objections and conscience clauses, which permit medical providers to refuse to provide certain health services on the basis of religious or moral objections. Because these service refusals can limit the availability of abortion, the Federal District took measures to narrow the scope of conscientious objection.

A. Ethiopia Adopts Guidelines on Safe Abortion Services

Prior to 2004, abortion was permitted in Ethiopia only to save a woman's life, protect her health, and in cases of rape. Representatives of civil society, including medical providers, lawyers, and international NGOs participated in the national debate over liberalization of the abortion law.[28] According to the new penal code, adopted in 2004, abortion is not punishable when it is performed to save a woman's life or health; in cases of rape, incest, and serious fetal impairment; and when a pregnant woman lacks the capacity to care for a child because of her age or physical or mental health.[29] A major step toward implementing the new law came with the Ministry of Health's release of guidelines for safe abortion services.[30]

In June 2006, the Ethiopian Ministry of Health issued *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, which set out basic principles and standards for the delivery of abortion care.[31]

Recognition of the duty to address maternal mortality and protect rights
According to the guidelines, underlying the government's commitment to improving abortion care are the high rates of maternal mortality and morbidity in Ethiopia, the country's duties under international human rights treaties and consensus documents, and the mandates of Ethiopia's own constitution and national policies.[32]

Woman-centered care
The guidelines focus on two types of care related to pregnancy termination: woman-centered abortion care and postabortion care. "Woman-centered abortion care" is defined as "a comprehensive approach to providing abortion services that takes into account the various factors that influence a woman's individual mental and physical health needs, her personal circumstances, and her ability to access services." According to the guidelines, this care includes services "that

support women in exercising their sexual and reproductive rights." Postabortion care is a set of comprehensive services for women who present at health-care facilities with complications following a spontaneous abortion or an attempted pregnancy termination.[33]

Clarification of legal requirements for abortion
The guidelines provide an official interpretation of the legal framework for abortion, which includes the following stipulations:

- abortions should be provided within three days of a woman's request;
- a woman seeking an abortion on the grounds of rape or incest is not required to submit evidence of the criminal act or identify the offender; and
- a woman seeking an abortion on the grounds that she is a minor and unable to care for a child is not required to present proof of age.[34]

Counseling
The guidelines' provisions on abortion care address counseling and informed decision-making.[35]

Measures to expand access
The guidelines also set out procedures for both medical (see text box below) and surgical abortions. In addition, the guidelines explicitly allow mid-level providers, such as clinical nurses and midwives, to provide comprehensive abortion services, including manual vacuum aspiration and medical abortion.[36]

B. Federal District of Mexico Requires Public Health Facilities to Offer Abortion

In 2000, the Federal District of Mexico amended its penal code to remove penalties for abortions performed when a woman's health is in danger, in cases of fetal impairment, and when the pregnancy being terminated resulted from nonconsensual artificial insemination. The exceptions previously recognized under the law—in cases of rape, danger to a woman's life, and unintentional abortion caused by accident—all remain in effect.[37] The implementing regulations issued by the District Secretariat of Health in 2002 require health-care facilities to ensure the accessibility of abortion in circumstances where it is legal. Very significantly, in 2004, the public health code was amended to further reinforce the duty of health-care facilities to make abortion accessible, including their duty to limit the scope of "conscientious objections."

Regulations for Health Care Providers

Recognition that "health" includes mental health
The District Secretariat of Health explicitly interprets the penal code's provision permitting abortion when a woman's health is at risk to include risks to mental health, as well as to physical health.[38]

Public Health Code Reforms

Services offered free of charge
In 2004, the Federal District of Mexico amended its public health code to require that, in cases where abortion is legal, public health institutions perform abortions free of charge and under safe conditions.[39]

Timely and accurate information
The law also requires that pregnant women be provided with timely and accurate information on options other than abortion and on the effects of abortion on their health.[40]

Limits on "conscientious objection"
A legal abortion should be carried out within five days of a woman's request. Health providers who oppose abortion on religious grounds or personal convictions may refuse to provide one, but they must refer the pregnant woman to a physician who is willing to perform the procedure. Providers may not refuse to perform abortions in emergency situations where the pregnancy threatens the health or life of the pregnant woman. Public health institutions are required to ensure that services are provided in a timely manner and that personnel who are not opposed to abortion are available to provide the procedure.[41]

3. AVAILABILITY OF THE FULL RANGE OF ABORTION TECHNOLOGIES

Medical advancements have steadily improved the abortion technologies available to women. For example, vacuum aspiration has replaced sharp curettage as the favored surgical abortion method, which has made the procedure considerably safer and more comfortable.[42] The recent availability of nonsurgical, medical methods of pregnancy termination gives women yet another choice. Mifepristone is registered for use as a method of medical abortion in at least 36 countries.[43] Studies of women and physicians in France, Great Britain, and Sweden, where medical abortion with mifepristone has been legal for more than a decade,[44] provide ample evidence that the regimen is safe, effective, and accepted by women. Medical abortion has recently been approved in Vietnam, for example, where it is included in guidelines for reproductive health-care delivery.

What Is Medical Abortion?

Medical abortion is an early, safe, and effective alternative to surgical abortion that generally involves the use of two medicines to end a pregnancy. The most common regimen calls for an oral dose of mifepristone, a drug that blocks progesterone receptors and thereby detaches the embryo from the uterus, which is followed by a dose of misoprostol up to 48 hours later; misoprostol is a prostaglandin analog that causes uterine contractions in order to complete the abortion.[45] This regimen, which can be initiated as soon as pregnancy is confirmed,[46] is approximately 95% effective.[47] Most countries that have approved medical abortion regimens permit their use up to seven weeks' gestation; Sweden and the United Kingdom permit medical abortion up to nine weeks of pregnancy.[48] Mifepristone, which was first approved for medical abortion in France in 1988, is also commonly known by its original French name, RU-486.[49]

Medical abortion should not be confused with emergency contraception (EC). While medical abortion terminates pregnancy, EC prevents it. EC includes emergency contraceptive pills, which are generally taken within 72 hours of unprotected sex, and the copper-T intrauterine device, which may be inserted up to seven days after unprotected sex.[50] While EC is thought to prevent pregnancy in a variety of ways, depending on where a woman is in her menstrual cycle,[51] recent scientific research indicates that the most popular method of EC appears to work by preventing a woman from ovulating.[52] No form of EC is effective once implantation has begun, meaning that EC cannot interfere with an existing pregnancy.[53]

A. Vietnam Includes Medical Abortion in Reproductive Health Norms

Abortion in Vietnam is legal and relatively unrestricted. Services are widely available in the public health-care system, even in rural areas.[54]

In 2002, with the release of its National Standards and Guidelines for Reproductive Health Care Services,[55] Vietnam took steps toward medical abortion provision at public facilities.

Restrictions on facilities and providers
The guidelines permit medical abortion up to 49 days of gestation and only doctors trained in medical abortion are allowed to offer it. Services are available at only the central and provincial levels. Women who live more than 30 minutes away from the facility may not use this abortion method.[56]

Emphasis on counseling
Counseling should provide information about all available abortion methods, including medical abortion; the complications and side effects of medical abortion, as well as danger signs of complications; what to expect when taking the medicine; the timing of a woman's recovery of fertility; postabortion contraceptive advice; and the importance of the two-week follow-up appointment.[57] General provisions on counseling focus on the particular needs of adolescents and women who have experienced violence.[58]

Short period of observation
The guidelines recommend that the drugs be administered under medical supervision at the clinic, with 15 minutes of observation following the mifepristone dose and four hours of observation following the dose of misoprostol.[59]

Follow-up care
A follow-up examination is to be given two weeks later to determine whether the abortion is complete and to check for bleeding.[60]

CONCLUSION

There are numerous legal fronts on which to pursue recognition of a woman's right to access safe abortion services. NGOs can continue to fight for law reform that broadens the grounds for legal abortion, takes abortion out of the realm of criminal law, recognizes an affirmative right to have an abortion, and reduces procedural barriers to the procedure. An incremental approach, one that promotes access where abortion is legal on some grounds, is also gaining in settings with relatively restrictive laws. Some specific means of improving access include providing clear procedures for obtaining an abortion, ensuring abortion funding, and limiting providers' legal ability to opt out of abortion service provision. In addition, women should have access to the full range of abortion technologies.

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