

# Safe and Legal Abortion Is a Human Right

*Abortion, 2015*

From Opposing Viewpoints in Context

The Center for [Reproductive Rights](#) is an international advocacy organization that uses the law to advance reproductive freedom as a fundamental human right.

In 2008, an estimated 86 million women had unintended pregnancies. The impact of unintended pregnancies vary immensely depending on such factors as a woman's health, family relationships, economic resources, and the availability of medical care. These and other factors influence her decision to either carry a pregnancy to term or to seek an [abortion](#). Given the complexity of this decision, the only person equipped to make it is the pregnant woman herself.

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

International legal support for a woman's right to safe and legal abortion are found in numerous international treaties and other instruments.... The right to choose abortion has support in guarantees of life, health, freedom from [discrimination](#), [autonomy](#) in reproductive decision-making, freedom from cruel, inhuman, or degrading treatment and the right to enjoy the benefits of scientific progress.

## Women's Right to Life

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Multiple [human rights](#) instruments protect the [right to life](#). In 2000, in elaborating States' obligations in reporting on their compliance with the right to life enshrined in the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee called upon States to inform it of "any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."

It is widely acknowledged that in countries in which abortion is restricted by law, women seek abortions clandestinely, often under conditions that are medically unsafe and therefore life-threatening. According to the World Health Organization (WHO), about 21.6 million women had unsafe abortions in 2008. These unsafe abortions were responsible for the deaths of nearly 47,000 women. The incidence of unsafe abortion is closely associated with high maternal mortality rates. Therefore, laws that force women to resort to unsafe procedures infringe upon women's right to life.

Several United Nations (UN) human rights bodies have framed maternal deaths due to unsafe abortion as a

violation of women's right to life. As a result, they have called on States to review restrictive laws that criminalize abortion and increase access to [family planning](#) and sexual and reproductive health information, in order to reduce the number of unsafe abortions.

The right to health can be interpreted to require governments to take appropriate measures to ensure that women have the necessary information and the ability to make crucial decisions about their reproductive lives.

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

## Women's Right to Health

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International law guarantees women the right to "the highest attainable standard of physical and mental health." The right to health requires governments to provide health care and to work toward creating conditions conducive to the enjoyment of good health. In 2000, the Committee on Economic, Social and Cultural Rights recognized that the right to health includes "the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference." Furthermore, the right to health "requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) explicitly recognizes that the right to health includes access to safe and legal abortion, at a minimum, in certain circumstances. It requires States Parties to "ensure that the right to health of women, including sexual and reproductive health is respected and promoted" by taking appropriate measures to authorize 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."

## Safe Abortion Services Protect Women

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The right to health can be interpreted to require governments to take appropriate measures to ensure that women have the necessary information and the ability to make crucial decisions about their reproductive lives, such as determining whether or not to continue a pregnancy, and to guarantee that women are not exposed to the risks of unsafe abortion, which can have devastating effects on their health, leading to long-term disabilities, such as uterine perforation, chronic pelvic pain or pelvic inflammatory disease. Such measures include removing barriers that interfere with women's access to health services, such as legal restrictions on abortion, and ensuring access to high-quality abortion information and services.

Laws that restrict abortion have the effect and purpose of preventing a woman from exercising any

of her human rights or fundamental freedoms on a basis of equality with men.

- Several UN human rights bodies have recognized the deleterious impact of restrictive abortion laws on women's health and have consistently raised general concerns about the inaccessibility of safe [abortion services](#).
- The Programme of Action adopted at the International Conference on Population and Development (ICPD) in 1994 called upon governments to consider the consequences of unsafe abortion on women's health. It states that governments should "deal with the health impact of unsafe abortion as a major public health concern."
- At the 1995 Fourth World Conference on Women, the international community reiterated this language and urged governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions." In addition, in a paragraph addressing research on women's health, the Platform for Action adopted at this conference urges governments "to understand and better address the determinants and consequences of unsafe abortion."
- In 1999, at the five-year review of the ICPD, governments recognized the need for greater safety and availability of abortion services. They affirmed 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."

## Women's Right to Equality and Nondiscrimination

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The right to gender equality is a fundamental principle of human rights law. All major human rights instruments require freedom from discrimination in the enjoyment of protected human rights. According to the Convention on the Elimination of All Forms of Discrimination against Women, "discrimination against women" includes laws that have either the "effect" or the "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men. In 1999, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recognized "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures" as a barrier to women's access to appropriate health care.

## Denying Women Access to Abortion Is a Form of Gender Discrimination

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Laws that restrict abortion have the effect and purpose of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.

- Restricting abortion has the *effect* of denying women access to a procedure that may be necessary for their equal enjoyment of the right to health. Only women must live with the physical consequences of [unwanted pregnancy](#). Some women suffer maternity-related injuries, such as hemorrhage or obstructed labor. Women are consequently exposed to health risks not experienced by men.
- Laws that deny access to abortion, whatever their stated objectives, have the *discriminatory purpose* of both denigrating and undermining women's capacity to make responsible decisions about their bodies and their lives. Indeed, it is not surprising that unwillingness to allow women to make decisions about their own bodies often coincides with the tendency to deny women decision-making roles in the areas of political, economic, social, and cultural affairs.
- The CEDAW Committee has consistently expressed concern about restrictive laws that criminalize

abortion. Furthermore, the Human Rights Committee has recognized that criminalizing abortion, even in cases of rape, is incompatible with the States' obligation to ensure the equal right of men and women to the civil and political rights set forth in the ICCPR. Additionally, it has indicated that the problem of maternal mortality due to unsafe abortion is evidence of discrimination against women.

The Human Rights Committee has recognized that denying women access to legal abortion services is an arbitrary interference in their private lives.

## Women's Right to Reproductive Self-Determination

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Human rights instruments provide the basis for the right of women to make decisions regarding their own bodies. In particular, they require the right to freedom in decision-making about private matters. Such provisions include protections of the right to physical integrity, the right to decide freely and responsibly the number and spacing of one's children and the right to privacy.

When a pregnancy is unwanted, its continuation can take a heavy toll on a woman's physical and emotional well-being. Decisions one makes about one's body, particularly one's reproductive capacity, lie squarely in the domain of private decision-making. A pregnant woman may seek advice from others, but only she knows whether she is ready to have a child, and governments should play no role in making that decision for her.

- The Human Rights Committee has recognized that denying women access to legal abortion services is an arbitrary interference in their private lives.
- The European Court of Human Rights has underscored the connection between pregnancy and a woman's private life, which includes her physical and psychological integrity. It has recognized that States have a positive obligation to effectively secure the physical integrity of [pregnant women](#). This obligation requires them to establish procedural safeguards to ensure that women can make an informed decision about whether or not to terminate a pregnancy and access safe and legal abortion services in a timely manner.

## Women's Right to Be Free from Cruel, Inhuman, or Degrading Treatment

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International law recognizes that women have a right to be free from cruel, inhuman, or degrading treatment. The Human Rights Committee has stated that cruel, inhuman, or degrading treatment is not restricted to acts that cause physical pain, but also applies to mental suffering, which often accompanies denials of access to abortion services.

As a result of restrictive abortion laws and policies, many women experiencing complications of pregnancy and needing therapeutic abortion are forced to suffer from painful, frightening and life-threatening conditions.

Human rights bodies have recognized that restrictive abortion laws can lead to violations of the right to be free from cruel, inhuman and degrading treatment. The Committee against Torture has recognized the impact of restrictive laws, which force women to carry unwanted pregnancies to term or to undergo illegal

abortions that often place their health and lives in danger, and noted that the failure of States to take steps to prevent these acts constitutes cruel and inhuman treatment.

Specifically, it has indicated that a total prohibition on abortion, which forces a woman to carry a pregnancy resulting from a crime of gender-based violence, such as rape, "entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression." The Human Rights Committee has stated that criminalizing abortion is incompatible with the right to be free from cruel, inhuman or degrading treatment.

The denial of access to abortion services in certain circumstances, regardless of the legality of the procedure, constitutes cruel, inhuman or degrading treatment.

## Women Suffer Without Access to Abortion

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Women may also undergo severe suffering and anguish when legal abortion services are inaccessible.

In many countries, healthcare personnel refuse to provide legal abortion services because of their own objection or discriminatory attitudes towards abortions. In the case of *L.M.R. v. Argentina*, the Human Rights Committee found that the State's failure to ensure a woman's access to abortion services to which she was legally entitled, caused her physical and mental suffering, which constituted cruel, inhuman or degrading treatment.

Additionally, in the case of *R.R. v. Poland*, the European Court of Human Rights established a violation of the right to be free from inhumane and degrading treatment because of the suffering experienced by R.R., due to the knowledge that she could not terminate her pregnancy even though the fetus had an incurable deformity and she was entitled to have an abortion under the Polish law. The Court stated that "[s]he suffered acute anguish through having to think about how she and her family would be able to ensure the child's welfare, happiness and appropriate long-term medical care."

Furthermore, the denial of access to abortion services in certain circumstances, regardless of the legality of the procedure, constitutes cruel, inhuman or degrading treatment.

In the landmark decision of *K.L. v. Peru*, the Human Rights Committee found that the depression and emotional distress experienced by a 17-year old girl were foreseeable consequences of the State's failure to enable her to benefit from a therapeutic abortion, and constituted a violation of her fundamental right to be free from cruel, inhuman, or degrading treatment. Notably, this ruling did not depend on the legality of abortion.

## Women's Right to the Enjoyment of the Benefits of Scientific Progress

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The Universal Declaration of Human Rights and the International Covenant on Economic, Social and

Cultural Rights enshrine the right to enjoy the benefits of scientific progress.

As the medical and scientific communities make advances in abortion technologies, this right entitles women to access the full range of technologies for the safest abortion care.

The right to the benefits of scientific progress is particularly salient in the context of abortion because numerous safe, effective and low-cost health interventions, such as medical abortions, can substantially improve women's access to safe abortion services, thereby reducing the incidence of unsafe abortion, and decreasing the attendant maternal morbidity and mortality rates. Medical abortion is an alternative to surgical abortion that generally uses two medicines to end a pregnancy. The most common regimen calls for an oral dose of Mifepristone, followed by a dose of Misoprostol up to 48 hours later. This regimen, which can be initiated as soon as pregnancy is confirmed, is approximately 95% effective. In 2005, the WHO added Mifepristone and Misoprostol to its Model List of Essential Medicines, a list intended to guide governments in their prioritization of necessary drugs for budgetary allocations and procurement in their national health systems.

Permitting medical abortion can significantly improve women's overall access to safe abortion because it can be provided in a broad range of settings, such as in practitioner's offices, and can be offered by non-physicians, which helps to expand the pool of providers available to perform safe abortions. Additionally, reducing reliance on physicians can reduce costs and help make abortion more available and accessible to women. By approving medical abortion protocols, training providers and removing barriers to the regimen, governments can ensure that women have access to medical abortion in a safe setting, which allows them to enjoy their right to the benefits of scientific progress.

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