

Human Rights, Unwanted Pregnancy & Abortion-Related Care



Reference information and illustrative cases

September 2002

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Preface

Leading international human rights organizations, such as Amnesty International and Human Rights Watch, have begun to specifically address violations of women's rights, at least partly because of growing acknowledgment that gender-based biases and inequalities contribute in large measure to discrimination against women. However, most international and national human rights organizations have thus far largely concentrated on combating violence against women. Though this focus is of the utmost importance, it is vital that such work be expanded to include other violations of women's sexual and reproductive rights that may harm their health and lives.

The World Health Organization (WHO) estimates that more than 1,400 women around the world die each day because of complications related to pregnancy and childbirth [1]. About 13% of these deaths — seven each hour — are due to unsafe abortions. In addition, women are exposed to substantial health risks in relation to pregnancy:

- They may suffer violence when they attempt to use contraceptives against their partners' wishes or be subjected to coercive sexual intercourse, whereby they cannot prevent unplanned and unwanted pregnancies.
- They may be abused during pregnancy and subsequently suffer miscarriages as a result.
- They may be unable to gain access to affordable and appropriate antenatal care that could reduce possible pregnancy complications, including fetal loss.
- They may be prevented from terminating pregnancies that are unwanted or dangerous to their health and lives.

As a result of growing gender awareness, governments, UN agencies, and nongovernmental organizations (NGOs) have begun to acknowledge that respect for human rights, which include sexual and reproductive rights, must form the basis for enhancing women's and men's sexual and reproductive health. Ensuring compliance with these rights is particularly essential to guarantee that adolescent and adult women are able to make well-informed and voluntary decisions regarding their reproductive choices.

"By design, neglect or ignorance, health policies, programs and practices in and of themselves can promote and protect or, conversely, restrict and violate human rights... The promotion, protection, restriction or violation of human rights all can be seen to have direct and indirect impacts on health and well being. Looking at health through a human rights lens means recognizing not only the technical and operational aspects of health interventions but also the civil, political, economic, social and cultural factors that surround them." [2]

Most countries have endorsed at least some international human rights treaties that affect women's enjoyment of their human rights. Various organizations have published documents explaining how these rights are related to reproductive health. Because abortion-related care remains a sensitive health issue, however, there are relatively few documents that specifically address human rights in relation to unwanted pregnancy and abortion issues. This document aims to expand available resources on the subject, particularly for NGOs working to enhance women's health. Health providers and trainers of health professionals may also find the material useful for assessing their daily practice or reviewing aspects of ethics covered in pre- and in-service training.

It should be stressed that, overall, few court cases concerning violations of women's reproductive rights have cited or applied international human rights standards. This document therefore merely suggests how international human rights standards might be applied to issues regarding unwanted pregnancy and abortion-related care.

Organization of the document

Part 1 of this document introduces the international sources of human rights, briefly explaining how international conventions are adopted and how their implementation by States is monitored. It also describes the legal status of

international consensus statements, such as conference declarations. Part 2 introduces the right to health as defined in international treaties. It then goes on to explain the sexual and reproductive rights which are commonly acknowledged by legal scholars and international agencies. Part 3 provides suggestions on how NGOs and health providers can increase awareness about, and promote compliance with, sexual and reproductive health rights, particularly regarding unwanted pregnancy and abortion-related care. Part 4 presents case studies demonstrating possible violations of women's reproductive rights.

Appendices I and II provide information on international and regional human rights documents, while Appendix III provides questions that can be asked when assessing whether a woman's rights have been violated in a specific case. Appendix IV demonstrates how international human rights standards may be related to specific rights violations regarding prevention of unwanted pregnancy, unsafe abortion, postabortion care and abortion permitted by law.

How this document can be used

In addition to serving as a reference source, this document can be used in the following ways:

- Parts 1 and 2 can be used to prepare presentations and handouts with background information for NGO staff or for pre-service training and continuing education of health-service providers.
- Part 3 can serve as a reference during project and program planning to generate ideas for research and activities related to human rights, unwanted pregnancy and abortion-related care.
- The case studies in Part 4 can be used as discussion starters in workshops on human rights and abortion-related care with community members, health-service providers, journalists and members of the legal and law enforcement sectors. For example, they could be read and analyzed using a series of questions or be illustrated through a dramatization that is followed by audience discussion. The case studies can also be used in articles, brochures or radio programs to illustrate concretely how women's rights have been violated in connection with abortion-related care. Finally, the case studies can be used as examples for documenting new cases in which violations of women's rights have occurred locally.
- Appendices III and IV can be useful to groups wishing to document cases in which women's rights may have been violated. Different types of possible violations are presented with lists of relevant citations from international conventions, Treaty Monitoring Committees and international consensus statements. Such cases can be presented to the public through tribunals, in print and the broadcast media. They can also be incorporated into reports to Treaty Monitoring Committees that describe the extent to which States are or are not observing the treaties to which they have committed themselves.

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Part 1: International Human Rights Standards

The international human rights system

The concept of protecting individuals' dignity and rights is not new — it has been found in the philosophical and legal traditions of countries in Africa, Asia, Europe and South America [1]. The modern movement towards protecting human rights began when States ratified the United Nations Charter (an international treaty). According to Article 56 of the Charter, States are required to promote human rights [3]. This requirement gained international recognition with adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948.

After adoption of this Declaration, an international system of law was established to ensure respect for human rights. The system, which has continued to evolve and expand over recent years, includes the formulation and endorsement of international conventions by States, the establishment of committees to monitor States' compliance with the treaties that they have ratified, and international courts that consider cases in which human rights have been violated if remedies for the violations have not been achieved through domestic courts.

International conventions

The Statute of the International Court of Justice recognizes “conventions” as principal sources of human rights. The international human rights legal system also uses other, equally valid, synonyms to refer to such international agreements: treaties, charters, covenants and pacts.

Examples of conventions that are cited in connection with the application of human rights to sexual and reproductive health issues are:

- The International Covenant on Civil and Political Rights (CCPR)
- The International Covenant on Economic, Social and Cultural Rights (CESCR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The Convention on the Rights of the Child (CRC)
- The African Charter on Human and Peoples' Rights (ACHPR)
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará).

States first sign a convention, which indicates that they agree not to act in ways that would defeat the purpose and objectives of the treaty, even though it is not yet legally binding for them [4]. When States ratify conventions, they become legally obliged to enforce them. Ratification takes place through mechanisms that differ from country to country, for example, through a decision by the executive branch of government or via legislative approval. States may make reservations when they ratify a treaty, which means that they exempt themselves from complying with certain provisions in the treaty.

Some States give ratified conventions the same status as national laws that have been adopted through ordinary legislative mechanisms. Other governments only ascribe value to international treaties when they have been transformed into national law through a required procedure, such as an Act of Parliament. Each State's constitutional law then stipulates whether the treaty has equal or lesser status than the constitution as a source for interpreting the fundamental rights and freedoms of citizens [5].

A number of conventions have established Treaty Monitoring Committees that evaluate the degree to which States have made efforts to comply with the ratified treaties, for example by amending national laws, policies and practices so that they honor convention provisions. Conventions that are monitored by such Committees include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

The Committees that monitor the International Covenant on Economic, Social and Cultural Rights and CEDAW have said that, once States have ratified the conventions, they are legally obliged to [6]:

- Respect the rights mentioned in the conventions by not violating them, for example, by not taking actions that may restrict individuals' sexual and reproductive autonomy.
- Protect those rights by taking positive action against third parties who violate them, i.e., by maximizing protection through sanctions against individual violators and measures to deter potential violators.
- Fulfill the rights by using governmental means to ensure that individuals have the full benefit of human rights; these means include legislative, administrative, judicial, budgetary, economic and other measures.

States must submit periodic reports to a Treaty Monitoring Committee concerning what they have done to comply with the treaty (every 2-5 years, depending on the convention). Individuals and civil society organizations may submit information on States' compliance as well — these reports are sometimes called shadow reports. After considering the official state and shadow reports, a Treaty Monitoring Committee issues Concluding Observations. These include recommendations on how a State can take action to improve its observance of the convention. States are not legally obliged to carry out the recommendations but are expected to do so as a result of ratification of the convention.

Following are three examples of how Treaty Monitoring Committees address State obligations to respect, protect and fulfill rights:

1. If a State does not provide adolescents with information and education on contraception, the State may be considered to be restricting individuals' sexual and reproductive autonomy. The Committee on the Rights of the Child responded to a report by Gabon in 2002 as follows: "The Committee recommends the State Party to: a) undertake a comprehensive study to assess the nature and extent of adolescent health problems, and with the full participation of adolescents, use this as a basis to formulate adolescent health policies and programmes with a particular attention to the prevention of STDs and early pregnancies notably through new efforts to educate adolescents on contraception" [7].
2. If a State does not take sufficient measures to sanction persons who commit sexual abuse against adolescents that may lead to unwanted pregnancies, the State may not be protecting the rights of these young women. In 2002, the Committee on the Rights of the Child recommended that Malawi: "b) properly investigate cases of violence, through a child-sensitive judicial procedure, and that sanctions be applied to perpetrators with due regard given to guaranteeing the right to privacy of the child; c) provide services for physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention; and take measures to prevent the criminalisation and stigmatisation of victims" [8].
3. If a State does not take adequate measures guaranteeing all women access to adequate health care, it may not be ensuring that they have full benefit of their human rights. The Monitoring Committee for CEDAW urged the government of India to "allocate resources from a 'women's right to health' perspective" as part of a holistic approach to women's health [9].

The Committees also produce *General Recommendations* and *General Comments* that explain in more detail how specific articles of conventions are to be understood and interpreted. Through these recommendations, the Committees develop criteria for assessing how well States observe ratified treaties. For example, the CEDAW Committee published General Recommendations 19 and 24 in order to help governments identify human rights violations in the areas of violence against women and women's health, respectively. The Human Rights Committee, which monitors the International Covenant on Civil and Political Rights, has issued a number of General Comments, including General Comment 28 on the equality of rights between men and women.

The Treaty Monitoring Committee General Recommendations and Comments establish criteria for assessing States' compliance with conventions. The criteria are based on events-based and standards-based data [10]. *Events-based data* refer to *individual violations of human rights* (for example, when a woman is forced to undergo sterilization or when she

is denied emergency obstetric care). *Standards-based data* refer to *population-based findings* (for example, persistently high or low rates of maternal morbidity and mortality) that can indicate systematic denial of human rights. The use of evidence-based data by Committees requires governments to explain, for example, why high rates of maternal mortality exist; if they cannot provide reasonable explanations, a case may be brought forward for consideration by one of the international courts of justice. The decisions of international courts are legally binding upon States, in contrast to the recommendations for action made by Committees.

The conventions can be useful tools in efforts to promote the harmonization of inconsistent laws and policies within a country. For example, in Mali the penal code prohibits abortion in all cases, while the National Population Policy permits abortion if the health of a woman or fetus is in danger [11]. By making references to treaty provisions and Treaty Monitoring Committee recommendations concerning maternal and infant mortality, NGOs in Mali could advocate for changes to bring the law into accordance with the National Population Policy.

Declarations and conference consensus statements

International conferences convened by the United Nations and UN agencies, such as WHO, issue declarations and consensus statements, such as *programs of action*. When governments sign such statements, they express an intention to honor the recommended actions. These documents are political rather than legal in nature; they neither imply obligations nor establish State responsibilities within the framework of international human rights. Generally, governments do not recognize new rights at international conferences. This is why the 1994 International Conference on Population and Development (ICPD) affirmed that reproductive rights comprise rights that have already been recognized in international treaties.

Even though the declarations and consensus statements have no legal status, they may serve as supplementary (extra) sources of legal interpretation; Treaty Monitoring Committees use them as a reference framework to evaluate State actions. The CEDAW Committee has adopted the ICPD Programme of Action as a basis for its observations and recommendations regarding States' observance of human rights in the area of sexual and reproductive health.

In addition, international declarations and consensus statements are valuable in helping to promote social norms that re-emphasize government commitments to ensuring respect for human rights. This was the case, for example, when the 1993 Conference on Universal Human Rights issued the *Vienna Declaration and Programme of Action* [12]:

"The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, inter-governmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

Many international UN-sponsored conferences are followed by review meetings, such as the five-year reviews of ICPD (ICPD +5) and the 1995 World Conference on Women (Beijing +5), held in 1999 and 2000, respectively. The declarations issued at such review meetings are also political rather than legal documents.

In this document, the term international human rights standards will be used to refer to both conventions and declarations/consensus statements.

Part 2: Human Rights and Reproductive Health

The right to health

The International Covenant on Economic, Social and Cultural Rights, which entered into force in 1976, affirms “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” It also says that States must take steps to ensure “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.” The Convention on the Elimination of All Forms of Discrimination against Women, which came into force in 1981, specified the right to health for women explicitly, stating that it includes health-care services related to family planning, pregnancy, childbirth and the postnatal period. In 1999, the CEDAW Committee further commented that States must “eliminate discrimination against women in their access to health care services, throughout the life cycle...”

CEDAW Committee General Recommendation 24 notes that the right to health includes:

- provision of health information and education
- services oriented towards the preservation and recuperation of health, including rehabilitation
- actions to prevent and deal with public health problems such as epidemics, infant mortality and maternal mortality
- mechanisms to monitor and orient health management
- means to obtain justice when individuals’ human rights have been violated or their health and personal integrity have been damaged due to acts or omissions by state agents or private persons in accordance with established civil, penal or administrative responsibilities.

Sexual and reproductive health rights

Other than CEDAW, most human rights conventions do not refer explicitly to sexual and reproductive rights. Rather they refer to human rights related to health, information and education, survival and security of the person, life, privacy and confidentiality, torture and inhumane treatment, and nondiscrimination. (See Appendix II for references to the provisions of major treaties in which the rights are expressed.) It is therefore important to demonstrate how these human rights can be applied to sexual and reproductive health, for example, by referring to guidance provided by Treaty Monitoring Committees [6].

The International Planned Parenthood Federation (IPPF) has examined human rights in various conventions in order to define how rights related to sexual and reproductive health can be expressed [13]. IPPF identified 12 sexual and reproductive rights and published a charter and guidelines explaining them; these reference documents are used by organizations around the world. The Center for Reproductive Law and Policy (CRLP) differentiated the 12 rights as belonging to two broad groups: rights related to reproductive health care and rights related to reproductive self-determination, that is individuals’ rights to make decisions about their own reproductive health [14]. Others have stressed the importance of recognizing that these rights “...involve more than just the biological workings of a woman’s womb...[so that] reproductive health strategies must address the ways in which men view and influence women’s reproduction, as well as the ways in which men view their own reproductive lives and responsibilities” [3].

Sexual and reproductive rights, as identified by IPPF and categorized by CRLP, are listed below with relevant citations from three of the most relevant conventions and their Treaty Monitoring Committees: the International Covenant on Political and Civil Rights (Human Rights Committee), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) and the Convention on the Rights of the Child (Committee on the Rights of the Child). To date, it would be fair to say that rights related to health care have gained broader societal acceptance in many countries than rights related to self-determination.

RIGHTS RELATED TO REPRODUCTIVE SELF-DETERMINATION

The right to equality and to be free from all forms of discrimination means that no person should be

discriminated against in his or her sexual and reproductive life, nor in his or her access to health services on the basis of race, ethnicity, sex, sexual orientation, marital status, family position, age, language, religion, political or other opinions, national or social origin, birth or other status, or property. In particular, this means that adolescent and adult women should have access to health-care interventions related to pregnancy and childbirth (including postabortion care and abortion permitted by law) so that their health is protected to the same extent as men's health. Married and single women should have equal access to all reproductive health services; neither should female refugees and members of ethnic minorities be denied access because of their marital or ethnic status. Examples of how this right could possibly be violated:

- Health providers treat female clients in a degrading or inhuman manner based on their sex or sexist stereotypes and prejudices.
- Postabortion care is denied to a woman suffering complications of an incomplete miscarriage or an unsafe abortion because of some personal trait (for example, she is of a particular race, she is HIV-positive).

"Whatever their stated purpose, restrictions on abortion discriminate against women by criminalizing a health-care procedure that only they need and by relegating them to the traditional roles of mothers and nurturers."

- The Center for Reproductive Law and Policy [15]

Citations from conventions and Treaty Monitoring Committees

- CEDAW, Article 12.1: "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."
- CEDAW Committee General Recommendation 24, paragraph 8: "States parties are encouraged to address the issue of women's health throughout the woman's lifespan. For the purposes of this general recommendation, therefore, women includes girls and adolescents."
- CEDAW Committee General Recommendation 24, paragraph 31(c): "Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion."

The right to privacy and confidentiality means that all sexual and reproductive health-care services should be confidential and offered with privacy, and that all women have the right to make independent, non-coerced reproductive choices. Examples of how this right might be violated:

- Health providers give information about a woman who has had abortion-related care to the mass media or other third parties without her consent.
- A woman is required to obtain her spouse's consent for an abortion permitted by law.

"...because decisions one makes about one's body, particularly one's reproductive capacity, lie squarely in the domain of private decision-making, the right to privacy protects women's right to choose abortion..."

- The Center for Reproductive Law and Policy [15]

Citations from conventions and Treaty Monitoring Committees

- International Covenant on Civil and Political Rights, Article 17.1: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence..."

- Human Rights Committee General Comment 28, paragraph 20: “States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women’s right to enjoy privacy and other rights protected by article 17 on the basis of equality with men....Another area where States may fail to respect women’s privacy relates to their reproductive functions, for example, where...States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion....In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake...States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.”
- CEDAW Committee General Recommendation 24, paragraph 12(d): “While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”

The right to freedom of thought includes freedom from the restrictive interpretation of religious texts, beliefs, philosophies and customs as a way to curtail freedom of thought about sexual and reproductive health care. Health providers have the right to conscientious objection regarding the provision of contraception and abortion services when they can refer clients to health professionals who are willing to provide the service at a site convenient to the client; the right does not exist in emergency cases where a woman’s life is at risk or her health might be permanently endangered. The right of conscientious objection also only applies to health providers who would carry out a procedure directly on a patient (for example, an abortion or insertion of an IUD); institutions and clinics may not invoke conscientious objection as a reason for not providing services [10]. This right might be violated if:

- Health providers refuse to provide postabortion care to a woman whose life is in danger due to complications from an unsafe abortion.
- Individuals or groups use religion as a reason for inciting violence against health personnel who provide postabortion care or abortions permitted by law.
- A woman is prevented from receiving an abortion permitted by law by persons or groups who attempt to prevent authorization being given for religious reasons.
- Health providers refuse to perform an abortion permitted by law for religious reasons without referring a woman to facilities nearby where she can obtain this care.

Citations from conventions and Treaty Monitoring Committees

- International Covenant on Civil and Political Rights, Article 18: “1. Everyone shall have the right to freedom of thought, conscience and religion....3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
- CEDAW Committee General Recommendation 24, paragraph 11: “Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

The right to decide whether or when to have children includes the right of all persons to the reproductive health information, education and services needed to choose and use fertility regulation methods. This includes methods to prevent unplanned and unwanted pregnancy, such as emergency contraception, and to ensure safe motherhood and safe abortion. This right might be violated if:

- Health providers deliberately refuse to inform women about contraceptive options, such as emergency contraception.
- Health providers deliberately refuse to inform women who request information about legal abortion about the conditions under which abortion is permitted by law.

Citations from conventions and Treaty Monitoring Committees

- CEDAW, Article 16.1: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:…e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights…”
- CEDAW Committee General Recommendation 24, paragraph 31(c): “States parties should also, in particular…Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion…”
- Human Rights Committee General Comment 28, paragraph 10: “…States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions…”
- Human Rights Committee General Comment 28, paragraph 11: “To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.”

The right to abortion is not stipulated explicitly in any international human rights treaties; neither do any of the conventions rule out the right of a woman to have an abortion [16]. Treaty Monitoring Committees have nevertheless recommended to various States that they consider revising restrictive abortion laws, either by removing provisions that criminalize abortion or by expanding legal provisions for abortion (for example, allowing it in cases of rape or incest or to protect a woman’s health and life):

- The CEDAW Committee did so in Concluding Observations made to the States of Argentina, Chile, Colombia, Ireland, Jordan, Mexico, Namibia, Nepal, Panama, Paraguay, St. Vincent and the Grenadines and Zimbabwe [17-28].
- The Human Rights Committee did so in Concluding Observations made to the States of Chile, Costa Rica, Lesotho and Peru [29-32].

The right to choose whether or not to marry and to found and plan a family means that women cannot be required to marry without their full, free and informed consent. This right might be violated, for example, when a woman is forced to marry someone because she has become pregnant outside marriage.

Citation from a convention

- CEDAW, Article 16.1: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:…(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent…”

The right to freedom of assembly and political participation includes the right of all persons to influence communities and governments to prioritize sexual and reproductive health and rights, including measures to increase access to contraceptive methods, to eliminate unsafe abortions, and to increase access to legal abortion by changing laws and regulations.

Citation from a convention

- International Covenant on Civil and Political Rights, Article 19: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

RIGHTS RELATED TO REPRODUCTIVE HEALTH CARE

The right to life means that no woman’s life should be put at risk by reason of pregnancy, no child’s life should be put at risk because of his/her gender, and no person’s life should be put at risk because of a lack of access to sexual and reproductive health services. This right might be violated when:

- A health provider refuses to provide or delays postabortion care to a woman suffering complications of an incomplete miscarriage or unsafe abortion, thereby causing unnecessary risks to a woman’s health and life.
- A health provider refuses to provide an abortion permitted by law to safeguard a woman’s health or life.

Citation from a convention

- International Covenant on Civil and Political Rights, Article 6.1: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Some conservative commentators have opposed exclusive affirmation of a woman’s right to life when she is placed at risk through pregnancy by asserting that the fetus has a right to life. When the UN General Assembly adopted the International Covenant on Civil and Political Rights, those drafting the Covenant refrained from determining the legal status of a fetus [33]. A fetus was not legally considered to be a human being; human beings were defined as persons who had been born [1]. This was in accordance with Article 1 of the Universal Declaration of Human Rights, which states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Court rulings issued under other major treaties with right to life provisions support this conclusion. The European Commission has ruled that in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protects “everyone’s right to life,” the term “everyone” does not include the unborn [34]. This is the case even with respect to treaties that define life as beginning before birth, such as the American Convention on Human Rights, which guarantees protection of the right to life “in general, from the moment of conception.” The Inter-American Commission on Human Rights, in the “Baby Boy vs. the USA” case, found that the phrase “in general” qualifies protection of life from the time of conception; the Commission concluded that the Convention does not require States to prohibit abortion [35].

The right to information and education refers to access to full factual education and information about sexuality, including the benefits, risks, and effectiveness of all methods of fertility regulation, so that all decisions taken are made on the basis of full, free and informed consent. The information and education must be gender-sensitive, free of stereotypes and presented in an objective manner. Examples of how this right might be violated:

- Health providers do not give patients information about abortion-related care in a manner that is adequate and appropriate to their needs (for example, understandable language that will be useful in guiding their decisionmaking).
- Health providers do not give women complete and medically correct information regarding their options so that they can make a free and informed choice regarding abortion permitted by law.

Citations from conventions and Treaty Monitoring Committees

- CEDAW, Article 10: “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women...(h) Access to specific educational information to help to ensure the

health and well-being of families, including information and advice on family planning.”

- CEDAW Committee General Recommendation 24, paragraph 18: “...States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality.”

The right to liberty and security of the person recognizes that every woman has the right to services that will help preserve her health, including protection against causes of maternal morbidity and mortality such as unsafe abortions. This right also recognizes that no woman should be subjected to female genital cutting, forced pregnancy, forced sterilization or coerced abortion, that is, medical interventions done without a woman’s full, free and informed consent. The International Criminal Court also condemns forced pregnancy, defined as confinement of women who have deliberately been made pregnant in order to affect the ethnic composition of a civilian population [36]. This right might be violated when:

- A health provider denies or delays giving a woman postabortion care for an incomplete miscarriage or unsafe abortion.
- A health provider refuses to provide an abortion permitted by law without referring a woman to facilities that will provide such a health service.
- A health provider pressures a woman to undergo an abortion or sterilization, for example, in the case of a woman living with HIV/AIDS.

Citations from conventions and Treaty Monitoring Committees

- International Covenant on Civil and Political Rights, Article 9.1: “Everyone has the right to liberty and security of the person...No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”
- Human Rights Committee General Comment 28, paragraph 11: “...The States parties should also provide the Committee information on measures to prevent forced abortion or forced sterilization.”
- CEDAW Committee General Recommendation 24, paragraph 11: “Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

The right to health care and health protection includes the right of health-care clients to the highest possible quality of health care, including access to methods of fertility regulation, safe abortion, and diagnosis and treatment of infertility and HIV/STIs. They also have the right to be free from traditional practices that are harmful to health and all forms of violence. Examples of how this right might be violated:

- A health provider denies or delays giving a woman postabortion care for an incomplete miscarriage or unsafe abortion.
- A health provider refuses to provide an abortion permitted by law without referring a woman to facilities that will provide such a health service.
- A woman is required to obtain her spouse’s consent for an abortion permitted by law.

Citations from conventions and Treaty Monitoring Committees

- CEDAW, Article 12.2: “Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”
- CEDAW, Article 14.2: “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(b) To have access to adequate health care facilities, including information, counselling and services in family planning...”
- CEDAW Committee General Recommendation 24, paragraph 14: “The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women’s rights to have access to health care. For example, States parties should not restrict women’s access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”
- CEDAW Committee General Recommendation 24, paragraph 27: “States parties should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post-partum periods for women. Many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity and post-natal services. The Committee notes that it is the duty of States parties to ensure women’s right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.”
- Convention on the Rights of the Child, Article 24.2: “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: a) To diminish infant and child mortality; b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care...”

The right to the benefits of scientific progress includes the right of sexual and reproductive health service clients to new reproductive health technologies that are safe, effective and acceptable in relation to infertility, contraception and abortion-related care. For example, women who have access to abortion permitted by law should be informed about the availability of methods such as medical abortion (using pharmaceutical drugs) and vacuum aspiration which is recommended over dilatation and curettage. This right might be violated when:

- Health providers deliberately do not inform women about available contraceptive methods, including emergency contraception, or different methods for carrying out abortions permitted by law.

Citations from conventions and Treaty Monitoring Committees

- International Covenant on Economic, Social and Cultural Rights, Article 15.1(b): “The States Parties to the present Covenant recognize the right of everyone...[to] enjoy the benefits of scientific progress and its applications.”
- CEDAW Committee General Recommendation 24, paragraph 20: “Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.”
- CEDAW Committee Concluding Observations to Mexico in 1998, paragraph 408: “The Committee recommends that the Government consider the advisability of revising the legislation criminalizing abortion and suggests that it weigh the possibility of authorizing the use of the RU486 contraceptive, which is cheap and easy to use, as soon as it becomes available” [37].

The right to be free from torture and inhuman treatment includes the rights of all persons — women, men, adolescents and boys/girls — to protection from violence, sexual exploitation and abuse in relation to their sexuality and reproduction. Inhuman and degrading treatment can include gender-based psychological violence against women who present for abortion-related care. Examples of how this right might be violated:

- Health providers refuse to carry out or delay an abortion permitted by law when a woman has legal authorization, thereby causing mental distress and, in some cases, possibly increased risks to her health.
- Health providers treat women presenting for postabortion care or legal abortion in a degrading way (insulting, humiliating, threatening her).
- Health providers do not take sufficient measures to decrease pain for women presenting for postabortion care or an abortion permitted by law as a way of “punishing” her.

Citations from conventions and Treaty Monitoring Committees

- International Covenant on Civil and Political Rights, Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”
- CEDAW Committee General Recommendation 24, paragraph 15: “The obligation to protect rights relating to women’s health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure: (a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services; (b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence...”
- Convention on the Rights of the Child, Article 19.1: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person...”

Part 3: Ensuring Sexual and Reproductive Health Rights – What NGOs and Health Providers Can Do

NGOs and health-care providers can use their knowledge of international human rights standards to promote reproductive health by identifying and publicizing violations related to unwanted pregnancy and abortion-related care. Activities are possible in the fields of research, advocacy, and information and education.

Possible actions

1. Conduct research on the societal impact of unwanted pregnancy and unsafe abortion and on the impact of restrictive abortion laws on maternal mortality
2. Promote the ratification of international treaties and their use in domestic forums and courts
3. Support the work of Treaty Monitoring Committees
4. Organize and participate in tribunals on women's human rights
5. Participate in educating the general public and health providers about international human rights standards that are important for reproductive health

Conduct research

Hard data are needed to demonstrate to governments, the health and legal sectors, and Treaty Monitoring Committees that unwanted pregnancies and unsafe abortions affect women's right to health. Treaty Monitoring Committees have recognized the need for research. For example, the Committee on the Rights of the Child requested that in-depth studies be done on adolescent health problems, including early pregnancies and unsafe abortions, by the governments of Armenia, Belize, Benin, Chad, Iraq, Mali, Nicaragua and Paraguay [38-45]. The Committees that monitor the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights requested that the United Republic of Tanzania and Mauritius, respectively, provide research data on unsafe abortions [46, 47].

Academic institutions and NGOs can play a role in gathering such information. Quantitative data can indicate relationships between unwanted pregnancies, unsafe abortions and overall female morbidity and mortality, while qualitative data can illustrate the impact on women's individual lives. In the case of abortion, it is important that data regarding maternal morbidity and mortality be disaggregated by age and geographical location so that violations specific to adult and adolescent women, and certain population groups (rural women or women from certain ethnic groups) can be demonstrated. It may be particularly useful to work with agencies specialized in human rights to develop gender-sensitive investigative tools to document the qualitative aspects of individual unsafe abortion cases.

Research is also needed regarding the economic impact of unwanted pregnancies and unsafe abortions and on the health-care resources that could be saved if they were not needed to treat the complications of unsafe abortions. Studies on barriers to women's access to postabortion care and abortion permitted by law can focus on a variety of factors. Some examples:

- The existence of contradictory regulations concerning abortion, such as penal codes that prohibit abortion and health policies that permit abortion, for example, when a woman's life is in danger.
- The absence of clear policies and guidelines regarding how authorization for an abortion should be obtained, and where and by whom the procedure can be performed.
- The existence of obstacles that make it difficult for specific groups of women to gain access to an abortion permitted by law. These might include: unauthorized fees for the procedure; availability of services only in certain

hospitals, requiring women to travel great distances; requirements for spousal or parental consent to obtain the procedure; required approval by more than one physician or certain types of physicians, such as gynecologists, who may not be present in rural areas; required authorization by judges when regulations do not specify which types of judges can grant such authorization.

- The lack of sufficiently trained health-care providers at various levels of the health system who can provide safe abortion care.
- The lack of means to provide women with various options to obtain safe abortion care (for example, electric and manual vacuum aspiration instruments, pharmaceutical products that can be used for medical abortion).

Promote the ratification of international treaties

NGOs can participate in actions to promote ratification of various treaties by governments that have not yet done so. In countries where constitutions stipulate a special procedure to incorporate a treaty in the application of domestic law, a strategic action for NGOs is to promote such a procedure. They can also advocate that States withdraw reservations to treaties. Such work will involve lobbying legislators, working with parliamentary commissions and mobilizing public support for ratification through collaboration with the mass media.

Promote the use of treaties in domestic forums and courts

International human rights standards can be used in trials before a country's judicial administration. NGOs can work with lawyers to address cases in which human rights have been violated in relation to abortion care, such as denial of postabortion care or abortions permitted by law. They must consider whether the State has signed and ratified treaties relevant to the case; it is also important to determine whether the State made any reservations in signing a convention. References can be made to specific recommendations issued by a Treaty Monitoring Committee to the country, citing the criteria developed by the Committee to signify that the State involved was at fault. Consideration can also be given to bringing cases before an international court of justice if all domestic avenues for resolving cases have been exhausted.

Support the work of Treaty Monitoring Committees

NGOs can promote the continued development by Treaty Monitoring Committees of criteria to evaluate States' compliance with conventions. One way is to contribute to and disseminate "shadow reports" that are submitted to the Committees when they are in the process of evaluating a particular State's compliance with a treaty [48]. These reports can include information on violations of women's rights, such as cases in which women have been denied abortions permitted by law. It is also important to take a constructive approach by highlighting progress that governments have made in complying with conventions.

When NGOs do not have time to prepare comprehensive reports for Committees, they can submit letters with relevant information. Both reports and letters need to include documented evidence of violations and progress. NGOs, such as The Center for Reproductive Law and Policy (CRLP) and the International Women's Rights Action Watch (IWRAP) can provide information on the process used to prepare shadow reports (see Resources on page 68).

Tribunals and testimonies concerning violations of women's rights

NGOs working on women's rights and health can play an especially important role in motivating both governmental and nongovernmental agencies to devote serious attention to violations of sexual and reproductive rights. Provision of research data and documented cases where rights have been violated is one way to accomplish this.

Another is the organization of, and participation in, tribunals on violations of women's rights. During these national and international meetings, women present testimonies about violations of their rights. For example, during the Third Tribunal on Violations of Women's Human Rights in Costa Rica (1998), a pregnant mother of six children spoke of a physician's refusal to grant her request for sterilization to prevent future pregnancies [49]. During a tribunal held in Nigeria, women testified about female genital cutting, domestic violence, rape, early marriage and widow abuse [50].

Violations of human rights suffered by women in relation to abortion and postabortion care also need to be highlighted at these forums. NGOs can work with women to present testimonies, anonymously if necessary, and disseminate their stories through the mass media and educational materials. For example, in July 2001, the Polish Federation for Women and Family Planning organized a Tribunal on Polish Anti-Abortion Law which presented the cases of women who were denied legal abortions at various hospitals; they included women who sought to prevent the birth of disabled children. The Tribunal included a press conference and resulted in reports that were also disseminated via the Internet. The Federation also published a book of testimonies, *Women's hell: Contemporary stories*, to encourage other women to report similar cases [51, 52].

Education about international human rights standards and reproductive health

According to international human rights standards, States have an obligation to ensure that those working in the health-care sector are informed and educated about human rights in relation to health. For example, CEDAW Committee General Recommendation 24 states in paragraph 31(f) that States should: "Ensure that the training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence."

It is important to educate different groups — health-care providers, staff of the judicial sector, the mass media and community-based organizations — about the international human rights standards that are relevant to preventing unwanted pregnancies and providing abortion-related care. Many conventions oblige States to provide human rights education; when NGOs carry out education on reproductive rights, they are participating in observance of the treaties. For example, during debates in Kenya regarding liberalization of abortion laws in 2001, NGOs wrote articles for newspapers and websites that pointed to the public health and rights implications of unsafe abortion.

"Unsafe abortion is one of the five leading causes of pregnancy related deaths and injuries in Kenya....Every year, a significant portion of the Ministry of Health's budget is spent managing complications resulting from unsafe abortions....In referral hospitals across the country, a significant proportion of gynaecological admissions are as a result of complications from unsafe abortion. In Nairobi alone, about 60 per cent of acute gynaecological admissions are as a result of this. A visit to any gynaecological ward at any referral hospital makes one wonder if these resources could not indeed be put to better use....The choice should not be between providing safe services or managing complications from unsafe abortion. The focus must be on strategies that will save lives and reduce injury and suffering for women and girls."

- Executive Director, Centre for the Study of Adolescence [53]

It is possible to work on education with organizations specialized in human rights monitoring, such as Human Rights Watch and Amnesty International. Both organizations carry out campaigns on women's rights, especially regarding violence against women. They produce thematic and country-based reports based on research, submit reports to governments and Treaty Monitoring Committees, exert pressure to stop abuses (for example, through letter-writing campaigns to national authorities) and promote the development of legislation and measures to protect human rights within countries.

Part 4: Case Studies

It is difficult to find well-documented cases of possible human rights violations concerning abortion-related care. Most of the accounts presented below are consequently based on media reports. Their complete accuracy cannot be guaranteed; however, the reports come from sources known to provide reliable information. Some of the cases provide only a few facts, while others include much more detailed information. Each one demonstrates how international human rights might be applied to show that sexual and reproductive rights may have been violated.

Mexico: 13-year-old rape survivor goes to international commission

On 31 July 1999, 13-year-old Paulina Ramírez Jacinta was raped at home by an intruder in Mexicali, Baja California; she became pregnant as a result. On 3 September, Paulina and her mother, María Elena Jacinta Rauz, requested an abortion, which is legal in the first trimester of pregnancy according to the Penal Code (Article 136) of Baja California if the rape is officially reported. The rapist was arrested and state justice officials authorized the procedure, provided it was carried out in a state-run institution.

In early October Paulina was admitted to the General Hospital in Mexicali. The chief obstetrician, Dr. Fernando Garza, refused to perform the abortion, resigning from his post after the hospital director, Dr. Ismael Ávila Iñíguez, told him that the procedure had been ordered by the authorities. The other surgeons on staff also refused to perform the procedure.

In the meantime, two unidentified women visited Paulina, saying they were state social workers sent by the hospital director. They showed her a videotape with pictures of aborted fetuses and warned her that she risked excommunication from the Catholic Church. They also showed her a paper with black inkblots and an English text, asking her to visualize the image of Jesus Christ and what he was saying to her. “I didn’t want anyone to see me,” Paulina said. “I just wanted them to leave me alone. I was very upset, and so I just kept quiet and hung my head.” The social work agency denied that any of its staff had visited Paulina in the hospital.

After a week, Dr. Ávila discharged Paulina. Her mother immediately took her to see Attorney General Juan Manuel Salazar Pimentel, the state’s highest justice official, to obtain his personal order for the abortion. Mr. Salazar tried to talk them out of the procedure but Paulina insisted that she wanted to end her pregnancy. She said the attorney general responded, “How can you do that to your own blood?” Despite protests from Ms. Jacinta, Mr. Salazar drove them to his church. He sat with Paulina and Ms. Jacinta through mass and then left them alone with the priest, who reminded them that the Catholic Church views abortion as a sin. “When you are in this much pain, you forget a lot of things you learned in church,” Ms. Jacinta told the priest. “Even though the pope does not agree, if I do not do anything cruel, why shouldn’t God forgive me?”

When Mr. Salazar saw that Paulina’s mother would not change her mind, he summoned Dr. Ávila to explain why the order for the abortion had not been implemented; he also signed a new order. Dr. Ávila recruited a surgeon from outside the hospital and scheduled the procedure for 9 October. Minutes before the abortion, Dr. Ávila misinformed Ms. Jacinta that Paulina could suffer a fatal hemorrhage or be left sterile, whereupon she refused to sign the authorization and the abortion was canceled. “I thought it was better for my daughter to have the baby than to die,” she said. “Probably nothing would happen to her, but if everyone was so angry about the operation, maybe the doctors would do it badly on purpose.” In a later statement to the Tribunal for Administrative Conflicts, Ms. Jacinta said: “They forced me to waive my daughter’s right to abortion...They did not care that they gave me manipulative, partial or fatalistic information violating my right and my daughter’s right to information and to her right to choose to reproduce in a free, responsible and informed manner.” Paulina and her mother went home; Ms. Jacinta, mother of eight children, faced more than \$1500 in medical costs for the delivery that she could not pay.

The Baja California Law Office of Human Rights and Civil Protection ruled in March 2000 that Paulina’s rights had been violated; according to Antonio García Sánchez, the government’s failure to carry out the abortion “was dominated by the ethical preferences of the officials involved.” He called on the state to set up a long-term trust fund to care for Paulina and her child until they could support themselves, including costs for health care, education, clothing,

housing, and other basic needs. Two NGOs, the Asociación Alaide Foppe and GIRE, opened a bank account in Ms. Jacinta's name to help cover the costs of Paulina's hospital stay in October and delivery.

The state governor, Alejandro González Alcocer, rejected the Law Office's finding and recommendation, saying that the family had never lodged a formal legal complaint and that Paulina had voluntarily withdrawn her request for an abortion. On 6 April several dozen Mexican intellectuals, including the novelists Carlos Fuentes and Laura Esquivel, signed an open letter in Mexico City newspapers calling on Governor González to accept the human rights prosecutor's recommendation to indemnify Paulina. Ms. Socorro Díaz, a public health system director, commented that the adolescent's human rights had been violated twice: first when she became a victim of rape and second when the state authorities refused her a legal abortion. She said: "Sometimes a fundamental rule is forgotten: morals are personal and pose obligations on individuals; the law is general and poses obligations on everyone."

The case was referred to the National Commission on Human Rights, which also found that Paulina's right to terminate her pregnancy had been violated because public authorities had "confused their religious beliefs with their legal obligations."

On 15 April 2000, Paulina gave birth to a boy, Isaac, through a cesarean section. In August, she stated on national television that she supported the right of rape survivors to have an abortion. The NGOs Epikeia, Asociación Alaide Foppe and The Center for Reproductive Law and Policy presented the case to the Inter-American Commission on Human Rights in March 2002, requesting that the State pay Paulina compensatory damages and establish protocols instructing government and health-sector staff how to handle cases of rape survivors. Rebecca Cook, professor of human rights and international law at the University of Toronto, commented: "This is really a case of women's access to care to which they are legally entitled."

If the Mexican State does not reach an agreement with the Commission, the case may be submitted to the Inter-American Court on Human Rights, which can pass judgments that are legally binding on Mexico [54-59].

Sexual and reproductive health rights possibly involved

- The right to equality, and to be free from all forms of discrimination: Paulina's right to medical care that only a woman would need was denied.
- The right to privacy and confidentiality: a priest and two unidentified women were informed about Paulina's decision to have an abortion without her consent.
- The right to decide whether or when to have children: Paulina's decision not to carry an unwanted pregnancy to term was violated.
- The right to information and education: the misinformation given to Ms. Jacinta by the hospital director violated her right to objective and comprehensive information.
- The right to liberty and security of the person: Paulina's right to freely choose a legal medical procedure was obstructed by several state authorities through delays in carrying out the procedure.
- The right to health care and health protection: all of the actions taken by state authorities violated Paulina's right to receive legal health care; since pregnancy at an early age may carry more risks of maternal morbidity, Paulina's right to health protection was also involved.
- The right to be free from inhuman treatment: Paulina suffered inhuman and degrading treatment when she was harassed and threatened by various individuals, including state authorities.

Argentina: mentally-disabled adolescent rape victims

Pregnancy resulting from the rape of a mentally-disabled woman is one of the few indications for legal abortion in Argentina, according to Article 86.2 of the Penal Code. In 1999, a 13-year-old malnourished, mentally-disabled girl was raped and impregnated in the city of Chabut. A religious authority, judge and governmental minister convinced the girl's parents to forego an official complaint and an abortion in return for economic and nutritional assistance. Several months later, the girl's father reported that the "aid" had comprised 2 kg of flour, 1 kg of sugar, 1 liter of oil, a packet of noodles, two packets of yeast and a box with 24 tins of liver pate.

In November of the same year, the mother of another young, mentally-disabled rape survivor requested an abortion for her daughter. A judge declared that judicial authorization was unnecessary for abortions permitted by law; however, the hospital to which she went refused to perform an abortion without judicial authorization. Respected legal authorities commented that legal permission was not required, but debates continued until the young woman had a spontaneous abortion that was almost fatal. A lawyer, who supported denunciation of the case by the girl's mother and a physician, stated that no doctor in Argentina wishes to risk being accused of committing a crime, even when the case concerns an abortion permitted by law [60].

Sexual and reproductive health rights possibly involved

- The right to life: the delays in granting an abortion for the second girl endangered her life.
- The right to liberty and security of the person: the rights of the girls and parents to freely choose a legal medical procedure were obstructed in both cases.
- The right to health care and health protection: the right to gain access to a legal medical procedure was obstructed in both cases.

Bolivia: forced pregnancy for sisters after incest

Article 266 of the Bolivian Penal Code permits abortion in cases of rape and incest. To date, however, only a few women have been able to gain access to legal abortions, partly because of pressure placed on physicians and legal authorities by the Catholic Church. As Sister Rosio, secretary to the Archbishop of La Paz, has stated: “Abortion is murder and we condemn it under all circumstances...I will not deny that incest occurs in this country, but I also can’t ignore the fact that many women provoke incest and rape by the way they behave and dress.”

Two sisters, who were raped repeatedly by their father for several years, are among those who have been forced to give birth to their own siblings. When the two girls from Santa Clara, aged 14 and 18 years, requested abortions, the first judge who reviewed the request disqualified himself and referred them to a family judge.

The family judge also disqualified himself, and a third judge approved the abortions but said he could not authorize them himself and referred the case back to the first judge. By the time the request made it back to him, the girls were already five and eight months pregnant, past the time period during which abortion is permitted by law [61].

Sexual and reproductive health rights possibly involved

- **The right to decide whether or when to have children:** the delays in granting authorization for the abortions forced the girls to have children that they did not want.
- **The right to liberty and security of the person:** the obstruction to the procedure resulting from the actions of the judicial authorities negated the girls’ right to freely choose a medical procedure.
- **The right to health care and health protection:** the delays in granting authorization denied the girls access to health-care services.
- **The right to be free from inhuman treatment:** being forced to give birth to children resulting from rape by their father constituted inhuman treatment of the girls.

Bolivia: 14-year-old girl raped by adoptive father

On 19 August 1998, 14-year-old Olga finally received an abortion at the Jaime Sánchez Pórcel Hospital in Sucre, after having been raped and impregnated by her adoptive father. (The names of the girl and her mother were changed in the published report on this case.) However, this was only after actions by physicians delayed and obstructed the procedure for more than a month and the case had become a subject of public debate.

Olga was raped by Severino one day in May 1988. Leonarda, her mother, had gone to the doctor and the crime occurred during her absence. On 1 July, Leonarda entered the hospital to have a hysterectomy as treatment for her uterine cancer. When she returned six days later, Olga complained of stomach pains and vomiting; after questioning, she told Leonarda about the rape. A visiting teacher, Olga's godmother, took her away. Severino said: "I didn't do anything, Leo, I tried yes, but I didn't penetrate her." Leonarda told him to get out and she didn't see him again.

On 9 July 1998, Leonarda reported the crime to the Division of Minors of the Judicial Technical Police, accompanied by Olga's godmother and school director. The next day, in the company of the teachers, Olga was seen by the medical examiner. He wrote: "She said she was the victim of sexual aggression on Monday, 6 July of this year...she says she was dampened in the genital area with sperm...she says the date of her last menstruation was at the end of May this year." He concluded: "Has not had a heterosexual relationship. Does not present external or internal signs of physical violence, paragenitally or extragenitally...No sperm observed."

Lieutenant Freddy Zárate, head of the police's Division of Minors, interviewed Olga's mother and the teachers and referred them to the Juana Azurduy Center, an NGO that could provide legal, psychological and social assistance. The Center immediately assigned a lawyer, Marisol España, to help with legal issues and sent Olga and her mother to the Center's psychologist, Mariel Muñoz, for counseling.

Leonarda took Olga to a gynecologist who noted that, while the girl's hymen seemed intact and there were no wounds corresponding to assault, the dilation of her cervix indicated a possible pregnancy. Two pregnancy tests (urine and serum) were done by the Jaime Mendoza Hospital laboratory and a private laboratory. A sonogram on 24 July confirmed the presence of a fetus of about 10 weeks' gestation. Olga was surprised to hear that she was pregnant.

On 27 July, more than 20 days after the initial complaint was presented to the police, Leonarda had gathered sufficient medical proof, endorsed by a certificate from the National Health Insurance, of her daughter's sexual assault and ensuing pregnancy. The Center's lawyer requested another forensic medical report, which was completed on 29 July; the medical examiner now recognized that sexual intercourse had taken place, acknowledged the pregnancy and explained that his first erroneous diagnosis was based on Olga's intact hymen. Four leading staff-members of the Center concluded that there were sufficient grounds to request judicial authorization for an abortion.

On 5 August, the Center's lawyer sent a memo to the Third Judge of Penal Instruction requesting a legal abortion for Olga. On 7 August, after a national holiday, the Judge approved the petition, arranging for his decision to be passed to the appropriate authorities. The same day, district attorney Lucio Valda gave permission for the abortion.

On 8 August, the medical examiner advised that the abortion be done at the Jaime Sánchez Pórcel Hospital because judicial authorities considered this hospital to be the best in Sucre for gynecological and obstetric procedures. A medical team at the hospital nevertheless refused to comply with the order for 10 days.

- 10 August: the Center lawyers and Leonarda asked the hospital director, Edwin Subirana, to comply with the order. He agreed on condition that the order first be presented to the Medical College and the Departmental Society of Obstetrics and Gynecology because it concerned an exceptional case that could affect the institution's prestige. The lawyers agreed.
- 11 August: the lawyers presented the judicial authorization to the two agencies, obtaining their signatures in the afternoon; they returned to the hospital but Subirana had left so they had to wait until the next day.
- 12 August: Subirana received the signatures and promised to give instructions to admit Olga that afternoon

through an outpatient consultation. The attending physician listened to the reason for the admission and then indignantly and loudly expressed his refusal to “kill a baby” in Olga’s presence. It was already 5:00 p.m. and Subirana had left the hospital. Olga and her mother were taken to his home and he guaranteed that she would be admitted the next day.

- 13 August: the attending physician argued that the girl presented no symptoms of bleeding that would justify her admission and added that his personal religious convictions prevented him from taking any life. Olga and her mother returned home while the lawyers expressed their dissatisfaction to Subirana who was at his private practice. He phoned the hospital to ask the emergency service to receive Olga and the lawyers that same evening. They arrived at 8:00 p.m. and contacted the young medical resident with whom Subirana had spoken; he said he had to refer to the attending physician on call; a couple of hours passed. At 10:00 p.m., the lawyers spoke to the attending physician when he left the operating theater; he then phoned his colleagues to consult with them and subsequently said he would not admit Olga because they were trying to entrap him. The lawyers phoned Subirana, reminding him that the hospital had to comply with the judicial order; at 11:00 p.m. an ambulance arrived to take Olga and her mother, who had returned home, to the hospital again.
- 14 August: Leonarda informed the lawyers that Olga had been admitted. They arrived at the hospital to find her in bed in a small maternity room, where nurses and even cleaning staff were continually entering to see “the girl in the matter.” The hospital had done nothing to protect her identity as stipulated by the Code on Minors. The lawyers sought out Subirana to ask why her treatment had not been initiated; Subirana said the delay was not his fault but that other doctors did not want to perform an abortion. He asked two physicians to explain to the lawyers why they refused. They cited ethical, religious and moral principles, which they said prevented them from violating the Hippocratic oath and killing an innocent being. They asked why the forensic physician had not chosen another hospital and even suggested that the lawyers themselves initiate the procedure by inserting vaginal tablets, because the situation would change if Olga had to be treated for an abortion begun by someone else. Subirana asked the lawyers to be patient while he talked with other physicians. A fourth doctor with whom the lawyers spoke reacted violently, saying that no judicial order could obligate him to do something against his moral and religious beliefs. The lawyers then went to the District Attorney for Minors and the Family to denounce the psychological mistreatment that Olga was receiving. He phoned Subirana, demanding compliance with the judicial order and transfer of Olga to another place. She was put in another room and Subirana promised to get an intern to do the procedure since the physicians all refused.
- 15-16 August (Saturday/Sunday): the hospital staff said that they could not do anything during the weekend. One physician ordered Olga to be sent home but Subirana phoned to countermand this order.
- 17 August: Olga was feeling fear and anxiety and the Center’s psychologist could not calm her. Leonarda asked a hospital staff-member why no one would treat her daughter and received the reply: “It’s that no one wants to dirty their hands with her.” Leonarda suffered an attack of nerves and extreme physical weakness and was taken home in an ambulance.
- 18 August: Subirana began the abortion, giving Olga drugs that would generate uterine bleeding. But because hospital shifts were changing, the process was interrupted. When the lawyers asked why the treatment was not having an effect, a nurse said that her uterus was too hard and that the baby “resisted dying.” Subirana said the treatment did not work but the Center staff did not believe him.
- 19 August: Center staff, including the director, visited the District Attorney for Minors to inform him that the hospital was not complying with the judicial order. He ordered Subirana to prepare a detailed report about how they were resisting the judicial order. The hospital director thereupon preferred to no longer delay the matter and performed the procedure himself. The operation took a couple of hours. At about 2:00 p.m. Olga was taken from the theatre with violent spasms and contractions, resulting from a reaction to the general anesthesia. She stayed in hospital two more days and on 21 August was dismissed from the hospital.

The Public Ministry requested a detailed list of all staff at the hospital who had refused to comply with the judicial order but none were sanctioned. The Center decided to publicize the case, keeping Olga and Leonarda's identity secret. Various organizations expressed their support. A TV station managed to find out Olga's name and went to her house; Leonarda, caught by surprise, felt incapable of denying an interview and watched as they filmed her daughter. She went to the Center to protest and the lawyers asked the district attorney to remind the station that the Code on Minors put severe restrictions on the publication of events that affected minors. The lawyers visited the station in Sucre and the damaging images had to be deleted from the media report.

The hospital held a press conference during which Subirana said it was chosen for the procedure because it was the best facility; however, no physician except himself felt obliged to comply. The hospital management asked the Medical College and director of the Bolivian Gynecology Society to organize a seminar to debate abortion, including all the interested parties: the Society, representatives of the Medical College, Public Ministry, and Juana Azurduy Center. Subirana said the meeting did not take place due to a lack of funding and support. The National Association of Doctors later publicly denounced Subirana.

The Catholic Church publicly condemned the Juana Azurduy Center for its role in the case. On 9 September, the archbishop of Sucre said that the event was an offense against God, abortion was a sin and no situation justified killing an innocent. Iván Avilés, a journalist, pointed out that the Center was not seeking to use the law to permit the mass murder of innocent babies but was seeking rights of justice to protect the life and mental health of a raped minor. The Center continued to give Olga and Leonarda psychological therapy; months later she still manifested insecurity about having a relationship and showed fear and distrust of men [62].

Sexual and reproductive health rights possibly involved

- ❑ The right to equality, and to be free from all forms of discrimination: Olga's access to a medical procedure that only women need was obstructed.
- ❑ The right to privacy and confidentiality: Olga's privacy and medical confidentiality were violated when hospital personnel not involved in her care entered her room to "see her"; the fact that a TV station learned Olga's identity meant that information about her was leaked to the press by a third party.
- ❑ The right to decide whether or when to have children: Olga's right to freely choose not to have a child was obstructed.
- ❑ The right to liberty and security of the person: Olga's right to freely choose to undergo a legal medical procedure was obstructed.
- ❑ The right to health care and health protection: Olga's right to health care and health protection was violated by physicians who suggested that non-medical personnel initiate an induced abortion; this advice also contravened professional ethics.
- ❑ The right to be free from inhuman treatment: the delays in granting the legal medical procedure were accompanied by actions that humiliated, insulted and threatened the dignity and liberty of Olga and her mother; actions by the physicians led to repeated admissions and discharges from the hospital which caused the girl and her mother mental suffering and can be termed psychological violence.

Bolivia: 12-year-old girl raped by her stepfather

Félix Guarayo Fajardo, a painter, was married to a woman who had to travel for her job as a substitute teacher. He took advantage of her absences to rape his stepdaughter from the time she was 11 years old. The woman discovered her daughter was 18 weeks pregnant when she was barely 12 years. On 10 February 2000, the mother asked Judge Juan Luis Ledezma to permit a legal abortion. He gave permission and Guarayo was detained to await trial for the crime.

The abortion was to take place at the Viedma Hospital but the hospital director, Gastón Aranibar, refused to comply with the judicial order. He claimed that the order had to be much clearer and more explicit and that the hospital only had a maternity ward, not a gynecology service. This was despite the fact that the girl was suffering vaginal bleeding which could lead to a spontaneous abortion.

The Bolivian Medical College argued that the order was not ethical and against their religious principles. The College president, Gerardo Ríos, said: “On the one hand there is the religious factor and on the other the medical. Regarding the religious factor: the church states that a life may not be killed and many physicians agree with this concept. The scientific factor is related to a risk to the life of the mother or congenital malformation, but this is not relevant in the present discussion.” Ríos said that a judge who orders an abortion should also designate which medical examiner should carry out the order.

A meeting was held on 25 February with the Medical College, physicians of the Germán Urquidí Maternity Hospital, the medical examiner of the Supreme Court and judicial department representatives. The Gynecology Society had received notice of the judicial order and designated the Maternity Hospital for the surgical intervention but all the physicians there refused to comply. The gynecologists said that public opinion had created an image of a “delinquent” physician who carries out abortions and it would be difficult to change their mentality.

The archbishop of Cochabamba, Tito Solari, condemned Ledezma’s decision saying, “A mother’s nature is to give life, sacrificing her own; a mother’s nature is the vocation of motherhood. Every mother that gives life runs a risk.”

The Vice-Minister of Health, José Henicke, said that if the judicial authorities required a statement from the Ministry, they would do so after a professional team evaluated the situation. He added that the girl’s human rights needed to be evaluated since “a minor of 12 years cannot be obliged to carry to term a product against her will; this is a serious problem from the ethical standpoint but there is a law which must be upheld. The girl, as a girl, is not prepared for pregnancy and in this situation her rights must be taken into account; we are not in favor of abortion but all the pros and cons must be analyzed to give a solution in which the minor, the physicians or justice will not be more affected.”

On 29 February, the girl’s mother asked Ledezma to order the Maternity Hospital to carry out the procedure given the Viedma Hospital’s refusal. Ledezma ordered a medical board, comprising the directors of two hospitals (Gastón Aranibar and Joaquín López), a representative of the departmental medical college (José Luis Terán), a medical examiner (Wilfredo Bustamante), and a physician designated by the Prefecture, to assign a physician to carry out the abortion within 24 hours. He refused to have a “secret” designation of a physician because: “This is not a crime, it is a judicial order emanating from compliance with the law and I do not see the reason why physicians would hide their identity to comply with what the law demands.” He said the board should assign the physician because “they (the board) are those who should decide which technique to use, which doctor will do the operation and the date on which it will be done.”

The board examined the girl on 29 February, ordering urine, blood, fecal and other tests to determine if she had a sexually transmitted infection. The girl’s lawyer, Javier Céliz, said other doctors were present and did not allow him or the girl’s mother to be present. The Vice-Minister of Health said that the Ministry communicated to the Departmental Health Service of Cochabamba that they must carry out the judicial order.

A medical team from the Maternity Hospital decided to judge whether the abortion would be riskier than carrying the pregnancy to term; they suggested after examining the girl that she continue the pregnancy because she would be 13 years in April, already was an adolescent and in good health. The team met with the archbishop of Cochabamba, a

priest, the hospital director and the president of the medical college. In the meantime, the girl told a judge that she would carry out the pregnancy termination herself if she was not helped.

The Minister of Health, Guillermo Cuentas, declared on 1 March that he favored continuation of the pregnancy. The same day, Fernando Lavadenz, the authority in charge of Bolivian health reforms, released a report saying that an average of 50,000 illegal abortions are carried out in the country yearly, about 136 each day. The National Network of Information and Communication Workers (Red-Ada), speaking for the “28 September Campaign for a Right to Decide,” issued an open letter. It stated that: “The physicians must comply with the law, within the margins of their individualism and ethics which, as we know, are subject to the hypocrisy of double morality and a prestige that is superseded by the commercial rules of the labor market.”

The Board of Physicians said the girl should receive psychological aid and that the baby should be given to a religious institution when born. The judge said he had not asked their personal opinions and on 3 March he ordered the Board to carry out the abortion within 72 hours. Julieta Montaña, a lawyer and president of the Women’s Judicial Office of Cochabamba, said the refusal to comply with the law was also non-compliance with Bolivia’s commitments to the Inter-American Convention on the Prevention, Penalization and Eradication of All Forms of Violence Against Women, which guarantees women’s and girls’ rights to justice and mental and physical integrity, as well as the Inter-American Convention on Human Rights, which guarantees the right to justice.

The Board said that the girl was biologically older than 12 years (almost 16 years), the pregnancy had already passed 20 weeks and the girl had had sexual relationships for more than six months before her pregnancy. Ledezma did not respond as this was not communicated to him officially. In the meantime, the Catholic Church presented a constitutional petition for rights to be respected against Ledezma, saying that:

1. Article 266 of the Penal Code only establishes that judicial authorization can be given for certain cases but not judicial orders;
2. because the case concerned the life of a child, the case did not belong with a judge of penal instruction but with a family judge;
3. minors are protected by Bolivian law from the moment of conception as established by various international laws and agreements which Bolivia had signed;
4. Article 266 only speaks of impunity and not the right to abortion, so that abortion remains a crime.

The Board of Physicians refused to carry out the abortion, threatening to present a constitutional petition against Ledezma and to call a 24-hour strike if he continued asking for compliance with the order. They also questioned the girl’s age and whether her stepfather had really raped her.

The girl’s mother denounced the physicians on 8 March, saying that they had suggested she divorce her husband (awaiting trial in the El Abra prison) so that he could marry her daughter, thereby making the baby legitimate. The Women’s Judicial Office said they would initiate a legal process against the director of the maternity hospital on the same day.

On 9 March, Ledezma withdrew the judicial order, stating that the Board of Physicians had given him a report saying that the abortion would endanger the girl’s life because of a possibility of uncontrolled bleeding. He criticized them for not having informed him about this earlier, and he gave them 30 days to judge whether the operation should be done, also saying that the state would pay the girl’s medical and hospitalization costs. He added that: “In any case, the determination [of whether to proceed] is in the hands of the girl and her mother and they should decide if the abortion will be done” – they could seek out another physician to do it. The Catholic Church decided not to pursue the constitutional petition since none of the physicians would perform the abortion. Several organizations offered to take the baby from the girl when it was born. The girl withdrew from the hospital.

On 10 March, Red-Ada announced that the girl had had an abortion performed at 20 week's gestation by a physician they had found in La Paz; she was in perfect health and glad to get on with her life. Organizations from many countries – Argentina, Chile, Mexico, Nicaragua, South Africa, USA and Venezuela – had sent messages asking for compliance with the law.

The La Paz Medical College decided to request an official report about the abortion. The Catholic Church announced that they might excommunicate Ledezma. The Minister of Justice, Juan Chahín, said that Ledezma had complied with the law in ordering the abortion [63-78].

Sexual and reproductive health rights possibly involved

- **The right to equality, and to be free from all forms of discrimination:** the girl suffered discrimination because her access to a legal medical procedure that only women need was obstructed repeatedly.
- **The right to privacy and confidentiality:** information about the case was made public, shown by the pronouncements issued by the archbishop of the Catholic Church.
- **The right to decide whether or when to have children:** the girl's wish not to carry the pregnancy to term, made clear by her statement to a judge that she would self-induce an abortion if necessary, was obstructed.
- **The right to liberty and security of the person:** the girl's right to freely choose a legal medical procedure was obstructed by authorities in both the legal and health sectors.
- **The right to health care and health protection:** the delays in carrying out the abortion when the girl was already vaginally bleeding could have posed a threat to her health.
- **The right to be free from inhuman treatment:** the repeated debates and delays in carrying out the procedure exposed the girl to possible health risks. She also experienced mental suffering and damage to her reputation (for example, through suggestions by the Board of Physicians that she might not have been raped in the first place and was therefore lying).

Italy: parents seeking abortion lose custody of mentally-disabled daughter

Laura, the 13-year-old mentally disabled daughter of a retired farm worker and his wife in Pozzallo, Sicily, became pregnant in 1999. When the local child welfare services learned of her condition, they moved her to a Catholic foster home until incest could be ruled out. Investigation revealed that Laura had been impregnated by her 14-year-old mentally-disabled boyfriend. Laura's parents, who had protested her removal from their care, requested an abortion, which is legal in Italy without restriction during the first three months of pregnancy.

Laura's first court-appointed guardian, Francesco Gugliotta, commissioner of Pozzallo's social services department, opposed the abortion. A juvenile court then appointed the family doctor, Ignazio Ruffino, as her legal guardian; he advised that she have an abortion, saying: "I know the condition of her physical and mental health and I am certain that she is not capable of understanding what is happening to her."

The local bishop and parish priest became aware of the decision and helped make the case public. The Vatican's newspaper, *Osservatore Romano*, condemned the decision. Through the efforts of anti-abortion campaigners, the family doctor was replaced as Laura's guardian by a priest, Oreste Benzi. The case was taken to court, where Benzi presented a letter that he said the girl had written: "Dear judge, I want my baby. Don't kill my baby. Please, let my baby grow. Please, save me." After interviewing Laura, the judge prohibited the abortion. She stipulated that her decision was to remain secret but it leaked out, leading to public statements of victory by abortion opponents [78-82].

Sexual and reproductive health rights possibly involved

- ❑ The right to equality, and to be free from all forms of discrimination: Laura suffered discrimination because her access to a legal medical procedure that only women need was denied.
- ❑ The right to privacy: information about the case was leaked to Catholic Church members, who subsequently publicized the case and intervened in the family's private life by managing to have the family doctor replaced as Laura's guardian.
- ❑ The right to liberty and security of the person: the parents' right to provide for their daughter's well-being in accordance with her mental capacities was obstructed.
- ❑ The right to health care and health protection: the parents' and girl's right to authorize/undergo a legal medical procedure was violated.
- ❑ The right to freedom from inhuman treatment: the parents were caused mental suffering through the actions of third parties who prevented them from protecting their daughter's well-being in a manner supported by their family physician.

Mexico: abortion obstructed for 12-year-old incest victim

Lucila Sánchez Montellano, a 12-year-old girl with a mental age of 8 years, was raped in April 2001 by her father, Rosendo, a retired police officer. Upon learning of the incest, her mother, Lucia, pressed charges against Rosendo on 27 May and he was detained.

When Lucia discovered that Lucila had become pregnant, she sought an abortion for her daughter, facing weeks of delays because the law in Sinaloa State, where they resided, failed to stipulate the gestational limits for legal abortion or who is permitted to perform the procedure.

Lucia first approached two hospitals, where she was told to obtain authorization from the State Department of Justice. On 4 June, a judge requested a medical opinion from two doctors but they replied that the decision should be legal rather than medical. State prosecutor Edna Aguilar said that if a physician were willing to carry out the abortion, her office would decide afterwards whether the procedure had been legal. Physicians refused to perform an abortion, however, without a judicial order that would protect them against prosecution.

Lucia continued to pursue her daughter's access to the health-care procedure, saying: "I am a Catholic and I am going to stay one, and as far as I can see, in my daughter's case, abortion is not a sin...If it is, let God judge me on that one, nobody else." Psychologist Patricia Espinoza, who worked with Lucila through a group for children with mental disabilities, said: "Nobody wants to take responsibility for this, and the doors have closed everywhere as each authority passes the buck to the next."

By the time that Lucila was in her fourth month of pregnancy, physicians stated that her health and life could be endangered by further delays in carrying out the abortion because of her young age and malnourished state. On 20 July, the State Attorney General, Ramón Jesus Castro, announced that Lucila had finally been granted a legal abortion. He also stated that a special department had been established to handle cases of rape-related abortion [83-86].

Sexual and reproductive health rights possibly involved

- **The right to equality, and to be free from all forms of discrimination:** Lucila's access to a legal medical procedure that only women need was obstructed.
- **The right to decide whether or when to have children:** Lucia's right to make decisions on childbearing for her mentally-disabled daughter was obstructed.
- **The right to life:** the repeated delays in authorizing the procedure posed a threat to Lucila's life.
- **The right to liberty and security of the person:** Lucia's right to freely choose a legal medical procedure to protect her daughter's well-being was obstructed; the State prosecutor's assertion that physicians would only learn after carrying out the procedure whether they had performed a legal act threatened their liberty and security.
- **The right to health care and health protection:** Lucila's access to a legal medical procedure was obstructed and her health was put at risk.

Mexico: hysterectomy due to inadequate postabortion care

In a personal testimony given to health-care providers, Karina, a 25-year-old woman living in the state of San Luis Potosí, Mexico, said she was happy when she learned that she was six months' pregnant. Unfortunately, a week later, she began bleeding heavily and went to a clinic for care at 8:00 p.m. in the evening. After an hour, she was seen by a gynecologist who hospitalized her because of the hemorrhaging. The physician said he wanted her to rest in order to see if the bleeding would stop.

The next afternoon, another doctor said she needed immediate attention because the fetus was no longer alive. She was taken to the labor ward at 4:00 a.m. and finally had a uterine evacuation under general anesthesia at 2:00 p.m. in the afternoon.

The next day a physician examined her at 8:00 a.m. and Karina said her stomach hurt; she requested pain relief and was given medicine but the pain continued and she developed a fever. Three days later, the physician told Karina that she had to sign some papers because an examination was needed. The following day at 3:00 p.m., another doctor said it was strange that she had such a high fever and ordered her to be taken to surgery at 4:00 p.m.

The doctor told Karina that nothing bad would happen to her and that everything would turn out all right since they would anesthetize her. He also said that he would have to remove her uterus because the uterine evacuation had been done badly. Karina said that she did not want anything removed and became agitated; she was given general anesthesia and returned to her room at 10:00 p.m. She was kept in the hospital for three more days and then referred to psychological care [87].

Sexual and reproductive health rights possibly involved

- ❑ The right to health care and health protection: the delays in carrying out the uterine evacuation posed a threat to Karina's health; it could be argued that insufficient postabortion care was given because it took four days for an examination to be carried out in connection with her symptoms.
- ❑ The right to be free from torture and inhuman treatment: the poorly performed uterine evacuation resulted in the need for a hysterectomy which caused Karina great mental suffering.

USA: denial of abortion for life-threatening pregnancy

Michelle Lee, 27 years old, suffered from cardiomyopathy, a life-threatening heart condition that is exacerbated if a woman becomes pregnant. In 1995, she moved to live closer to her doctors in case a donor heart became available. Following the birth of her second child, Lee's doctors told her that having another child could kill her; moreover, they would not give her a heart transplant if she was pregnant. They implanted a defibrillator to regulate her heart rhythm and put her on several medications, both measures which could negatively affect a fetus.

When Lee unintentionally became pregnant, she sought a first-trimester abortion three times at Louisiana State University Medical Center (LSUMC). Louisiana state law prohibits health-care facilities that receive public funds "to assist in or to provide facilities for an abortion" except in the case of pregnancies resulting from rape or incest or that can endanger a woman's life. However, a committee of doctors ruled that Lee's chances of death from carrying the pregnancy to term were no greater than 50%, a standard set by LSUMC. The hospital denied her request without referring her to another facility. Commenting on LSUMC's handling of the situation, Lee said, "These people have taken care of me for five years....They told me I couldn't get pregnant because it'd kill me, and now they're turning their back on me."

Lee's condition was so medically dangerous that an outpatient clinic refused to help, stating that the abortion needed to be carried out in a hospital. Finally, the National Abortion Federation found a physician willing to perform the procedure, but Lee had to travel over 250 miles in an ambulance to a neighboring state and pay costs of US\$10,000.

The Center for Reproductive Law and Policy (CRLP) initiated a medical malpractice lawsuit against LSUMC. CRLP president, Janet Benshoof, stated: "Louisiana's state hospital turned away Michelle, a woman with a life-endangering condition, because the procedure crucial for her survival was an abortion. It is akin to the hospital deciding not to treat a shot and bleeding crime victim because the person does not have greater than a 50 percent risk of dying from the wound." The lawsuit is based on federal laws that: 1) require states to provide abortion in cases of life endangerment, rape or incest; and 2) require hospitals to screen and treat or transfer emergency care patients. CRLP also charged that LSUMC violated Lee's rights to privacy, equal protection, and due process guaranteed by the Fourteenth Amendment to the United States Constitution, and intentionally inflicted emotional harm upon her. Benshoof explained: "The hospital is willing to sacrifice a real woman's life, and violate federal law and legitimate medical standards for patient care due to anti-abortion ideology. Hospital policies and state laws must not conflict with federal constitutional law governing medical decision-making" [88-90].

Sexual and reproductive health rights possibly involved

- The right to equality, and to be free from all forms of discrimination: Michelle was denied the right to undergo a legal medical procedure which only women need.
- The right to decide whether or when to have children: Michelle's right to choose not to have more children was denied by the Louisiana hospital.
- The right to life: denial of the abortion by the Louisiana Hospital posed a threat to Michelle's life.
- The right to liberty and security of the person: Michelle's right to freely choose a legal medical procedure was denied.
- The right to health care and health protection: Michelle's right to care was denied and her health was placed at further risk.
- The right to be free from torture and inhuman treatment: Michelle suffered mental anguish because of repeated refusals to carry out an abortion to protect her health and life.

Nepal: imprisonment for forced abortion

When Indira Rana, a social worker, first saw Min Min Lama in the courtyard of the Kathmandu women's jail, she assumed that Min Min was an inmate's daughter. But Rana discovered that Min Min was actually serving a prison sentence in connection with abortion. Min Min had been raped by the brother of her step-brother's wife when she was 13 years old. "He opened the door and shoved a towel in my mouth and raped me." When Min Min confronted her sister-in-law about the rape, ". . . she said she couldn't believe that her brother would do such a thing to such a young person. After some time, she realized I was pregnant."

Min Min had left her mountain village in 1996, without ever attending school. She joined her step-brother's household in Kathmandu, where she went to work at a carpet factory. Min Min stood to inherit some of her deceased mother's land. Perhaps it was this fact that drove her sister-in-law to induce an abortion for Min Min. Six months pregnant and complaining about a toothache one night, Min Min was given an herbal concoction by her sister-in-law. When she later awoke, she was no longer pregnant. She recounted, "A few minutes after taking the medicine, I fainted and remained unconscious for about an hour and a half. When I awoke, I saw blood everywhere. There was no baby – I was just drenched in blood." Min Min's sister-in-law had thrown the fetus in a public latrine and then reported the abortion to the police.

Although Min Min had been forced to have an abortion, she was sentenced to 12 years in jail; while abortion carried a maximum sentence of 2.5 years, she was charged with infanticide, a crime carrying penalties of 10 years to life in prison. Her rapist was freed after only a few months. After two years in prison, Min Min, Nepal's youngest female prisoner, commented, "Even if I had killed the baby, they should have released me after a few months just as they released him. I feel very sad that I am still in jail and he is free."

During Min Min's time in prison, Rana lobbied human rights groups; the International Federation of Planned Parenthood (IPPF) and the Family Planning Association of Nepal (FPAN) took up the case. A reporter sent to interview Min Min was asked to find her family and sister-in-law and report on their side of the story. The reporter located Min Min's sister-in-law, who admitted to administering a substance to Min Min in order to perform an abortion. She also confessed to having lied about Min Min's age so that the police would arrest and imprison her in spite of the fact that she was a minor. After her confession and with neighbors and fellow villagers listening, Min Min's sister-in-law said, "OK, I am guilty. I feel guilty, but what good will that do now?"

In March 1999, Director-General Ingar Brueggemann and South Asia Regional Director Dr. Indira Kapoor sent a Mercy Petition to the King of Nepal, requesting him to grant amnesty to Min Min Lama; in September 1999, the King "pardoned" 16-year-old Min Min.

Lena Choudary of IPPF commented that Min Min could face social discrimination since most Nepali women who serve prison sentences for such crimes are shunned by their families and communities. They find it difficult to earn an income and, consequently, many resort to commercial sex work, she said. FPAN assumed responsibility for arranging for Min Min's care and she went to live with Rana.

A study carried out in Nepal's 74 prisons in 1997 found that six men had been imprisoned for involvement in abortions and eight for infanticide, compared with 465 women jailed for both offenses. Estimates of the percentage of female prisoners serving sentences for abortion ranged from 20-60% and led to efforts by NGOs such as FPAN to lobby the government for a liberalized abortion law since abortion was not even permitted to save a woman's life. However, in 2001, President George Bush of the USA reinstated a regulation (popularly known as "the global gag rule") which prohibited US development assistance from going to any NGO that works on abortion issues, even if the activities are not funded with US government donations. FPAN had to give up the campaign or US funds and chose to relinquish \$250,000 in US donations.

One study carried out among gynecologists found 95% favored lifting restrictions on abortion as a way to reduce mortality due to unsafe abortion practices. On 14 March 2002, the Lower House of Parliament

approved legalizing abortion in cases of rape, incest, fetal impairment and danger to a woman's health and life as part of a women's rights bill; the vote was 147 for and one against. The legislation was enacted after signing by the King [91-97].

Sexual and reproductive health rights possibly involved

- The right to equality, and to be free from all forms of discrimination: Min Min was sentenced to imprisonment for a crime that she did not commit and for which primarily women were sentenced in Nepal.
- The right to life: Min Min's life was endangered by the abortion forced upon her by her sister-in-law.
- The right to liberty and security of the person: Min Min's liberty was unjustly taken away through her imprisonment.
- The right to health care and health protection: Min Min's health was endangered by the coerced abortion.
- The right to be free from torture and inhuman treatment: Min Min was unjustly charged with a crime. She was also sentenced according to a charge that carried a more severe penalty (infanticide instead of abortion), which contravenes Article 37(b) of the Convention on the Rights of the Child: "...The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

South Africa: obstacles to provision of quality services

The South African Termination of Pregnancy Act permits abortions upon request up to the 13th week of pregnancy. Between 13-20 weeks of pregnancy, an abortion may be obtained if a medical practitioner decides that pregnancy may risk injury to a woman's physical or mental health, if there is a substantial risk that the fetus would suffer severe physical or mental impairment, if the pregnancy resulted from rape or incest, or if the continued pregnancy would significantly affect a woman's social or economic situation. Abortion is available at any time if a pregnancy poses a threat to a woman's life or a risk of fetal impairment or injury. In June 2000, the South African Portfolio Committee on Health heard testimonies from health-service providers about their experiences in providing pregnancy terminations in order to review implementation of the Act.

A midwife from the Northern Province, Refiloe Nonyane, stated that her hospital's management did not help her provide good-quality care. Because of the stigma associated with abortion, no one would speak to her. When her clients needed admission to the gynecology wards for an evacuation procedure, they were not attended to: "If it's a Friday, the person just has to wait to be evacuated until Monday. They say it's my patient, I must deal with them."

Other providers said that they were being verbally accused of killing babies and that pressure from community members opposed to abortion was impeding staff from performing the procedure. Stanley Nesengani, a doctor from the Northern Province, said he referred clients to a hospital because his other patients would not come to him if he performed abortions: "The senior citizens and the religious leaders have strong feelings around the issue...And the men in rural areas give us a lot of problems, even with contraception" [98].

Sexual and reproductive health rights possibly involved

- ❑ **The right to equality, and to be free from all forms of discrimination:** testimony revealed that some health providers who carry out abortion are stigmatized by work colleagues and community members and discriminated (for example, suffering verbal harassment, humiliation and damage to their reputations, refusals for assistance in providing high-quality care).
- ❑ **The right to decide whether or when to have children:** pressure from community members appears to be preventing health providers from carrying out abortions, thereby denying some women the right to choose when to have children.
- ❑ **The right to health care and health protection:** the refusal of hospital staff to attend patients who want or need a uterine evacuation denies them the right to a legal medical procedure.

Thailand: women living with HIV coerced and misinformed

Over the years, women living with HIV/AIDS in Thailand have faced obstacles both in continuing and ending their pregnancies. Abortion has been permitted by law in Thailand in cases of rape, incest and danger to the woman's health; it is estimated that about 300,000 women have abortions each year. A limited number of abortions have been carried out by physicians at hospitals; when the women involved were living with HIV, physicians have stated that the procedure is necessary to protect the woman's mental health and authorities have "overlooked" the procedures. It has been estimated that as many as 90% of women who seek abortions resort to illegal clinics or self-induced abortions.

Some women living with HIV have been pressured by health providers into having an abortion to prevent the birth of possibly infected babies. In cases where women only learn that they are HIV-positive during antenatal care, such advice comes at a time when they are already dealing with psychological distress and mental suffering.

During a seminar on AIDS held on 30 July 1997, Um, a representative of the International Community of Women Living with HIV/AIDS (ICW), stated: "Many of my friends who are also pregnant and infected were told that their babies will certainly be infected and that they should have an abortion." A researcher observed: "In my study, the women had only 7 days to make their decisions. That is too short to think over the various options. The counselors tell them it is possible to change their mind, but many women will not change something they said to a doctor or a nurse."

Jansuda Praphananukul, another ICW representative, commented that social pressures may influence women's decisions to terminate pregnancies: "There is still a question concerning reproductive right of HIV-positive women. But talking about reproductive right, we have to think first if women have the right to accept or refuse sexual relationship. Such issue is hardly talked about... In fact, we are forced to think that we could never live a long life, so what to do if the virus was transmitted to the baby. Infection of the disease means social burden, and our baby will become a social burden as well. Therefore, most of us will have quite negative attitudes towards having a child."

Some women living with HIV have wished to terminate pregnancies for reasons other than social pressure. Um commented in 2000 that some women do not wish to take antiretroviral drugs during pregnancy to reduce HIV transmission because of drug side effects and the difficulty of following strict drug regimens. Gynecologists reported fears among patients of giving birth to a baby with HIV and economic difficulties. These women have also been subject to coercion or denial of services. Muai, a young woman living with HIV, related that her doctor insisted she undergo sterilization immediately after the procedure or the abortion would not be done. Jai told the story of her friend with a two-month pregnancy who was informed by her doctor, with no reasons being given, that she would have to wait two months before an abortion could be done. A woman whose attempt at self-induced abortion failed and who sought an abortion at the Dok Kham Tai hospital in Phayao Province was denied the procedure by hospital staff, who persuaded her to participate in a program to prevent perinatal transmission instead. Other women have also reported that hospital counselors now urge them to continue pregnancies and refuse abortion care since antiretroviral therapies have become available to reduce mother-to-child HIV transmission.

In 1998, Dr. Wiput Phoolcharoen, director of the Ministry of Health's AIDS Division, stated: "At present, the state has taken away the rights of women by telling them that abortion is an act of murder, a criminal act since people are national assets. The assumption goes against the world trend. Women should be free to decide for themselves. It's their bodies. Besides, you should ask yourself, 'Which is more sinful: saving a baby knowing well that it will suffer so much, or just let it go?'" He did not advocate for counseling to persuade women living with HIV/AIDS to have abortions but did believe that they have a right to choose to have children or not.

In 2000, the Thai Council of State ruled that abortion laws would not be amended to permit abortions for women living with HIV/AIDS. Various reasons were reported in the press for the decision, for example, a rationale that the women would die eventually anyway so that danger to their health from pregnancy was not an issue and the belief that a woman's health status would not change [improve] after an abortion. That same year, at a national seminar organized by the Population Council, Mahidol University, the Ministry of Public Health, the Association for Promotion of Status of Women and the Centre for AIDS Rights Protection, 600 participants nevertheless called for review of the law.

In February 2001, the Ministry of Public Health requested the Medical Council to examine possibilities of amending the abortion law. The Ministry also submitted a draft amendment to the Ministry of Justice, in which abortion would be legally permitted in cases of fetal abnormality or the possibility of the baby being born with a dangerous disease. In November 2001, it was reported that a working committee with representatives of the Medical Council and two ministries had agreed on recommendations to revise the law. The indications for legal abortion would be expanded to explicitly include mental illness, mental retardation and fetal abnormality [99-109]. It was unclear whether abortion would be explicitly permitted for women living with HIV.

Sexual and reproductive health rights possibly involved

- ❑ The right to decide whether or when to have children: women who were pressured to undergo abortions suffered a violation of their right to make free and voluntary decisions about childbearing. Varying interpretations of the legal indication “to protect a woman’s health” meant that not all women living with HIV who wished terminations of pregnancy had access to safe, legal abortions. In addition, hospital staff who deny women abortions because they want the women to enroll in programs to reduce perinatal HIV transmission also are obstructing the women’s right to decide freely and voluntarily the number and spacing of their children.
- ❑ The right to information and education: the right to information and education implies that such information should be accurate; when women were told that their babies would almost certainly be HIV-positive, they received inaccurate information which could unduly influence their decisions.
- ❑ The right to liberty and security of the person: women who have been told they can have an abortion only if they consent to sterilization have been denied their right to freely choose a medical procedure.
- ❑ The right to be free from inhuman treatment: women who have been offered abortions only if they comply with unnecessary medical procedures (sterilization) are caused mental suffering.

USA: murder of abortion-care provider

Dr. Barnett Slepian, who performed abortions at the Buffalo Women's Services clinic, had been confronted by anti-abortion demonstrators in 1988 when they picketed his home. In 1995, commenting on the murder of a physician in another state who had carried out abortions, he told a reporter: "It probably hits home a bit because it could have been me. For years I've felt, and I still feel, it could happen to me or someone around here."

In 1998, Slepian's name appeared on a website that named physicians who performed abortions. On one evening that year, Dr. Slepian and his wife, Lynn, returned from religious services. After talking to his four sons, aged 7 to 15 years, he went to the kitchen. A sniper, who was hidden in woods behind the house, used a high-power rifle to shoot through a kitchen window, hitting Slepian in the chest. He died two hours later after being taken to a hospital. The website showed his name with a line through it.

George Pataki, then governor of New York state, called the shooting "an act of terrorism . . . a cold-blooded assassination." A vigil in his honor was attended by 200 people, including many women who remembered him as the gynecologist who had seen them successfully through pregnancy [110].

Sexual and reproductive health rights possibly involved

- **The right to privacy:** Slepian's right to privacy was violated when his home was picketed and his name was posted on the website without his permission.
- **The right to life:** it could be argued that Slepian's murder was influenced by the posting on the website, which kept tallies of abortion providers who died.
- **The right to liberty and security of the person:** it could be argued that Slepian's freedom to carry out his profession freely and legally was threatened by the posting on the website.

Appendix I: International human rights standards

The list below explains the abbreviations for various human rights standards - treaties, declarations and consensus statements - that are used in this document.

ACHR	American Convention on Human Rights – Covenant of San José de Costa Rica – adopted by the Organization of American States on 22 November 1969; entered into force 18 July 1978 (9 I.L.M. 101)
ACRWC	African Charter on the Rights and Welfare of the Child - adopted by the Organization of African Unity in 1990; entered into force October 1999 (OAU Doc. CAB/LEG/24.9/49 (1990))
Banjul	African Charter on Human and Peoples’ Rights - adopted by the Organization of African Unity on 27 June 1981; entered into force 21 October 1986 (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982))
Beijing	Declaration and Platform for Action of the Fourth World Conference on Women - adopted in Beijing, China, 4-15 September 1995 (UN Doc DPI/1766/Wom (1996))
Beijing +5	Further actions and initiatives to implement the Beijing Declaration and the Platform for Action - adopted by the UN General Assembly at its 23rd special session entitled “Women 2000: gender equality, development and peace for the twenty-first century,” 10 June 2000 (unedited final outcome document as adopted by the plenary of the special session)
Belém do Pará	Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - adopted by the Organization of American States on 9 June 1994; entered into force 5 March 1995
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – adopted by the United Nations General Assembly on 10 December 1984; entered into force 26 June 1987 (23 I.L.M. 1027; 24 I.L.M. 535)
CCPR	International Covenant on Civil and Political Rights – adopted by the United Nations General Assembly on 16 December 1966; entered into force 23 March 1976 (999 U.N.T.S. 171)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women – adopted by the United Nations General Assembly on 18 December 1979; entered into force 3 September 1981 (1249 U.N.T.S. 13)
CEDAW-GR19	CEDAW, General Recommendation 19 , issued by the CEDAW Monitoring Committee (UN GAOR, 1992, Doc. No. A/47/38)
CEDAW-GR24	General Recommendation No. 24: Women and health (Article 12) issued by the CEDAW Monitoring Committee on 1 February 1999 during its 20th session (UN GAOR, 1999, Doc. No. A/54/38/ Rev.1.)
CERD	International Convention on the Elimination of All Forms of Racial Discrimination – adopted by the United Nations General Assembly on 21 December 1965; entered into force 4 January 1969 (660 U.N.T.S. 195)
CESCR	International Covenant on Economic, Social and Cultural Rights – adopted by the United Nations General Assembly on 16 December 1966; entered into force 3 September 1976 (G.A. Resolution 2200A (XXI); 999 U.N.T.S. 3)

CESCR-GC5	CESCR General Comment 5, Persons with disabilities (UN ESCOR, 1994, Doc. No. E/1995/22)
CPST	Inter-American Convention for the Prevention and Punishment of Torture - adopted by the Organization of American States on 9 December 1985; entered into force 28 February 1987 (OAS Treaty No. 67)
CRC	Convention on the Rights of the Child – adopted by the United Nations General Assembly on 20 November 1989; entered into force 2 September 1990 (28 I.L.M. 1448)
DEFIDR	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief - adopted by the United Nations General Assembly on 25 November 1981 (G.A. Resolution 36/55)
DRRPPHR	Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – adopted by the United Nations General Assembly on 9 December 1998 (G.A. Resolution 53/144, UN Doc A/RES/53/144)
European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms - adopted 4 November 1940; entered into force 3 September 1953 (213 UNTS 222)
HRC-GC28	General Comment 28: Equality of rights between men and women (Article 3) - issued by the Human Rights Committee (CCPR Monitoring Committee) in 2000 (Doc. No. CCPR/C/32/Rev.1/Add.10)
ICPD	Programme of Action of the International Conference on Population and Development – adopted in Cairo, Egypt, 5-13 September 1994 (UN Doc A/CONF.171/13/Rev. 1 (1995))
ICPD+5	Report of the Ad Hoc Committee of the Whole of the Twenty-first Special Session of the General Assembly - adopted by the UN General Assembly 1 July 1999 at the 21st special session entitled “Overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development” (A/S-21/5/Add.1)

Appendix II: Provisions of international treaties and Treaty Monitoring Committees related to sexual and reproductive health

Rights Guaranteed in International Laws	CEDAW	CEDAW-GR19	CEDAW-GR24	CRC	CCPR	HRC-GC	CESCR
Right to Life and Survival			Par. 27	6.1 6.2	6.1	Par. 10	
Right to Liberty and Security				37(b)-(d)	9.1		
Right to Highest Standard of Health	11.1(f) 12 14.2(b)	Par. 24(m)	Par. 11 Par. 14 Par. 26 Par. 27	24			10.2 12
Right to Benefits of Scientific Progress			Par. 20				15.1 15.3(b)
Right to Receive & Impart information	10(e) 14(b) 16(e)		Par. 18 Par. 20	12 13 17	19		
Right to Education	10 14(d)		Par. 18	28 29			13 14
Right to Marry and Found a Family	16				23		10
Right to Decide Number and Spacing of Children	16.1	Par. 22 Par. 24(m)	Par. 31(c)			Par. 10 Par. 11	
Right to Private and Family Life	16		Par. 12(d)	16	17	Par. 20	10
Right to Non-discrimination on Ground of Sex	1-5 12.1 12.2 14.2		Par. 18 Par. 11 Par. 12(d) Par. 14	2.1	2.1 3	Par. 20	2.2 3
Right to Non-discrimination on Ground of Age			Par. 8 Par. 18	2.2	2.1		2.2
Right to be Free from Inhuman and Degrading Treatment				37(a) 39	7		

Appendix III: Assessing possible violations of women's rights

When assessing whether a woman's sexual and reproductive health rights have been violated in a specified case, the following questions can be useful:

1. Has a woman suffered discrimination in gaining access to, or receiving, contraceptives, postabortion care or an abortion permitted by law because of her race, ethnicity, sexual orientation, age, marital status, religion, national or legal status, or some other characteristic that is irrelevant to receiving health care?
2. Have a woman's privacy and confidentiality been violated when she attempted to gain access to, or received, postabortion care or an abortion permitted by law?
3. Was a woman's health or life endangered by unnecessary delays in providing postabortion care (for example, attending non-emergency patients first, letting her wait as "punishment")?
4. Was a woman pressured or coerced by health providers into having an abortion, for example, through denial or delays in provision of other health services, or through deliberate withholding of information about possibilities of ensuring safe pregnancy?
5. Was a woman's access to an abortion permitted by law obstructed by health providers or legal authorities, for example, through:
 - a requirement that she agree to accept a certain type of contraceptive or sterilization afterwards?
 - psychological pressure (for example, having to listen to lectures by anti-choice advocates, provision of inadequate and medically incorrect information about the supposed dangers of safe abortion)?
 - delays in granting authorization (for example, repeated refusals to perform the procedure, continued referral for decisionmaking from one authority to another, failure to refer to another health provider by someone invoking conscientious objection)?
 - a requirement for spousal consent?
6. Did a woman suffer inhuman and degrading treatment when undergoing postabortion or abortion-related care (for example, humiliation, blame, insults, threats, punishment by withholding pain medication)?

Appendix IV: How can rights be violated?

In preparing shadow reports and letters of information for Treaty Monitoring Committees, it is useful to document specific cases in which women's rights have been violated. Advocacy towards governments to ensure compliance with ratified treaties can also benefit from the use of specific examples with references to texts used in the international human rights system.

To aid in this process, this section gives examples of ways in which human rights might be violated in relation to unwanted pregnancy and abortion-related care. Possibly relevant citations are given from international conventions, General Comments and Recommendations from Treaty Monitoring Committees, regional conventions and international consensus statements [111] (see Appendix I for abbreviations).

It should be noted that application of these standards to the examples has rarely been tested through courts. The examples are related to:

- Lack of sufficient measures to decrease maternal mortality
- Lack of information provision regarding pregnancy prevention
- Lack of access to means to prevent unwanted pregnancy
- Lack of privacy and confidentiality and freedom from arbitrary interference for women
- Denial of postabortion care
- Denial of abortion care permitted by law
- Inhuman and degrading treatment through denial of abortion in cases of rape and incest
- Inhuman and degrading treatment through lack of adequate abortion care
- Discriminatory detention and legal sanctions against women who undergo abortion
- Threats and violence against providers and damage to their professional lives
- Coerced abortion

Lack of sufficient measures to decrease maternal mortality

Where unsafe abortion contributes to a high rate of maternal mortality, the absence of policies, programs and services to remedy this situation implies that women may not enjoy the same protection of their human rights as men. Failure to review laws that penalize abortion, which can be argued to contribute to unsafe abortions that result in maternal mortality, could be interpreted as non-observance of the principle of non-discrimination.

Treaty Monitoring Committee statements on unsafe abortion

The CEDAW Committee noted that unsafe abortions, which are linked to the criminalization of abortion, have contributed to high maternal mortality rates in Belize, Chile, Colombia, the Dominican Republic, Morocco, Namibia, Nepal, Paraguay, Peru and Zimbabwe. The CESCR Committee noted the same for Cameroon and Mexico, while the Committee on the Rights of the Child and the Human Rights Committee made similar observations regarding other countries (see citations below).

Citations from international conventions and Treaty Monitoring Committees

- **CEDAW Committee General Recommendation 24.14:** “The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women’s rights to have access to health care. For example, States parties should not restrict women’s access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”
- **CEDAW Committee General Recommendation 24.26:** “Reports should also include what measures States parties have taken to ensure women appropriate services in connection with pregnancy, confinement and the post-natal period. Information on the rates at which these measures have reduced maternal mortality and morbidity in their countries, in general, and in vulnerable groups, regions and communities, in particular, should also be included.”
- **CEDAW Committee General Recommendation 24.31:** “States parties should also, in particular:… (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion…”
- **CEDAW Committee Concluding Observations: Belize, 1999, paragraph 26:** “The Committee is also concerned at the restrictive abortion laws in place in the State party. It is concerned that, in 1998, so-called ‘unspecified abortions’ (abortions initiated outside the formal health sector) were the fifth cause of hospitalization, and hospitals discriminate against these women in the provision of services and care. In this regard, the Committee notes that the level of maternal mortality due to clandestine abortions may indicate that the Government does not fully implement its obligations to respect the right to life of its women citizens…”
- **CEDAW Committee Concluding Observations, Chile, 1999, paragraphs 28 and 29:** “The Committee is concerned at the insufficient recognition and protection of the reproductive rights of women in Chile. The Committee is especially concerned at the laws prohibiting and punishing any form of abortion. This law affects women’s health, increasing maternal mortality, and causes further suffering when women are imprisoned for violation [of] the law.... The Committee urges the Government to consider a review and amendment of the laws relating to abortion, in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including mental health, of the woman. The Committee also urges the Government to revoke laws which require health professionals to report women who undergo abortions to law enforcement agencies and which impose criminal penalties on these women.”
- **CEDAW Committee Concluding Observations, Colombia, 1999, paragraph 57:** “The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. No exceptions are made to that prohibition, including where the mother’s life is in danger, to safeguard her physical or mental health or in cases where the mother has been raped.... The Committee believes that the legal provisions on abortion constitute violations of the rights of women to life and health and of Article 12 of the Convention.”
- **CEDAW Committee Concluding Observations: Dominican Republic, 1998, paragraph 337:** “The Committee expresses deep concern with respect to the high rate of maternal mortality which is caused, as is noted in the report, by toxemia, haemorrhages during childbirth and clandestine abortions; the Committee also notes that toxemia may be caused by induced abortions. The high rate of maternal mortality, in conjunction with the fact that abortions in the Dominican Republic are absolutely and under all circumstances illegal, cause very great concern to the Committee and draws attention to the implications of the situation for women’s enjoyment of the right to life.”

- **CEDAW Committee Concluding Observations, Morocco, 1997, paragraph 68:** “The Committee noted with concern the high rate of maternal mortality in Morocco, the high number of unattended births, the unavailability of safe abortion and the need to develop further reproductive and sexual health services, including family planning.”
- **CEDAW Committee Concluding Observations, Namibia, 1997, paragraphs 111 and 127:** “The Committee was also concerned about the high number of illegal abortions in Namibia and the high rate of maternal mortality, and the fact that the inadequacy of the existing law on abortion contributed to the problem....The Committee recommended that the Government of Namibia adopt the necessary measures to review the laws containing punitive measures against women who had undergone illegal abortions.”
- **CEDAW Committee Concluding Observations, Nepal, 1999, paragraphs 31 and 32:** “The Committee expresses concern at the current law, which criminalizes abortion, including in cases of pregnancy through rape or incest. The Committee considers that the current law on abortion contributes to the high maternal mortality rate in Nepal. The Committee is also concerned that the proposed amendments to the current law continues to be restrictive, allowing abortion only when the mother’s health is in danger. The Committee urges the Government to revise existing legislation and to reconsider the proposed amendments so as to provide services for safe abortions. The Committee recommends that the Government prioritize prevention of unwanted pregnancy through family planning services and sex education. In these efforts, the Committee suggests that the Government take account of general recommendation 24 on article 12 - women and health.”
- **CEDAW Committee Concluding Observations, Paraguay, 1996, paragraphs 123 and 131:** “The Committee expressed great concern at the high level of easily preventable maternal mortality - one of the highest in the region - and of extremely unsafe abortions, especially among very young girls, as well as the high fertility rate and limited access to basic health and family planning services. It stressed that this situation was particularly serious among rural women, most of whom did not benefit from the right to health guaranteed by the Convention....The Committee called upon the State party to fulfil its obligations with respect to all the rights set out in Article 12 of the Convention. It stressed the urgency for the State party to take measures to deal with the high level of maternal mortality and illegal abortions and to consider reviewing the punitive measures of the law of abortion, in accordance with the Beijing Platform for Action. It also recommended that the State party provide sufficient and adequate family planning services and information.”
- **CEDAW Committee Concluding Observations: Peru, 1998, paragraphs 48 and 49:** “The Committee notes with concern that there is a close link between the number of abortions performed and the high maternal mortality rate, and it stresses that criminalizing abortion did not discourage abortions, but rather had the effect of making the procedure unsafe and dangerous for women...The Committee recommends that the Government of Peru review its law on abortion and ensure that women have access to full and complete health services which include safe abortion and to emergency medical attention when complications arise from abortions. The Committee also requests that information be included in the next periodic report on the implementation of these measures and on the health services that are available to women who need emergency medical attention as a result of complications arising as a result of abortion.”
- **CEDAW Committee Concluding Observations, Zimbabwe, 1998, paragraph 159:** “Noting that illegal abortion is cited by the Government as a major cause of death for women in Zimbabwe, the Committee recommends that the Government reappraise the law on abortion with a view to its liberalization and decriminalization.”
- **CESCR Committee Concluding Observations, Cameroon, 1999, paragraph 25:** “The Committee is concerned about the inadequacy of family planning policies and programmes in Cameroon, which have failed to reduce infant and maternal mortality. The Committee is also concerned about the high level of clandestine abortion in Cameroon, which is in part responsible for the high maternal mortality rate.”
- **CESCR Committee Concluding Observations, Mexico, 1999, paragraphs 29 and 43:** “The Committee is also

concerned to learn that the fourth highest cause of death among women in Mexico is illegal abortion....The Committee calls upon the State party to monitor closely the female mortality rate and to take steps to reduce the incidence of death caused by illegal abortion.”

- **CRC Committee Concluding Observations, Chad, 1999, paragraph 30:** “The Committee acknowledges the State party’s efforts in the area of adolescent health, but it remains concerned at the high rate of early pregnancy, and the lack of access by teenagers to reproductive health education and services and to emergency care. It is also concerned at the impact that punitive legislation regarding abortion can have on maternal mortality rates for adolescent girls. The Committee suggests that a comprehensive and multi-disciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy and illegal abortion. The Committee encourages the State party to review its practices under the existing legislation authorising abortions for therapeutic reasons with a view to preventing illegal abortion and to improving protection of the mental and physical health of girls.”
- **Human Rights Committee General Comment 28.10:** “When reporting on the right to life protected by article 6, States parties should provide data on birth rates and on pregnancy and childbirth-related deaths of women. Gender-disaggregated data should be provided on infant mortality rates. States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions....”
- **Human Rights Committee Concluding Observations, Chile, 1999, paragraph 15:** “The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives. The legal duty imposed upon health personnel to report on cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. In this regard: The Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions and to protect the confidentiality of medical information.”
- **Human Rights Committee Concluding Observations, Costa Rica, 1999, paragraph 11:** “The Committee notes with concern the consequences for women, including the danger to life involved in clandestine abortions, of the continuing criminalization of all abortions. The Committee recommends that the law be amended to introduce exceptions to the general prohibition of all abortions.”
- **Human Rights Committee Concluding Observations, Ecuador, 1998, paragraph 11:** “The Committee expresses its concern about the very high number of suicides of young females referred to in the report, which appear in part to be related to the prohibition of abortion. In this regard, the Committee regrets the State party’s failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives. Such situations are, from both the legal and practical standpoints, incompatible with Articles 3, 6 and 7 of the Covenant, and with Article 24 when female minors are involved. The Committee recommends that the State party adopt all necessary legislative and other measures to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.”
- **Human Rights Committee Concluding Observations, Mongolia, 2000, paragraph 8:** “Many areas of concern remain in relation to discrimination against women and the inability of women fully to enjoy Covenant rights (articles 3 and 26 of the Covenant). In particular, attention has been drawn to: (a) a general deterioration in the status of women in society, especially in the political sphere, despite their high standard of competence; (b) the acute problem of maternal mortality, due in part to unsafe abortions, and unavailability of family planning advice and facilities...”
- **Human Rights Committee Concluding Observations, United Republic of Tanzania, 1999, paragraph 15:** “The Committee deplores the law in force in Zanzibar which allows for the imprisonment of both mother and

father in the event of an unmarried woman becoming pregnant. In the Committee's view, this carries risks to the right to life (art. 6) (through resort to illegal abortion) and to the rights of the child (arts. 23 and 24) if born in such circumstances. It recommends the abolition of this law in Zanzibar and, noting in this connection that illegal abortion is a major cause of maternal mortality, that a national review be carried out on the restrictions on abortions (arts. 3, 6 and 26)."

Citation from regional convention

- **Banjul, Article 18.3:** "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

Citation from a consensus statement

- **ICPD+5, paragraph 63(i):** "In no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public-health concern and to reduce the recourse to abortion through expanded and improved family planning services."

Lack of information provision regarding pregnancy prevention

The right to information is violated when adolescent or adult women are prevented from receiving information about all available options for preventing unwanted pregnancy (including lesser-known methods such as emergency contraception, contraceptive patches, monthly injections) or about different options for performing abortions permitted by law.

International Court decision on the right to information

The European Court of Human Rights found in 1992 that Ireland was violating individuals' right to receive and impart information because the State was trying to prevent the dissemination of information about abortion services permitted by law in Great Britain [4].

Citations from international conventions and Treaty Monitoring Committees

- **CEDAW, Article 12.1:** "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."
- **CEDAW, Article 14.2:** "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women...in particular, shall ensure to such women the right...(b) to have access to adequate health care facilities, including information, counselling and services in family planning."
- **CEDAW, Article 16.1:** "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women...(e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."
- **CEDAW Committee General Recommendation 24.20:** "Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives."

- **CEDAW Committee General Recommendation 24.31:** “States parties should also, in particular:... (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance.”
- **CEDAW Committee Concluding Observations, Greece, 1999, paragraph 36:** “The Committee expresses its concern about the high rate of abortion in Greece, and especially of abortions by teenagers. The numbers are indicative of insufficient use of contraceptives, a lack of sex education and information about contraceptives and insufficient or unfocused family-planning efforts.”
- **CEDAW Committee Concluding Observations, Slovenia, 1997, paragraph 119:** “The Committee suggested that there was a need to analyze the reasons for the high rate of abortion among Slovene women. It strongly recommended education for women and men on the full range of safe and reliable contraceptive methods, stressing the mutual responsibility of both sexes for family planning as well as recommending that such methods be widely available.”
- **Human Rights Committee Concluding Observations, Ireland, 1993, paragraph 15:** “With respect to freedom of expression and the right of access to information, the Committee notes with concern that the exercise of those rights is unduly restricted under present laws concerning censorship, blasphemy and information on abortion. The prohibition of interviews with certain groups outside the borders by the broadcast media infringes upon the freedom to receive and impart information under Article 19, paragraph 2, of the Covenant. The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those offices.”

Citations from consensus statements

- **ICPD, paragraph 8.19:** “At present, approximately 90 per cent of the countries of the world, representing 96 per cent of the world population, have policies that permit abortion under varying legal conditions to save the life of a woman. However, a significant proportion of the abortions carried out are self-induced or otherwise unsafe, leading to a large fraction of maternal deaths or to permanent injury of the women involved. Maternal deaths have very serious consequences within the family, given the crucial role of the mother for her children’s health and welfare. The death of the mother increases the risk to the survival of her young children, especially if the family is not able to provide a substitute for the maternal role. Greater attention to the reproductive health needs of female adolescents and young women could prevent the major share of maternal morbidity and mortality through prevention of unwanted pregnancies and any subsequent poorly managed abortion.”
- **ICPD, paragraph 8.25:** “Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion.... Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling.... Post-abortion counselling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions.”
- **ICPD+5, paragraph 63(i):** “Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling.”

Lack of access to means to prevent unwanted pregnancy

Unwanted pregnancies will always occur, for example, because of the failure of contraceptive methods or because of incest and rape. However, a large number of unwanted pregnancies result from lack of access to contraceptive methods and this leads to adolescent and adult women seeking abortions, whether permitted by law or not. When a country has highly restrictive laws on abortion, most abortions will be unsafe, compromising a woman’s health.

Lack of contraceptive access and unsafe abortion: an example of possible links

In Benin, provision of information on contraception has been prohibited by law. While contraceptive users are not sanctioned and the government authorized the creation of a Family Planning Association in 1971, adolescent girls do not have adequate access to contraceptives because services are only open during school hours and service providers exhibit accusatory and condemnatory attitudes towards them. A 1997 study of 38,000 adolescents aged 13-19 years showed that 81.4% did not use family planning services; 79.4% of pregnancies among school-aged girls ended in mostly unsafe abortions that could lead to serious reproductive health problems. Abortion-related deaths accounted for 23% of recorded deaths [112, 113].

Citations from Treaty Monitoring Committees

- **CEDAW Committee Concluding Observations, Greece, 1999, paragraph 36:** “The Committee expresses its concern about the high rate of abortion in Greece, and especially of abortions by teenagers. The numbers are indicative of insufficient use of contraceptives, a lack of sex education and information about contraceptives and insufficient or unfocused family-planning efforts. The Committee is also concerned in this respect about the extent of funding for contraception, given the comprehensive coverage of health insurance and funding for health services in Greece.”
- **CEDAW Committee Concluding Observations, Ukraine, 1996, paragraph 287:** “The Committee noted the limited access of rural women to effective, affordable and acceptable methods of family planning. This situation often led large numbers of women to resort to unsafe abortions.”
- **CESCR Committee Concluding Observations, Armenia, 1999, paragraphs 15 and 19:** “In addition, the Committee is alarmed by the fact that abortion remains the most commonly used means of family planning in the country owing, in particular, to inadequate education and the high cost of contraceptives....The Committee recommends that family planning programmes be set up for women, in particular to decrease the incidence of abortion, along with programmes for the prevention and treatment of cancer.”
- **CRC Committee Concluding Observations, Benin, 1999, paragraph 25:** “The Committee expresses its concern regarding the limited availability of programmes and services and the lack of adequate data in the area of adolescent health, including accidents, suicide, violence and abortion. The Committee further suggests that a comprehensive and multi-disciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy as well as the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs. Additionally, it is recommended that the State party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counseling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent, where in the best interests of the child. The Committee recommends that the State party repeal the 1920 law concerning family planning and the use of contraceptives.”
- **Human Rights Committee General Comment 28.10:** “...States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions....”

Lack of privacy and freedom from arbitrary interference

Women’s right to privacy and confidentiality is violated when information about their abortion-related care is given to third parties without their permission. Examples: information about their identity or case is given to the mass media

(press), employers, hospital staff who are not involved in the care or family members. In addition, when their “cases” become public knowledge, they may be exposed to pressure and coercion (for example, offers of economic payment) to rescind their decision to have an abortion, even when it is permitted by law. When women are required to have spousal consent for a health procedure, their right to freedom from arbitrary interference may be violated.

Statements by a Treaty Monitoring Committee on spousal consent

The CEDAW Committee asked the States of Indonesia and Turkey to review their requirement that a woman's partner must give his permission for termination of pregnancy (see citations below).

Citations from international conventions and Treaty Monitoring Committees

- CEDAW Committee General Recommendation 24.12(d):** “While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”
- CEDAW Committee Concluding Observations, Indonesia, 1998, paragraph 284:** “The Committee is very concerned at the existence of laws that are not in accordance with the provisions of the Convention. It notes that discrimination against women exists in laws regarding...(c) Health, including the requirement that the wife obtain her husband's consent with regard to sterilization or abortion, even when her life is in danger.”
- CEDAW Committee Concluding Observations, Turkey, 1997, paragraphs 184 and 196:** “The Committee expressed its concern that spousal consent was required for abortion, a requirement it considered to be in contravention of Article 15 of the Convention.... The Committee requested the review of the requirement of spousal consent for abortion.”
- CRC, Article 16:** “1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks.”
- Human Rights Committee General Comment 28.20:** “Another area where States may fail to respect women's privacy relates to their reproductive functions, for example...where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion.”

Citations from regional conventions

- ACHR, Article 11:** “Right to privacy. 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.”
- Belém do Pará, Article 8:** “The States Parties agree to undertake progressively specific measures, including programs...g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women...”

Citation from a consensus statement

- ICPD, Paragraph 7.45:** “Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents...countries must ensure that the programmes and attitudes of health-care providers

do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. In doing so, and in order to, inter alia, address sexual abuse, these services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent, respecting cultural values and religious beliefs. In this context, countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents.”

Denial of postabortion care

An adolescent or adult woman may be exposed to increased risks to her health and life when she is denied postabortion care (PAC) or treatment is delayed unnecessarily. This happens, for example, when health providers leave women presenting for PAC aside to first assist all other kinds of emergencies or when health providers give less priority to PAC for women of lower socioeconomic classes or certain ethnic groups.

Denial of postabortion care in Brazil

A research participant in São Paulo, Brazil, commented: “So many women die, they have a hemorrhage, arrive at the hospital and [the staff] don’t care, they don’t give a damn. Then, what happens? That bleeding woman will die for lack of medical attention in the hospital and this happens every day...” [114]

Citations from international conventions and Treaty Monitoring Committees

- CCPR, Article 6.1:** “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
- CEDAW Committee General Recommendation 24.27:** “States parties should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post-partum periods for women. Many women are at risk of death or disability from pregnancy-related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity and post-natal services. The Committee notes that it is the duty of States parties to ensure women’s right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.”
- CEDAW Committee Concluding Observations, Morocco, 1997, paragraph 78:** “The Committee strongly recommended that the Government take special measures to reduce maternal mortality rates and protect women’s right to life by ensuring full and timely access of all women to emergency obstetric care.”
- CERD, Article 5:** “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e)(iv) The right to public health, medical care, social security and social services...”
- CRC, Article 19.1:** “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person...”
- CRC, Article 24.1:** “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”
- CRC, Article 24.2:** “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: a) To diminish infant and child mortality; b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care...”

Citations from regional conventions

- ACRWC, Article 14:** “Health and Health Services. 1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. 2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:...(b) to ensure the provision of necessary medical assistance and health care to all children...”
- Banjul, Article 16:** “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

Citations from consensus statements

- Beijing, paragraph 97:** “...Unsafe abortions threaten the lives of a large number of women, representing a grave public health problem as it is primarily the poorest and youngest who take the highest risk. Most of these deaths, health problems and injuries are preventable through improved access to adequate health-care services, including safe and effective family planning methods and emergency obstetric care...”
- Beijing, paragraph 106k:** “In all cases, women should have access to quality services for the management of complications arising from abortion.”
- DRRPPHR, paragraph 11:** “Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.”
- ICPD, paragraph 7.6:** “All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should, inter alia, include:...abortion as specified in paragraph 8.25, including prevention of abortion and the management of the consequences of abortion... Referral for family-planning services and further diagnosis and treatment for complications of pregnancy, delivery and abortion, infertility, reproductive tract infections, breast cancer and cancers of the reproductive system, sexually transmitted diseases, including HIV/AIDS should always be available, as required....”
- ICPD, paragraph 8.22:** “All countries, with the support of all sections of the international community, must expand the provision of maternal health services in the context of primary health care. These services, based on the concept of informed choice, should include education on safe motherhood, prenatal care that is focused and effective, maternal nutrition programmes, adequate delivery assistance that avoids excessive recourse to caesarean sections and provides for obstetric emergencies; referral services for pregnancy, childbirth and abortion complications; post-natal care and family planning. All births should be assisted by trained persons, preferably nurses and midwives, but at least by trained birth attendants.”
- ICPD, paragraph 8.25:** “...In all cases, women should have access to quality services for the management of complications arising from abortion....”
- ICPD+5, paragraph 61(i):** “...In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family planning services should be offered promptly, which will also help to avoid repeat abortions.”

Denial of abortion permitted by law

Women’s rights are violated when they are denied an abortion permitted by law (for example, in cases of rape, incest, risk to a woman’s health or life) or when there are delays in carrying out the procedure because of deliberate voluntary

actions of persons involved. Examples: justice authorities do not give the authorization required by law; health providers refuse to perform the procedure on the basis of conscientious objection and do not refer the woman to providers who will perform an abortion; third parties try to prevent the procedure by referring to religious beliefs (for example, through court injunctions or other legal procedures, persecution or harassment of the woman and her family, etc.).

Statement by a Treaty Monitoring Committee on conscientious objection

The CEDAW Committee found that the Italian State failed to ensure that women have sufficient access to legal abortion because providers' conscientious objections have outweighed women's rights. For example, in Southern Italy, more than 90% of doctors invoked a conscientious objection while in many smaller hospitals there were no staff members willing to carry out abortions. The Committee noted the same in the case of Croatia (see citations below).

Citations from international conventions and Treaty Monitoring Committees

- CCPR, Article 18.3:** "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."
- CEDAW Committee General Recommendation 24.11:** "Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."
- CEDAW Committee General Recommendation 24.14:** "The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."
- CEDAW Committee Concluding Observations, Croatia, 1998, paragraph 109:** "[The Committee] is also concerned about information regarding the refusal, by some hospitals, to provide abortions on the basis of conscientious objection of doctors. The Committee considers this to be an infringement of women's reproductive rights."
- CEDAW Committee Concluding Observations, Italy, 1997, paragraphs 353 and 360:** "The Committee expressed particular concern with regard to the limited availability of abortion services for women in southern Italy, as a result of the high incidence of conscientious objection among doctors and hospital personnel....The Committee strongly recommended that the Government take steps to secure the enjoyment by women, in particular, southern Italian women, of their reproductive rights by, inter alia, guaranteeing them access to safe abortion services in public hospitals."
- CEDAW Committee Concluding Observations, Panama, 1998, paragraphs 31 and 32:** "The Committee expresses deep concern in connection with the reproductive health of Panamanian women and an apparent setback in the treatment of the right to abortion in cases where the pregnancy is the result of rape. The Committee recommends that multidisciplinary measures should be taken to provide special care to the victims of sexual violence"

and should include legal and psychological assistance for the victim. It also recommends that Panamanian women whose pregnancies are as a result of rape should be granted the opportunity to seek termination of such pregnancies.”

- CRC, Article 24.1:** “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”
- Human Rights Committee General Comment 28.11:** “To assess compliance with article 7 of the Covenant... the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape....The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”

Citations from regional conventions

- ACHR, Article 25:** “Right to judicial protection. 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”
- ACRWC, Article 14:** “Health and Health Services. 1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. 2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures...(b) to ensure the provision of necessary medical assistance and health care to all children...”

Citations from consensus statements

- Beijing, paragraph 96:** “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”
- Beijing, paragraph 106k:** “... In circumstances where abortion is not against the law, such abortion should be safe....”
- Beijing, paragraph 114:** “Other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy.”
- Beijing, paragraph 124g:** “Actions to be taken By Governments: Promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women; actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices...”
- Declaration of Oslo, World Medical Assembly, Paragraph 6, Statement on Therapeutic Abortion, 1970:** “If the doctor considers that his convictions do not allow him to advise or perform an abortion, he may withdraw while ensuring the continuity of (medical) care by a qualified colleague.”
- DEFIDR, paragraph 1.3:** “Freedom to manifest one’s religion or belief may be subject only to such limitations

as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”

- **DRRPPHR, paragraph 11:** “Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.”
- **ICPD, paragraph 8.25:** “...Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling....Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances in which abortion is not against the law, such abortion should be safe.”
- **ICPD+5, paragraph 63(i):** “...In circumstances where abortion is not against the law, such abortion should be safe.”
- **ICPD+5, paragraph 63(iii):** “In recognizing and implementing the above, and 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.”

Inhuman treatment through denial of abortion in cases of rape and incest

When women are not allowed to have an abortion for a pregnancy resulting from rape or incest, their right to be free from inhuman and degrading treatment is violated. In essence, they are re-victimized when they are not permitted to take all possible measures to deal with the unwanted consequences of such violence.

Statements by Treaty Monitoring Committees on rape and abortion

The Human Rights Committee found that criminalization of abortion of pregnancies caused by rape is equivalent to inhuman treatment [115]. In 2000, the Committee declared that States parties to the CCPR should inform the Committee whether they give women who have become pregnant due to rape access to safe abortion; this information should include measures of protection, including legal remedies, for women whose rights have been violated under Article 7 [17].

The CEDAW Committee found that the States of Colombia, Jordan, Nepal and Panama should permit legal abortion for women who become pregnant as a result of rape (see citations below).

Citations from Treaty Monitoring Committees

- **CEDAW Committee Concluding Observations, Colombia, 1999, paragraph 57:** “The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. No exceptions are made to that prohibition, including where the mother’s life is in danger, to safeguard her physical or mental health or in cases where the mother has been raped. The Committee is also concerned that women who seek treatment following induced abortion are subject to prosecution, and that women seeking illegal abortions and doctors who perform them are subject to prosecution. The Committee believes that the legal provisions on abortion constitute violations of the rights of women to life and health and of Article 12 of the Convention.”

- **CEDAW Committee Concluding Observations, Jordan, 2000, paragraphs 2 and 3:** “The Committee expresses its concern that the prohibition of abortion also applies to cases where the pregnancy is due to rape or incest. The Committee calls on the Government to initiate legislative action to permit safe abortion for victims of rape and incest.”
- **CEDAW Committee Concluding Observations, Nepal, 1999, paragraphs 31 and 32:** “The Committee expresses concern at the current law, which criminalizes abortion, including in cases of pregnancy through rape or incest.... The Committee urges the Government to revise existing legislation and to reconsider the proposed amendments so as to provide services for safe abortions...”
- **Human Rights Committee General Comment 28. 11:** “To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape....”
- **Human Rights Committee Concluding Observations, Ecuador, 1998, paragraph 11:** “The Committee expresses its concern about the very high number of suicides of young females referred to in the report, which appear in part to be related to the prohibition of abortion. In this regard, the Committee regrets the State party’s failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives. Such situations are, from both the legal and practical standpoints, incompatible with Articles 3, 6 and 7 of the Covenant, and with Article 24 when female minors are involved. The Committee recommends that the State party adopt all necessary legislative and other measures to assist women, and particularly adolescent girls, faced with the problem of unwanted pregnancies to obtain access to adequate health and education facilities.”
- **Human Rights Committee Concluding Observations, Peru, 1996, paragraphs 15 and 22:** “The Committee notes with concern that the law still contains a provision exempting a rapist from punishment if he marries his victim and another which classifies rape as an offence prosecutable privately. The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhuman treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant....The Committee recommends that the provisions of the Civil and Penal Codes should be revised in the light of the obligations laid down in the Covenant, and in particular in its articles 3 and 26. Peru must ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection and must take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.”

Citation from a consensus statement

- **Beijing+5, paragraph 130c:** “Increase awareness and knowledge of the Rome Statute of the ICC which affirms that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence constitute war crimes and, in defined circumstances, crimes against humanity, with the aim of preventing such crimes from occurring and take measures to support prosecution of all persons responsible for such crimes and provide avenues for redress to victims; also increase awareness of the extent to which such crimes are used as a weapon of war...”

Inhuman and degrading treatment during abortion-related care

The rights of adolescent and adult women to health care are violated when they receive inadequate care for an abortion permitted by law or for PAC or when they suffer mistreatment during such care. Examples: health providers insult, humiliate, threaten or punish the woman or do not take the necessary measures to alleviate pain (anesthesia, sufficient analgesics).

Inhuman treatment in Chile

A 7-month pregnant woman in Chile fell down the stairs while carrying buckets of water. Suffering from a spontaneous abortion, she arrived at the hospital, but the physician treated her very badly, asking her what things she had put up her vagina. She told him about the fall, but he reported her for induced abortion [116].

Citations from international conventions and Treaty Monitoring Committees

- CAT, Article 1.1:** “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...”
- CAT, Article 16.1:** “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”
- CCPR, Article 7:** “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- CRC, Article 37:** “States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment....”
- CRC, Article 39:** “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

Citations from regional conventions

- ACHR, Article 5.1:** “Every person has the right have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”
- Belém do Pará, Article 2:** “Violence against women shall be understood to include physical, sexual and psychological violence:...b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.”
- Belém do Pará, Article 4:** “Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:...b. The right to have her physical, mental and moral integrity respected;...e. The rights to have the inherent dignity of her person respected and her family protected...”
- Belém do Pará, Article 7:** “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:...d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening

the woman or using any method that harms or endangers her life or integrity, or damages her property...”

- CPST, Article 2:** “For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose....”
- CPST, Article 6:** “...The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.”

Citations from consensus statements

- Beijing, paragraph 113:** “The term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life... c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”
- ICPD, paragraph 7.24:** “Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counselling of women who have had recourse to abortion.”
- ICPD+5, paragraph 63(ii):** “Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counselling of women who have had recourse to abortion.”

Discriminatory detention and legal sanctions against women who undergo abortion

When women are threatened with detention or detained when they present for medical care related to a miscarriage or complications of an unsafe abortion, they may be subject to violation of the principle of non-discrimination. It might also be argued that their right to medical privacy and confidentiality is violated when health providers are required to report suspected cases of induced abortion to law enforcement officials.

Discrimination due to socioeconomic status in Chile

In Chile, one study showed that most denunciations of women suspected of illegal abortions came from a few public hospitals serving women of low socioeconomic status and where certain doctors were on duty [117].

Citations from international conventions and Treaty Monitoring Committees

- CEDAW Committee General Recommendation 24.12(d):** “While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”
- CEDAW Committee General Recommendation 24.14:** “The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women’s rights to have access to health care...Other barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”

- **CEDAW Committee General Recommendation 24.31:** “States parties should also, in particular:... (c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion...”

- **CEDAW Committee Concluding Observations, Chile, 1999, paragraphs 28 and 29:** “The Committee is especially concerned at the laws prohibiting and punishing any form of abortion. This law affects women’s health, increasing maternal mortality, and causes further suffering when women are imprisoned for violation the law... The Committee urges the Government to consider a review and amendment of the laws relating to abortion, in particular to provide safe abortion and to permit termination of pregnancy for therapeutic reasons or because of the health, including mental health, of the woman. The Committee also urges the Government to revoke laws which require health professionals to report women who undergo abortions to law enforcement agencies and which impose criminal penalties on these women.”

- **CEDAW Committee Concluding Observations, Colombia, 1999, paragraph 57:** “The Committee notes with great concern that abortion, which is the second cause of maternal deaths in Colombia, is punishable as an illegal act. No exceptions are made to that prohibition, including where the mother’s life is in danger, to safeguard her physical or mental health or in cases where the mother has been raped. The Committee is also concerned that women who seek treatment following induced abortion are subject to prosecution, and that women seeking illegal abortions and doctors who perform them are subject to prosecution. The Committee believes that the legal provisions on abortion constitute violations of the rights of women to life and health and of Article 12 of the Convention.”

- **Human Rights Committee General Comment 28.20:** “States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women’s right to enjoy privacy and other rights protected by article 17 on the basis of equality with men. An example of such interference arises... where States may fail to respect women’s privacy relates to their reproductive functions, for example... where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake.... States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.”

Citation from a consensus statement

- **Beijing+5, paragraph 1-7I:** “consider reviewing laws containing punitive measures against women who have undergone illegal abortions...”

Threats and violence against providers and damage to their professional lives

Providers of postabortion care and/or abortion permitted by law may be subjected to threats and violence or suffer damage to their reputation so that their professional careers are endangered. Examples: parties opposed to abortion on the basis of religious beliefs publish the names of providers who give abortion care, exposing them to potential violence; parties opposed to abortion endanger the safety of providers.

Health providers threatened in the Americas

Providers of abortion-related care in Latin America have reported threats of violence, extortion and judicial prosecution [118]. In the USA, seven persons working for clinics that provide abortions permitted by law have been murdered since 1993 and since 1991 there have been 16 other attempts to murder staff. In addition, clinics and their staffs have suffered bombings, arson, assault, kidnapping and threatening phone calls [119].

Citation from an international convention

- CCPR, Article 17:** “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

Citation from a regional convention

- ACHR, Article 11:** “Right to privacy. 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.”

Citation from a consensus statement

- DEFIDR, Article 2.2:** “For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”

Coerced abortion

Women may be pressured to undergo an abortion by various individuals. Adolescents may be pressured or forced to undergo an abortion by their parents or partners. Women may be coerced to undergo sex-selective abortions by family members and spouses who desire only male offspring due to social norms. Women suffering an illness such as HIV/AIDS may be pressured to abort by health-care providers. If government policies place restrictions on the number of children that women may have, this may also result in coercion to abort. In all these cases, the woman’s right to make voluntary decisions concerning her reproductive life is violated.

Sex discrimination related to abortion

Data from six hospitals in Mumbai, India, showed that 7,999 of 8000 aborted fetuses were female. A study of 700 women in the same country focused on genetic amniocentesis. Only 20 of 450 women who were told they would have a daughter continued the pregnancy; all the women told they would have sons continued the pregnancy, even if a genetic disorder was likely [120].

Citations from Treaty Monitoring Committees

- CEDAW Committee General Recommendation 19.22:** “Compulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”
- CEDAW Committee General Recommendation 19.24(m):** “States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control...”
- CEDAW Committee Concluding Observations, China, 1999, paragraph 51:** “The Government should enforce laws against sex-selective abortion, female infanticide and abandonment of children and remove all legal disabilities from “out-of-plan” and unregistered children.”
- CEDAW Committee Concluding Observations, India, 2000, paragraph 50:** “... the Committee calls upon the

Government to elicit the support of medical associations in enforcing professional ethics and preventing sex-selective abortions. The Committee also recommends that the Government obtain the support of the medical profession in creating awareness on the urgent need to eliminate practices associated with son preference.”

- **CESCR Committee General Comment 5.31:** “Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of Article 10 (2).”
- **Human Rights Committee General Comment 28.5:** “Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of pre-natal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardise, or may jeopardise, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.”
- **Human Rights Committee General Comment 28.11:** “To assess compliance with article 7 of the Covenant... the Committee needs to be provided information on national laws and practice with regard to... measures to prevent forced abortion or forced sterilization.... The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”

Citations from consensus statements

- **Beijing, paragraph 96:** “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence....”
- **Beijing, paragraph 106(g):** “Ensure that all health services and workers conform to human rights and to ethical, professional and gender-sensitive standards in the delivery of women’s health services aimed at ensuring responsible, voluntary and informed consent...”
- **Beijing, paragraph 115:** “Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.”
- **Beijing, paragraph 283:** “By Governments and, as appropriate, international and non-governmental organizations...(d) Enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection...”
- **ICPD, paragraph 4.15:** “Since in all societies discrimination on the basis of sex often starts at the earliest stages of life, greater equality for the girl child is a necessary first step in ensuring that women realize their full potential and become equal partners in development. In a number of countries, the practice of prenatal sex selection, higher rates of mortality among very young girls....suggest that ‘son preference’ is curtailing the access of girl children to food, education and health care. This is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses...”

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