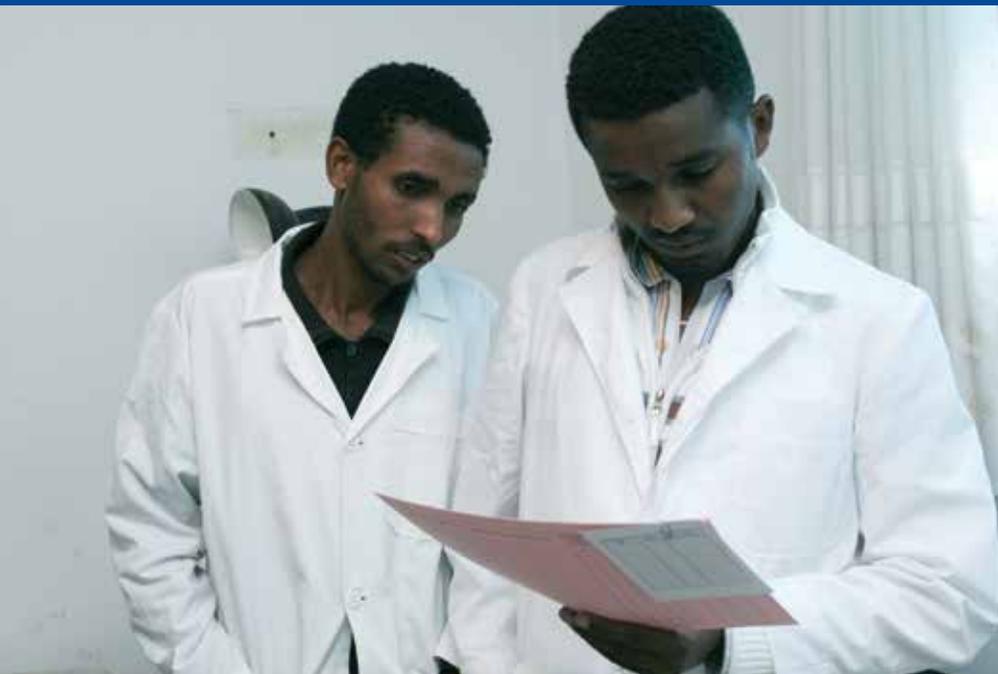


When a Health Professional Refuses

Legal and regulatory limits on conscientious objection to provision of abortion care



September 2012
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Introduction

Health professionals' refusal to provide service is a significant barrier to women's access to safe abortion and other reproductive health services. Doctors, pharmacists, nurses and midwives have the right to refuse to provide health-care services to which they are opposed, under international and some national law. However, national-level legal or regulatory limits on conscientious objection (also called conscientious refusal) are necessary to protect women's human rights and their ability to access safe abortion services.

This resource contains recommendations for enacting laws and regulations¹ that safeguard women's access to services while still protecting providers' rights of conscience. It also provides information on human rights standards that address provider refusal and includes a list of further resources.

What is conscientious objection?

In the health-care context, conscientious objection is the refusal by health professionals to provide treatment that they oppose on religious or moral grounds. International and national law in most countries protects freedom of thought, conscience and religion and allows health-care providers to refuse to provide abortion services. This must be balanced with governments' obligation to ensure that women have access to providers who are willing to offer safe abortion care. To achieve this balance, laws and regulations should ensure that women can obtain abortion services despite the refusal of certain providers to provide them.

Why must conscientious objection be addressed in laws and regulations?

Conscientious objection has been used outright to deny women access to legal medical services, including abortion. The denial of safe abortion services can be a violation of women's rights. Refusal to provide service is discriminatory because it most harms poor women, who are less likely to be able to pay for or obtain service from an alternative provider. Provider refusal may have consequences resulting in long-term health injuries or death because a woman refused a safe abortion may instead seek unsafe abortion—either self-induced or with help from another provider. Governments have a responsibility to protect women's human rights and ensure access to safe abortion by placing certain limits on provider refusal.

¹ These can be enacted by statute, court decision, a ministry's standards and guidelines or health-care providers' codes of ethics.

Limits on provider refusal, with national examples

To ensure that women are able to access safe legal services, protective provisions must be put in place by lawmakers, health ministries or health-care professional associations. Providers opposed to abortion who refuse service without oversight from a health system may completely deny women legal abortion. In addition to adopting the standards below, health ministries should monitor the practice of conscientious refusal to ensure that women have access to safe abortion services regardless of where they live and that facilities are adequately staffed by providers willing to provide service. Regulations should also establish mechanisms for compliance, such as penalties for health-care workers who do not act according to the standards.

Below are five standards which should be included in the legal or regulatory framework for the provision of abortion services. They reflect recommendations by internationally recognized human rights bodies and organizations such as the World Health Organization (WHO) and the International Federation of Gynecology and Obstetrics (FIGO). Following each standard is an example of how the standard has been incorporated into laws or regulations in particular countries.

1. If a health professional refuses to provide legal abortion services, that provider then must refer the pregnant woman to a practitioner who is willing to perform the abortion.

Examples

- The law of Madagascar requires that “if the physician because of his convictions believes that he is forbidden to recommend or advise an abortion, he may withdraw, ensuring continuity of care by a qualified colleague.”²
- The law of the state of Victoria in Australia includes among “Obligations of registered health practitioner who has conscientious objection” that he or she “(b) refer the woman to another registered health practitioner in the same regulated health profession who the practitioner knows does not have a conscientious objection to abortion.”³
- A guidance document issued by the government of Northern Ireland of the United Kingdom states “where a woman presents herself to her GP (General Practitioner) for advice or assessment in relation to a termination of pregnancy and that GP has a conscientious objection, he/she should have in place arrangements with... practice colleagues, another GP practice, or a Health Social Care Trust to whom the woman can be referred.”⁴
- The decision of the Colombian Supreme Court that liberalized the abortion law on human rights grounds states that objecting medical practitioners cannot deny the rights

2 Decree No. 98-945 of 4 December 1998 setting forth the Code of Medical Ethics (Madagascar).

3 Abortion Law Reform Act 2008 (Victoria) §8.

4 Guidance on the Termination of Pregnancy: The Law and Clinical Practice in Northern Ireland, 16 July 2008, the Department of Health, Social Services and Public Safety.

of their women patients to exercise their own conscience to choose a lawful abortion, but must immediately refer them to other non-objecting medical practitioners who will perform the procedure.⁵

- 2. Health-care providers must provide women seeking to terminate a pregnancy with information on legal abortion services.** Women have a right to information on reproductive health-care services. The principle of informed consent requires that a woman be informed of all of her options.

Example

- The South African Regulations on the Choice on Termination of Pregnancy (TOP) Act set out that a woman requesting TOP must be informed: (a) that she is entitled to the termination of her pregnancy upon request during the first twelve weeks of the gestation period; (b) that under the circumstances determined by the Act, her pregnancy may be terminated by the thirteenth and up to and including the twentieth week of the gestation period; (c) that only her consent is required for the termination of pregnancy; (d) that counseling contemplated in the Act shall be available; and (e) of the locality of facilities for the termination of pregnancy.

- 3. Only health professionals directly involved in the provision of abortion are able to object to providing the procedure.** Medical personnel such as nurses providing care before and after a woman has undergone an abortion do not have the right to object to providing such care, as the auxiliary care itself does not merit objection. Cleaners, receptionists and other hospital workers likewise have no right to conscientious objection.

Examples

- The law of Norway prohibits “personnel who provide a woman with service, care, and treatment before and after the treatment” from raising a conscientious objection.⁶
- Italy’s law states “conscientious objection shall exempt health personnel and allied health personnel from carrying out procedures and activities specifically and necessarily designed to bring about the termination of pregnancy, and shall not exempt them from providing care prior to and following the termination.”⁷

- 4. Health-care providers, regardless of their religious or moral objections, have a duty to perform an abortion if the woman will suffer adverse health consequences if the abortion is not promptly carried out.** When a woman faces a risk to her health because a practitioner refuses to provide an abortion, the woman’s right to health is paramount.

5 Decision T-209 of 2008 (Constitutional Court of Colombia).

6 Abortion Regulations 2001 (Norway) §15.

7 Law No. 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy (Italy) §9.

Examples

- Several countries—including Belize, Guyana, Singapore, United Kingdom and Zambia—stipulate that a health professional has a duty to participate in such treatment which is immediately necessary to save the life or to prevent injury to the physical or mental health of a pregnant woman.⁸
- Austria's law states that no physician is obliged to perform an abortion or to take part in it, except where it is necessary without delay to save the life of the pregnant woman from an immediately threatening danger which cannot otherwise be averted.⁹
- Under Ghana's Standards and Protocols for comprehensive abortion care, "no provider has the right to refuse to perform an abortion procedure that is needed to preserve a woman's health or life."¹⁰

- 5. Only individuals—and not institutions—have a right to object to providing abortion service.** The right of conscientious objection is a human right and as such, applies only to people and not hospitals, clinics or even governments.

Examples

- Most laws and policies of countries that explicitly provide for conscientious objection specify that the right to conscientious objection applies to a "person" or "provider." For example, the law of the United Kingdom provides that "no person shall be under any duty..."¹¹
- The Colombian Supreme Court has stated that that conscientious objection is not a right that legal entities or the State can exercise. It is only possible for natural persons to exercise this right. Hospitals, clinics or other health centers cannot raise a conscientious objection to performing an abortion when all the requirements established by this decision are met.¹²

8 Criminal Code (Ordinance No. 33 of 18 December 1980) (Belize) §110; Medical Termination of Pregnancy Act 1995 (Act No. 7 of 14 June 1995) (Guyana) §11; Termination of Pregnancy Act (Singapore) §6; The Abortion Act 1967 (as amended through 2008) (United Kingdom) §4; Termination of Pregnancy Act, 13 October 1972 (Zambia) §4.

9 Federal Law of 23 January 1974 (Austria) Art. 3(2).

10 Ghana Health Service. 2012. Prevention and Management of Unsafe Abortion: Comprehensive Abortion Care Services Standards and Protocols, Third Edition.

11 The Abortion Act 1967 (as amended through 2008) (United Kingdom) §4.

12 Decision T-209 of 2008 (Constitutional Court of Colombia).

Efforts to curtail access to abortion by expanding conscientious refusal

Anti-abortion activists have worked to expand provider refusal in law and policy to reduce access to abortion for women. In the United States, where mergers have put an increasing number of hospitals under Catholic control, such hospitals have refused to provide a range of reproductive health care, resulting in a dearth of abortion and contraceptive services in particular communities. Other efforts have resulted in laws prohibiting private insurance or public health funds to be used for payment for abortion services, leaving poor women in particular with few good alternatives.

In Europe, under pressure from anti-abortion forces, the Parliamentary Assembly of the Council of Europe enacted a watered-down resolution on conscientious objection that would extend the right to refuse to hospitals and institutions. The resolution also neglected needed limits on the right to refuse when doing so would result in harm to a woman's health.¹³

After standards are enacted, anti-abortion advocates have encouraged health-care providers and other stakeholders to expand the use of conscientious objection and to refuse to abide by regulations. With education of and early buy-in from health-care providers and community workers and activists, limits on conscientious objection are more likely to be followed.

13 The resolution also recognizes the responsibility of the state to ensure patients have access to medical care and invites member states to regulate conscientious objection by ensuring patients are referred to a willing provider and receive appropriate treatment, particularly in emergencies. Parliamentary Assembly of the Council of Europe. 2010. Resolution 1763. The right to conscientious objection in lawful medical care, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1763.htm>

Human rights standards addressing conscientious objection¹⁴

Article 18 of the **International Covenant on Civil and Political Rights** (ICCPR) guarantees the right to freedom of thought, conscience and religion. The Human Rights Committee, in its General Comment 22 on the right to freedom of thought, conscience and religion, states:

Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others...In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.¹⁵

In its General Comment on the Right to Health, the Committee overseeing the **International Covenant on Economic Social and Cultural Rights** has stated that “the obligation to *protect* requires States to take measures that prevent third parties from interfering with Article 12 guarantees.”¹⁶

The Committee overseeing the **Convention on the Elimination of All Forms of Discrimination Against Women** has explicitly stated that the State has an obligation to ensure a woman receives service when a service provider refuses to provide certain services needed by women. To do otherwise would be unequal treatment for women. General Recommendation 24 provides, “It is discriminatory for a State party to refuse to provide legally 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.”¹⁷

The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, commented on the role of conscientious objection in making legal abortion inaccessible. His 2011 report states, “conscientious objection laws create barriers to access by permitting health-care providers and ancillary personnel, such as receptionists and pharmacists, to refuse to provide abortion services, information about procedures and referrals to alternative facilities and

14 For further information, including Concluding Observations, see Zampas, Christina and Ximena Andión-Ibañez. 2012. Conscientious Objection to Sexual and Reproductive Health Services: International Human Rights Standards and European Law and Practice. *European Journal of Health Law* 19:231-256.

15 Human Rights Committee. 1993. General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): CCPR/C/21/Rev.1/Add.4, para. 8.

16 Committee on Economic, Social and Cultural Rights. 2000. General Comment 14: The right to the highest attainable standard of health (Art. 12): E/C.12/2000/4, para. 33.

17 Committee on the Elimination of Discrimination against Women. 1999. General Recommendation 24: Women and health (Art. 12), para 11.

providers.”¹⁸ The report further states that governments must “ensure that conscientious objection exemptions are well-defined in scope and well-regulated in use and that referrals and alternative services are available in cases where the objection is raised by a service provider.”¹⁹

The **Inter-American Commission on Human Rights** addresses the need to regulate conscientious objection in its report on access to information on reproductive health. In the report, the IACHR

considers that the States must guarantee that women are not prevented from accessing information and reproductive health services, and that in situations involving conscientious objectors in the health arena, the States should establish referral procedures, as well as appropriate sanctions for failure to comply with their obligation.²⁰

The report further recommends that states “establish protocols for effective access to information in cases involving conscientious objection.”²¹

18 UN Human Rights Council. 2011. Interim report prepared by the Special Rapporteur of the Human Rights Council on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/66/254, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/66/254health, para. 24 [UN Human Rights Council].

19 UN Human Rights Council, para. 65(m).

20 Inter-American Commission on Human Rights. 2011. Access to information on reproductive health from a human rights perspective. OEA/Ser.L/V/II. Doc. 61. 22, <http://www.oas.org/en/iachr/women/docs/pdf/womenaccessinformationreproductive-health.pdf>, para. 99 [IACHR].

21 IACHR, para. 116.

Further resources

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