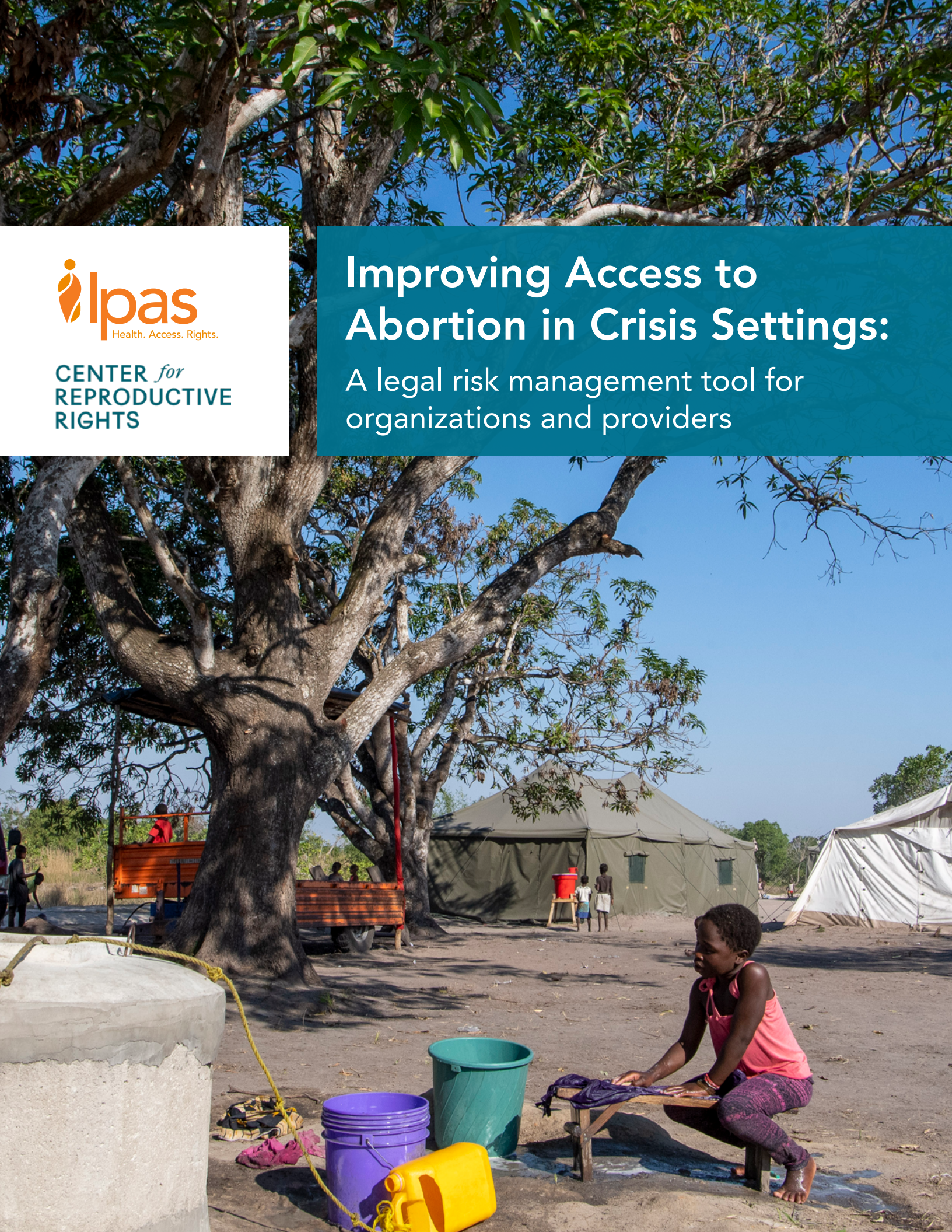

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Improving Access to Abortion in Crisis Settings:

A legal risk management tool for organizations and providers

Abortion is regulated by the criminal law in most countries, even where abortion laws are liberal. It's important for organizations and agencies looking into providing abortion care to not only understand local abortion laws, but also how the law operates in a given setting.

This tool is designed to help program planners and organizations to understand the potential impact of abortion regulation and help assess legal risk when providing or supporting access to abortion for people who are displaced by crisis, including conflict, natural disaster or other humanitarian contexts. The tool can be completed online or in-person and with program teams, field teams, program managers and other decision-makers. It can also be incorporated into other risk- and security assessment processes.

This tool is intended to provide general guidance and is not intended as legal advice and may not address all legal risks in your jurisdiction. We strongly encourage you to contact counsel in your jurisdiction for assistance in tailoring legal risk mitigation strategies to your particular circumstances.

Assessing legal risk is complicated by questions of who has authority over areas where displaced people are living and where health systems may be lacking. This becomes particularly important because conflict and crisis have dire consequences for sexual and reproductive health and rights (SRHR), as risks of maternal mortality and morbidity; child, early and forced marriage; sexual and gender-based violence (SGBV); and human trafficking increase. All people, including adolescents, need access to sexual and reproductive health services, but in conflict and other crisis and humanitarian settings, disintegrating health systems, unsafe environments, prohibitive costs, lack of information, fear of violence for seeking care, and pre-existing legal, policy and social barriers, make it difficult to access the necessary information and services.

Right: *Rohingya women gather in a refugee camp in Cox's Bazar, Bangladesh. (Photo by Farzana Hossen)*

On the cover: *A girl displaced by cyclones Idai and Kenneth washes clothes at the Mandruzi resettlement site in Mozambique. (UN Photo/Eskinder Debebe)*

HUMAN RIGHTS OBLIGATIONS

This section is taken from the Center for Reproductive Rights, Breaking Ground 2020: Treaty Monitoring Bodies on Reproductive Rights (2020)

Human rights law provides guidance to states on their obligations to ensure access to SRHR services. This applies in times of crisis, including in humanitarian settings and during armed conflict. While some states may not yet be meeting their obligations, it is important to be aware of what states human rights obligations are to provide abortion services. Below is a brief summary.

Under international human rights law, states have an obligation to respect, protect, and fulfill sexual and reproductive health and rights during conflict and humanitarian emergencies, including. but not limited to, ensuring access to services for people who are survivors of gender-based violence.[i] The UN human rights treaty bodies, which monitor state compliance with human rights treaties, have developed extensive guidance for States which reinforce and complement State's humanitarian obligations. This includes, for example, giving priority to the provision of sexual and reproductive health services, including safe abortion services, noting with concern the effects of armed conflict on SRHR and maternal mortality[ii]. These bodies have noted that refugees, stateless persons, asylum seekers and undocumented migrants are in a situation of vulnerability due to their legal status, which requires the State to take additional steps to ensure their access to affordable and quality sexual and reproductive information, goods, and healthcare[iii].

Left: Families wait in line as WFP, 'World Food Programme,' prepares to deliver food aid at the Bidi Bidi refugee camp on February 22, 2017, in Arua, Uganda. (Photo by Dan Kitwood/Getty Images)

A human rights-based approach to SRHR in humanitarian settings requires, *inter alia*:[iv]

- Ensuring available, accessible, adequate, and quality services without discrimination.
- Ensuring those who seek services can make informed and autonomous decisions, without spousal, parental, or third-party consent.
- Establishing systems for maintaining privacy and confidentiality.
- Access to justice and effective remedies when individual rights are violated.

With regard to abortion specifically, treaty bodies have found that States should:

- Decriminalize abortion in all circumstances;[v] eliminating punitive measures for people who undergo abortions and for health-care providers who provide abortion services.[vi]
- Ensure certain legal grounds for abortion. Specifically, that abortion must be legal, at a minimum, when a woman's life or health is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, such as where the pregnancy is the result of rape or incest and in cases of severe or fatal fetal impairments.[vii]
- Interpret exceptions to restrictive abortion laws broadly and ensure that health exceptions include risks to mental health.[viii]
- Provide postabortion care to people, regardless of whether or not abortion is legal.[ix]
- Address the socio-economic needs of people seeking abortion services.[x]
- Consider establishing a legal presumption stating that adolescents are competent to seek and have access to sexual and reproductive health commodities and services, including abortion.[xi]
- Remove stigma around abortion.[xii]

This tool offers two templates for understanding and assessing risk. It then provides examples of strategies that can help planning ways to reduce legal risk.

WHAT LEGAL RISKS ARE ASSOCIATED WITH ABORTION?

Abortion laws and regulations can shape the way people provide abortion and end their pregnancies, but the impact of the legal framework is diverse and complex. For example, in some contexts abortion laws are monitored, implemented and enforced; in others abortion laws are not enforced and are outside the purview of police and prosecutors, although risk of enforcement is always possible. Elsewhere, authorities use the law to intimidate and harass pregnant people and abortion providers. Abortion providers, the pregnant people they serve, humanitarian agencies, NGO staff, and partners may risk arrest, police harassment or bribery, prosecution and imprisonment. Legal risk may be high or low, depending on the specific context. Human rights standards in relation to abortion are sometimes not reflected in national law or practice. Human rights standards can be used to help advance the national level legal framework on abortion.

The legal framework can have varied impact on the availability, accessibility, and quality of abortion care, depending on factors such as awareness of the law and enforcement, and extent of stigma around abortion. Studies consistently show that people may end their pregnancies in ways that work best for their circumstances, even where the law does not support the method they choose. Even when a health worker provides abortion per the law, if police, lawyers, and judges don't know the legal framework on abortion or have biased views against abortion, the provider may face legal risk. The situation becomes more complicated in conflict settings, where there may be weak States or where armed non-state actors may be involved in the conflict. The role of law enforcement and military authorities in these situations may be unclear.

Here are some examples of legal and other repercussions that abortion providers and others have faced in non-crisis settings. The same types of risks could be expected in crisis settings:

1. A midwife was arrested for providing abortion according to the national law

and policy on abortion. The police who arrested her did not know that the abortion she provided was legal.

2. In a country where abortion is legal for any reason, a mother was sentenced to 9–18 months in jail for ordering abortion pills for her pregnant daughter.

3. Police have bribed abortion providers and pressured them to pay regular stipends.

4. People who have had abortions have been arrested after being reported to the police by family, neighbors, and schoolmates.

5. A trained midwife was arrested in a country where the law is unclear on whether midwives can provide abortion. In addition, police demanded that health facility staff give them money for new curtains for their police station.

6. NGOs have been prohibited from providing health services after being accused by the government of providing illegal abortions.

7. A doctor and two nurses were arrested on grounds of abortion and prosecuted. The entire case was based on falsified evidence and eventually ruled as improper, but only after the doctor and nurses spent a year in prison.

With partners, Ipas worked quickly in late 2017 to improve refugee access to reproductive health services to Rohingya refugees in Cox's Bazar, Bangladesh. Paramedics, midwives, and doctors went through short training to provide menstrual regulation (as abortion is known in Bangladesh) and treatment for complications of unsafe abortion. (Photo © Farzana Hossen)

MANAGING LEGAL RISK

Understanding your context

Consider the questions below to better understand how the abortion law might apply in a specific setting. Collect information on factors that can contribute to legal risk. It may be useful to bring together a group of staff and partners to answer the questions. These questions are suggested as a guide but feel free to edit to best suit your specific setting and project.

Questions	Answer	Suggested approaches
Which laws and policies apply to abortion in the specific setting?		Ask a partner or local lawyer to learn about the law and whether planned activities are permitted. Consider hiring a lawyer to research the legal context.
Are planned activities permitted by law or supported by policy?		
Are there reporting requirements for crimes, and exceptions to the requirements, such as for health-care providers or specific situations, such as illegal abortion?		Ask a legal organization or local lawyer to learn what reporting requirements or exceptions exist.
If planned activities are permitted by law or otherwise lawfully allowed, are police, military personnel, or peacekeepers aware that they are permitted?		Ask local authorities and agencies about their understanding of the legality of abortion, including legal requirements. Unless they have been sensitized, they may believe that abortion is prohibited.
Are staff of agencies working in your setting aware that activities are permitted by law?		
If planned activities are permitted by law, do judges and lawyers and other authorities (such as military personnel) understand that they are permitted?		Learn about any court decisions on abortion or action by authorities. Ask a lawyer for their understanding of the abortion law. If they have not been sensitized, judges might not know that the law allows abortion.

Have any groups or individuals experienced harassment or bribery by police related to abortion, such as staff of humanitarian agencies, NGOs, or abortion providers? Marginalized groups in particular might face harassment, such as adolescents, sex workers, and those who identify as LGBTQ.		Ask providers and partners whether they know of any police harassment and bribery related to abortion.
Have any humanitarian agency or NGO staff, abortion providers, groups or individuals been arrested, prosecuted, or imprisoned for abortion or had their license revoked? What groups, in particular, have been targeted?		Search newspaper articles for information on arrests, prosecutions, and imprisonment. Ask a lawyer to consult arrest and court records, if available. Ask partners and providers if they're aware of incidences of arrest, prosecution, or imprisonment. Identify under what laws were they prosecuted. Sometimes prosecutions for abortion occur under criminal laws other than those governing abortion, such as homicide or battery.
Have heath facility personnel notified law enforcement authorities, military personnel or peacekeepers, that a woman has had an abortion?		Ask supportive heath facility staff whether this has happened and if so, did they believe they were obligated to report?
Do UN and humanitarian agencies in the area support ensuring access to abortion in this setting?		Consider taking a poll or other assessment of UN and humanitarian agencies' attitudes about abortion.
What guidelines or policies do project donors have on abortion? Is there anything that expressly either supports or prohibits abortion access?		Ask donors or consult donor agreements.
What is the general understanding of the abortion law in the community?		Ask community groups, staff of local NGOs, individuals.
How do people get abortion in the community?		

MANAGING LEGAL RISK

Assess risk

Now that you have information about factors that contribute to legal risk, you can assess risk by considering the impact the risk would have on your program and the likelihood that it will happen. These considerations are a guide and might need to be revised for your context. Use what you know about the context to make your best guess. Again, it may be useful to work together as a group to answer the questions.

As noted above, this tool is intended to provide general guidance and is not intended as legal advice and may not address all legal risks in your jurisdiction. We strongly encourage you to contact counsel in your jurisdiction for assistance in tailoring legal risk mitigation strategies to your particular circumstances.

RISK	LIKELIHOOD 1 = unlikely 2 = somewhat like 3 = certain or nearly certain	IMPACT ON PROGRAM 1 = minor 2 = moderate 3 = severe
Authorities such as police, military personnel, or peacekeepers harass clinic staff		
Authorities such as police, military personnel, or peacekeepers bribe clinic staff		
People who seek abortion care are harassed or intimidated by police, military personnel, peacekeepers, or health workers		
People who seek abortion care are arrested		
People who seek abortion care are put in jail, prosecuted, sentenced to prison		
Community-based providers of abortion information or drugs are bribed or harassed by authorities such as police, military personnel, or peacekeepers		
Community-based providers of abortion information or drugs are prosecuted and/or imprisoned		
A health-care provider or NGO staff is bribed or harassed by authorities such as police, military personnel, or peacekeepers for abortion		
A health-care provider or NGO staff is prosecuted and/or imprisoned for abortion		
Community members physically threaten or socially ostracize an abortion care provider		
An abortion care provider loses his or her job because they provide abortions		

Plan to reduce risk

If you identified risks that have both high impact and high likelihood, you can plan activities to reduce risk. The following activities may reduce legal risk:

1. **Partner with lawyers, legal organizations, or women's rights organizations. Develop a response plan in case a provider is arrested for an abortion-related crime**. Establish relationships with lawyers who can provide formal legal defense or persuade authorities, prosecutors and judges not to move forward with criminal charges. If you don't have a lawyer ally, consider training lawyers (see below) or partnering with SRHR organizations that work with lawyers. Consider including lawyers' fees in your budget.

2. **Work with the Ministry of Health and other relevant ministries** on a plan, if they are a key partner in abortion care.

3. **Train and sensitize judges, lawyers, prosecutors, military authorities and other agencies working in your setting** on human rights obligations associated with abortion. Judges and lawyers trained on abortion and human rights can understand it as a health and human rights issue rather than a criminal issue, even in some restrictive settings. The Center for Reproductive Rights has a guide on the latest human rights standards related to abortion and other sexual and reproductive health services.

4. **Partner with community groups or humanitarian agencies to provide information, reduce stigma and build support for abortion care**. Work to reduce stigma among providers, humanitarian workers, and community members to build empathy, inform communities of women's rights, and reduce the chances of them reporting people who have had an abortion. You can also work with community-based and humanitarian service organizations to link people to accurate information and safe care networks.

5. **Consider partnering with police, military personnel and/or peacekeepers**. In a variety of legal contexts and with relevant training, law enforcement actors can promote access to abortion care. These actors may be surprising allies, who increasingly have a health and human rights mandate. Interaction with the law enforcement system can begin and end with the police, never reaching a

prosecutor or judge. Ipas developed a practical guide to help Ipas staff partner with police.

6. **Consider providing other types of support to providers charged with abortion-related crimes**. Providers who are in legal proceedings may need emotional support or may have lost their income.

7. **Train heath providers and other facility staff on privacy and confidentiality**. Medical ethics support private and confidential health care, as do laws. These can protect people from being reported to police. See Ipas's guide on privacy and confidentiality.

8. **Become familiar with your institution's risk mitigation strategies**. Clear institutional policies, systems, and processes can help mitigate legal risk to individual staff or partners. Ensure recruitment processes are designed to hire personnel supportive of abortion care.

9. **Establish a referral system** to an NGO or private abortion provider for persons seeking abortions.

10. **Support the advancement of self-managed abortion**, including the provision of information and drugs, outside the formal health setting, without the mandatory involvement of health care professionals. The Center for Reproductive Rights and Ipas developed a fact sheet on medical abortion and self-managed abortion.

11. **Train staff and partners** on the local legal framework and to reduce abortion stigma, including Values Clarification and Attitude Transformation (VCAT) activities.

OTHER CONSIDERATIONS

When considering the amount of resources to devote to legal risk, staff should be guided by **the impact of legal risk on your program**. No organization or agency can provide full support and legal representation to every abortion provider and every woman who has faced bribery, harassment, arrest, or imprisonment. To promote access to safe abortion, your organization or agency should consider taking steps to address legal risk where legal risk harms your work.

ENDNOTES

i CEDAW Committee, Gen. Recommendation No. 30, supra note 23, para. 2.; CRC Committee, Gen. Comment No. 20, supra note 12, para. 79.; CEDAW Committee, Concluding Observations: Democratic Republic of the Congo, para. 10(d), U.N. Doc. CEDAW/C/COD/CO/8 (2019).; Human Rights Committee, Gen. Comment No. 36, supra note 11, paras. 2, 10, 64.; CESCR Committee, Gen. Comment No. 14, supra note 4, paras. 40, 65.; CESCR Committee, Gen. Comment No. 3, supra note 105, para. 10.; Human Rights Committee, General Comment No. 31: The nature of the general legal obligation imposed on States parties to the Covenant, (80th Sess., 2004), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 11, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).; Human Rights Committee, General Comment No. 29: States of emergency (Article 4), (72nd Sess., 2001), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J., para. 22 (July 8).; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J., para. 106 (July 9).; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J., para. 216 (Dec. 19); CRPD, supra note 105, Article 11.; Convention on the Rights of the Child, adopted Nov. 20, 1989, arts.22, 38, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Jan. 3, 1976).; CRC Committee, Gen. Comment No. 20, supra note 12, paras. 79, 80.; CESCR Committee, Gen. Comment No. 22, supra note 1, paras. 30, 31.

ii CEDAW Committee, Gen. Recommendation No. 30, supra note 23.; CEDAW Committee, Concluding Observations: Central African Republic, para. 40(b), U.N. Doc. CEDAW/C/CAF/CO/1-5 (2014).; See also, CEDAW Committee, Concluding Observations: Democratic Republic of the Congo, paras. 35-36, U.N. Doc. CEDAW/C/COD/CO/5 (2006).

iii CESCR Committee, Concluding Observations: Czech Republic, U.N. Doc. E/C.12/CZE/CO/2 (2014).; CESCR Committee, Concluding Observations: Slovakia, U.N. Doc. E/C.12/SVK/CO/3 (2019).; CEDAW Committee, Concluding Observations: Lithuania, U.N. Doc. CEDAW/C/LTU/CO/4 (2008).; Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, G.A. Res. 2106, Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

iv CEDAW Committee, Gen. Recommendation No. 30, supra note 23.; CEDAW Committee, Gen. Recommendation No. 33, supra note 87.

v Committee on the Elimination of Discrimination against Women, United Kingdom of Great Britain and Northern Ireland Inquiry Summary (Article 8 of Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women), para. 58, U.N. Doc. CEDAW/C/OP.8/GBR/1 (2018).; Human Rights Committee, Gen. Comment No. 36, supra note 11, para. 8.; CESCR Committee, Gen. Comment No. 22, supra note 1, paras. 34, 40, 49(a), 57.; Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of All Forms of Discrimination against Women, Joint Statement: Guaranteeing sexual and reproductive health and rights for all women in particular women with disabilities, para. 4, available at https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx (29 August 2018).

vi Human Rights Committee, Gen. Comment No. 36, supra note 11, para. 8.; CEDAW Committee, Gen. Recommendation No. 24, supra note 12, para. 14.; CRC Committee, Concluding Observations: Nicaragua, para. 59, U.N. Doc. CRC/C/NIC/CO/4 (2010).; CAT Committee, Concluding Observations: Nicaragua, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).; CESCR Committee, Concluding Observations: Pakistan, paras. 77, 78, U.N. Doc. E/C.12/PAK/CO/1 (2017).

vii Human Rights Committee, *Gen. Comment No. 36, supra* note 11, para. 8.; L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 12(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011).; Statement of CEDAW Committee on the sexual and reproductive health and rights: Beyond 2014 ICPD review, para. 7, at https://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf; K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).; Human Rights Committee, *Concluding Observations: Paraguay*, paras. 20, 21, U.N. Doc. CCPR/C/PRY/CO/4 (2019); CEDAW Committee, *Concluding Observations: Democratic Republic of Congo*, para. 37(c), U.N. Doc. CEDAW/C/COD/CO/8 (2019); CRC Committee, *Concluding Observations: Malta*, para. 33, U.N. Doc. CRC/C/MLT/CO/3-6 (2019); CAT Committee, Concluding Observations: Bangladesh, paras. 38-39, U.N. Doc. CAT/C/BGD/1 (2019)

viii L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 9(b)(i), U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

ix CRC Committee, Gen. Comment No. 15, supra note 12, para. 70.; Human Rights Committee, Gen. Comment No. 36, supra note 11, para. 8.; CESCR Committee, Gen. Comment No. 22, supra note 1, para. 28.; CEDAW Committee, Gen. Recommendation No. 35, supra note 22, para. 18.; CAT Committee, Concluding Observations: Poland, para. 34(e), U.N. Doc. CAT/C/POL/CO/7 (2019).

x Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, paras. 7.11, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).; Whelan v. Ireland, Human Rights Committee, Commc'n No. 2425/2014, U.N. Doc. CCPR/C/119/D/2425/2014 (2017).

xi CRC Committee, Gen. Comment No. 20, supra note 12, para. 39.

xii CEDAW Committee, Concluding Observations: Hungary, para. 30, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013).; Human Rights Committee, Gen. Comment No. 36, supra note 11, para. 8.

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Balukhali refugee camp, Ukhiya Cox's Bazar, Bangladesh. (Photo © Farzana Hossen)