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Promoting Access to Self-Managed Abortion:

Considerations for managing legal risk

People have self-managed their abortions throughout history. Self-managed abortion is when a person performs their own abortion without clinical supervision.[i] As access to misoprostol and mifepristone has grown, self-managed abortion has become more widely understood and safer.[ii] People seeking abortion are obtaining abortifacient medicines directly through pharmacies, drug sellers, and new routes like online sellers or telemedicine services.[iii] Pregnant people can have a range of self-involvement in their medical abortion process, from learning about drug regimens from non-medical sources, to taking medication at home that was given to them by a doctor.

People who self-manage their abortions and those who help them may face legal risk. This publication is designed to help individuals and groups consider the potential impact of abortion regulation and offer tools to help assess legal risk when supporting access to self-managed abortion. It provides a brief background on medication and self-managed abortion, as well as related human rights obligations. It also includes two templates for understanding and assessing risk. The tool can be completed online or in-person and can be incorporated into other risk- and security- assessment processes.

This publication 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.

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THE SAFETY OF MEDICAL ABORTION

Medical abortion—or abortion with medication—is recommended by the World Health Organization (WHO) as a safe and effective method of ending a pregnancy.[iv] Medical abortion is widely considered safe and effective, with the level of safety and effectiveness depending on the drug regimen and gestational age.[v] In 2003, in its first technical guidance on abortion, the WHO included medical abortion as a recommended method to terminate a pregnancy.[vi] WHO-recommended medications for induced abortion are the drugs mifepristone and misoprostol in combination or misoprostol alone.[vii] Both drugs are included in the WHO Model List of Essential Medicines, which means that they should be "available within the context of functioning health systems at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and the community can afford."[viii] According to the WHO, medical abortion plays a crucial role in providing access to safe, effective, and acceptable abortion care.[ix] The WHO has recognized that medical abortion can expand access to care, particularly in early pregnancy, because it can be provided on an outpatient basis and by lower-level providers, and can give individuals a greater role in managing abortion care on their own.[x] These characteristics have proved all the more important in the context of the COVID-19 pandemic, which has negatively impacted access to essential sexual and reproductive health services, including abortion, due to strain on health systems, restrictions on mobility, and economic challenges—and has also exacerbated gender and social inequalities.[xi]

Photo: Courtesy of Women on Waves

SELF-MANAGED ABORTION AND CLINICAL SAFETY

With the advent of medical abortion, the practice of abortion without formal supervision of a health-care professional has become safer and more widespread. Where pregnant people may previously have sought clandestine abortion through invasive methods such as sticks, chemicals, or physical force,[xii] the availability of medicines means that pregnant individuals do not have to resort to unsafe methods of abortion, and this therefore reduces the health risks arising from unsafe abortion. Researchers have attributed self-managed abortion with pills to a worldwide decrease in abortion mortality.[xiii]

The World Health Organization recommends self-managed abortion with medicines as a method of abortion for individuals who are less than 12 weeks pregnant and have "a source of accurate information and access to a health-care provider should they need or want it at any stage of the process."[xiv]

Researchers continue to generate evidence on the safety of self-managed abortion with medicines, despite the challenges of researching illegal and stigmatized practices.[xv] The safety of self-managed abortion depends on an individual's knowledge, access to quality medicines and ability to seek follow-up care. An individual's safety can also depend on the degree to which they face risk of arrest when self-managing their abortion. The WHO defines self-care, in a general context, as "the ability of individuals, families and communities to promote health, prevent disease, maintain health, and cope with illness and disability with or without the support of a healthcare provider."[xvi] Self-care interventions for sexual and reproductive health are recognized by the WHO as "among the most promising and exciting new approaches to improve health and well-being."[xvii]

SELF-CARE IMPORTANT FOR MARGINALIZED POPULATIONS

The WHO also has recognized that self-care is particularly important for populations negatively affected by gender, political, cultural and power dynamics and for vulnerable persons.[xviii] At the same time, in order to adequately address the social determinants of health, States must take measures to rectify entrenched social norms, unequal distribution of power based on gender, and reform oppressive structural systems.[xix]

WHY DO PEOPLE SELF-MANAGE THEIR ABORTIONS?

People may prefer to self-manage their abortion for a variety of reasons, including in contexts where abortion is restricted by law or where access to abortion in the formal health care system is limited. Availability of abortion care may be limited by health worker shortages, a dearth of trained and willing abortion providers, or because people may not have access to abortion care facilities within a practical distance. Procedural and administrative requirements also limit access, and these include parental consent requirements, waiting periods, and judicial authorization requirements, among others.[xx] Women often face stigma, mistreatment and violence when seeking abortion services and care, as part of a pattern of violations that occur in the wider context of structural inequality, discrimination and patriarchy.[xxi]

A systematic review of the reasons women turn to the informal sector for abortion where abortion is legal found that the reasons include fear of mistreatment by staff, long waiting lists, high costs, inability to fulfill regulations, privacy concerns, and lack of awareness about the legality of abortion or where to procure a safe and legal abortion.[xxii] Research indicates that most abortions occur for reasons other than the commonly legalized exceptional grounds,[xxiii] and exceptions-based legal frameworks do not provide sufficient guarantee of effective access to abortion services in practice, even when the grounds have been met (risk to health or life of pregnant person, where pregnancy is result of rape or incest, or in cases of severe fetal impairment).[xxiv] Even if abortion is legally available on request,

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there are a wide range of other barriers that pregnant persons face in accessing abortion services, including stigmatization, high cost, mandatory waiting periods, counselling requirements, multiple provider authorization, third party consent/authorization, unnecessary requirements on providers and facilities, and a lack of evidence-based information or the provision of misleading information.[xxv]

HUMAN RIGHTS OBLIGATIONS

United Nations (UN) treaty monitoring bodies, which monitor state compliance with UN human rights treaties and guide states on how they can meet their human rights obligations, have found that restrictive abortion laws violate a range of human rights, including the rights to health, life, privacy, to be free from gender discrimination and from gender stereotyping, and to be free from cruel, inhuman and degrading treatment.[xxvi] The treaty monitoring bodies have repeatedly recognized the connection between restrictive abortion laws, high rates of unsafe abortion and maternal mortality.[xxvii] The Committee on the Elimination of Discrimination Against Women has noted that it is a form of gender discrimination for a State party to "refuse to provide legally for the performance of certain reproductive health services for women" or to punish women who seek those services.[xxviii]

The treaty monitoring bodies also have recognized that abortion must be decriminalized, and services must be available, accessible, affordable, acceptable, and of good quality.[xxix] For example, the Human Rights Committee has said that States may not regulate abortion in a manner contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and must reform their abortion laws accordingly; that any restrictions must be non-discriminatory, and that States must provide safe, legal and effective access to abortion, inter alia, "when carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering."[xxx] The treaty monitoring bodies recommend that States should liberalize their abortion laws to improve access and remove legal, financial, and practical barriers that deny effective access by women and girls to safe and legal abortion, including medically unnecessary barriers to abortion and third-party authorization requirements.[xxxi] States are required to eliminate laws and policies that undermine autonomy, integrity, and the right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health.[xxxii]

CEDAW described the prohibition of misoprostol in one state as "indicative of the ideological environment" and having a "retrogressive impact," and urged the state to reintroduce it, in order to reduce women's maternal mortality and morbidity rates due to unsafe abortion. [xxxiii]

Medical abortion has been addressed by the Committee on Economic, Social and Cultural Rights (CESCR), first indirectly through General Comment No. 14 which interprets and sets forth guidance on how to implement the right to health, which states that providing access to medicines on the WHO Model List of Essential Medicines is a core obligation of the right to enjoy the highest attainable standard of health.[xxxiv] CESCR's General Comment No. 22 on the right to sexual and reproductive health reinforced the obligation to ensure access to essential medicines, and specified access to "medicines for abortion."[xxxv]

In 2020, CESCR's General Comment No. 25 on science and economic, social, and cultural rights, the Committee said that States must ensure access to up-to-date scientific technologies necessary for women in relation to the right to sexual and reproductive health, in particular medication for abortion, on the basis of non-discrimination and equality.[xxxvi] The Special Rapporteur on the Right to Health has also expressed concern about legal restrictions that impede access to essential medicines, thereby limiting women's accessibility to sexual and reproductive health.[xxxvii]

Treaty monitoring bodies have not yet expressly addressed legal and policy barriers specific to self-managed abortion in detail, although they have indirectly done so when requiring that persons undergoing abortion and providers assisting them not be criminalized, and when calling on states not to regulate abortion in a manner contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions.

Below are two templates for understanding and assessing risk, along with examples of strategies that can help in planning ways to reduce that risk.

WHAT LEGAL RISKS ARE ASSOCIATED WITH SELF-MANAGED ABORTION?

Laws and regulations that apply to abortion can shape the way people end their pregnancies, but the impact of the legal framework is diverse and complex. For example, in some contexts laws that criminalize abortion are implemented and enforced; in others abortion is outside the purview of police and prosecutors, although risk of enforcement is always possible. Elsewhere, authorities use the law to intimidate, harass, and extort pregnant people and people who provide abortion information and pills. People working to expand access to abortion and the pregnant people they serve 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 not always reflected in national law or practice but can be used to help advance the national-level legal framework on abortion.

The legal framework has varied impact on the availability, accessibility, and quality of abortion, depending on factors such as awareness of the law and enforcement, and the extent of stigma around abortion. People end their pregnancies in ways that work best for their circumstances, even where the law does not support the method they choose.

People involved in self-managed abortion face unique risks. Even where the drugs themselves are legal, medication abortion may be regulated under the law, policy, or guidelines on vacuum aspiration or surgical abortion. This does not comport with its use and is burdensome on women. Most abortion laws are written as exceptions to an overall criminalization of abortion framework and require a health-care professional to be involved with the abortion in order for it to be lawful.

People who self-managed their abortion and people who help them may be in violation of various laws, and could face arrest and criminal prosecution, even in places where abortion is legal, though this phenomenon has not been widely researched. Arrests of people who have self-managed their abortion have been

documented in Bolivia,[xxxviii] and Rwanda[xxxix]–countries where abortion is legal at least on certain grounds. Arrests have also occurred in countries with more liberal laws, as in Nepal and the United States. In the United States, where abortion is legal through the second trimester for all indications, at least 21 people have been arrested for self-managing their abortions.[xl]

Here are some examples of legal and other repercussions faced by people seeking to undergo abortion or undertake self-managed abortion and those who help them.

1. 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.

2. A government shut down a hotline offering information on how to end a pregnancy with pills.

3. Law enforcement authorities publicly threatened to arrest an individual who was offering abortion pills.

4. Doctors have reported individuals seeking treatment for unsafe abortion to the police.

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

6. 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.

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

8. 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.

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 generally, and to self-managed abortion?		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 or self- managed 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, 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.
Do individuals working in reproductive health care understand the law on abortion?		
If planned activities are permitted by law, do judges and lawyers and other authorities 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, 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 groups or individuals been arrested, prosecuted, or imprisoned for abortion, including undergoing or supporting self-managed abortion, or had their license revoked? What groups, in particular, have been targeted?		Search newspaper articles for information on arrests, prosecutions, and imprisonment, including of persons who have self-managed abortion or supported persons who have. 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, including self-managed abortion?		Ask supportive heath facility staff whether this has happened and if so, did they believe they were obligated to report?
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 likely 3 = certain or nearly certain	IMPACT ON PROGRAM 1 = minor 2 = moderate 3 = severe
Authorities such as police harass individuals who provide abortion or who have had an abortion, including self-managed abortion		
Authorities such as police bribe individuals who provide abortion services, information, or medicines or individuals who have had an abortion		
People who seek abortion, including abortion medicines, are harassed or intimidated by police or health workers		
People who seek abortion care, including abortion medicines, are arrested		
People who seek abortion care are put in jail, prosecuted, sentenced to prison		
People who provide 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 is bribed or harassed by authorities such as police or other government actors		
A health-care provider or NGO staff is prosecuted and/or imprisoned for abortion, including providing medical abortion or supporting self-managed abortion		
Community members physically threaten or socially ostracize an abortion care provider		
A provider of abortion services, information, or drugs loses his or her job because of their association with abortion		

Plan to reduce risk

If you identified risks that need addressing , 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, including one related to self-managed abortion**. 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. **Develop a security protocol** and train individuals on how to reduce legal risk.

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

4. **Train and sensitize judges, lawyers, prosecutors, military authorities and other agencies working in your setting** about the human rights obligations associated with abortion and the safety and efficacy of self-managed abortion. Judges and lawyers trained on abortion and human rights can thus understand it as a health and human rights issue rather than a criminal issue, even in 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.

5. **Partner with community groups 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.

6. **Consider partnering with police or public prosecutors**. 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.

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

8. **Train individuals providing abortion information and drugs 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.

9. **If you work for an institution, become familiar with its 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.

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

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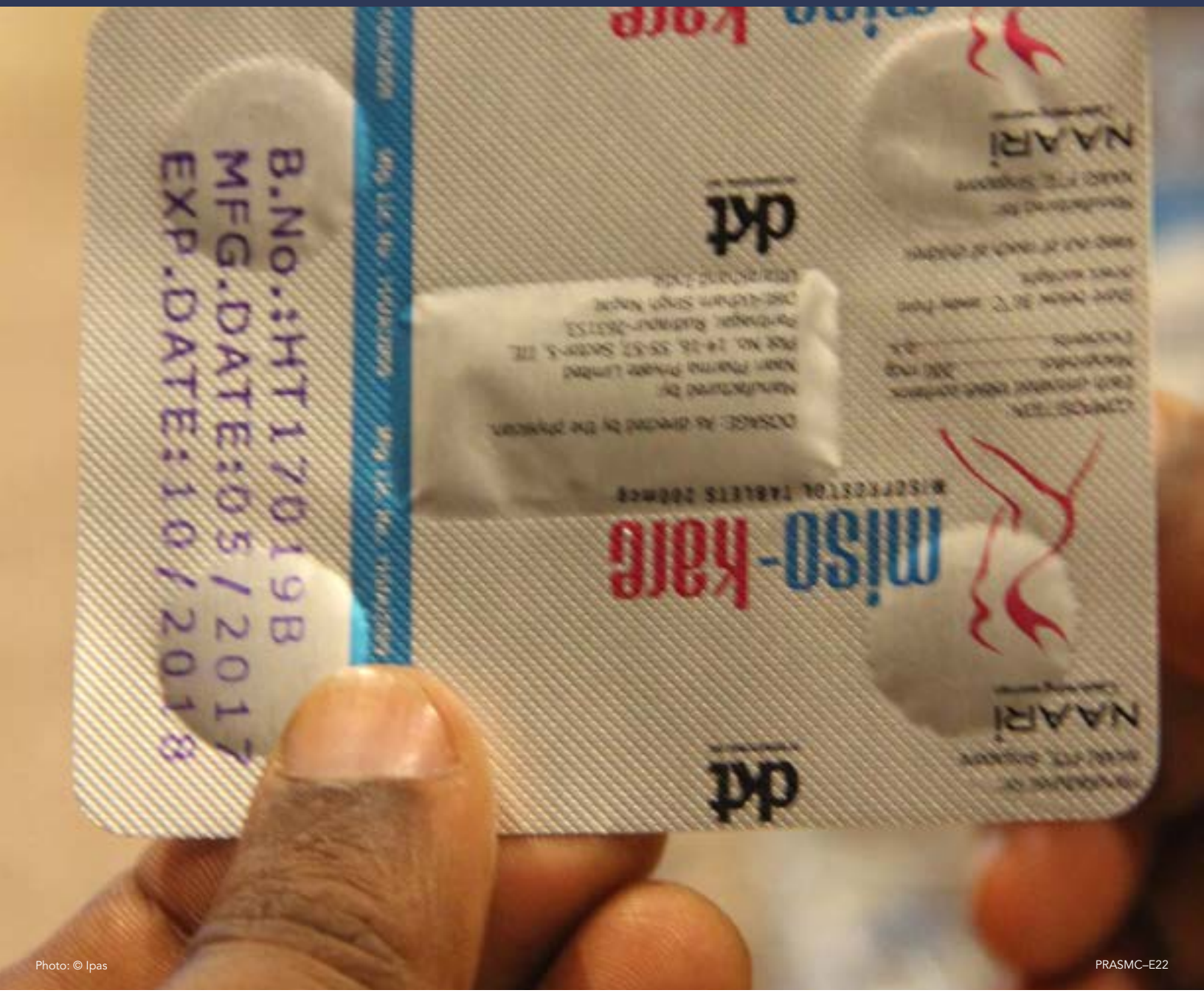

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