

# TEN REASONS TO DECRIMINALIZE AND LEGALIZE EARLY ABORTION

Sources: To develop "ten reasons to decriminalize and legalize early abortion", we relied on data from the Guttmacher Institute, from November 2015, the WHO, Safe abortion: technical and policy guidance for health systems, 2012. Also, the report by Special Rapporteur Anand Grover on the interaction between criminal laws and other legal restrictions related to sexual and reproductive health and the right to health; and the report by Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, February 1, 2013, The brochure on "Abortion Stigma and Quality of Care: A Proposed Framework for Analysis and Integration", published by Inroads, was illustrative of the concept of "stigma". We also consulted the Argentine Supreme Court decision "F.A.L. s/ medica autosatisfactiva"; and other annual reports issued by the Center for Legal and Social Studies (CELS).

## 1 Criminalization of abortion does not dissuade women from having one

The extremely high number of abortions indicates that criminalization has little or no effect on a woman's decision to have one. Likewise, if what we're seeking is to protect the fetus, criminalization has never been effective in this regard. Protection can be achieved through public policy that is also consistent with women's rights, such as comprehensive health services that include pre-abortion counseling.

Highly restrictive abortion laws do not result in lower rates of abortion. For instance, in Western Europe, where abortion is generally permitted, the abortion rate is 12 per every 1000 women of fertile age. In Africa and Latin America where abortion is illegal in most circumstances in the majority of countries, the rate is 29 per 1000 women and 32 per 1000, respectively.

Criminalization only results in:

- Clandestine abortions
- Unsafe abortions
- Higher mortality rates for poor and young women

## 2 Criminalization of abortion affects, restricts and violates the fundamental human rights of women and girls

Lack of equal access to safe and dignified health services for women experiencing undesired pregnancy is discriminatory because it only violates the rights of women. It goes against Articles 1 and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The State's failure to guarantee the equal exercise of reproductive rights violates women's rights to life, health, physical, mental and moral integrity, autonomy, intimacy, dignity and the right to freedom from cruel, inhuman and degrading treatment. According to the UN Special Rapporteur on the right to health, Anand Grover, "the enactment or enforcement of laws that penalize abortion may constitute a violation of the State's obligation to respect, protect and fulfill the right to health."

## 3 Criminalization of abortion causes women to resort to unsafe abortion methods that pose a risk to their life and health

As the World Health Organization (WHO) has pointed out, in countries whose laws broadly allow abortion, there are fewer complications associated with unsafe abortions than in places where legal abortion is more restricted.

Nearly half of abortions worldwide are unsafe, performed by persons lacking the necessary skills or carried out in an environment not in conformity with minimal medical standards, or both (WHO). Statistics indicate a correlation between the number of unsafe abortions and restrictive laws: deaths associated with abortion are much more frequent in countries with highly restrictive laws (34 deaths per 100,000 childbirths) than in countries with less restrictive laws (1 death or less per 100,000 childbirths).

Therefore, the criminalization of abortion does not result in fewer abortions, but rather in more unsafe abortions.

## 4 Criminalization of abortion increases death and health in women due to unsafe abortions

Abortion does not endanger women's health. For example, in Uruguay the number of complications and deaths associated with abortion were reduced to zero after the Law on Voluntary Interruption of Pregnancy passed in 2012. Unsafe abortion, on the other hand, is a severe public health problem involving serious risks to the health and life of thousands of women. Worldwide, the latest evidence from 2014 indicates that between 8% and 18% of maternal deaths are caused by unsafe abortions, meaning that the number of deaths associated with abortion ranges between 22,500 and 44,000.

In Latin America, 95% of abortions were carried out in unsafe conditions, a figure that did not vary between 1995 and 2008. Nearly all safe abortions were performed in the Caribbean where they are allowed by law and are readily accessible, especially in Cuba.

## Criminalization of abortion has a negative impact on access to legal abortion

Many women who have the right to a legal, safe abortion, but cannot access one due to the stigma associated with the practice. Stereotypes regarding maternity and the social construct around abortion lead to discrimination against women who make decisions about their own reproductive capacity. The illegal interventions of judicial officials, lawyers and health professionals impede access to legal abortion and push women to resort to clandestine abortions.

Some of the obstacles they face include: bad faith from some professionals and public officials; ignorance of existing legislation; lack of legal information by health professionals who fear legal penalties; abuse of conscientious objection tolerated by the State; disparaging comments from healthcare personnel; and institutional violence against women in these situations.

## Lack of access to a safe abortion when the life or health of the woman is at risk leads to death by indirect causes

The estimated percentage of deaths due to unsafe abortions is between 8% and 18%. Deaths associated with abortion in 2014 ranged from 22,500 to 44,000. Complications arising from abortion have decreased in recent years for different reasons: access to abortion with medication; training programs for health service providers and the development of health care systems in general. However, the data on the impact of these changes is incomplete. Unsafe abortion is one of the principal factors affecting women's health in developing regions. Estimates from 2012 indicate that 6.9 million women (or 6.9 per 1000) between ages 15 and 44 underwent care for complications related to unsafe abortions. The consequences of unsafe abortion can be noted beyond the immediate effects on a woman's health. For instance, unsafe abortions can cause maternal death, leaving existing children without a mother, or generate long-term health problems, such as infertility.

## Criminalization of abortion disproportionately impacts poor and young women

Women from middle and higher socioeconomic strata have access to adequate, safe health care and, in general, do not experience post-abortion complications. The less advantaged—in many cases teenagers—are forced to resort to clandestine interventions in precarious sanitary conditions. The high mortality rates for abortion are a lamentable reflection of discrimination against women from poor backgrounds.

## Criminalization of abortion exposes women to potential torture, cruel, inhuman and degrading treatment and institutional violence

Women who request a non-criminalized abortion are often victims of reproachful judgments and institutional ill-treatment; they are denied the request and left to their own devices, urged not to abort and subjected to illegal intervention by justice officials and lawyers aiming to prevent the practice. These situations are forms of torture and cruel, inhuman and degrading treatment, as established by the Human Rights Committee in *L.M.R. v. Argentina*. *L.M.R.* is a young woman with developmental delay who had been raped and denied the non-criminalized abortion to which she was entitled. The United Nations Special Rapporteur on the matter, Juan E. Méndez, acknowledging that restrictions in access to abortion violate the prohibition of torture and ill-treatment, implored all States whose national laws authorize abortions in different circumstances to "safeguard the real availability of these services without adverse consequences for the woman or healthcare personnel."

## Criminalization of abortion validates a clandestine market that profits in the millions at the cost of women's autonomy

In countries with restrictive laws that limit access to abortion, the market moves multi-million dollar figures for clandestine abortions, both through surgical abortions and the sale of misoprostol and mifepristone pills. In other words, the criminalization of abortion validates a clandestine market without regulation that profits at the cost of women's lives, health and autonomy.

## Criminalization of abortion goes against the principle of egalitarian society

Criminalization is not founded on protecting the life of the fetus—because there are other effective ways to achieve that—but is instead a form of stigmatization written into criminal codes. In addition to reinforcing stereotypes around child raising, denying a woman's right to decide whether or not to become a mother and when to do so, aggravates gender inequalities in education, cultural, economic and political life. Maintaining the criminalization of abortion goes against the construction of equal societies. The sovereignty of women over their own bodies is key to achieving gender equality.