

Abortion Worldwide: Twelve Years of Reform

by The Center for Reproductive Rights

“In light of Paragraph 8.25 of the Programme of Action of the International Conference on Population and Development, which states: “...All governments and relevant intergovernmental and non-governmental organisations 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... In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion...”, consider reviewing laws containing punitive measures against women who have undergone illegal abortions.”

-Beijing Platform for Action, para. 106(k)1

In 1995, the Beijing Platform for Action expressly called upon governments to reexamine restrictive abortion laws that punish women. By linking women’s health to abortion law reform, the Beijing Platform affirmed what has become increasingly clear to governments and advocates worldwide: removing legal barriers to abortion saves women’s lives, promotes their health, and empowers women to make decisions crucial to their well-being.

While the Beijing Platform’s directives on abortion are narrow, they provide vital support to advocates seeking abortion law reform in their countries. The Beijing mandate also reflects a global trend toward abortion law liberalisation—a trend that first gained momentum in the late 1960s and continues to this day. Currently, 70 countries, representing more than 60 per cent of the world’s population, permit abortion without restriction as to reason or on broad grounds.

Twelve years after Beijing, advocates for abortion law reform can continue to point to the global commitment, declared in 1995, to stopping unsafe abortion.



Un homme avisé planifie sa famille

Distributed by Burkina Faso's Ministry of Health and Social Action, the poster emphasises the role of male partners in family planning and reproductive health.

Image from Info for Health website, <http://www.infoforhealth.org>

They can also highlight the examples of 17 countries that have removed legal restrictions on abortion in the last 12 years alone.

National Abortion Law Changes Since 1995

The vast majority of legal reforms relating to abortion have broadened the circumstances under which the procedure is legal. Only a few countries have taken steps to legally restrict abortion or make it more difficult for women to have the procedure.

Liberalisations

- 1 Albania (1996): Abortion is legal without restriction as to reason during the first 12 weeks of pregnancy.² The 1996 law confirmed a 1991 directive permitting abortion on the same grounds.³ Prior to the reform, abortion was legal only to save a woman's life, to protect her physical and mental health, when the pregnancy resulted from rape or incest, and when the pregnant woman was under 16.⁴
- 2 Benin (2003): Abortion is legal to save a woman's life and protect her health and in cases of rape, incest, and fetal impairment.⁵ Previously, abortion was considered legal only to save a woman's life.⁶
- 3 Bhutan (2004): Abortion is legal to save a woman's life, in cases of rape and incest, and when a pregnant woman is "of unsound mental condition."⁷ Previously, the law on abortion was unclear, although it was generally understood to permit the procedure only to save a woman's life.⁸

4 Burkina Faso (1996): Abortion is permitted to save a woman's life and protect her health and in cases of rape, incest, and severe fetal impairment.⁹ Previously, abortion was considered legal only to save a woman's life.¹⁰

5 Cambodia (1997): Abortion is permitted without restriction as to reason during the first 14 weeks of pregnancy.¹¹ The previous law permitted abortion only to save a woman's life.¹²

6 Chad (2002): Abortion is legal to save a woman's life and protect her health, as well as in cases of fetal impairment.¹³ Previously, abortion was considered legal only to save a woman's life.¹⁴

7 Colombia (2006): Following a ruling by the Constitutional Court of Colombia, abortion is now permitted to save a woman's life and health, and in cases of rape, incest, and severe fetal impairment.¹⁵ Previously, abortion was prohibited with no explicit exceptions.¹⁶

8 Ethiopia (2004): Abortion is permitted to save a woman's life and protect her health, as well as in cases of rape, incest, and fetal impairment.¹⁷ It is also permitted when a woman is a minor or when she is physically or mentally injured or disabled.¹⁸ Prior to 2004, abortion was permitted only to save a woman's life and protect her health and in cases of rape.¹⁹

9 Guinea (2000): Abortion is permitted to save a woman's life and protect her health, as well as in cases of rape, incest, and fetal impairment.²⁰ Previously, abortion was permitted only to save a

Other countries adopted significant reforms intended to increase access to abortion, although legislation was not adopted to permit abortion on broader grounds.

woman's life and protect her health.²¹

10 Mali (2002): Abortion is legal to save a woman's life and in cases of rape and incest.²² Previously, abortion was considered legal only to save a woman's life.²³

11 Nepal (2002): Abortion is legal without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on specific grounds.²⁴ Under the former law, abortion was prohibited altogether.²⁵

12 Portugal (2007): Abortion is legal without restriction as to reason until the tenth week of pregnancy and thereafter on specific grounds.²⁶ The previous law permitted abortion only when a woman's life and physical or mental health were in danger and in cases of rape and fetal impairment.²⁷

13 Saint Lucia (2004): Abortion is permitted when the pregnancy endangers the woman's life or physical or mental health, or is a result of rape or incest.²⁸ Under the former law, abortion was permitted only when performed "for purposes of medical or surgical treatment of a pregnant woman."²⁹

14 South Africa (1996): Abortion is legal without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on numerous grounds.³⁰ The former law permitted abortion only to save a woman's life and in cases of rape, incest, and fetal impairment.³¹

15 Swaziland (2005): According to the recently amended constitution, abortion is legal to save a woman's life and protect her physical and mental health, as well as in cases of

rape, incest, fetal impairment, and unlawful sexual intercourse with a mentally disabled female.³² Previously, abortion was considered illegal under common law, with no clearly defined exceptions.³³

16 Switzerland (2002): Abortion is legal without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on specific grounds.³⁴ Previously, the law permitted abortion only on broad health grounds.³⁵

17 Togo (2007): Abortion is legal to save a woman's life and protect her health, as well as in cases of rape, incest, and severe fetal impairment.³⁶ Previously, the penal code made no explicit mention of abortion but the procedure was considered illegal in most or all circumstances.³⁷

Other countries adopted significant reforms intended to increase access to abortion, although legislation was not adopted to permit abortion on broader grounds. France, in 2001, extended the gestational period during which abortion is legal without restriction as to reason from 12 weeks to 14 weeks.³⁸ It also removed a parental consent requirement for minors, demanding instead that minors be accompanied by an adult of their choosing.³⁹ In 2002, India adopted legislation aimed at improving access to safe abortion facilities by moving authority to approve facilities from the state level to the district level.⁴⁰ The law, which is intended to simplify the approval process for new facilities, also increases criminal penalties for providers and facility owners who operate without approval.⁴¹ In Thailand in 2005, the Medical Council amended a regulation governing the medical profession's



conduct with regard to abortion. The regulation provides a standard interpretation of the criminal law provision on abortion, which permits the procedure when a woman's life or health is in danger and in cases of rape.⁴² According to the new regulation, "health" is defined to include mental health as well as physical health.⁴³ The regulation clarifies that abortion may be performed in public or private health facilities not only to protect a woman's life and physical health and in cases of

during the first 12 weeks of pregnancy.⁵¹ Previously, abortion was legal only to protect the life or health of the pregnant woman and in cases of rape and fetal impairment.⁵² The new legislation requires the government to provide abortions free of charge in public health facilities.⁵³ It also declares that sexual and reproductive health care shall be a government priority and a means of ensuring all persons enjoyment of their right to determine the number and spacing of their children.⁵⁴

In Mexico, family planning services are to be provided. These services are to be provided in a manner that reflects sensitivity to gender and respect for sexual diversity and the needs of diverse groups.

rape, but also when a pregnancy causes harm to a woman's mental health and in cases of fetal impairment.⁴⁴

A number of countries have issued regulations aimed at ensuring the safe delivery of abortion services. Some countries, including Colombia,⁴⁵ Ethiopia,⁴⁶ and Nepal,⁴⁷ have issued regulations to clarify health sector procedures in the wake of a significant liberalisation of the national abortion law. Other countries, including Brazil,⁴⁸ Uruguay,⁴⁹ and Vietnam,⁵⁰ have issued regulations to address unsafe abortion in the absence of national legislative initiatives.

Abortion law liberalisations in two countries have occurred at the state level. In 2007, Mexico's Federal District amended the penal code to permit abortion without restriction as to reason

The law also calls for the adoption of policies on education and training regarding sexual health, reproductive rights, and responsible parenthood.⁵⁵ Family planning services are to be provided in order to reduce the incidence of abortion, lower reproductive health risks, prevent sexually transmissible infections, and support the enjoyment of reproductive rights. These services are to be provided in a manner that reflects sensitivity to gender and respect for sexual diversity and the needs of diverse groups, especially young people and adolescents. The government will offer free counseling and provide the full range of safe and effective contraceptive methods.⁵⁶

In addition, a number of other states with restrictive abortion laws, including Baja California Sur,⁵⁷ Chihuahua,⁵⁸ Mexico State,⁵⁹ and Morelos,⁶⁰ added narrow grounds on which abortion is permitted or not punishable.⁶¹

Finally, in Australia, two states significantly liberalised abortion. In Western Australia in 1998, abortion was made legal without restriction as to reason.⁶² Previously, it was permitted only to save a woman's life.⁶³ In 2002, Australian Capital Territory, a state that



Jubilation following the legalisation of abortion in Portugal.

Photo from Women on Waves

permits abortion on broad social and economic grounds, removed abortion from the penal code entirely.⁶⁴

Restrictions

1 El Salvador (1998): El Salvador amended its penal code to eliminate all exceptions to its prohibition of abortion.⁶⁵ Under the previous law, abortion was permitted to save a woman's life and in cases of rape and fetal impairment.⁶⁶

2 Nicaragua (2006): Nicaragua amended its penal code to eliminate all exceptions to its prohibition of abortion. The new law removed the provision of the former penal code that allowed therapeutic abortions to be performed after the approval of three physicians and with the consent of the pregnant woman's spouse or nearest relative.

3 Poland (1997): The situation in Poland is worth noting, although there has been no "net" change since 1993. Abortions in Poland are legal when a pregnancy threatens the life or health of the woman; when there is justified suspicion that the pregnancy resulted from a "criminal act" and in cases of fetal impairment.⁶⁷ The terms of the current law were set in legislation in 1993, when Poland's previously liberal abortion law was severely restricted.⁶⁸ In 1996, the law was liberalised once again, permitting abortion on social and economic grounds.⁶⁹ The revised law, however, was invalidated the following year by the Constitutional Court, which found that it violated the constitution's protection of the right to life of the "conceived child."⁷⁰ In December 1997, Parliament enacted

new legislation eliminating social and economic grounds for abortion.⁷¹

In addition, in Hungary, a 2000 law imposes onerous and biased counseling requirements and restricts funding for abortion to procedures performed based on medical indications and in cases of rape.⁷² Japan, as part of reform aimed at moving the country away from its historically strong legal support for eugenics,⁷³ adopted an abortion and sterilisation law in 1996 that removed fetal impairment as a justification for abortion. Abortion remains legal on health and socioeconomic grounds.⁷⁴ A decree issued by the Russian Federation in 2003 restricts the circumstances under which women may legally obtain abortions from the end of the 12th week until the beginning of the 22nd week of pregnancy.⁷⁵ The decree reduces from 12 to 4 the number of conditions under which abortion is legal during this period.⁷⁶

In 2003, the United States adopted the "Partial-Birth Abortion Ban Act of 2003."⁷⁷ The term "partial-birth abortion" is not a medical one and does not refer to any specific medical procedure. Rather, if broadly interpreted, the law's definition of "partial-birth abortion" covers a range of abortions performed starting early in the second trimester, including those performed using the safest and most common techniques. The law contains no reference to the stage of pregnancy at which penalties apply, and therefore includes abortions performed as early as 12–15 weeks of pregnancy. While there is a limited exception where a woman's life is endangered, there is no exception for safeguarding a woman's health.⁷⁸ In a 2007 ruling, the U.S. Supreme Court upheld the ban, but interpreted it narrowly to apply only to

a single second-trimester procedure— intact dilation and evacuation.⁷⁹ In doing so, the Court for the first time weighed Congress’s interest in protecting fetal life against women’s health interests.⁸⁰ The decision paves the way for state and federal legislatures to enact additional bans on abortions as early as 12 weeks, including those that doctors say are safe and medically necessary.

Finally, there has been a growing trend toward the adoption of constitutional measures that recognise life from the moment of “conception.” El Salvador, for example, adopted such a provision in 1999.⁸¹ While these amendments do not directly affect the legality of abortion, they set the stage for future abortion restrictions and make liberalisations less likely. ■

Endnotes

- 1 *Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, para. 106(k), U.N. Doc. A/CONF.177/20 (1995).*
- 2 *Albania, Directive of June 8, 1991 of the Ministry of Health to the Order of June 17, 1989, translated in 18 Annual Review of Population Law 26 (Reed Boland & Jan Stepan eds., 1991); International Planned Parenthood Federation European Network (IPPFNetwork), Abortion Legislation in Europe (1997).*
- 3 *Id.*
- 4 *Albania, Order No. 1765 of June 17, 1989 of the Ministry of Health on Permission of Prevention and Eventual Interruption of Pregnancy, summarized in 18 Annual Review of Population Law 26 (Reed Boland & Jan Stepan eds., 1991).*
- 5 *Benin, Law No. 2003-04 on Reproductive and Sexual Health, ch. 4, art. 17 (2003).*
- 6 *Benin, 1973 Code of Medical Ethics (1973).*
- 7 *Bhutan, Penal Code, art. 146 (2004).*
- 8 *Population Division, United Nations Department for Economic Social Development, Abortion Policies: A Global Review, Vol. 1: Afghanistan to France 60 (2001) [hereinafter Nations, Abortion Policies: Afghanistan to France]; World Health Organization, Improving Maternal, Newborn and Child in the South-East Asia Region 19 (2005).*
- 9 *Burkina Faso, Law No. 043/96/ADP amending the Penal Code, arts. 383, 387 (1996).*
- 10 *Burkina Faso, Penal Code, arts. 317, 328 (1984).*
- 11 *Duration of pregnancy is calculated from the last menstrual period (LMP), which is generally considered to occur two weeks prior to conception. For the sake of consistency, statutory gestational limits calculated from the date of conception have been extended by two weeks. Cambodia, Royal Kram of Nov. 12, 1997, art. 8.*
- 12 *United Nations, Abortion Policies: Afghanistan to France, supra note 8, at 80.*
- 13 *Chad, Law No. 06/PR/2002 on the Promotion of Reproductive Health, ch. 4, art. 14 (2002).*
- 14 *Chad, Penal Code, title VIII, ch. III, sec. 3, art. 296; Decree No. 55-1591 of November 28, 1995 concerning the Professional Code of Ethics, art. 38 (1995).*
- 15 *Women’s Link Worldwide, C-355/2006: Excerpts of the Constitutional Court’s Ruling That Liberalized Abortion in Colombia 48-61, 69-70 (2007).*
- 16 *Colombia, Penal Code, promulgated by Law 599 of 2000, arts. 122-24.*
- 17 *Ethiopia, Proclamation No. 414/2004, Criminal Code of the Federal Democratic Republic of Ethiopia, art. 551 (2004).*
- 18 *Id.*
- 19 *Ethiopia, Penal Code 158/1957, 1 Negarit Gazeta, Gazette Extraordinary, art. 534 (1957); Medical Ethics for Physicians Practicing in Ethiopia 19 (1992).*
- 20 *Guinea, Law Adopting and Promulgating the Law on Reproductive Health, ch. III, art. 10 (2000).*
- 21 *Guinea, Penal Code, art. 269 (1966).*
- 22 *Mali, Law no. 02-44 of June 24, 2002 on Reproductive Health, art. 13 (2002).*
- 23 *Mali, Penal Code, art. 176 (1961).*

- 24 Nepal Raj Patra (Official Gazette), pt. 52, additional issue 47, pt. 2, at 22–23 (Sept. 26, 2002); Legal Aid and Consultancy Centre, *The Eleventh Amendment of National Code of Nepal (Muluki Ain) on Women's Rights* 6-7.
- 25 Nepal, *Muluki Ain*, 2020 (1963), No. 28, Chapter on Homicide.
- 26 Portugal, Law No. 16/2007 on Exceptions to the Criminality of Voluntary Interruption of Pregnancy, art. 1, *Diario da República*, pt. 1, No. 75, April 17, 2007.
- 27 Portugal, Law No. 6/84 Specifying Certain Exceptional Cases Where Voluntary Termination of Pregnancy is Permissible, sec. 1, *Diario da República*, pt. 1, No. 109, May 11, 1984, translated in 35(4) *International Digest of Health Legislation* 768-70 (1984).
- 28 Saint Lucia, *Criminal Code*, arts. 164-166, *Acts and Statutory Instruments for the Year 2004*, Act No. 9, *Saint Lucia Gazette* 273-868 (2004).
- 29 Saint Lucia, *Criminal Code*, arts. 117-19, reprinted at *Annual Review of Population Law* at <http://annualreview.law.harvard.edu/population/abortion/Saintlucia.abo.htm>.
- 30 South Africa, *Choice on Termination of Pregnancy Act*, Act No. 92, art. 2 (1996).
- 31 South Africa, *Abortion and Sterilization Act* (1975), reprinted in *International Advisory Committee on Population and Law*, *Annual Review of Population Law* 48 (1975). **Abortion**
- 32 *Constitution of Swaziland* (July 26, 2005).
- 33 Population Division, United Nations Department for Economic Social Development, *Abortion Policies: A Global Review*, Vol. III: Oman to Zimbabwe 112 (2002) [hereinafter *Nations, Abortion Policies: to Zimbabwe*].
- 34 Switzerland, *Penal Code*, art. 119(2), *Amendment of March 23, 2001*, adopted Sept. 12, 2002.
- 35 Switzerland, *Penal Code*, arts. 118–212 (1942).
- 36 Togo, Law No. 2007-005 of January 10, 2007, on Reproductive Health, art. 42.
- 37 United Nations, *Abortion Policies: Oman to Zimbabwe*, supra note 33, at 130-31.
- 38 France, Law No. 2001-588 on Voluntary Interruption of Pregnancy and on Contraception, art. 2, *Official Journal* No. 156 of July 7, 2000, p. 10823 (2001).
- 39 *Id.* art. 5.
- 40 India, *Medical Termination of Pregnancy (Amendment) Act*, 2002, Act No. 64 of 2002, sec. 4, December 18, 2002 [hereinafter *India, Medical Termination of Pregnancy (Amendment) Act*]; see also Siddhivinayak Hirve, *Abortion Law, Policy and Services in India: A Critical Review*, 12(24)(suppl.) *Reproductive Health Matters* 114, 116 (2004).
- 41 India, *Medical Termination of Pregnancy (Amendment) Act*, supra note 40, sec. 5.
- 42 Thailand, *Penal Code*, art. 305 reprinted in *Population and Law* (Lanke T. Lee & Arthur Larson, eds., 1971).
- 43 Thai Medical Council's Regulation on Criteria for Performing Therapeutic Termination of Pregnancy in Accordance with Section 305 of the Criminal Code of Thailand B.E. 2548, para. 5, *Government Gazette*, vol. 122, sec. 118 Ngor, Dec. 15 B.E. 2548 (unofficial translation by PATH).
- 44 *Id.* paras 5-7.
- 45 Colombia, Ministry of Social Protection, Decree No. 4444 of December 13, 2006 on the Regulation of Certain Reproductive Health Services; see also Ministry of Social Protection, *Technical Norms on Care for Voluntary Termination of Pregnancy*, December 2006.
- 46 Ethiopia, Federal Ministry of Health, *Technical and Procedural Guidelines for Safe Abortion Services* (2006).
- 47 Nepal, *National Safe Abortion Directive* (2003) described in Center for Reproductive Rights et al., *Women of the World, Laws and Policies Affecting Their Reproductive Lives—South Asia* 131-132 (2004).
- 48 Brazil, Ministry of Health, Decree No. 1.508 of September 1, 2005 on Procedures for Justification and Authorization of Pregnancy Termination in the National Health System in Cases Permitted by Law, *Official Journal*, No. 170, September 2, 2005.
- 49 Uruguay, Ministry of Public Health, Order, No. 369, August 6, 2004
- 50 Vietnam, Ministry of Health, *National Standards and Guidelines for Reproductive Health Care Services* (Ipas Resource Center) (2004).
- 51 Mexico, Federal District, Decree Reforming the Federal District Penal Code and Amending the Federal District Health Law, art. 1, *Official Gazette of the Federal District*, No. 70, April 26, 2007 [hereinafter *Mexico, Federal District Decree*].
- 52 Mexico, Federal District, *Penal Code*, arts. 144-48 (2002).