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EDITORIAL

Progress toward Decriminalization of Abortion and Universal Access to Safe Abortions: National Trends and Strategies

MARGE BERER AND LESLEY HOGGART

This special section of the *Health and Human Rights Journal* captures a particular historical moment in the world of abortion law, policy, and practice, which is a constantly changing space. In the countries and regions covered in the papers in this special section—Chile, Colombia, East Africa, Gabon, Gambia, India, Ireland, Latin America, South Korea, and the United Kingdom—changes have been happening or are anticipated, some of them momentous.

The constant possibility of change—due to a change of government, for example—underlines the importance of advocates, abortion providers, legal experts, and academics working together to gain a critical mass of support. This must reach from the grassroots through to national leadership in order to achieve two complementary goals: (1) decriminalization of abortion and (2) universal access to safe abortion and life-saving treatment for complications of unsafe abortion. Though in the short term these may be achieved only partially, we are always aiming for things to get better in each year that passes. Looking back 100 years, we can say that we are succeeding, though painfully slowly, and with setbacks arising from organized opposition.

Recent successes analyzed here have been in very different contexts and have involved different politics: for example, South Korea, Chile, and Ireland. Sunhye Kim, Na Young, and Yurim Lee's paper argues that framing abortion as reproductive justice in South Korea contributed to the 2019 ruling by South Korea's Constitutional Court that the ban on abortion was unconstitutional. They argue that the Joint Action for Reproductive Justice, initiated in 2017 by an organization for women with disabilities, was instrumental in shifting the discourse on abortion from a pro-choice/pro-life binary toward one supporting reproductive justice for all. The paper posits that by shifting the discourse related to reproductive issues, the movement had a stronger position in the legal fight against the state and was able to establish solidarity with other human rights organizations and groups.

For Ireland, Anna Carnegie and Rachel Roth's paper charts the path to abortion law reform from the perspective of grassroots activists in the Abortion Rights Campaign, and then goes on to analyze the legislation enacted as a result of the 2018 referendum victory. The paper highlights the national and inter-

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national policy mechanisms and recommendations that activists leveraged to bring Ireland's abortion regime to the point of reform, pointing, for example, to the 2010 European Court of Human Rights ruling in favor of three women who challenged Ireland's abortion law (known as the ABC judgment).¹ They also point to the power of challenging abortion stigma as a mobilizing call for the public and politicians. They go on to argue, however, that while the substantial changes introduced by the new law are a momentous step forward, it also establishes a needlessly cumbersome regime that remains grounded in a criminal law framework and incorporates barriers (such as a 12-week time limit) that have no grounding in medical evidence. Hence, a significant number of women are still forced to travel to Great Britain for abortions.

Chile is another example. Until 2017, Chile was one of the few countries left that did not permit abortion under any circumstances. Gloria Maira, Lidia Casas, and Lieta Vivaldi show that despite a significant change in the law in 2017—which permits abortion only when the woman's life is at risk, when there are fetal anomalies incompatible with life, and in the case of rape—many women are still forced to have illegal abortions because these limited grounds exclude the reasons for their abortions. The paper raises important questions about whether it is the right thing to do to support a very limited law when no other alternative is offered, or whether it is better to hold out until a better option can be put forward, not knowing whether or when that might happen. There are no easy answers.

The papers thus illustrate how breakthroughs in legal reform—which may be vitally important—are invariably not the end of the struggle. This will certainly remain the case while abortion is still criminalized in any way. Arguably, locating abortion within the criminal law also opens the door to anti-abortion activism, often seeking to limit grounds for abortion or attacking women's reproductive autonomy altogether. In their paper, Pam Lowe and Sarah-Jane Page, based on ethnographic research in the United Kingdom, show how anti-abortionists have attempted to co-opt and use rights-based claims in their arguments against

abortion. This paper is important in analyzing anti-abortionists' own words to explain why they do not succeed and how their arguments nonetheless continue to be framed by religious beliefs. The paper ends by suggesting that the right to freedom of belief is a qualified right that should not be drawn upon to damage or limit the rights of others. In respect to abortion, therefore, while activists have the right to hold anti-abortion views, they do not have the right to harass, intervene, or block the path of women who are accessing abortion services.

Why decriminalization?

Because the aim of all criminal abortion laws is to restrict or deny sexual and reproductive autonomy. Globally, almost everywhere, abortion is still punishable in the criminal law, though with exceptions. These exceptions (specific legal grounds) may make only a very restricted number of abortions legal, or they may allow most abortions. This differs from one country to the next in spite of the fact that women's needs are universal. Most of these laws also set an upper time limit on the number of weeks of pregnancy beyond which abortion is not permitted and is punishable. Both these ways of restricting abortion serve to restrict reproductive autonomy. Many countries' laws, such as Great Britain's, contain both kinds of restrictions. Some countries specify certain legal grounds but do not state an upper time limit; however, in many of these cases it is understood that abortion providers may not go beyond an accepted time limit, often not beyond the first trimester of pregnancy.² In very few jurisdictions—Canada, for example—abortion has been decriminalized entirely through a court judgment, yet restrictions on access apply there too, as many areas of the country have no abortion services.³ Thus, whatever the law, issues with provision and access may pertain.

Why universal access to safe abortion and treatment for complications of unsafe abortion?

Because every woman has the right to life and health.

As long as abortion remains a crime, it damages women who need abortions and threatens providers willing to help them, though in different ways and to different degrees. Many papers in this special section not only explore these different realities but also demonstrate how these can be contested and changed through activism. Aimée Patricia Ndembi Ndembi, Justine Mekuí, Gail Pheterson, and Marijke Alblas show the positive potential of midwives who provide post-abortion care in medical institutions in a radical and subversive manner. Research by Le Réseau d'Afrique Centrale pour la Santé Reproductive des Femmes: Gabon, Cameroun, Guinée Équatoriale (Middle African Network for Women's Reproductive Health), which they founded in 2009, showed that the main obstacle to providing effective post-abortion care was the lack of emergency skills among midwives as first-line providers. They thus designed a training program for midwives in manual vacuum aspiration, misoprostol protocols, and the insertion of copper IUDs. To date, the network has trained more than 500 hospital practitioners in Gabon in manual vacuum aspiration, leading to important decreases in treatment delays, with corresponding decreases in mortality from abortion complications. This direct-action strategy circumvents restrictive abortion laws by the provision of expert assistance. The authors are right to believe that services cannot await legal reform. However, they do also advocate for the decriminalization of abortion—and while they were completing their paper, abortion law reform was announced in Gabon (details unclear at this writing), which the authors played an important part in achieving.⁴

Other papers explore different strategies for changing the discourse on abortion. Ximena Casas, for example, describes a multidimensional strategy developed by Planned Parenthood Global, whose long-term aim is to ensure that legal abortion is universally available and accessible to girls aged 9–14 who have been raped. The strategy includes research, communications, litigation, and advocacy work. As part of this, they launched the advocacy campaign “Niñas, No Madres” (“Girls, Not Mothers”), which is now supported by a Latin

American-wide coalition of 45 organizations. The campaign draws on case histories of girls aged 9–14 who have been raped by family members or acquaintances, who were denied legal abortions, and, in many cases, who have received no justice since. They are now working with groups in several countries in the region to litigate the cases of four girls, described in the paper, to have their rights recognized and receive reparations. Their work shows that forced pregnancy and motherhood seriously damage girls' physical, emotional, and psychological health; violate their rights to health, education, and information; and upend their life plans.

Changing political contexts—as well as activist action—also open up new opportunities. In the Gambia, for example, the colonial imposition of a Gambian version of the UK's 1861 Offences against the Person Act was inserted in the Gambian Penal Code in 1933 and has not been revised since. It was only when an international conference was due to be held in the Gambia that an effort was made to reform the law to include some women's rights. Yet, as argued by Satang Nabaneh, the current shift from an authoritarian regime to a democratic one provides an opportunity for legal mobilization to advance women's sexual and reproductive rights, including broadening the legal grounds for abortion to the extent that they might be achievable. In order to achieve this, the paper calls for collaborative networking among parliamentarians, health professionals, human rights activists, the media, and women's rights supporters. Although many Gambian women's groups have not yet felt comfortable supporting abortion rights, a conference in 2019 bringing together a wide range of actors, organized by a young women's group, has now opened up this conversation and is challenging this stance.

Legal experts' involvement in addressing the consequences of criminal laws on abortion is varied, and innovative projects are developing rapidly in many countries. The paper by Ximena Casas, Michelle Kimathi-Osiemo, Dee Redwine, Claire Tebbets, and Karen Plafker describes and analyzes the formation of the Legal Support Network (LSN), an initiative by Planned Parenthood Global in conjunction with national lawyers in several Latin

American and East African countries, from a feminist perspective. The paper argues that, although in the long term, fully overcoming obstacles to the provision of legal abortion requires the transformation of gender norms, in the short term, the negative impact that restrictive laws have on abortion providers and those who require abortions can be mitigated and circumvented with legal support. National LSN groups look to bypass the oppressive consequences of restrictive abortion laws. At the heart of their method is the prevention of harassment of women and abortion providers who have been threatened with prosecution. The paper argues that such prevention work in support of safe abortion providers is effective in reducing police harassment, offering providers the information and skills they need to stand up to intimidation, and helping to keep safe abortion services available to those who need them.

Women's wide-ranging needs and realities

Examination of the consequences of legality or illegality of each of the six main grounds for abortion forces a focus on the particular categories of women and girls affected—from those who become pregnant due to their husbands' refusal to allow contraception, to those who have been raped, sometimes repeatedly, to those whose life would be at risk if the pregnancy were continued, to those whose pregnancy is wanted but is non-viable.

Although probably the most common reasons for seeking abortion are related to a range of social and economic reasons—such as young age, single status, and being unable to support a(nother) child—too many laws are interpreted to allow abortions only if there is an immediate risk to the woman's life and in cases of serious risk to her health, serious or fatal fetal anomaly, and rape. While having these grounds is far better than having none, it also means that only a small number of the women seeking abortions will be considered eligible and able to access abortion in public health care services. Too often, moreover, women are denied abortions they are entitled to, and in some cases because they present for abortion after the

legal time limit. In their paper, Padma Bhate Deosthali and Sangeeta Rege show that safe abortions are being denied to survivors of rape in India even though domestic laws place a legal responsibility on the health care system to offer immediate care and treatment, including legal abortion, to anyone who has been subjected to rape. Their paper provides case histories of survivors of marital rape, acquaintance rape, and rape during childhood who have nonetheless been refused abortions in several public hospitals in Mumbai, and describes the enormous damage inflicted on them by having to continue those pregnancies. Much of the problem arises because the abortion law permits abortions only up to 20 weeks of pregnancy, and many women (and especially children) in this situation do not seek help until too late. But marital rape survivors are denied abortions even if they come before 20 weeks. Doctors feel restricted by the law and may also not understand the repercussions women suffer. Courts are then approached to intervene, though this is not a requirement. This often exacerbates the problem by creating long delays—and even then, it still does not always lead to an abortion being permitted. The authors make a strong case for upholding the legal framework for access to safe abortion following rape, including marital rape, and for holding doctors accountable for the provision of timely abortion services.

Limited grounds mean women having to pay a lot of money for a private sector abortion in secret or having to go through an unsafe abortion. Hence, the broader the legal grounds—and the later in pregnancy that abortion when needed is allowed—the more likely it is that most (or all) girls and women will be able to access safe abortions. Given that an average of one in four pregnancies ends in an induced abortion, we are talking about the consequences for the health and lives of a very high number of women and girls every year—some 56 million annually as of 2010–2014.⁵

In too many parts of the world, breakthroughs have been years, if not decades, in the making and are few and far between. Ana Cristina González-Vélez, Carolina Melo-Arévalo, and Juliana Martínez-Londoño show this in Colombia, where

nearly 13 years of sustained and continuous efforts to ensure the implementation of the legal grounds for abortion approved by the Constitutional Court in 2006 have not resulted in great advances. Today, less than 1% of abortions in Colombia are legal. To challenge this stasis and move forward, they propose a strategy for change based on the complete decriminalization of abortion as a “just cause”—that “no woman should be imprisoned or otherwise punished for having an abortion, and that no health care provider should be imprisoned or otherwise punished for providing safe abortion services at the woman’s request, or for providing abortion-related information.” They draw on the concept of biolegitimacy, a concept first developed by Didier Fassin, which is about the importance not only of women’s biological lives but also their biographical lives, to explain why human rights belong only to those who have been born. They argue that only “without the crime of abortion, without the legal grounds, without the stigma, without legal coercion or regulation, and with the normalization of abortion care as a regular health service [can we] begin to transform the terms of the debate and to conquer our right to abortion and, by extension, our right to full gender equality.”

As the guest editors of this powerful collection of papers, we can only agree wholeheartedly with this politically charged conclusion.

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