

Special Rapporteur on violence against women, its causes and consequences,
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
Special Rapporteur on extrajudicial, summary or arbitrary executions,
Chair of the Working Group on discrimination against women and girls
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Re: Critical Importance of Abortion as a Human Right During COVID-19 Pandemic

May 7, 2020

Dear Special Rapporteurs Šimonovic, Pūras, and Callamard and Chair Techane,

During this unprecedented time as the entire world faces the challenges presented by the COVID-19 pandemic, we thank you for your leadership and expert guidance on the human rights dimensions of this crisis, in particular, with respect to gender, the right to health, the specific needs of women, and the need for treatment to be available to everyone without discrimination. We write to you now to ask that you extend that leadership to sexual and reproductive rights, in particular access to safe abortion.

The need for abortions does not stop during a pandemic, nor does the need to access such healthcare in a time-sensitive manner. Abortion bans and barriers simply make access more difficult, and in many cases force pregnant persons to travel far distances to seek out the care they need, at a time when governments and health experts are advising the population to stay at home in order to avoid contracting or spreading the virus. As a result, this crisis has further highlighted the need for states to take steps to ensure multiple safe access points to abortion care, including options via telehealth systems and services such as increased access to medication abortions.²

Over the past months, as states enact their COVID-19 response plans, we have noted an uptick in focus on sexual and reproductive health and rights in the United States and around the globe - resulting in a mix of outcomes, both positive and negative. The unevenness with which abortion has been dealt with makes it clear that it is critical that abortion be recognized by officials as essential medical care, and that access to abortion care cannot be restricted.

We now call upon you to utilize your good offices to issue clear guidance to states regarding their obligations under human rights law to ensure access to safe abortion services in their COVID-19 responses.

¹ Responses to the Covid-19 could exacerbate pre-existing and deeply entrenched discrimination against women and girls, say UN experts, (Apr. 20, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25809>.

² See Jaime Todd-Gher & Payal K Shah, *Abortion in the context of COVID-19: a human rights imperative*, Sexual and Reproductive Health Matters (Apr. 19, 2020), <https://www.tandfonline.com/doi/full/10.1080/26410397.2020.1758394>.

I. Lack of understanding of abortion as an essential service

Access to safe abortion has become firmly entrenched as a protected right under the international human rights framework.³ Recently the World Health Organization identified reproductive health services as an essential service in its updated guidelines, and the UN Working Group on discrimination against women and girls called on states in their COVID-19 responses to “[p]rovide universal health care for all women and girls, including uninterrupted access to a full range of sexual and reproductive health services.”⁴ However, more action is still needed in order to ensure states’ compliance with this right.

As you recognized last September on International Safe Abortion Day, “States should guarantee access to legal, safe and affordable abortion and post abortion care for all women and girls.”⁵ In certain circumstances denial of abortion access has been found to amount to torture and inhuman treatment.⁶ Similarly, Special Rapporteur Callamard has found that absolute abortion bans can amount to a gender-based arbitrary killing by a state,⁷ and that conditional access to abortion may constitute an arbitrary deprivation of life.⁸

A collective lack of understanding of abortion as an essential service, and its denial as violation of fundamental rights, is resulting in an urgent need for reassertion of this right in order to avoid dire consequences across the world. As recent examples will show, the moment is now to ensure human rights, and ultimately lives, are protected.

II. Recent domestic and international examples related to abortion access during COVID-19 pandemic

A. Worrying trend

Several worrying examples of restrictions on abortion access indicate a trend worldwide as it relates to the accessibility of safe abortion services during the pandemic.

Perhaps first and foremost, in their responses to COVID-19, a number of U.S. states have moved to limit abortion by classifying abortions that are not a medical emergency as non-essential medical services that must be canceled or deferred, and ordering providers to stop their performance.⁹ As a result, legal battles have been playing out across these states. In Texas, the conflict first began after the governor enacted an executive order banning abortions as “a

³ United Nations Working Group on the issue of discrimination against women in law and in practice, *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends* (Oct. 2017), <https://www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>.

⁴ Statement by the UN Working Group on discrimination against women and girls, Responses to the COVID-19 pandemic must not discount women and girls, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>. World Health Organization, News release, *WHO releases guidelines to help countries maintain essential health services during the COVID-19 pandemic* (Mar. 30, 2020),

<https://www.who.int/news-room/detail/30-03-2020-who-releases-guidelines-to-help-countries-maintain-essential-health-services-during-the-covid-19-pandemic>.

⁵ International Safe Abortion Day, 28 September 2019, All states must ensure access to safe and legal abortion as a matter of human rights, say UN experts (Sept. 27, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25066&LangID=E>.

⁶ Committee against Torture, *Concluding Observations: Paraguay*, ¶ 22, U.N. Doc. CAT/C/PRY/CO/4-6 (Dec. 14, 2011).

⁷ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*, ¶ 94, U.N. Doc. A/HRC/35/23 (Jun. 6, 2017).

⁸ *Id.* at ¶ 95.

⁹ Serra Sippel & Akila Radhakrishnan, *Abortion is a human right. A pandemic doesn't change that*, CNN (Mar. 28, 2020, 9:13 AM), <https://www.cnn.com/2020/03/28/opinions/covid-19-abortion-access-human-right-sippel-radhakrishnan/index.html>.

nonessential medical procedure that must be suspended to conserve scarce medical equipment for doctors treating coronavirus patients.”¹⁰ The fight has since gone back and forth between different courts, causing chaos, confusion and disruption for providers and patients.¹¹ There have been numerous stories of pregnant women trying to access clinics for their appointments only to find them closed, waiting in clinic parking lots for hours while being harassed by protestors, and traveling for hours across state lines to reach the nearest available clinic.¹² A similar pattern has emerged in other states across the country.¹³

In these states, these emergency provisions are coupled with a range of pre-existing restrictions on abortion imposed by the federal and state governments, including on abortion funding, that already render abortion difficult to access. Additionally, the U.S. Congress has passed a number of bills seeking to relieve the devastation caused by the virus. The legislation authorizes funds to be used to respond to the virus, both domestically and internationally. Of particular concern, however, is that all foreign assistance funds are subject to existing statutory restrictions such as the Helms Amendment. Non-humanitarian funding is **also** subject to the Global Gag Rule, which further restricts healthcare access, including to abortion.

Based in ideology and not evidence, these provisions violate human rights and threaten the health and lives of millions of women and girls around the globe. As recently highlighted in a U.S. Government Accountability Office report, there were 54 awards in which non-governmental organisations declined to sign onto the Global Gag Rule, accounting for a total loss of \$153 million in funds.¹⁴ Additional reporting has shown how these policies weaken health infrastructures, restrict access to a broad range of services, including HIV and AIDS prevention and treatment, maternal and child health, and nutrition, and ultimately cause further harm.¹⁵ At such a critical moment as this, attention should be on efforts to help rather than hurt populations in need.

Internationally, specifically in Europe, as 100 non-governmental organisations have said in a collective statement, “[p]articular concerns arise in relation to those six European countries where abortion is still illegal or severely restricted and in countries where, due to a range of barriers such as administrative processes or doctor’s refusals of

¹⁰ Alice Miranda Ollstein, *Abortion providers ask Supreme Court to ease pandemic-related ban*, POLITICO (Apr. 11, 2020, 7:36 PM), <https://www.politico.com/news/2020/04/11/abortion-providers-ask-supreme-court-to-ease-pandemic-related-ban-179907>.

¹¹ Sabrina Tavernise, *‘Overwhelmed and Frustrated’: What It’s Like Trying to Get an Abortion in Texas*, N.Y. Times (Apr. 14, 2020), <https://www.nytimes.com/2020/04/14/us/abortion-texas-coronavirus.html>.

¹² *Id.*

¹³ For example, the recent abortion ban in Alaska, where one-third of women and girls live in rural parts of the state, will “disproportionately harm Alaskans already facing systemic barriers to health care – rural, indigenous, young, and poor people.” Schuyler Reid, *Alaska Issues Covid-19 Abortion Ban*, Human Rights Watch (Apr. 16, 2020 7:47 AM), <https://www.hrw.org/news/2020/04/16/alaska-issues-covid-19-abortion-ban#>.

¹⁴ U.S. Government Accountability Office, *Global Health Assistance: Awardees’ Declinations of U.S. Planned Funding Due to Abortion-Related Restrictions* (Mar. 18, 2020), <https://www.gao.gov/products/GAO-20-347>; Monica Kerrigan, *The Latest Government Report on the Global Gag Rule Confirms What We Already Know*, Ms. Magazine (Mar. 30, 2020), <https://msmagazine.com/2020/03/30/the-latest-government-report-on-the-global-gag-rule-confirms-what-we-already-know/>.

¹⁵ Global Justice Center & Center for Health and Gender Equity, *Censorship Exported: The Impact of Trump’s Global Gag Rule on the Freedom of Speech and Association* (Jan. 2019), http://www.globaljusticecenter.net/files/Censorship_Exported_Impact_of_Trumps_GGR.pdf; Global Justice Center, *FAQ: How US Abortion Restrictions on Foreign Assistance, including the Global Gag Rule, Violate Women’s Rights & Human Rights* (Jan. 2018), http://globaljusticecenter.net/files/FAQ_Abortion_Restrictions.pdf.

care due to their private beliefs, women are often forced to travel abroad to access abortion care or to obtain abortion medication from other countries by post.”¹⁶

In Italy, where the COVID-19 pandemic has hit particularly hard, activists have reported that hospitals across the country have suspended medical abortions and shut down surgeries, including abortions.¹⁷ Concerningly, the country already has more limited access to abortion than other European neighbors - limiting the availability of medical abortion to seven weeks as opposed to the recommended nine weeks.¹⁸

In Poland, the parliament was recently set to debate a bill that would effectively ban abortions in the country. Opponents argued that the government was taking advantage of the pandemic moment to try and pass a bill at a time when the population cannot freely protest as they did in 2016 due to the lockdown.¹⁹ Poland already has one of the strictest abortion laws in Europe,²⁰ and this law would restrict access further by “outlaw[ing] abortion on the grounds of serious foetal abnormalities, one of a small number of exceptions to a near-total ban on abortion currently in place in the country.”²¹ Even without the new bill, as a member of the Abortion Dream Team explained, “the coronavirus pandemic has made life harder for women seeking abortion. The organisation’s helpline has received around 550 calls in the month since lockdown was imposed in Poland, which is twice as much as during a usual month.”²²

In the Netherlands, a Dutch court rejected a case that would allow women to receive and self-administer medication abortion at home, thereby still requiring them to travel to a clinic to physically appear and take the pill in the presence of a doctor.²³

Women and girls are losing access to sexual and reproductive health services in other parts of the world. As the International Planned Parenthood Federation (IPPF) has found, “Pakistan, El Salvador, Zambia, Sudan, Colombia and Germany were among the countries reporting more than 100 closures of clinics and community-based providers

¹⁶ Amnesty International, *Europe: Failures to guarantee safe access to abortion endangers health of women, girls amid COVID-19* (Apr. 8, 2020), <https://www.amnesty.org/en/latest/news/2020/04/europe-failures-to-guarantee-safe-access-to-abortion-endangers-health-of-women-and-girls-amid-covid-19/>.

¹⁷ Francesca Visser, ‘Absurd’ rules obstruct abortion access in Italy during COVID-19, *Open Democracy* (Apr. 3, 2020), <https://www.opendemocracy.net/en/5050/italy-access-abortion-during-covid/>.

¹⁸ *Id.*

¹⁹ Chris Harris, *Coronavirus in Europe: Polish MPs set to debate abortion ban while lockdown prevents protest*, *Euronews* (Apr. 12 2020), <https://www.euronews.com/2020/04/12/coronavirus-in-europe-polish-mps-set-to-debate-abortion-ban-while-lockdown-prevents-protes>.

²⁰ Amnesty International, *Europe: Failures to guarantee safe access to abortion endangers health of women, girls amid COVID-19* (Apr. 8, 2020), <https://www.amnesty.org/en/latest/news/2020/04/europe-failures-to-guarantee-safe-access-to-abortion-endangers-health-of-women-and-girls-amid-covid-19/>.

²¹ Shaun Walker, *Polish parliament delays decision on new abortion restrictions*, *The Guardian* (Apr. 16, 2020), <https://www.theguardian.com/world/2020/apr/16/polish-parliament-delays-decision-on-new-abortion-restrictions>.

²² Shaun Walker, *Concerns over Polish government tightening abortion laws during Covid-19 crisis*, *The Guardian* (Apr. 14, 2020), <https://www.theguardian.com/world/2020/apr/14/concerns-over-polish-government-tightening-abortion-laws-during-covid-19-crisis#maincontent>.

²³ Molly Quell, *Dutch Woman Loses Bid for Abortion Pill Without Clinic Visit*, *Courthouse News Service*, (Apr. 14, 2020), <https://www.courthousenews.com/dutch-woman-loses-bid-for-abortion-pill-without-clinic-visit/>.

that serve poor women in hard-to-reach locations.”²⁴ According to an IPPF survey of its national members, 23 reported reduced availability of abortion care.²⁵

These domestic and international examples raise the particular concern of governments taking advantage of this crisis moment to restrict, under the guise of safety, time-sensitive access to protected healthcare such as abortion. They also equally highlight the difficulties that pregnant people already face in accessing safe abortion care and how laws and policies which place barriers to access can render abortion fully inaccessible in moments of crisis.

B. Positive examples

We have also seen a few notable positive examples of other countries’ and U.S. states’ responses taking steps to increase access to abortion during this crisis.

In the United Kingdom, except for Northern Ireland, the government approved the use of abortion pills at home up to the tenth week of pregnancy - “[w]omen will be sent the two pills required for an early termination in the post following a telephone or e-consultation with a doctor.”²⁶ Although the decision is temporary, “limited for two years or until the coronavirus crisis is over,”²⁷ it is a welcome move. Similarly, in France, where abortion has been legal since 1974,²⁸ the Health authority decided to extend access to medical abortions at home up to nine weeks during the pandemic.

In the United States, states such as Massachusetts²⁹ and New Jersey³⁰ have taken steps to protect abortion as an essential service in light of COVID-19. In New Jersey, the governor’s executive order suspending elective surgeries and invasive procedures included an explicit exemption for terminating pregnancies.³¹

These examples of protective action, leadership and guidance are needed more than ever at this critical time, and should be utilized as models to guide states in ensuring that their laws and policies, whether directly related to COVID-19 or not, are compliant with their human rights obligations.

²⁴ Amber Milne, *Women face 'catastrophic' risks as thousands of sexual health clinics close*, Reuters (Apr. 9, 2020 3:34 PM), <https://www.reuters.com/article/us-health-coronavirus-women-trfn/women-face-catastrophic-risks-as-thousands-of-sexual-health-clinics-close-idUSKCN21R39C>.

²⁵ International Planned Parenthood Federation, *COVID-19 pandemic cuts access to sexual and reproductive healthcare for women around the world* (Apr. 9, 2020), <https://www.ippf.org/news/covid-19-pandemic-cuts-access-sexual-and-reproductive-healthcare-women-around-world>.

²⁶ Aamna Mohdin, *Relaxation of UK abortion rules welcomed by experts*, The Guardian (Mar. 30, 2020), <https://www.theguardian.com/world/2020/mar/30/relaxation-of-uk-abortion-rules-welcomed-by-experts-coronavirus>.

²⁷ *Id.*

²⁸ Sarah Elzas, *France extends access to abortions during Covid-19 pandemic*, RFI (Apr. 11, 2020), <http://www.rfi.fr/en/france/20200411-france-extends-access-to-abortions-during-covid-19-pandemic>.

²⁹ Steph Solis, *Coronavirus response: Hospitals must cancel colonoscopies, knee replacements; abortions can continue as scheduled*, Mass Live (Mar. 17, 2020), <https://www.masslive.com/coronavirus/2020/03/coronavirus-response-hospitals-must-cancel-colonoscopies-knee-replacements-abortion-s-can-continue-as-scheduled.html>.

³⁰ Dennis Carter, *State Officials Try to End Legal Abortion During COVID-19 Crisis*, Rewire News (Mar. 23, 2020, 5:33 PM), <https://rewire.news/article/2020/03/23/state-officials-try-to-end-abortion-during-covid-19-crisis/>.

³¹ Press Release, Governor Murphy Suspends All Elective Surgeries, Invasive Procedures to Preserve Essential Equipment and Hospital Capacity (Mar. 23, 2020), <https://t.e2ma.net/message/bezr1c/vds5dt>.

III. Conclusion

This pandemic has brought to the forefront the urgency of this issue. We remain deeply concerned that the limitations on abortion during this moment of crisis will likely lead to a sharp increase in unsafe abortion procedures, ultimately impacting people's lives. Researchers have estimated that "if countrywide lockdowns forced clinics to close or if abortion was considered a nonessential service so that 10% of women who would normally have a safe abortion instead resorted to an unsafe method, an additional 3.3 million unsafe abortions would occur in LMICs [low- and middle-income countries] over the course of a year. Such an increase in unsafe abortion would, in turn, result in an additional 1,000 maternal deaths."³² It is critical that abortion be recognized as essential medical care and that access cannot be restricted.

We thank you for your attention to this important matter and reiterate our request for you to issue clear guidance to states regarding their obligations under human rights law to ensure access to safe abortion services in their COVID-19 responses and recommendation on actions that could help support compliance. Considering how abortion has been the particular target of recent state actions, we request additional specific guidance from your offices regarding the need for abortion to be classified as an essential service, for multiple safe access points to abortion care including medication abortions, and for removing any restrictions related to abortion on the funding of relief efforts in response to the pandemic.

Thank you for your continued leadership on this important issue.

Sincerely,



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³² Taylor Riley et al., Comment, *Estimates of the Potential Impact of the COVID-19 Pandemic on Sexual and Reproductive Health in Low- and Middle-Income Countries*, 46 *International Perspectives on Sexual and Reproductive Health* 73, 74 (Apr. 16, 2020), https://www.guttmacher.org/sites/default/files/article_files/4607320.pdf.