Unsafe Abortion in Humanitarian Emergencies, June 2015

Unsafe abortion accounts for approximately 13% of the global burden of maternal mortality, or an estimated 47,000 maternal deaths, and 5 million hospitalizations per year.5 The World Health Organization (WHO) defines unsafe abortion as “a procedure for terminating a pregnancy performed by persons lacking the necessary skills or in an environment not in conformity with minimal medical standards, or both.”2 The general lack of access to safe abortion and post-abortion care in emergencies means that women and girls who seek abortion risk preventable infections and injuries. Refugees and internally displaced persons (IDPs) are particularly vulnerable to unintended pregnancies and unsafe abortions as a result of increased sexual violence, along with disruptions or absence of health services, including family planning (FP), safe abortion care (SAC), and post-abortion care (PAC).9 UNFPA estimates that 25-50% of maternal deaths in refugee settings are due to complications of unsafe abortion.9

Chad

In Chad, the maternal mortality ratio is 980 per 100,000 live births.5 The unsafe induced abortion rate in the region (Middle Africa, WHO) is 36 per 1,000 women aged 15-44, and an estimated 12% of maternal deaths are due to complications of unsafe abortion.1,3 Data from the N’Djamena general referral hospital showed that, 6%-25% of maternal deaths from 1988-1992 were due to complications of unsafe abortion.6

According to Chad’s Penal Code of 1967, induced abortion is a criminal act punishable by imprisonment and a fine:

Article 296: Whosoever, by food, drink, medicine, violence or by any other means, procures the abortion of a pregnant woman or a woman assumed to be pregnant, whether or not with her consent, will be punished with imprisonment of one to five years and a fine of 50,000 to 500,000 CFA francs. The woman who procures or attempts to procure her own abortion, or who consents to the use of the means administered for this purpose, shall be punished with imprisonment of two months to two years and a fine of 5,000 to 50,000 CFA francs.6

The law further specifies that penalties may be doubled in cases where abortion is “routinely” provided. If a medical practitioner is found guilty of promoting or providing abortion, his/her license to practice can be suspended for 5 years in addition to the other penalties. However, Article 38 of the Medical Professional Code of Ethics explicitly allows induced abortion to save the life of the woman. The Code of Ethics stipulates that the attending physician must consult with two other physicians before performing the abortion. One of the other physicians must be on a country list of civil court experts, and both must provide written certification that an abortion is required to save the woman’s life.6

Chad’s 2002 Promotion of Reproductive Health Law reflects the definition of reproductive health adopted by the 1994 International Conference on Population and Development (ICPD) Program of Action and expands the legal justification for abortion:7

**Article 14:** Under no circumstances should therapeutic abortion be regarded as a contraceptive method. It is permitted only in the following cases and under prescription of an advisory group of doctors after notice to a judge:

- When continuation of the pregnancy endangers the life or health of the woman
- When the unborn child has been diagnosed with a particularly grave disorder.4

To operationalize Article 14, a decree establishing the technical protocols for legal therapeutic abortion must be developed by the Ministry of Health and then presented to the national Cabinet and the President of the Republic for final approval.

Although it has yet to ratify the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) Chad has signed the treaty, which mandates that states “protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.”9

Chad’s population policy recognizes prevention of clandestine abortion as a priority for improving women’s and children’s health.6 It is rare for accusations related to illegal abortions to result in conviction of women or health providers, although cases are occasionally brought before the country’s judiciary.10

Legal Grounds for Abortion

<table>
<thead>
<tr>
<th>In Chad, an abortion may be performed:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>To save the life of the woman</td>
<td>✔</td>
</tr>
<tr>
<td>To preserve physical health</td>
<td>✔</td>
</tr>
<tr>
<td>To preserve mental health*</td>
<td>✔</td>
</tr>
<tr>
<td>In cases of rape or incest</td>
<td>✔</td>
</tr>
<tr>
<td>In cases of fetal impairment</td>
<td>✔</td>
</tr>
<tr>
<td>For economic or social reasons</td>
<td>✔</td>
</tr>
<tr>
<td>On request</td>
<td>✔</td>
</tr>
</tbody>
</table>

*It is not clear how broad the definition of “health” is under the Promotion of Reproductive Health Law.
Influences on Safe Abortion Provision in Chad

International Law

Humanitarian Law The international community recognized the need to address unsafe abortion at the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt (Principle 8), and numerous international human rights treaties uphold rights relevant to SAC access; Universal Declaration of Human Rights - “right to life, liberty and security of person” (Articles 2 & 3);1 International Covenant on Civil and Political Rights – “right to privacy” (Article 17.1);2 International Covenant on Economic, Social and Cultural Rights – “right to health” (Article 12.1);3 Convention on the Elimination of All Forms of Discrimination Against Women – “right to decide on the number and spacing of their children” (Article 16.1).4

Humanitarian Law Article 3 of the Geneva Conventions, which covers the rights of the “wounded and sick” during armed conflicts has been interpreted to include the availability of SAC as part of rightful medical care for women who have been raped.5 This article and its elaborations are considered customary international law and binding to all actors in a conflict situation. Denial of safe abortion to a rape survivor can be considered in violation of her rights to care and humane treatment.6 Medical providers caring for rape survivors during armed conflicts are immune from prosecution under domestic law.7 In 2013 The UN Security Council unanimously adopted Resolution 2106 (later reinforced by Resolution 2122), which cites the “need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination.”8

National Law

Under the Medical Professional Code of Ethics and the Promotion of Reproductive Health Law, abortion may be induced to save the life of the woman. The Promotion of Reproductive Health Law also permits abortion to protect a woman’s health and in cases when the fetus has been diagnosed with a serious disease. Multiple physicians and a judge must certify that an abortion is being performed under authorized grounds. The decree that will put these expanded abortion parameters into practice is currently in process. Upon ratification, the Maputo Protocol will expand the legal grounds for abortion to cases of rape and incest.

On-the-ground Practices

Clandestine abortions are reported to be common, and unsafe abortions are known to contribute to a substantial proportion of maternal deaths, but they are poorly documented. While grounds for legal abortion remain limited, prosecution of suspected illegal procedures is rare.

Humanitarian Guidelines

The Inter-Agency Field Manual on Reproductive Health in Humanitarian Settings includes a specific chapter on Comprehensive Abortion Care, and the WHO/UNHCR Clinical Management of Rape Survivors manual for refugees and IDPs includes the delivery of safe abortion information and options whenever possible.9

Donor Policies: U.K. and U.S. Aid

U.K. The UK has stated that it expects all recipients of UK humanitarian aid to treat survivors of rape during conflict according to international humanitarian law rather than national law.10 DFID, the UK’s development assistance agency, has indicated that it will support initiatives to improve the quality and safety of abortion services to the extent that they are legally permitted, as well as certain locally-led efforts to enable legal and policy reform in settings where restrictions on abortion contribute to high maternal mortality and morbidity.11

U.S. The 1973 Helms Amendment forbids the use of U.S. foreign aid funds “to pay for the performance of abortion as a method of family planning or to motivate or coerce anyone to practice abortions.”12 Provision of abortion for non-FP reasons is not forbidden by the Helms Amendment. However, administrative policy within the United States Agency for International Development (USAID) effectively prohibits the use of U.S. government funds to provide abortion services under any circumstances.13 Under the Helms Amendment, an organization can use funding from other sources to provide SAC and organizations are permitted to provide information or counseling on pregnancy options as “consistent with local law.”14 The Helms Amendment does not restrict provision of PAC.15 If an organization does not receive U.S. government funds, the Helms Amendment does not apply to its activities. The Mexico City Policy, also known as “the Global Gag Rule,” was repealed in 2009. When in place, it barred non-U.S.-based USAID grantees from engaging in abortion-related activities, including with funds from other sources.16

For more on legal and other barriers to safe abortion, visit IPPF’s Access to Safe Abortion tool: http://ippf.org/sites/default/files/access_to_safe_abortion.pdf

---


© RAISE, June 2015