SAFE ABORTION IN EMERGENCIES: DEMOCRATIC REPUBLIC OF CONGO

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. 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.” 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). UNFPA estimates that 25-50% of maternal deaths in refugee settings are due to complications of unsafe abortion.

Democratic Republic of Congo (DRC)

In the DRC, the maternal mortality ratio is 730 deaths per 100,000 live births. The unsafe induced abortion rate in the region (Middle Africa, WHO) is 36 per 1,000 women aged 15-44, and 12% of maternal deaths are due to complications of unsafe abortion. According to the 1982 DRC Penal Code, induced abortions are illegal and punishable by 5 to 15 years of prison:

Article 165: Whosoever, by food, drink, medicine, violence or by any other means, procures the abortion of a woman will be punished with imprisonment of five to fifteen years.

Article 166: The woman who voluntarily procures her own abortion shall be punished with imprisonment of five to ten years.

However, under the general law principle of “necessity,” it is inferred that an abortion is justified to save the life of the mother. Article 38 of the Statute of the International Court of Justice (ICJ) recognizes “general principles of law recognized by civilized nations” or common to systems of national law, as a source of international law.

The DRC has signed and ratified the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), a legally binding 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.”

Following its FP2020 commitment made at the 3rd International Conference on Family Planning (November 2013), the DRC released a National Strategic Plan for Family Planning in January 2014. Abortion was discussed as a consequence of low contraceptive prevalence, which the plan seeks to address; there was no mention of expanding access to safe abortion services.

In the DRC, as in other countries where abortion access is heavily restricted, data on the prevalence of abortion are weak. Available evidence suggests that clandestine abortion is common, and that there may be substantial variation in relative safety of procedures. According to a 2002 UN review, adolescent girls appear to account for the majority of serious complications from unsafe abortion, and political opposition has often hindered attempts to expand access to essential reproductive health information and contraceptive services.

Legal Grounds for Abortion

<table>
<thead>
<tr>
<th>National Law</th>
<th>Maputo Protocol</th>
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<tr>
<td>To save the life of the woman</td>
<td>✓</td>
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<td>To preserve physical health</td>
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<td>To preserve mental health</td>
<td>✓</td>
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<td>In cases of rape or incest</td>
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<td>In cases of fetal impairment</td>
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<td>For economic or social reasons</td>
<td>✓</td>
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<td>On request</td>
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*Under general law principle of "necessity*
Influences on Safe Abortion Provision in DRC

International Law

**Human Rights 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** (Article 12.1, later reinforced by **Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa**); and the **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).

**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. 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. Medical providers caring for rape survivors during armed conflicts are immune from prosecution under domestic law.

In 1993 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.”

National Law

According to the DRC Penal Code, all induced abortions are illegal, but under the general law principle of “necessity” SAC may be provided to save a woman’s life. Under the **Maputo Protocol** which, as a ratified treaty has the force of law, abortion may be performed in cases of rape and incest, and to preserve mental or physical health.

On-the-ground Practices

Some INGOs offer SAC as a component of post-rape care. Clandestine abortions are reported to be common, although the true prevalence of such procedures is unknown.

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.

**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. 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.

**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 any person to practice abortions.” 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. 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.” The Helms Amendment does not restrict provision of PAC. 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.

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