

# International Abortion Policies Dataset and Information Availability

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**ABSTRACT:** *According to research, women, healthcare professionals, and even policymakers across the globe have inadequate or incorrect understanding about their country's abortion laws and regulations. These knowledge gaps are often caused by the law's imprecise and broad words, which may lead to confusion and even conflict when they are not supported by clear regulation or guidance. Inconsistency in national legislation and policy makes safe and evidence-based practise even more difficult. This lack of openness has resulted in an accountability problem. Those seeking care are unable to understand their legal rights, service providers are unable to practise with legal protection, and governments are able to avoid legal liability for the negative consequences of their laws. This is the context for the newly launched Global Abortion Policies Database, an open-access repository that aims to promote transparency and state accountability by providing clear and comprehensive information about national laws, policies, health standards, and guidelines, as well as the ability to compare and cross-reference to health indicators, WHO recommendations, and other sources.*

**KEYWORD:** *Abortion, Abortion Law, Human Rights, Policy, Safe Abortion.*

## 1. INTRODUCTION

Safe abortion was acknowledged as a significant public health issue in United Nations (UN) conferences in the 1990s, and states were urged to take action to address it. Governments have pledged to make abortion safe and accessible in situations where it is legal. The commitment to enable safe abortion access to the "full extent of the law" has subsequently been reaffirmed in many political statements and plans of action, and has become a cornerstone of WHO safe abortion advice [1]. This worldwide agreement on safe abortion encourages countries to make the rights and services guaranteed in their own laws a reality. The call, on the other hand, presupposes that the rights granted by abortion legislation are recognized, or at least knowable [2].

Many abortion regulations are worded in ambiguous language, causing confusion and even disagreement about what they allow in reality. This is particularly true in nations where abortion is partly decriminalized, meaning it is permitted only under specific legal circumstances, or when illegal abortion is banned with no indication of what kind of abortions are permissible. In such cases, abortion regulations often outsource the task of determining the legal limits of abortion to medical and legal experts. This delegation results in inconsistent and arbitrary practise if there is no direction or monitoring. Beyond a single law's interpretative issues, there is contradiction among national laws and policies, as shown in the reconciliation of constitutional rights and state policies of life and health protection with criminal restrictions on life-saving and health-preserving abortion treatment, for example. Abortion laws and practises differ by subnational jurisdiction in certain federal states, complicating access for women, girls, and anyone who may become pregnant[3].

A crisis of accountability has arisen as a result of the lack of openness in abortion laws and practises. Women and others seeking treatment have no way of knowing their legal rights, which leads to delays and denials of care, or their avoidance of the official health system entirely. Service providers' fragile legal position forces them to choose between providing treatment and risking arbitrary detention and other sanctions. Governments may avoid responsibility for the negative consequences of their laws on health and human rights if the legislation is unclear [4].

As a result, understanding abortion legislation and policy is critical for guaranteeing safe abortion access as well as safeguarding sexual and reproductive health and human rights. This understanding underpins the Global Abortion Policies Database, an open-access database of abortion laws and policies from 197 UN Member States. The database is intended to improve state accountability by facilitating comparative analysis across countries and against evidence-based recommendations and human rights standards, as well as to

promote transparency by providing clear and accurate information about national-level abortion laws and policies [5].

In this article, we explain the background for and fundamental characteristics of the Global Abortion Policies Database, as well as the possibilities it provides to enhance openness in abortion legislation and policy and improve state accountability for health and human rights.

### *1.1 Access to Legal Information as A Factor in Safe Abortion:*

The European Court of Human Rights highlighted the Irish government's inability to create any standards by which the sole legal reason for abortion, to save the pregnant woman's life, could be proved in a 2010 ruling. Physicians were put in a difficult situation, facing criminal accusations on one side and a lack of clear legal advice on the other. After Savita Halappanavar died from miscarriage complications, this tie sparked national outrage. On the false assumption that their hands were legally bound, her treating doctors refused to terminate the pregnancy [6].

Empirical research indicates that women and providers across the globe have little or incorrect understanding about their country's abortion laws and regulations. This information gap has an impact on how women join the health system and whether they are able to effectively traverse its bureaucratic procedures, even in nations where laws are more liberal. A comprehensive study confirms women's overall lack of knowledge, but also reveals significant knowledge disparities depending on location, income, and education. Low-income first-generation immigrants and Spanish speakers in the United States are considerably less likely to be aware of gestational age restrictions and parental or partner permission regulations in the United States [7]. Given the importance of legal information in determining access to safe abortion, these disparities help to explain why marginalized women are disproportionately subjected to arbitrary service denials, as documented in Argentina, Bolivia, and Brazil, raising human rights concerns about discrimination in access to care.

Because many women depend on and defer to service providers' legal expertise, having a thorough understanding of the law is critical to guaranteeing access. Healthcare workers' knowledge has a significant impact on how and if they give care, with a strong link between correct information and advanced practice [3]. This is due in part to what is known as the "chilling effect" of criminal legislation. When abortion regulations do not expressly state what behaviour is banned, providers are excessively cautious and even restricted in their interpretations of the law, afraid of being found in violation of the law after the fact. A research in the United States discovered a statistical link between legislation prohibiting "late-term" abortions and refusals of "near-late-term" abortions, defined as abortions occurring within one month of the legal limit. The stifling impact of criminal abortion laws is exacerbated by the fact that earlier criminal statutes are selectively or infrequently implemented today in certain jurisdictions, leaving their modern interpretations largely unknown [8].

Through unrestricted delegations of authority, unenforced laws and the information vacuums they generate also lead to inconsistent, arbitrary, and even discriminatory behaviour. Medical and governmental authorities may deny legal services in poor faith, for the wrong reason, or based on irrelevant considerations when abortion regulations are unclear or misunderstood. Legal ambiguity allows these players to impose their moral beliefs on people seeking treatment, obstructing the exercise of their legal rights and therefore defeating the law's objectives [9].

Lack of understanding among policymakers, who do not know what the law permits or what responsibilities it implies for them, often creates and sustains information gaps among women and service providers. The Northern Ireland Family Planning Association, for example, filed a lawsuit against the Department of Health for failing to guarantee that healthcare professionals were aware of the abortion legislation. The Court of Appeal concluded that officials within the Department did not fully comprehend the legislation, and were ignorant of how courts had construed important words such as "severe damage to the mother's physical or mental health."

The fact that there are so many information gaps suggests a systemic problem. The common colonial heritages of laws in the global south support the argument that lack of transparency is inherent to key structural characteristics of abortion law and policy. Criminal rules, for example, often seem absolute, and

their exceptions are seldom stated, making the law difficult to comprehend and appear inconsistent. When these rules are converted into general knowledge, their prohibitions are remembered, but their unique rights are overlooked [10].

### *1.2 Abortion Law and Policy Transparency:*

The Global Abortion Policies Database aims to offer free access to clear and accurate information on national-level (and chosen subnational) law and policy, in recognition of the critical role of legal knowledge in protecting health and human rights. The data is presented in country profiles that are organized by a common set of policy domains: legal grounds and gestational limits, administrative requirements (such as third-party authorizations, mandatory counselling, mandatory waiting periods, or medical tests), service delivery regulation (such as who, where, and how abortions may be provided; permitted and registered methods; national insurgencies), and service delivery regulation (such as who, where, and how abortions may be provided; permitted and registered methods; national insurgencies) (who may be charged and associated penalties) [11].

A conscious attempt was made to provide a more complete picture of abortion regulation than was previously possible via earlier materials that were primarily concerned with criminal legislation and their legal justifications. However, while abortion has historically been and continues to be solely regulated by penal codes in some countries, with successive waves of liberal reform, these laws have been gradually replaced or supplemented by health legislation as well as other forms of subordinate regulation, such as medical standards or practise guidelines as well as ethics codes. Some nations, like Kenya, Swaziland, and Somalia, do have explicit constitutional restrictions regarding abortion, while others have health laws that are specific to pregnancy. Kenya is one such country [11].

The Global Abortion Policies Database, which incorporates these sources of abortion law and policy into country profiles and supplements them with extensive notes on conflicting directives and subnational variations, reveals a level of complexity in abortion regulation that defies previous and simplistic classification schemes. The database is distinguished by the wide range of abortion laws and policies it contains. It is by displaying this variety that the database helps to dispel the tight connection between abortion and criminality, which is at the heart of most abortion stigma. Publicizing laws and policies that regard abortion as a medical intervention and work to ensure that all women have access to safe abortion helps to mainstream safe abortion as a component of comprehensive sexual and reproductive health services.

The database also includes direct links to downloadable source documents, which is a valuable resource given that many subordinate forms of regulation, which often establish administrative and service delivery requirements, can be difficult to access and thus remain unknown, making the database an invaluable resource. According to a study conducted in Brazil, providers have a particularly poor understanding of Ministry of Health norms that outline the official documents and procedures that must be followed in order to perform legal abortions, including the incorrect belief that a judicial order is always required. The database does not include a complete collection of judge-made or common-law sources, which is one of the database's limitations in this regard. As an example, the Supreme Court of India, in a case involving a child victim of sexual assault, decided to extend a statutory 20-week gestational time restriction in the abortion legislation, and many high courts followed suit, allowing termination beyond 20 weeks in comparable situations. As a result, online resources such as the Abortion Law Decisions database maintained by the University of Toronto are a valuable complement to the database.

As a result, this restriction serves as an essential reminder that, in order to properly comprehend the abortion laws of any nation, it is always necessary to reference local legal norms and traditions. To put it another way, since all legal documents must be interpreted, abortion laws will never be completely transparent, unambiguous and absolute, but will always be in the process of being formulated. Indeed, it is frequently the gaps and ambiguities in the legislation that enable it to accommodate changing practises of evidence-based care in the protection of health and human rights as they are being addressed.

Following the relaxation of the abortion legislation by the Colombian Constitutional Court in 2006, a coalition of women's groups developed a rights-based framework for the interpretation of the law, including the legal basis of danger to health. By accompanying women seeking health-care services in the health-care

system, they were able to learn about access barriers and systematize this knowledge in order to develop guidance to assist health-care providers and public officials in their efforts to interpret and apply the law in their respective jurisdictions.

The use of an affirmative interpretation of the legislation was also used to support a service delivery approach in Uruguay that was intended to minimize the risks and consequences associated with unsafe abortion. Because these acts of harm reduction were not prohibited by the law prior to decriminalization and were not yet part of the healthcare system, service providers at Pereira Rossell Hospital confirmed pregnancies, informed women of risks, and provided follow-up care in accordance with an interpretation of the law that excluded these acts of harm reduction from its prohibition. Following the model's development, the legal interpretation on which it was based was adopted as official policy by the Ministry of Health. Similar to Uganda, a complicated and apparently conflicting legislative environment is seen as a chance to develop a harm reduction programme for safe abortion on the basis of improvisation.

## 2. DISCUSSION

Improved state accountability is achieved via the availability of accurate and complete information on national-level laws and policies, such as that provided by the Global Abortion Policies Database. State accountability, in its most basic definition, implies that governments and those to whom they transfer authority do not have complete discretion over whether or not abortion services are permitted, as well as who they penalize and for what actions. Accountability, on the other hand, is difficult when one does not know what rights and safeguards are provided by the law. Transparent and easily available norms of abortion legislation and policy serve as a baseline against which people seeking care and those providing services may hold governments responsible for failures and abuses of practice. In this way, transparency in abortion laws and regulations has evolved into a positive legal duty on the part of governments, one that is recognized and enforced by authorities all over the globe. According to the European Court of Human Rights, "the relevant legislative rules must, first and foremost, provide clarity of the legal status of the pregnant woman."

A second way in which the database contributes to state accountability is through the ability it provides to compare and contrast laws and policies across countries and geographical regions, as well as to cross-reference national laws and policies with sexual and reproductive health indicators, World Health Organization evidence-based recommendations, and human rights principles. State responsibility is a concept found in international human rights law that holds governments responsible for public health damages where a causal link can be shown between state activity and harm. When it comes to making this link, markers of sexual and reproductive health are useful since they reveal patterns of damage at the population level. This viewpoint takes into account the broader context of unsafe abortion, as well as the impact of structural issues such as legislation and government policy. Laws that are likely to result in physical and psychological damages as well as avoidable death are direct breaches of the right to health under international humanitarian law. 34 So-called standardized indicators may offer tangible proof of implementation failures, gaps between law and practice, or other dysfunctions and negative externalities, such as gaps between law and practice. States are responsible for these practical consequences because they have a human rights responsibility to design and promote laws and policies that are beneficial to the health of their people.

Since the best suitable method may differ from one state to another, states have the option in choosing the means that will be used to comply with their international human rights responsibilities. This discretion, on the other hand, is not absolute. A limit on appropriate abortion policy is set by international law, which is based on the principles of non-arbitrariness and proportionality, which state that laws must be rationally designed to achieve legitimate ends and cannot restrict human rights in a way that is disproportionate to these ends. Every state must be able to show that its laws and policies comply with these requirements in order to be recognized. A cross-country comparison of abortion care standards as well as cross-referenced evidence-based standards of care are both helpful in this endeavor.

Prenatal life, for example, is recognized as having legitimate state interests under international law, which includes the protection and preservation of prenatal life. Because any criminal regulation of abortion has an impact on the human rights of pregnant women, the existence of reasonable alternatives to protect this interest, as demonstrated by comparative law, renders criminal restrictions arbitrary and disproportionate, thus constituting an infliction of harm without necessity or justification. On this premise, the World Health

Organization's safe abortion guideline recommends criminal law change. Abortion services are also often singled out for excessive health regulation, with access criteria, training, and infrastructure that are unnecessary, if not downright detrimental to the provision and availability to safe abortion services. States are under an obligation to explain more severe criteria under cross-referenced WHO guidelines on increased health worker responsibilities in the provision of safe abortion care, for example. Indeed, abortion legislation that is in accordance with WHO guidelines is a critical structural indication of high-quality abortion services.

The United Nations Human Rights Treaty Monitoring Bodies and Special Rapporteurs on Abortion Legislation and Policy have developed human rights standards on abortion law and policy during the past four decades. Further analytical criteria for assessing and evaluating abortion laws and policies are made available by cross-referencing these standards with relevant policy areas in the nation profiles included in the database. Human rights accountability is meant to be positive in nature. When governments deviate from these criteria, they are required to either offer an explanation and justification for their current policy or, alternatively, to provide strong incentives for change. In this way, the database builds on key findings from in-country strategic health and human rights evaluations, such as those conducted in Malawi, which help to improve the public health and legal evidence on which governments may depend when reforming policies and programmes. Malawi's Special Law Commission on the Review of the Law on Abortion published a draught bill in 2015, which was endorsed by the government. Many reasons contribute to the hazardous abortion practice prevalent in the nation, but one in particular has received special attention: the legislation. In particular, sections of the Penal Code that essentially prohibit abortion have been highlighted. Since abortion is almost entirely prohibited by law, it is difficult to reconcile with the National Sexual and Reproductive Health and Rights Policy, which calls for "the provision of abortion services to the maximum degree permitted by law," as well as the prevention of unsafe abortions[12].

### 3. CONCLUSION

Long recognized as a critical factor in ensuring the safety of abortions and as a fundamental human right, access to the availability of sexual and reproductive health information continues to be a top priority worldwide. Less well recognized is the fact that legal information may be considered a kind of health information. It is critical to be aware of and understand the limitations and rights imposed by abortion legislation and policy in order to ensure access to safe abortion and to preserve one's health and well-being after an abortion. Access to legal information is thus a critical health intervention, as is the availability of legal knowledge. This commitment serves as the foundation for the Global Abortion Policies Database, and it serves as inspiration for its goals of increasing openness and improving accountability.

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