

Legal Framework for 2nd Trimester Abortions

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Overview

- Law (abortion law, health care law, penal code, regulations, guidelines), not practice
- Laws differ dramatically across globe
- Challenge: unclear laws
- Restrictions during second trimester, could apply to other times during pregnancy, depending on:
 - legal status of abortion and
 - indication for abortion

Legal Framework: 2nd trimester (or earlier or later)

- Depending on Indications for Abortion:
 - Time limits:
 - Weeks in pregnancy
 - Additional Requirements:
 - Commissions/Health boards
 - Number of health care providers to approve
 - Type of health care provider to perform abortion or to approve
 - Type of health care settings
 - Spousal or parental authorization

Abortion permitted on request (within certain time period)

- 40% of the world's population, 1/4 of countries+
- On request ranging up to 8 weeks to anytime during pregnancy
 - most common is 12 or 14 weeks.
 - 8 weeks (Guyana); 10 (Turkey and draft Portuguese); 12 (Nepal, Albania, South Africa); 14 (Cambodia, France, Romania); 18 (Sweden)
- Beyond abortion on request period:
 - sets time limits, depending on indication for abortion
 - and sometimes with additional procedural requirements, depending on indication for abortion
- anytime to save woman's life

Beyond abortion on request (and countries with broad economic or social indications)

1/3 of countries

- Time limits for broad economic or social reasons:
 - Denmark, Great Britain (up to 24 weeks or viability)
 - Russia (up to 24 weeks for limited social reasons)
 - FSU countries (up to 28 weeks)
 - South Africa (20 weeks)
- Additional requirements:
 - Some need approval by commissions or multiple physicians
 - 2 medical practitioners (Great Britain)
 - Commissions/Boards (FSU countries, Denmark, Sweden)

Abortion permitted to preserve health

2/3 of countries

- Time:
 - Laws are sometimes silent on time restrictions, usually allowed throughout pregnancy
 - Explicitly allowed throughout pregnancy (Sweden, GB, NZ-serious permanent injury after 20 weeks v. earlier requirement of physical harm)
 - Limited (Kuwait: first 4 months, India: 12-20 weeks)
- Other requirements:
 - Commissions (Denmark, Kuwait, Sweden)
 - Number of health care providers (India, Poland)
 - Types of health care providers (usually physicians)

Does Health include Mental Health?

2/3 of countries that allow for health, include mental health

- explicitly include mental health in health exception (Botswana, Ethiopia, GB, Nepal)

Or

- *interpret* health exception to allow abortion on mental health grounds where provision only says "health" or "medical": WHO definition of health (Peru, Mexico City-often in MoH guidelines)
 - Can also include fetal impairment and rape under (mental) health

Or

- Law says "physical health" or narrow interpretation of health

Requirements:

- time: similar to physical health
- other: psychiatrist approval
 - CEDAW: Namibia only one qualified psychiatrist

KL v. Peru

U.N. Human Rights Committee (2005)

- Law: to save a woman's life or to prevent serious and permanent damage to her health
- HRC: "the conditions for a **lawful** abortion as set out in the law were present" and that "the refusal to act in accordance with the author's decision to terminate her pregnancy was not justified and amounted to a violation of article 17 of the Covenant."
- Acknowledgment that being forced to continue a pregnancy that involves fetal anencephaly results in **serious harm to mental health**.
- Health=mental health (WHO definition)

Fetal Impairment

- Many countries that allow for health also allow for fetal impairment either explicitly in law or read into mental health exception (some African countries; Benin, Chad, Zimbabwe)
- Time:
 - Viability (Poland); 24 weeks (Finland); 28 weeks (many FSU countries);
 - Explicitly unlimited (South Africa, UK, Sweden)

And/or:

- Other requirements:
 - Commissions (Sweden)
 - Number of physicians (Poland, South Africa after 20 weeks)
 - Types of examinations (Finland)

Pregnancy as a result of a crime

- Either explicit in law or interpreted to fall into mental health exception
 - Time:
 - ie: 10 weeks (Burkina Faso); 12 weeks (Poland); 18 weeks (Nepal); 19 weeks (Greece); 20 weeks (India, Mexico City, South Africa)
- And/or
- Other requirements:
 - Police or state prosecutor confirmation/evidence of sexual penetration or that intercourse was involuntary
 - IE: "Crime must be established by State Prosecutor and abortion performed during first 10 weeks." (Burkina Faso)
 - Woman's report is enough (Ethiopia)
 - Mental disability of woman (Ecuador, Argentina)

Abortion permitted to save a woman's life

- 3 countries explicitly forbid life exception for abortion: Chile, El Salvador, Nicaragua
- Rest of world allows (theoretically)
- Approx 26% of the World's population allow abortion only for this purpose
 - Explicit in law (ie: Bangladesh, Guatemala, Ireland, Nigeria)
or
 - Grounds of "necessity" (ie: Philippines)

Abortion permitted to save a woman's life (2)

- Time: usually allowed throughout pregnancy, explicit in law (Russia)
Some exceptions (Botswana-16 weeks)
- Other requirements: few countries
 - Very few require approval by several doctors/commissions (usually in countries that only allow abortion for life: Cote D'Ivoire)
 - Spousal or parental authorization (Malawi, Panama, Syria)
 - Some explicitly state that where other requirements usually needed, in life threatening situation do not need (Cote d'Ivoire, Great Britain, India, Poland)
 - In "good faith" or "certify on his/her honor"

Right to Procedures to Access Abortion:

Tysi c v Poland

European Court of Human Rights

20 March 2007

- Rule of law requires "legal protection against arbitrary interferences by public authorities ..."
- Polish procedure does not specify any steps that woman could take if her opinion & that of the doctor (s) diverge or disagreements between doctors
 - As result, she 'severe distress and anguish when contemplating the possible negative consequences of her pregnancy and upcoming delivery for her health'
 - legal remedies, such as civil cases or disciplinary boards, not sufficient, as retrospective and do not prevent damage to health
- Other countries have appeal or review procedures (Bulgaria, Croatia, Czech Republic, Denmark, Finland, Norway, Slovakia, etc.)
- Procedures must meet following criteria:
 - Competent body to issue written decision
 - Women's views considered
 - Timely procedure
- The absence of such preventive procedures amount to the failure of the State to comply with the right to private life under the Convention.

What can be done?

- Ask governments to clarify scope of laws and adhere to international human rights standards (KL, Tysi c, African Protocol on Women's Rts);
- Ensure mental health read into health exception (WHO definition), especially in countries with restrictive laws;
- Judicial or administrative requirements for rape should be removed;
- Ensure health care providers and women clearly understand scope of laws.