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Denial of abortion rights as a form of ill-treatment or torture

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Acronyms
CAT - Committee Against Torture
CEDAW. Working Group on the issue of discrimination against women in law and in practice
CESCR. Committee on Economic, Social and Cultural Rights (CESCR)
CRPD.- Committee on the Rights of Persons with Disabilities
ECtHR - European Court of Human Rights
HRC - Human Rights Committee
IACtHR. Inter-American Court of Human Rights
SRT. Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.
SRT – Health. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
SRT- Disabilities. Special Rapporteur on the rights of persons with disabilities
SR VAW - Special Rapporteur on Violence Against Women
WGDAW (Working Group on Discrimination Against Women)

Abortion and the right to abortion are sensitive issues in which elements linked to the right of women to decide about their bodies are interpolated with critical cultural, ideological and religious considerations. Quite often, there is a dissociation between the jurisprudential positions in the international legal system, national legislation and civil society.

Over the past three decades, there has been a notable advancement in the recognition of abortion rights within the context of national legal systems across the globe. It is noteworthy that there have only been four instances where progress has been reversed, namely in the United States, Nicaragua, El Salvador, and Poland. (Center for Reproductive Rights, 2022).

Table 1 summarizes the legal status of regulation in the world (Center for Reproductive Rights, 2022).

These advancements cannot hide that 134 countries have penalties for women who attempt abortions. It should be noted that even in jurisdictions where abortion is legally permitted, it is still subject to criminalization, including the possibility of life imprisonment at the discretion of the judge. In most cases, these

***Table 1**. Legal status of abortion (adapted from Center for Reproductive Rights, 2022)*

Category	Countries (%)	Conditions under which abortion is allowed
On request	77 (38%)	On request by the woman, with varying gestational limits (usually 12 weeks) and on additional circumstances once that limit has expired.
Socioeconomic grounds	12 (6%)	Under broad circumstances such as age, economic status or others. Most also include rape, incest or foetal diagnosis.
Preserve health	47 (23%)	Under health or therapeutic grounds. Some of them only physical health, while others (20) include mental health
Save the pregnant person's life	44 (22%)	Only when the pregnant person´s life is at risk. Some of them (12) also include rape, incest or foetal diagnosis.
Prohibited on any grounds	21 (10%)	In some countries this includes criminalization under legal offenses.

Source: Adapted from Center for Reprodctuve Rights (2022)

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are offences under the criminal code. With data updated in 2022, in 91 countries the penalties are between 0 and 5 years imprisonment, in 25 countries between 5 and 10 years and 10 countries between 10 years and life imprisonment (Ambast et al., 2023).

According to a recent review of studies, this criminalisation has a strong negative impact on women: delayed access to abortion care, unsafe abortion or increased risks of maternal mortality or morbidity, opportunity costs with discrimination for those who have fewer resources, including travelling, paying private care, emotional distress, poor quality postabortion care, undernalised and experienced stigma among others (De Londras et al., 2022). Moreover, epidemiological data indicate that women with limited resources, rural women, and those with lower educational attainment, as well as those seeking abortion due to rape or for health reasons, are less likely to have access to it (De Londras et al., 2022).

All these data provide ground for for a full decriminalisation of abortion (WHO & HRP, 2022).

Epidemiology of unsafe abortions

Roughly 121 million unintended pregnancies occurred each year between 2015 and 2019. Of these unintended pregnancies, 61% ended in abortion (Guttmacher Institute, 2022). Significantly, abortion rates are similar in countries where abortion is restricted and those where the procedure is broadly legal.

According to the WHO, between 4.7% and 13.2% of all maternal deaths are attributed to unsafe abortions (WHO & HRP, 2022). This equates to between 13,865 and 38,940 lives lost annually worldwide, besides many more women experiencing serious morbidities. Developing countries account for 97% of unsafe abortions. Moreover, the proportion of abortions that are unsafe is also significantly higher in countries with highly restrictive abortion laws than in those with less restrictive laws (WHO & HRP, 2022). Over half (53.8%) of all unsafe abortions occur in Asia, while another quarter (24.8%) occur in Africa. An estimated 7% of women aged 15-44 years are treated every year for complications of unsafe abortion (WHO & HRP, 2022).

Relationship between abortion and mental health

One of the most contentious issues in the debate surrounding the legal framework of abortion is the question of psychological suffering, both in the context of pregnancy interruption and its denial. Those who advocate for anti-abortion positions frequently assert that abortion results in enduring psychological trauma for women. Conversely, those who support the right to abortion, also base their arguments, among other considerations, on the psychological suffering and long-lasting consequences associated with the denial of abortion.

Several longitudinal studies and reviews have sought to examine the relationship between abortion (or the refusal of abortion) and mental health. The majority of these studies have been conducted in the United States, with a particular focus on the impact of regressive legal reforms in that country. A smaller number have been conducted in Central European and Scandinavian countries using cohort studies. As a result, the findings may not apply to the majority of countries globally, where the context and conditions for women entail many more psychosocial and socioeconomic vulnerabilities and ideological, cultural and religious constraints.

A summary of key findings from these studies, relevant here, are:

1. There is a lack of empirical evidence to support that terminating a pregnancy causes mental health problems in terms of affective disorders, anxiety disorders, or otherwise. In the United States, the majority of authors cite the Turnaway study. The study included 1,132 women recruited from 30 abortion facilities across the United States. Participants were divided into three groups: *Turnaways*: Women who were denied an abortion due to gestational limits; *Near-limits*: Women who received an abortion close to the facility's gestational limit; and *First-trimester*: Women who received an abortion in the first trimester. Participants were interviewed semi-annually from 2008 to 2016. The study concluded that (a) Abortion does not harm mental health**:** Women who received abortions did not experience worse mental health outcomes than those denied abortions. Both groups experienced a decline in emotional distress over time (b) Turnaways experienced initial increases in stress and anxiety**,** but these declined over the follow-up period (c) Women who were denied an abortion reported worse physical health over time, including more complications from childbirth and higher rates of chronic pain (d) Women denied abortions were more likely to experience economic hardship, including lower employment rates, higher poverty rates, and greater reliance on public assistance. (i.e. Their children also faced more developmental challenges and economic disadvantages. (f) Denial of abortion was linked to a greater likelihood of remaining in abusive relationships, particularly among women experiencing intimate partner violence. (g) Existing children of women denied abortions faced greater instability, including poorer maternal bonding and household stress (Biggs et al., 2017; Foster et al., 2018, 2022; Ogbu-Nwobodo et al., 2022). Other longitudinal studies in the US population have found similar results. (Rocca, 2013).

2. There are inconclusive results regarding the relationship between abortion and suicide rates when controlling for previous mental health indicators and socioeconomic variables, as shown by a large cohort study in a sample of nearly 50.000 women followed over five years in Denmark (Steinberg et al., 2019). Nevertheless, epidemiological data show there is an increase in suicidal ideation and attempts of suicide among women of reproductive age in the US States where there are restrictive laws or abortion is forbidden (Zandberg et al., 2023) and the absolute ban on abortion in Nicaragua lead to an increase in reproductive-age young women suicide deaths using organophosphate pesticides (Moloney, 2009). Furthermore, ecological data from 162 countries provide significant evidence that abortion laws reduce maternal mortality due to medical complications and suicide (Latt et al., 2019).
3. Children born from unwanted pregnancies. The Prague Study examined long-term outcomes of children born from unwanted pregnancies to mothers twice denied abortions in the early 1960s in Czechoslovakia. It tracked 220 children and matched controls over three decades to assess differences in psychosocial development, educational achievement, mental health, and family dynamics. In a series of studies, the authors showed that children born from unwanted pregnancies faced more socio-emotional challenges, poorer educational outcomes, and increased psychiatric care usage compared to peers from accepted pregnancies. Family instability and socioeconomic factors partly mediated these effects (David, 2011).

It is important to reiterate that all of these studies have been conducted with populations from the Global North. Such findings can obscure the reality of the most vulnerable individuals and contexts where human rights are denied, and discrimination is more prevalent. An intersectional approach is crucial when examining data related to mental health, emotional distress, and abortion.

Denying women and girls abortion services as ill-treatment? The position of international human rights bodies.

Based on the aforementioned studies and ethical and medical debates, a growing number of international health and human rights bodies, including the World Health Organisation, consider that abortion should be considered among unalienable women's rights, as an integral part of Sexual and Reproductive Rights. Table 2 summarizes their foundations in international law in chronological order.

Concurrent with the advancement of SRR is a parallel evolution demanding that abortion be decriminalized and that states guarantee access to safe and legal abortion.

***Table 2**: Legal foundations of sexual and reproductive rights.*

- Universal Declaration of Human Rights (UDHR) (1948). Articles 1 and 25.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). Article 12: Right to the highest attainable standard of physical and mental health; Article 10: Protection and assistance for families, especially mothers before and after childbirth.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979). Article 12: Access to healthcare services, including family planning. Article 16: Equal rights in matters of marriage and family, including decisions on the number and spacing of children.
- International Conference on Population and Development (ICPD) Programme of Action (1994). Recognizes reproductive rights as part of human rights. Stresses the right to decide freely on reproduction without discrimination, coercion, or violence.
- Beijing Declaration and Platform for Action (1995). Calls for the elimination of practices that violate women's reproductive rights.
- Convention on the Rights of Persons with Disabilities (2008): article 25 a) underscores the right of persons with disabilities to enjoy the same choices and services around sexual and reproductive health as other individuals.
- 2030 Agenda for Sustainable Development (2015). Sustainable Development Goals. Goal 5. Achieve Gender Equality and Empower All Women and Girls. Goal 5.6. Ensure Universal Access to Sexual and Reproductive Health and Rights (Indicators: Proportion of women aged 15-49 who make their own informed decisions regarding sexual relations, contraceptive use, and reproductive health care; Number of countries with laws and regulations guaranteeing access to sexual and reproductive health care).

Table 3. Denial of abortion as a violation of sexual, reproductive and health rights.

Body	Reference document	Selected Wording
SRT – Health	A/76/172, para. 20, 40, 51	Sexual and reproductive health encompasses (…) safe abortion services and the availability of trained medical and professional personnel and skilled providers. (…). Safe and legal abortion is a necessary component of comprehensive health services (…). States should provide it, including access to post-exposure prevention, emergency contraception and safe abortion services
	A/66/254, 2011, para. 27	Criminal prohibition of abortion is a clear expression of State interference with a woman's sexual and reproductive health because it restricts a woman's control over her body, possibly subjecting her to unnecessary health risks. (…). States are obliged to ensure that women are not denied access to necessary post-abortion medical services, irrespective of the legality of the abortion undertaken.
	E/CN.4/2004/49, 2004, para. 30.	In all circumstances, women should have access to quality health care for the management of complications arising from abortion.
HRC	General Comment No. 28: CCPR/C/21/Rev.1/ Add.10, para 10.	States should ensure women do not have to undertake life-threatening clandestine abortions.
CAT	CAT/C/POL/CO/5-6, 2013, para. 23	The document highlights the State's responsibility to guarantee that women, particularly those who have been raped and who have chosen to terminate their pregnancies, have access to legal abortions in secure settings. It emphasises the necessity to prevent the exercise of conscientious objection from impeding individuals' access to the services to which they are legally entitled.
CESCR	General Comment No. 14, E/C.12/2000/4, 2000, para. 8, 14	The freedoms [protected under the right to health] include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference (…). Right to health includes a right to access health information including on SRH.
	General comment No. 22, E/C.12/GC/22, 2016, para. 5 Paras. 41, 18 and 45	States should repeal and refrain from enacting laws and policies that create barriers to access to SRH including biased counselling requirements and mandatory waiting periods for access to abortion. All individuals and groups have a right to evidence-based information on SRH including safe abortion and post-abortion care. States must guarantee physical and mental health care to victims of sexual and domestic violence, including safe abortion care.
CRPD and CEDAW	Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities, 2018, para. 2	Access to safe and legal abortion, as well as related services and information, are essential aspects of women's reproductive health and a prerequisite for safeguarding their human rights to life, health, equality before the law and equal protection of the law, non-discrimination, information, privacy, bodily integrity and freedom from torture and ill-treatment.
CEDAW	General Recommendation No. 34: CEDAW/C/ GC/34, 2016, para. 39 a)	States should provide safe abortion and high-quality abortion care regardless of whether abortion is legal.
WGDAW	A/HRC/32/44, 2016, para. 107 c) and d)	States should allow women to terminate pregnancy on request during the first trimester or later in specific cases. States must provide women and girls with medical treatment for unsafe abortions.

Body	Reference document	Selected Wording
IACtHR.	Advisory Opinion OC-29/22 of May 30, 2022. Serie A No. 29, for 152.	The State has a reinforced obligation to ensure access, without discrimination, to good quality sexual and reproductive health for women deprived of liberty **(…)** "(iii) comprehensive and timely care for cases in which they have been victims of violence and rape, including access to prophylactic therapies, emergency contraception and psychosocial care (…)".
	Case I.V. v. Bolivia Judgment of November 30, 2016, para. 157. Case of Manuela et al. v. El Salvador. Judgment of November 2, 2021, para. 192	The right to sexual and reproductive health is part of the right to health. It is related to reproductive autonomy and freedom, in terms of the right to make autonomous decisions about their life plan, their body, and their sexual and reproductive health, free from all violence, coercion, and discrimination.

Over the past fifteen years, a body of jurisprudence from the committees, experts, and courts has reinforced the notion that when this right is not guaranteed and this results in significant distress for women, it can be considered a form of cruel, inhuman, or degrading treatment (see Table 3). Together these bodies establish, including prior information, the existence of qualified professionals and quality resources, emergency contraception and post-exposure prevention, adequate care, post-abortion care and the management of complications that may arise, in a prompt, diligent, non-discriminatory manner, free of coercion, reprisals or criminalisation, with respect for the autonomous decisions made by women.

Denial of abortion services as torture

But in some cases, the aforementioned treaty bodies and experts and international courts have explicitly linked abortion to the right to integrity and the eradication of torture and have determined that under certain circumstances the denial of the right to termination of pregnancy could constitute torture. Table 4 provides a summary of the principal cases in which the denial of abortion is deemed to constitute a breach of articles related to torture.

The number of cases is growing and includes almost all the competent bodies in the matter. The analysis of the body of law shows a wide range of reasons why the denial of the right to abortion could constitute a form of ill-treatment or torture.

- A form of **discriminatory torture** based on gender stereotypes, especially when it entails criminal prosecution that adds additional psychological suffering to the victim.
- **Punitive and discriminatory torture** linked to restrictive laws prohibiting abortion even in cases of incest, rape, foetal harm or risk to the life or health of the woman, reinforced when there are special conditions of vulnerability, such as age, disabilities, health status, being in detention, severe illness of the foetus or foetal death.
- Situations of **punitive or investigative torture** in cases where information or confessions are sought for criminal purposes from women seeking emergency medical care following illegal abortions.
- **Punitive torture** associated with anti-abortion laws that carry prison or jail sentences that stigmatise and criminalise women, disrupting their life plans.
- Institutional mistreatment of women causing **severe physical or psychological suffering** including access to abortion, violation of medical secrecy and confidentiality.
- **Severe suffering and ongoing re-traumatisation** of women associated with being forced to continue a pregnancy resulting from incest or rape, which is a daily reminder of the extreme violence suffered.
- **Physical and psychological suffering** associated with forcing the woman to resort to illegal abortions that carry a substantial risk to her life and health.

Taking together, we see the four elements of the definition of torture reflected in the above situations:

1. There is an **action** of the State either affirmative (i.e. criminalizing abortion) or as an omission (i.e. restricting access to abortion services)
2. **Severity of suffering**. The question arises as to what level of intensity is required for pain or suffering to be considered "severe"? This is a topic of debate in relation to any case of alleged ill-treatment or torture. Concerning abortion, there is some caselaw regarding extreme examples where suffering seems beyond discussion (i.e. pregnancy after incest or rape in a minor). However, in many other cases, there is a more

blurred threshold. Furthermore, there is not a clear answer from epidemiological and clinical studies on the physical and mental pain and suffering that may be endured by women who are prevented from legally terminating their pregnancies. The studies demonstrate that the legal coercion of a woman to carry an unwanted pregnancy to term can have markedly disparate effects on women's mental health. In some cases, the impact is less severe or transient. In other cases, however, it can result in significant distress, particularly in countries where there is a high level of stigma and discrimination. In some instances, this has even lead to suicide. The right to abortion should be contingent upon the respect of fundamental human rights, rather than contingent upon the potential for mental suffering. From the pespective of physical suffering, there is a clear link between legal restrictions on abortion and the safety of the procedure itself. Unsafe abortions are a very relevant factor when considering the severity of suffering, both in terms of mortality and morbidity (Sifris, 2014). When considering that the severity of mental or physical suffering could amount to ill-treatment and torture, we are assuming that *in most women* there is suffering, as we do not need to probe for all individuals that prolonged solitary confinement or continuous sleep deprivation are harmful and amount to CIDT. Sometimes the CAT or the HRC have considered that due to specific vulnerabilities and circumstances, the suffering of the woman could be considered *prima facie* due to the especially harmful circumstances under assessment.

3. **Intentionality**. The point of consideration here is whether the state seeks to intentionally inflict suffering on women when acting against the right to abortion. Most committees include here the *foreseeability* of pain and suffering within the concept of intention. When pain and suffering are a *likely and logical consequence of conduct*, the intentionality criteria would be met. The CAT and the HRC are especially prone to this line of interpretation.
4. **Purpose**. Since CEDAW's creation and positioning, gender *discrimination* has been the most frequently cited purpose related to the denial of abortion. The prohibition and criminalisation would be deeply rooted in a cross-cutting patriarchal culture in the international human rights realm (Meda & Hadi, 2017; Sifris, 2014). From this point of view, restrictions on abortion would be a consequence of a male-centric organisation of social institutions imposing the policing of women's bodies. These perspectives provide the rationale for legislation that restricts access to abortion, thereby further entrenching the subordination of women. Moreover, from an intersectional standpoint, this phenomenon must be considered alongside race-based and class-based discrimination, as women from disadvantaged socioeconomic backgrounds and those who identify as racial minorities are more likely to resort to unsafe abortion services. (Prandini & Erdman, 2022; Webster, 2016). As some authors have argued, the meaning of abortion legislation would most likely be very different if the capacity to bear children were vested in men, given the overwhelming majority of male legislators. (Sifris, 2014). As only women become pregnant, legislation restrictions on abortion are in itself discriminatory. Moreover, the legislation that punishes abortions never includes male responsibility: only women must bear the consequences of unwanted pregnancies. There are also other elements of discrimination considered by the different committees. For instance, women forced to bear a child are also forced in myriad ways, including to have less paid jobs, have less oportunities to study and, in general, less oportunities to pursue their life goals.

   Furthermore, in the joint document by the CEDAW, SRT, SR on Health; SRT – Disabilities and SR-VAW, the authors go further to say that more generally, it can be considered that this discrimination satisfies both the purpose and intent elements. This same line has been followed by the CAT (table 3) which states that "[b]oth men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles[1]". (CAT/C/GC/2, para. 22).

   The consideration of discrimination as the key element in the analysis of the denial of abortion as torture ties in with dignity and moral harm as the core element of the concept of torture. (Webster, 2016).

Weight of each of the elements of the definition in the Committee's decisions.

The various UN committees focus on different motivations as part of the teleological element (punitive, based on discrimination, in the case of CEDAW, the HRC and CAT, as well as some cases of interrogational or indagatory torture in the case of the CAT). However, it is the severity of the physical and psychological suffering caused by the restrictions that are, in most cases, the determining factor in understanding the right to integrity to have been violated, without specific vulnerability factors being required. In fact, they only appear in cases where the absolute prohibition forces women to decide cases of foetal malformations incompatible with life or in cases of rape.

1 CAT: General Comment No. 2: Implementation of article 2 by States Parties, CAT/C/GC/2, 24 January 2008, para. 22.

Table 4. *Denial of rights to abortion as CIDT or Torture. Relevant caselaw.*

Body	Reference document	Key points
SRT	A/HRC/31/57, 2016, paras. 43-44	Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or foetal impairment or to safeguard the life or health of the woman violate women's right to be free from torture and ill-treatment. The practice of extracting, for prosecution purposes, confessions from women seeking emergency medical care as a result of illegal abortion in particular amounts to torture or ill-treatment
	A/HRC/22/53, 2013, paras. 46	Policies that inhibit reproductive rights, including the lack of sexual and reproductive health services for women, may rise to the level of CIDT.
	A/HRC/7/3, 2008, para. 36	There are forms of "torture" that can occur in conjunction with rape, among which it cites the denial of the right to abortion.
CEDAW	General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 2017, para. 18	Violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.
CEDAW, SRT, SR on Health; SRT – Disabilities; SR-VAW	Denial of abortion services and the prohibition of torture and cruel, inhuman and degrading treatment	The denial of the right to abortion is regarded as a form of **discriminatory treatment** that may amount to torture or cruel, inhuman or degrading treatment**.** The prevailing stereotypes regarding the role of women as mothers receive greater consideration than their health. The suffering caused by the involuntary continuation of an unwanted pregnancy, the risks associated with clandestine abortions, and the stigma and even criminal prosecution associated with it in some societies can result in significant physical and psychological distress for victims in situations of particular vulnerability.
CAT	CAT/C/CR/32/5, 2004, para. 7 m)	The CAT has found **punitive or indagatory CIDT** in cases of denial or conditioning of access to post-abortion medical treatment after clandestine abortions.
	General Comment No. 2, 2008, CAT/C/GC/2, para. 22	The Committee recognized that discriminatory treatment satisfies the specific intent requirement for torture or CIDT when women are deprived of medical treatment, "particularly involving reproductive decisions."
	CAT/C/SLE/CO/1, 2014, para. 17 CAT/C/BOL/CO/2, 2013, para. 23 CAT/C/PRY/CO/4-6, 2011, para. 22 CAT/C/NER/CO/1, 2019, para. 27 CAT/C/PER/CO/6, 2023, paras. 15-16	In several resolutions related to cases from Sierra Leone, Bolivia, Paraguay and Niger, the Committee against Torture has determined that the lack of access to abortion in **cases of rape or incest** may constitute a violation of the Convention against Torture, given the potential for **continued re-traumatization** associated with rape. The Committee is concerned that these restrictions push women into undergoing illegal abortions that not only endanger their lives and health but also expose them to criminal penalties. The CAT evaluates the denial of access to emergency oral contraceptives to **rape victims** as a potential violation of the right to be free from torture.
	CAT/C/NIC/CO/1, 2009, para. 16 CAT/C/PER/CO/4, 2006, para. 23 CAT/C/CHL/CO/5, 2018	In Country reports on Nicaragua, Peru and Chile, the CAT states that **punitive abortion** laws should be reassessed since they may lead to violations of a woman's right to be free from inhuman and cruel treatment. The CAT also reminds the Peruvian government of the responsibility that medical personnel employed by the State.
	CAT/C/PER/CO/5-6, 2013, paras. 15 CAT/C/POL/CO/5-6, 2013, para. 23 CAT/C/SLE/CO/1, 2014, para. 17	In Country reports on Peru, Poland and Sierra Leone the CAT states that the promotion of reproductive rights is part of the State's affirmative obligation to prevent acts of torture and CIDT.
	CAT/C/POL/CO/7, 2019, para. 33	In a Country report on Polonia, the Committee highlights the legal and bureaucratic impediments that result in significant physical and mental suffering in instances where abortion is permitted, and which give rise to state accountability under the Convention against Torture.

Body	Reference document	Key points
HRC	General Comment Nº 28, 2000, para. 11	It is argued that forced abortion, forced sterilization, female genital mutilation, domestic violence against women, and the lack of access to safe abortion for women who have become pregnant as a result of rape can lead to violations of the right to freedom from torture or other ill-treatment.
	General Comment No. 36, 2019, para. 8	Restrictions on the ability of women or girls to have access to abortion must not, inter alia, endanger their lives or subject them to physical or mental pain or suffering in a manner that violates the right not to be subjected to torture of the International Covenant on Civil and Political Rights. States should provide safe, legal, and effective access to abortion when carrying a pregnancy to term would cause substantial pain or suffering, especially when the pregnancy is the result of rape.
	CCPR/CO/82/MAR, 2004, para. 29 CCPR/CO/79/LKA, 2003, para 12 K.L. v. Peru, CCPR/C/85/D/1153/2003, 2003, para. 6.4	In resolutions related to Morocco, Sri Lanka and Peru, the Committee states that the criminalisation of abortion may violate Article 7
	CCPR/C/IRL/CO/4, 2014, para. 9	The Committee states that the serious suffering caused by the denial of access to abortion to pregnant women due to rape or in cases of an unviable foetus due to an anomaly or serious health risks contravenes Article 7 of the ICCPR.
	L.M.R. v. Argentina, CCPR/C/101/D/1608/2007, 2007, para. 9.2	It considers the age and disability of the victim as vulnerability factors that increase the suffering of a rape victim who is denied access to abortion.
	K.L. v. Peru, CCPR/C/85/D/1153/2003, 2003, para. 6.3 and 6.5	It considers the mother's minority as a factor of vulnerability and the suffering generated by the denial of access to abortion due to serious illness of the foetus and states a violation of the right to be free from torture and other CIDT under Article 7 of the ICCPR. Furthermore, it is stated that the right safeguarded by Article 7 of the Covenant extends beyond physical pain to encompass moral suffering. This protection is of particular significance in the context of minors.
	Mellet v. Ireland, CCPR/C/116/D/2324/2013, 2016, paras. 7.4-7.6 ; 7.10,7-11 Whelan v. Ireland CCPR/C/119/D/2425/2014, 2017, paras. 7.4-7.7; 7-9, 7-11	Denial of abortion, health care and bereavement support, in cases where the foetus is diagnosed with a life-threatening condition, caused suffering of sufficient intensity to amount to torture. The Committee also considered the issue of discrimination in healthcare concerning women who choose to continue with pregnancies.
ECtHR	P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R. paras. 76-77, 2012	The ECtHR condemned Poland for a violation of Art. 3 ECHR, related to ill-treatment and torture, by applying a series of dilatory measures on a minor pregnant after a rape to prevent her from exercising her right to an abortion. Also considered that "*the general stigma attached to abortion and sexual violence ..., caus*[ed] *much distress and suffering, both physically and mentally*".
	R.R. v. Poland, App. No. 27617/04, 2011, paras. 159-161	The ECtHR condemned Poland for a violation of Art. 3 ECHR by applying a series of dilatory measures in access to prenatal genetic testing when an ultrasound scan revealed a possible foetal abnormality.
IACHR	Case B v El Salvador. Provisional Measures. Resolution of the Inter-American Court of Human Rights of May 29, 2013, paras. 14 and 17	The failure to adopt the provisional measures requested (abortion) by a pregnant woman with a foetus with lesions incompatible with life is considered a violation of Articles 4 and 5 of the American Convention (right to life and moral integrity). The State is condemned on grounds of obstetric violence.
	Case of Valencia Campos et al. v. Bolivia. Judgment of October 18, 2022, para. 242.	The IACHR considers the denial of medical care to a detainee who has suffered an abortion to be a violation of Article 5 (right to integrity, but also to health, due to her special physical vulnerability).

However, in the case of the regional courts (mainly the ECtHR or the IACHR), attention is paid not only to the seriousness of the suffering but especially to the victim's conditions of vulnerability. Consequently, in regional Courts, determining whether the threshold for ill-treatment has been reached would necessitate, in most cases, a context-specific approach that considers individual characteristics and circumstances. By contrast, the tendency of the Joint Document and HRC is that the consideration of discrimination as amounting to torture would be met regardless of specific contextual factors, especially when there is the additional social or economic burden of belonging to a marginalised or disadvantaged group.

Conditions that are afforded particular consideration concerning severe suffering. Relevance to forensic assessment using the Istanbul Protocol.

The Istanbul Protocol does not mention in any of its sections the violation of the right to abortion nor does it illustrate or provide specific indications for its forensic assessment. The review of jurisprudence shows that there are seven groups of elements that contribute to the particular suffering of victims and that should consequently be considered in an Istanbul Protocol in a case linked to the right to abortion (Table 5).

In seeking accountability for violations that predominantly result in severe mental suffering, petitioners may encounter substantial obstacles in demonstrating the extent of their distress to the court. In contrast to physical injuries, mental harm may be overlooked by healthcare professionals, perceived as more subjective, and may be less visible. A lack of understanding of, or sensitization to, mental health and trauma may result in courts undervaluing such injuries.

There is no document, to our knowledge, that addresses redress for these types of ill-treatment. Alongside medical and psychological rehabilitation, it is essential to take into account reparation linked to family and community impact and harm linked to stigma and marginalisation. Courts should consider measures that address the whole of society and the communities to which they belong as well as measures to compensate for the moral and dignity damage suffered.

Furthermore, the State's responsibility is often engaged not only by the application of restrictive and discriminatory laws or policies, but also by actions by medical professionals who fail to meet ethical standards, by the failure to appropriately regulate private healthcare settings, or the failure to sanction violence by private individuals, such as a spouse or intimate partner, elements that require proper documentation. All these aspects can be considered in the framework of reparation measures.

Table 5*. Elements to explore in forensic assessment of the denial of the right to abortion as ill-treatment or torture using the Istanbul Protocol.*

1. Factors arising from previous conditions of vulnerability of the victim, i.e. prior to the pregnancy
2. Factors arising from the specifics of the pregnancy itself or from the physical condition of the woman or the foetus that place additional physical or psychological stress on the woman or foetus
3. Burden of lack of information to make a meaningful decision
4. Factors arising from conditions of vulnerability generated by public institutions after the abortion or the denial of abortion including economic burden and having to resort to non-trusted care providers
5. Conditions of State health care and possible negligent, discriminatory, abusive or humiliating treatment, including placing women in a position of powerlessness.
6. Factors arising from social or gender stereotypes and stigma linked to cultural, ideological or religious factors and especially those involving a component of psychological harm, in particular criminalisation, humiliation, shame or guilt.
7. Suffering linked to arrest and criminal investigations, including extracting confessions, deportation or loss of child custody.

Reflections on the future

The impact of self-managed abortion.

Historically, abortion was criminalized to protect women from unsafe procedures performed by unqualified individuals. However, the advent of medical abortion using drugs has enabled safer and less stigmatized options, particularly in early pregnancy stages[2]. Integrating these methods into primary healthcare can reduce discrimination and eliminate the risks associated with clandestine abortions (CHRHL, 2016). International networks promoting "autonomous abortion" now provide mutual support, emphasizing autonomy, solidarity, and compassion (Moloney, 2009). These networks challenge punitive abortion laws,

2 The usual combination is the use of Mifepristone, a progesterone receptor antagonist and Misoprostol a synthetic prostaglandin E1 analogue. Together have a high efficacy rate (95–98%) for terminating pregnancies up to 10 weeks. When used under proper guidance, the combination is considered safe and effective, with minimal risk of complications (World Health Organization, 2014). Available at https://iris.who.int/bitstream/handle/10665/97415/9789241548717_eng.pdf

advocating for health systems to adopt these safer methods rather than penalize past unsafe practices[3].

Revolutionary changes need time.

Sexual and reproductive rights are considered second-generation rights, linked to the International Covenant on Social, Economic, and Cultural Rights (1966). Since that time, there has been a growing body of legal foundations that support, strengthen, and further develop these rights reviewed here. Nevertheless, there is a significant disparity in the pace of implementation between countries and regional areas due to the religious and cultural diversity that presents a challenging context. The process is expected to continue evolving until a more unified approach is achieved. This indicates that international health organizations such as the WHO and the UN treaty bodies that advocate for non-compliance with these rights to be considered cruel, inhuman, or degrading treatment have a vision that, to some extent, may still be considered to be somewhat detached from the sociological and political reality of some of the signatory countries, particularly in certain regions of Latin America, Africa, and Asia, and now the US.

This can sometimes give rise to impassioned discussions. Ireland held a referendum in 2018, resulting in the legalization of abortion, influenced in part by the Human Rights Committee's decisions. After being urged to implement legal and policy changes, on December 30, 2020, Argentina's Senate passed a law legalizing abortion during the first 14 weeks of pregnancy. The law was passed following years of advocacy by feminist and human rights groups, including the "Green Wave" (Marea Verde) movement, which became a symbol of reproductive rights in Latin America. The combined action of women's activism, political initiatives and the concurring views of international bodies succeeded in pushing an agenda that, while not completely decriminalising abortion, opens the door to full recognition of women's rights.

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3 Efforts to criminalize these networks have been criticized by the Special Rapporteur on the Situation of Human Rights Defenders. (Prandini & Erdman, 2022)

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