Abortion and Human Rights: Examples from Latin America

Janet Walsh, Marianne Møllmann and Angela Heimburger*

Access to safe and legal abortion is a central human rights issue. Human Rights Watch's experience, in particular in Latin America, has reaffirmed that women's ability to decide if, when, how often, and with whom to have children is fundamental to their ability to make independent decisions about work, education and family life. In short, limitations to decision-making in the reproductive area hamper decision-making in nearly every other area of women's lives; and limitations to women's access to safe and legal abortion is, our preliminary research has shown, part and parcel of other limitations to reproductive health and information. Yet the link between abortion and human rights has not always been made explicit. In many countries in Latin America, traditional human rights groups have shied away from the protection of women's human rights beyond the occasional case related to rape as torture. And many Latin American feminist groups have not used human rights law as a tool in their advocacy.

Research conducted by Human Rights Watch has confirmed what numerous other studies have shown: restrictive abortion laws do nothing to eliminate the need for abortion, but merely contribute to the use of unsafe services to the serious detriment of women's health and lives.[1] Our reports[2] look at this issue in a much broader context of women's rights violations, including denial of access to contraceptives and reproductive healthcare generally, and impunity for violence against women. It is precisely the close links between these issues that our research and advocacy on abortion has sought to illustrate. Women do not need abortions in a vacuum. Often, women face crisis pregnancies because family planning is unavailable to them or has failed, and women's decisions about abortion are taken in the context of their family or community. This simple truth is not generally reflected in public policies regarding violence, health and abortion.

This article begins by reflecting in more depth on the links between abortion and human rights. It goes on to illustrate the scope for human rights advocacy in relation to the struggle for abortion rights in a number of Latin American countries. In doing so, it draws out regional commonalities and contextual differences, exploring entry points for activism and change.

1 International law standards and response of international human rights authorities regarding non-criminalised abortion

Most human rights treaties and conventions do not refer directly to abortion. However, a number of enunciated human rights are directly relevant to the issue of abortion: women's rights to life; physical integrity; health; non-discrimination; privacy; information; freedom of religion and conscience; equal protection under the law; and the right to make independent decisions about the number and spacing of children. Taken together, this body of law, including directly relevant interpretations of this law by authoritative UN expert bodies, compels the conclusion that women should have autonomy in decisions regarding abortion, and equitable access to safe and legal procedures. Moreover, it is in the deprivation of such autonomy and access that the relevance of legal abortion to women's dignity – and human rights – becomes clear.

Underpinning all of Human Rights Watch's work on access to safe and legal abortion is a careful analysis of well-established human rights and interpretation of those rights through UN treaty bodies, legislative history and court cases. Those authoritative interpretations of international human rights law suggest that all women should have the right to decide independently in matters related to sexuality and reproduction, including the issue of abortion.

International human rights law is consistent with a woman's right to choose if and when to have children and if and when to terminate her pregnancy, and supports the provision of timely and accessible healthcare services within evidence-based guidelines and safe and sanitary conditions. The criminalisation of abortion, on the other hand, is a clear violation, *inter alia*, of a woman's right to privacy, security of person and non-discrimination.

International standards on the link between access to abortion and women's exercise of their human rights have undergone significant development over the past 15 years. This development has manifested itself in over 130 concluding comments from UN treaty monitoring bodies, in which international human rights experts have expressed their opinion on abortion restrictions in over 90 countries (Walsh and Møllmann, forthcoming; Center for Reproductive Rights, forthcoming). This jurisprudence furthers an understanding that firmly established human rights are jeopardised by restrictive or punitive abortion laws and practices.

There have also been significant developments in regional human rights systems relevant to women's right to decide on matters relating to abortion. For example, the African regional human rights system now has a binding protocol that stipulates a state's obligation to take all appropriate measures to 'protect the reproductive rights of women by authorising 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 foetus'.[3]

1.1 Right to life

The right to life, a fundamental right in many human rights treaties,[4] is in jeopardy when women and girls are denied access to safe, legal abortions. In Latin America and the Caribbean, over 4 million abortions are performed each year, and the regional maternal mortality rate is 190 out of 100,000 live births (WHO 2004). Of those deaths, 5,000 women are estimated to die from unsafe abortions every year (Palma *et al.* 2006). In Peru, where maternal death rates are among the highest in the region, unsafe abortions cause approximately 16 per cent of all maternal deaths (Távara *et al.* 1999). Criminalising abortion does not reduce its incidence. In fact, abortion rates are often highest where the laws are most restricted (Boonstra *et al.* 2006) and women are obliged to seek clandestine abortions from unlicensed, unregulated practitioners, often under conditions that are medically unsafe and therefore life-threatening (Berer 2004).

UN treaty bodies have often expressed concern that restrictive abortion laws may violate the right to life. For example, the UN Human Rights Committee (HRC) has noted, with concern, the relationship between restrictive abortion laws, clandestine abortions and threats to women's lives.[5] In 2000, in its general comment on equality of rights between men and women, the HRC called upon states to inform the committee of 'any measures taken by the state to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions'.[6]

1.2 Right to health

International law also guarantees women the right to the highest attainable standard of physical and mental health.[7] Unsafe abortions are a grave threat to women's health: 10–50 per cent of women who undergo unsafe abortions require post-abortion medical attention for complications such as incomplete abortion, infection, uterine perforation, pelvic inflammatory disease, haemorrhage, or other injury to internal organs. These may result in death, permanent injury, or infertility. Denial of access to safe, legal abortion can also result in mental health harm, including depression.

UN treaty bodies have commented on the impact of unsafe abortions and restrictive abortion laws on health. For example, citing concerns about possible violations of the right to health, the UN Committee on Economic, Social and Cultural Rights has recommended that states legalise abortion in some circumstances, such as when the pregnancy is the result of rape or incest, and when the life of the pregnant women is endangered.[8]

The right to health requires four interrelated features: availability of services in sufficient quantity; accessibility of services and information, within physical and economic reach of everyone without discrimination; acceptability of services with respect to culture, gender, and life-cycle; and evidence-based technology and services of good quality.[9] Professor Rebecca J. Cook points out that in addition to constituting poor public health policy, 'laws and policies that unreasonably restrict safe abortion

services would not comply with this performance standard … [It] may be a human rights violation to jeopardise health care' (Cook 2006).

International law also has specific standards for the right to health as applied to adolescents. In its 2003 General Comment on adolescent health and development, the Committee on the Rights of the Child noted the physical and mental health risks related to early pregnancy, and urged governments to provide adequate services, including abortion services where they are not against the law. It also urged states to take measures to reduce maternal morbidity and mortality in adolescent girls, including those caused by unsafe abortion practices.[10] The UN Human Rights Commission has recognised the need for special access and services to protect the vulnerable rights and wellbeing of adolescents, especially with respect to reproductive health, and has called upon states to guarantee safe, timely and affordable access to abortion for adolescents with unwanted pregnancies when the law allows (Kebriaei 2006).

1.3 The right to non-discrimination

The right to non-discrimination is also a fundamental right in every major human rights treaty. Denying women access to therapeutic abortions to terminate dangerous pregnancies amounts to a discriminatory denial of women's healthcare. Women are consequently exposed to health risks not experienced by men. In its General Recommendation on women and health, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) suggests that the denial of medical procedures only women need is a form of discrimination against women. It explains that 'barriers to women's access to appropriate health care include laws that criminalise medical procedures only needed by women and that punish women who undergo these procedures'.[11]

In several concluding observations on country reports from the Latin American region, the HRC has established a clear link between women's equality and the availability of reproductive health services, including abortion.[12] In the case of Argentina, HRC noted: 'The Committee is concerned that the criminalisation of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law, *inter alia* when there are clear health risks for the mother or when pregnancy results from rape of mentally disabled women. The Committee also expresses concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women.'[13]

1.4 The right to privacy

International human rights law protects the right to non-interference with one's privacy and family,[14] as well as the right of women to decide on the number and spacing of their children.[15] These rights can only be fully implemented where women have the right to make decisions about when or if to carry a pregnancy to term without interference from the state. The lack of privacy and confidentiality common to many public healthcare facilities makes it difficult for some women – unmarried women and adolescents in particular – to access contraceptive information and services in clinics, leaving them more vulnerable to unwanted pregnancy and sexually transmitted infections.

1.5 The right to information

The right to information, certainly as it relates to the right to health, includes both the negative obligation for a state to refrain from interference with the provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection and promotion of reproductive health and rights, including information about abortion (Coliver 1995). Human rights law further recognises the right to non-discrimination in access to information and health services, as in all other services.[16] Women stand to suffer disproportionately when information concerning safe and legal abortion is withheld.

1.6 Freedom from cruel, inhuman, or degrading treatment

The right to be free from cruel, inhuman, or degrading treatment is protected by international customary law as well as by several international and regional human rights treaties.[17] The UN Human Rights Committee has indicated that restrictions on access to safe and legal abortion may give rise to situations that constitute cruel, inhuman, or degrading treatment. These situations include forcing a pregnant woman to carry an unwanted or health-threatening pregnancy to term.

Human Rights Watch has concluded, 'Evidence suggests that restrictions on abortion often lead to

restrictions on post-abortion care. These restrictions can also be incompatible with the right to be free from cruel, inhuman or degrading treatment. This could, for example, be the case where post-abortion care is systematically denied, or where available pain medication is withheld. It could also be the case when women only have access to necessary post-abortion care if they testify in criminal proceedings' (Human Rights Watch 2005b).

1.7 Purported conflict of rights

Although the right to life clearly protects the interests of pregnant women, opponents of abortion rights also argue that the 'right to life' of a fetus should predominate. There is debate as to when 'legal personhood' commences and when the right to life should apply, with many arguing that it should only apply as a legal concept after birth.

The American Convention on Human Rights (ACHR) is the only international human rights instrument to contemplate that the right to life can apply from the moment of conception, although not in absolute terms.[18] The American Declaration on the Rights and Duties of Man, the predecessor instrument to the ACHR, does not mention conception, guaranteeing instead that 'every human being has the right to life, liberty, and the security of his person'.[19] In 1981, the body that monitors the implementation of the human rights provisions in the American regional system – the Inter-American Commission on Human Rights – was asked to establish whether or not the right-to-life provisions in these documents are compatible with a woman's right to access safe and legal abortions. The commission concluded that they are.

The question reached the commission through a petition brought against the US government by individuals related to a group called Catholics for Christian Political Action when a medical doctor was acquitted of manslaughter after performing an abortion in 1973 (the 'Baby Boy Case').[20] The petitioners asked the commission to declare the USA in violation of the right to life under the American Declaration on the Rights and Duties of Man, using the ACHR as an interpretative tool.[21] In the deliberation on the 'Baby Boy Case', the Commission went to great pains to examine the provisions on the right to life in both the declaration and the convention, looking to the preparatory work for both documents to clarify the intended object and purpose of the wording of the provisions.[22]

In the case of the declaration, the commission explained:

> [I]t is important to note that the conferees in Bogotá in 1948 rejected language which would have extended that right to the unborn … [and] … adopted a simple statement on the right to life, without reference to the unborn, and linked it to the liberty and security of the person. Thus it would appear incorrect to read the Declaration as incorporating the notion that the right to life exists from the moment of conception. The conferees faced this question and chose not to adopt language which would clearly have stated that principle.[23]

With regard to the convention – which, as noted above, protects the right to life, in general, from the moment of conception – the commission found that the wording of the right to life in Article 4 was very deliberate and that the convention's founders specifically intended the 'in general' clause to allow for non-restrictive domestic abortion legislation. As the commission phrased it: 'it was recognised in the drafting session in San José that this phrase left open the possibility that states parties to a future Convention could include in their domestic legislation "the most diverse cases of abortion",[24] allowing for legal abortion under this article'. The commission went on to correct the petitioners in their selective reading of the ACHR:

> [I]t is clear that the petitioners' interpretation of the definition given by the American Convention on the right of life is incorrect. The addition of the phrase 'in general, from the moment of conception' does not mean that the drafters of the Convention intended to modify the concept of the right to life that prevailed in Bogotá, when they approved the American Declaration. The legal implications of the clause 'in general, from the moment of conception' are substantially different from the shorter clause 'from the moment of conception' as appears repeatedly in the petitioners' briefs.[25]

The commission also cited several countries, including the USA and Brazil, for having clarified during the negotiations that, notwithstanding any language contained in Article 4(1) of the convention, they retained the right to 'preserv[e their] discretion with respect to the content of legislation in the light of

their own social development, experience and similar factors'.[26]

2 Access to abortion in Latin America

Latin America is a region characterised by diverse geography and populations, large gaps between rich and poor due to unequal distribution of resources and access to services, a successful region-wide demographic shift from larger to smaller families – thanks in part to access to family planning methods, a pragmatic approach in daily life to predominant Roman Catholicism, a strong human rights movement following many of the darkest periods of violations in the second half of the twentieth century, and a long history of struggle for women's rights, especially sexual and reproductive rights, led by Latin American feminists. Latin America is also the region with the highest rates of unsafe abortion and some of the strictest policy restrictions on abortion in the world (WHO 2007). Like the region, women's experiences and the abortion laws in its different countries are exceedingly diverse.

A common trait among countries is that abortion restrictions seriously affect women's health. According to information from six Latin American countries, between five and ten of every 1,000 women in the population are hospitalised annually for treatment of complications from an induced abortion (Rayas *et al.* 2005). Unsafe abortion practised in unsanitary conditions can expose women to numerous risks, including health complications like excessive bleeding, infections, uterine perforation, septic shock, infertility and even death. Women who undergo clandestine abortions are also exposed to high fees for the services, lack of redress for ill-performed procedures requiring post-abortion care, stigma and discrimination from having sought illegal and therefore unregulated healthcare services, and possible fines or prison sentences.

Another commonality is that women's decisions about abortion may be the first choice they can make about their own fertility and reproduction because of a lack of access to sexual education, contraception and other options. These decisions can often be imperfect, wretched, and unsafe because of the generalised criminalisation of abortion. In many countries, marital rape is common and either legal or not criminally prosecuted. Sexual violence outside the home is also relatively common and shrouded in impunity. Access to sex education and contraception is limited. In such a context, women are generally prevented from making any real decisions about their sexual autonomy and reproduction, until they face a crisis pregnancy. This was the case in Argentina, the first focus country for Human Rights Watch's research on abortion. Government figures showed that 40 per cent of pregnancies ended in abortions – a clear testament to the inability of women to control their fertility before pregnancy, and also to the ineffectiveness of the criminalisation of abortion (Human Rights Watch 2005a).

Our reports on access to safe abortion in the Americas have documented how barriers to legal abortion affect rich and poor women differently. Women with some financial resources are in a better negotiating position and can pay for safe abortions in private clinics with better conditions. Poor and marginalised women and girls must resort to the kind of remedies they can afford, including herbal remedies, unregulated or medically supervised use of pharmaceuticals, or even objects like knitting needles, sticks, or wires. Our reports gather information from women themselves, healthcare providers, human rights activists, government officials and a host of other actors to thoroughly examine the reported human rights violations and offer recommendations for remedies and means of protection.

In the following sections, we explore different dimensions of access to safe and legal abortion as a human rights issue in the Latin American context. We begin with Peru, which arguably represents the most common situation in Latin America: where women have nominal access to some non-criminalised forms of abortion, but in practice have little or no real access in the public healthcare sector. We go on to consider regional examples of both ends of the spectrum in abortion law reform, from the complete prohibition of abortion in all cases, even to save the woman's life, in Nicaragua, to the complete liberalisation of abortion laws during the first trimester of pregnancy in Mexico City.

2.1 Peru: nominal access

In Peru, abortion is penalised in all cases except to save a pregnant woman's life or preserve her health from grave and lasting damage. In practice, non-punishable abortion (or therapeutic abortion as it is known) is rarely practised or classified as such. Those women and girls who should qualify to receive a

legal abortion have great difficulty accessing services. Peru's highly restrictive abortion law and its poor record on making legal abortions accessible has resulted in repeated, forceful critiques by national and international human rights bodies and experts. Some of the strongest critiques have come from the HRC, the body which monitors compliance with the International Covenant on Civil and Political Rights, the CEDAW Committee, and the UN special rapporteur on the right to health.

In October 2005, the HRC tribunal decided in favour of K.L., an adolescent who was forced to carry a non-viable pregnancy full-term, against her wishes and against doctors' recommendations. K.L. filed charges against the state as an individual complainant under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The Committee found the government of Peru in breach of its international obligations and in violation of its domestic laws for denying access to therapeutic abortion for a pregnant adolescent. Furthermore, the same hospital that originally recommended therapeutic abortion upon diagnosis denied her access to treatment, much to the detriment of her mental health. The Committee ordered the state to 'furnish the author [K.L.] with an effective remedy, including compensation' and to 'take steps to ensure that similar violations do not occur in the future'.[27]

This decision is the HRC's first on the theme of abortion for an individual complaint and the first ruling for any international or human rights tribunal to hold a state accountable for failing to provide access to legal abortion services (Kebriaei 2006). The Committee found violations of the following Covenant rights: respect for and guarantee of rights (Article 2); freedom from torture and cruel, inhuman or degrading treatment (Article 7); privacy (Article 17); and special measures of protection for minors (Article 24).[28]

In evaluating Peru's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the CEDAW Committee noted that 'illegal abortion remains one of the leading causes of the high maternal mortality rate and that the State party's restrictive interpretation of therapeutic abortion … may further lead women to seek unsafe and illegal abortions'. The Committee urged 'the State party to review its restrictive interpretation of therapeutic abortion, which is legal … and to consider reviewing the law relating to abortion for unwanted pregnancies with a view to removing punitive provisions imposed on women who undergo abortion'.[29]

Over the past several years, the UN special rapporteur on the right to health has made multiple visits and appeals to the government of Peru on the issue of access to therapeutic abortion. In an urgent appeal in July 2006, the special rapporteur admonished the Peruvian State for failing to comply with the HRC ruling in *K.L. v. Peru* and expressed concern for the 'continuing uncertainty surrounding the precise circumstances in which women are legally entitled to access therapeutic abortion … exposing some to potentially serious physical and mental health risks, if their pregnancy was carried to term'.[30] The rapporteur also signalled that such legal and procedural uncertainty was 'contributing to a rise in unsafe and clandestine abortions, and consequently an increased likelihood of maternal mortality', in a country still plagued with relatively high rates. In a subsequent report in February 2007, the special rapporteur regretted that to date, he had received no reply from the Peruvian government.[31]

Women's rights groups, medical associations and human rights organisations in various regions within Peru have increasingly worked together to draw attention to the lack of regulation in the public health sector that keeps women in the dark about their right to access health services and puts their health and lives at risk. These civil society actors have held meetings with government officials and lobbied international agencies and experts to pressure the Peruvian government to abide by the recommendations of the HRC. However, Peru's conservative administration and allied legislators are opposed to moving forward on this issue. The government still has not created national protocols; high-level officials contest the complete decision of the HRC on *K.L. v. Peru*, and women still do not have adequate access to legal abortions (Human Rights Watch 2008a). In consultation with these groups, Human Rights Watch decided to research violations of access to therapeutic abortion in Lima, the nation's capital. We will add our analysis and voice to the urgent demand for the respect, protection and fulfilment of women's reproductive rights in Peru with the publication of an upcoming report (2008b).

2.2 Nicaragua: complete prohibition

The most drastic case of recent rollbacks in reproductive rights in the region – and arguably in the world – belongs to Nicaragua. In response to requests by women's rights groups on the ground, Human Rights Watch conducted an investigation on the effects of the recently introduced total abortion ban in Nicaragua and released a report entitled *Over Their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua* in October 2007 in Managua, the capital of Nicaragua.

The investigation followed a series of events starting with the National Assembly vote in November 2006 to eliminate from the 134-year-old penal code, all exceptions to the criminalisation of therapeutic abortion. In so doing, Nicaragua became one of only a handful of countries in the world to maintain a blanket ban on abortion, even in cases of rape, incest, or life- or health-threatening pregnancies.[32] Such blanket abortion bans are incompatible with international human rights obligations, including obligations on the rights to life, health and non-discrimination. Their imposition can, and most often does, have serious effects on the lives and health of women and girls.

Nicaragua's complete prohibition of abortion was reaffirmed in September 2007, and includes a ban on previously legal therapeutic abortions.[33] But there is a pending petition with the Nicaraguan Supreme Court to rule on the constitutionality of the ban. Currently the penal code allows for prison sentences for doctors who carry out abortions under any circumstances – even to save a pregnant woman's life – and on women who seek abortions, again, regardless of the reason. Although it appears that actual prosecutions are rare, the ban has very real consequences that fall into three main categories: (1) denial of access to life- or health-saving abortion services; (2) denial or delay in access to other obstetric emergency care; and (3) a pronounced fear of seeking treatment for obstetric emergencies. The net result has been avoidable deaths.[34]

The ban has also had a strong 'chilling effect' on healthcare providers. Public health providers told Human Rights Watch that due to the ban, they delayed or refrained from treating women with pregnancy complications, including life-threatening ectopic or extrauterine pregnancies. They feared being criminally charged with inducing an abortion, even in cases that clearly would not be covered by the ban. But the potentially most wide-ranging effect of the ban on therapeutic abortion – albeit the hardest to measure – is the surge in patients' fear of seeking treatment for pregnancy-related complications, in particular haemorrhaging, because women and girls are afraid they will be accused of having induced an abortion.

While the Nicaraguan government has developed medical guidelines to mitigate some of the effects of the ban, it does not monitor the implementation of the guidelines and does not appear to properly investigate and sanction all medical personnel who cause unnecessary delay of or deny women access to legal care. Nicaragua's government has not made an effort to counter public misperceptions regarding abortion, the blanket ban and available legal care options. This lack of due diligence may have resulted in additional fatalities not directly related to the ban on therapeutic abortion.

In the interests of protecting women's human rights, including the rights to life, physical integrity, health and non-discrimination, Human Rights Watch calls on Nicaragua's government to repeal penal code provisions that criminalise abortion, and instead guarantee in law that women have access to voluntary and safe abortions. Regardless of the legality of abortion, Nicaragua must immediately guarantee women and girls access to emergency obstetric care. As part of our ongoing vigilance and response to the situation, Human Rights Watch has published opinion articles in Nicaraguan newspapers to maintain pressure on the government to uphold women's basic human rights and to examine and correct the dire reproductive health situation for women and girls that has resulted from the ban. Human Rights Watch supports the petition of various non-governmental organisations (NGOs) for the Nicaraguan Supreme Court to rule immediately on the constitutionality of the ban and will maintain contact with international observers who are conducting the universal periodic review for Nicaragua at the Human Rights Council this year.

2.3 Mexico: access to abortion in the first trimester in Mexico City

Mexico has a federal system of government and no national abortion law. Some Mexican states have fairly liberal abortion laws, compared with the rest of the region, at least on paper. But putting the laws

into action has been problematic and the focus of international attention. In 2006, Human Rights Watch issued a report on the lack of access for pregnant rape victims to legal abortion, calling on governments to ensure immediate access to safe and legal abortion after rape and to discipline public officials – whether in the health, legal or judicial sectors – who are abusive or neglectful in the provision of relevant services for women and girls (Human Rights Watch 2006).

Since that time, lawmakers in Mexico City have broadened the scope of legislation in the federal district to legalise abortion in the first trimester for all pregnant women. This makes Mexico City the only jurisdiction in Latin America, other than Cuba, where women can decide to terminate a pregnancy in the first 12 weeks for any reason. Mexico City's recent decision (April 2007) is groundbreaking, and sets the stage for the similar legislation to protect women's reproductive rights in the country and the region. Unfortunately, the National Commission on Human Rights challenged the constitutionality of Mexico City's law, arguing that the Mexican Constitution protects the right to life of the unborn and thus precludes abortion. Many proponents of human rights argue that this law is, in fact, protecting women's right to life, and that the Constitution's language does not preclude abortion.

In 2008, the Mexican Supreme Court is anticipated to decide on the Mexico City abortion law. This weighty decision will determine if women and girls in the capital will continue to have access to abortion in bona fide medical facilities with qualified professionals under sanitary conditions, or be forced to revert to unsafe and often hazardous practices with unlicensed practitioners in clandestine clinics, pharmacies or marketplaces. For some, this decision may mean the difference between life and death.

In Mexico City, thousands of women and girls have made use of the legal abortion services now available in the public healthcare system: 13,000 women have asked for information, and more than 6,500 women have received abortions as of 5 March 2008 (Cabrera 2008). Of those women, 86 per cent are from Mexico City and 14 per cent come from elsewhere within the country, with at least one woman registered from Guatemala. Contrary to popular belief, only 5 per cent of those women were under 18. Every one of them made a decision to interrupt her pregnancy based on a number of reasons, including physical health, mental health, financial security, rape, fetal complications, and the interruption of other life projects, such as education.

Whatever their reasons, under Mexico City's law, each woman is entitled to make the decision for herself based on her own individual set of criteria and considerations. This ability to exercise individual decisions represents a monumental advance in the exercise of women's rights to life, the rights to health and healthcare, the right to non-discrimination, and the right to decide the number and spacing of children. All of these rights are also enshrined in the Mexican Constitution of 1917. But 91 years later, Mexican women are still struggling to protect those rights.

The public hearings in Mexico's Supreme Court have fallen around the first year anniversary of women's and girl's access to safe and affordable pregnancy termination in Mexico's largest city. The Mexican Supreme Court has been recognised recently for adopting some very important human rights decisions, and is currently the centre of regional attention on reproductive rights. This decision will have important repercussions not only for women in Mexico City, but for Mexico itself and for Latin America as a whole (Heimburger and Taraciuk 2008).

3 Conclusion

Human Rights Watch maintains that decisions about abortion belong to pregnant women without interference by the state or others. The denial of a pregnant woman's right to make an independent decision regarding abortion violates or poses a threat to a wide range of human rights. Any restriction on abortion that unreasonably interferes with a woman's exercise of her full range of human rights is unacceptable.

Not informing women and healthcare providers of their rights to access and provide safe abortion services can be a violation of the rights to seek, receive and impart information to the highest attainable standard of health. Hindering or not allowing women and girls to seek care for emergency obstetric services and therapeutic abortions that can save their health *and* lives is a violation of the right to health and the right to life. Only if governments provide legal protections that do not criminalise access to healthcare services,

including abortion, and that provide evidence-based information on a range of sexual and reproductive rights, can women make free and informed decisions about the best ways to protect their health and wellbeing and decide if and when to have children and found a family.

In reports and through advocacy throughout the region and globally, Human Rights Watch has urged governments to take all necessary steps, both immediate and incremental, to ensure that women have informed and free access to safe and legal abortion services as an element of women's exercise of their reproductive and other human rights. Together with allies in many countries, we continually underscore how access to legal abortion is not only a vital public health service that can protect women's health, save women's lives, and contribute to a reduction of maternal mortality and disability, but also a necessary step in fully guaranteeing fundamental human rights of women, including the rights to health, life, non-discrimination, physical integrity and freedom from cruel, inhuman, or degrading treatment.

Notes

* Janet Walsh, Marianne Møllmann and Angela Heimburger work at Human Rights Watch's Women's Rights Division as Deputy Director, Advocacy Director and Researcher on Latin America, respectively.

1 For more information, see Ferrando (2002), Francome and Velkmans (2007), Boonstra *et al.* (2006), Warriner and Shaw (2006), Faundes and Barzelatto (2006).

2 Human Rights Watch (2005a, 2006, 2007 and 2008).

3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 13 September 2000, CAB/LEG/66.6, entered into force 25 November 2005, Article 14.

4 International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Suppl. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976; and Convention on the Rights of the Child (CRC), adopted 20 November 1989, G.A. Res. 44/25, annex, 44 UN GAOR Suppl. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force 2 September 1990.

5 See, e.g. the HRC's concluding observations on Honduras, UN Doc. CC PR/C/HND/CO/1 (2006), para. 8; Madagascar, UN Doc. CCPR/C/MDG/CO/3 (2007), para. 14; Chile, UN Doc. CCPR/C/CHL/CO/5 (2007), para. 8; Zambia, UN Doc. CCPR/C/ZMB/CO/3 (2007), para 18; Kenya, UN Doc. CCPR/CO/83/KEN (2005), para. 14; Mauritius, UN Doc. CCPR/CO/83/MUS (2005), para. 9; Bolivia, UN Doc. CCPR/C/79/Add.74 (1997), para. 22; Cameroon, UN Doc. CCPR/C/79/Add.116 (1999), para. 13; Chile, UN Doc. CCPR/C/79/Add.104 (1999), para. 15; Colombia, UN Doc. CCPR/CO/80/COL (2004), para. 13; Costa Rica, UN Doc. CCPR/C/79/Add.107 (1999), para. 11; Ecuador, UN Doc. CCPR/C/79/Add.92 (1998), para. 11; Guatemala, UN Doc. CCPR/CO/72/GTM (2001), para. 19; Mali, UN Doc. CCPR/CO/77/MLI (2003), para. 14; Morocco, UN Doc. CCPR/CO/82/MAR (2004), para. 29; Peru, UN Doc. CCPR/CO/70/PER (2000), para. 20; Poland, UN Doc. CCPR/C/79/Add.110 (1999), para. 11; Poland, UN Doc. CCPR/CO/82/POL (2004), para. 8; Senegal, UN Doc. CCPR/C/79/Add.82 (1997), para. 12; Sri Lanka, UN Doc. CCPR/CO/79/LKA (2003), para. 12; and Venezuela, UN Doc. CCPR/CO/71/VEN, (2001), para. 19.

6 Human Rights Committee, General Comment 28, Equality of rights between men and women (Article 3), UN Doc. CCPR/C/21/Rev/1/Add/10 (2000), para. 10.

7 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Suppl. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force 3 January 1976, Article 12.

8 CESCR, concluding observations on Nepal, UN Doc. E/C.12/1/Add.66 (2001), para. 55; Malta, UN Doc. E/C.12/1/Add.101 (2004), para. 41; Monaco, UN Doc. E/C.12/MCO/CO/1 (2006), para. 23; Mexico UN Doc. E/C.12/CO/MEX/4 (2006), paras. 25 and 44; Chile, UN Doc. E/C.12/1/Add.105 (2004), para. 25; and Kuwait, UN Doc. E/C.12/1/Add.98 (2004), para. 43.

9 UN Committee on Economic, Social and Cultural Rights, 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights', General

Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 12.

10 UN Committee on Rights of the Child, General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child, CRC/GC/2003/4 (2003), para. 31.

11 UN Committee on the Elimination of Discrimination Against Women, General Recommendation 24, Women and Health (twentieth session, 1999), UN Doc. A/54/38 at 5 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 271 (2003), para. 14.

12 See UN Human Rights Committee, Concluding Observations on Argentina, UN Doc. CCPR/CO.70/ARG (2000), para. 14; Colombia, UN Doc. CCPR/C/79/Add.76 (1997), para. 24; Ecuador, UN Doc. CPR/C/79/Add.92 (1998), para. 11; Paraguay, UN Doc. CCPR/C/PRY/CO/2 (2006), para. 10; and Guatemala, UN Doc. CCPR/CO/72/GTM (2001), para. 19.

13 UN Human Rights Committee, Concluding Observations on Argentina, UN Doc. CCPR/CO.70/ARG (2000), para. 14.

14 ICPPR, art. 17.

15 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979, G.A. res. 34/180, 34 UN GAOR Suppl. (No. 46) at 193, UN Doc. A/34/46, entered into force 3 September 1981, Article 16(1)(e). This Article reads: 'States Parties shall … ensure, on a basis of equality of men and women … (e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights'.

16 ICCPR, Article 19(2); Committee on Economic, Social and Cultural Rights, General Comment 14, paras. 12(b) and 18.

17 ICCPR, Article 7; American Convention on Human Rights ('Pact of San José, Costa Rica'), adopted 22 November 1969, O.A.S. Treaty Series No. 36, 1144 UNTS 123, entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), Article 5.

18 American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), Article 4.

19 American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992), Article I.

20 Inter-American Court of Human Rights, White and Potter ('Baby Boy Case'), Judgement of 6 March 1981, Inter-Am.Ct.H.R. (Ser. L) No. 5/II.54 (1981).

21 The American Convention on Human Rights was not directly applicable, since the USA had not ratified this convention. However, as a member of the Organization of American States, the USA is bound by the American Declaration on the Rights and Duties of Man.

22 The 1969 Vienna Convention on the Law of Treaties, which guides public international treaty law, establishes as a general rule of interpretation of international treaties that 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose', and notes that the preparatory works of a treaty can be used as a supplementary means of interpretation. Vienna Convention on the Law of Treaties, Articles 31 and 32.

23 Inter-American Commission of Human Rights, Baby Boy Case, para. 14(a).

24 Inter-American Commission of Human Rights, Baby Boy Case, para. 14(c).

25 Inter-American Commission on Human Rights, Baby Boy Case, para. 30.

26 Inter-American Commission of Human Rights, Baby Boy Case, para. 14(c).

27 UN Human Rights Committee, *Karen Noelia Llantoy Huamán* v. *Peru* (*K.L.* v. *Peru*), Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003(2005), paras. 8–9.

28 UN Human Rights Committee, *K.L.* v. *Peru*, para. 6.6.

29 United Nations Committee on the Elimination of Discrimination Against Women, Concluding Comments: Peru, UN Doc. CEDAW/C/PER/CO/6 (2007), paras. 24 and 25.

30 UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of

physical and mental health, Paul Hunt, A/HRC/4/28/Add.1, 23 February 2007, paras 36 and 37.

31 UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, A/HRC/4/28/Add.1, 23 February 2007, paras 36 and 37.

32 The other countries are Chile, El Salvador and Malta. See Center for Reproductive Rights, *The World's Abortion Laws*, www.reproductiverights.org/pub_fac_abortion_ laws.html (accessed 19 September 2007).

33 Therapeutic abortion was not defined in Nicaraguan law, but was set out in an official norm, issued by the Health Ministry: 'The termination of pregnancy before 20 weeks gestation … due to maternal pathologies that are made worse by the pregnancy or for maternal pathologies that have a negative effect on the development and growth of the foetus'. Health Ministry of Nicaragua, Medical Treatment Department/Department of Comprehensive Treatment for Women, 'Norm for treatment of abortion' (Norma de atención al aborto), August 1989.

34 Human Rights Watch conducted research in Nicaragua in August 2007 to document the ill and sometimes fatal effects of the blanket ban. In October 2007, we released a report on the human rights consequences of the ban, *Over Their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua*. The report is based on interviews with officials, doctors from the public and private health systems, women in need of health services, and family members of women who died as a result of the ban. For more information, see http://hrw.org/reports/2007/nicaragua1007.

References

Berer, Marge (2004) 'Global Perspectives: National Laws and Unsafe Abortion: The Parameters of Change', *Reproductive Health Matters* 12.24: 1–8

Boonstra, Heather D.; Benson Gold, Rachel; Richards, Cory L. and Finer, Lawrence B. (2006) *Abortion in Women's Lives*, New York: Guttmacher Institute: 10

Cabrera, Rafael (2008) 'Experts Signal that Reforms are Constitutional and Address Public Health Problem', [Señalan Expertos que las Reformas son Constitucionales y Atienden un Problema de Salud Pública], *Reforma,* 4 April

Center for Reproductive Rights (forthcoming) *Bringing Rights to Bear: Abortion and Human Rights*, New York: Center for Reproductive Rights: 1–28 of draft manuscript

Coliver, S. (ed.) (1995) *The Right to Know: Human Rights and Access to Reproductive Health Information*, Philadelphia: University of Pennsylvania Press: 39, 61–72

Cook, Rebecca J. (2006) 'Abortion, Human Rights and the International Conference on Population and Development (ICPD)', in Ina K. Warriner and Iqbal H. Shah (eds), *Preventing Unsafe Abortion and its Consequences: Practices for Research and Action*, New York: Guttmacher Institute: 15

Faundes, Aribal and Barzelatto, Jose S. (2006) *The Human Drama of Abortion: A Global Search for Consensus*, Nashville: Vanderbilt University Press

Ferrando, Delicia (2002) *Clandestine Abortion in Peru: Facts and Figures 2002*, April, Lima: Centro de la Mujer Peruana Flora Tristan and Pathfinder International

Francome, Coline and Velkmans, Marcel (2007) *Abortion: A Worldwide Perspective*, London: Middlesex University Press

Heimburger, Angela and Taraciuk, Tamara (2008) 'A Vital Choice' [Una Decisión de Vida], *Proceso,* 19 May, www.proceso.com.mx/impreso_anls.html?Nta=144736 (accessed 31 July 2008)

Human Rights Watch (2008a) *My Rights, and My Right to Know: Lack of Access to Therapeutic Abortion in Peru*, July, http://hrw.org/reports/2008/peru0708 (accessed 31 July 2008)

Human Rights Watch (forthcoming 2008b) *The Right to Whose Life? Access to Therapeutic Abortion in Lima, Peru*, Lima, Peru: Human Rights Watch

Human Rights Watch (2007) *Over Their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua* 19.2(B), October, http://hrw.org/reports/2007/nicaragua1007 (accessed 31 July 2008)

Human Rights Watch (2006) *The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico* 18.1(B), March, http://hrw.org/reports/2006/mexico0306 (accessed 31 July 2008)

Human Rights Watch (2005a) *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina* 17.1(B), June, http://hrw.org/reports/

2005/argentina0605 (accessed 31 July 2008)
Human Rights Watch (2005b) *Q&A: Human Rights Law and Access to Abortion*, www.hrw.org/backgrounder/americas/argentina0605/#crule (accessed 6 June 2008)
Kebriaei, Pardiss (2006) 'UN Human Rights Committee Decision in *Karen Llantoy* v. *Peru*', *Interights Bulletin* 15.3: 151–2
Palma, Yolanda; Lince, Elsa and Raya, Ricardo (2006) 'Unsafe Abortion in Latin America and the Caribbean: Priorities for Research and Action', in Ina K. Warriner and Iqbal H. Shah (eds), *Preventing Unsafe Abortion and its Consequences: Priorities or Research and Action*, New York: Guttmacher Institute: 188
Rayas, Lucia; Catotti, Diane and Cortes, Ana (2005) *Achieving ICPD Commitments for Abortion Care in Latin America: The Unfinished Agenda*, Chapel Hill, NC: Ipas: 6
Távara, Luis; Sacsa, L.D.; Frisancho, O.; Urquizo, R.; Carrusco, N. and Tavera, M. (1999) 'Current State of Maternal Mortality in Peru' [Estado Actual de la Mortalidad Maternal en Perú], *Gynecology and Obstetrics (Peru)* 45.1: 38–42
Walsh, Janet and Møllmann, Marianne (forthcoming) 'Human Rights and Access to Abortion', *Revista Iberoamericana de Derechos Humanos* 3
Warriner, Ina K. and Shaw, Iqbal H. (eds) (2006) *Preventing Unsafe Abortion and its Consequences: Priorities for Research and Action*, New York: Guttmacher Institute
WHO (2007) *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2003*, 5th edn, Geneva: World Health Organization, www.who.int/reproductive-health/publications/unsafeabortion_2003/ua_estimates03.pdf (accessed 30 March 2008)
WHO (2004) *Maternal Mortality in 2000: Estimates Developed by WHO, UNICEF, UNFPA*, Geneva: World Health Organization, www.who.int/reproductive-health/publications/maternal_mortality_2000/mme.pdf (accessed 13 March 2008)