



General Assembly

Distr.: General
21 September 2020

English only

Human Rights Council

Forty-fifth session

14 September–2 October 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by International Women's Health Coalition, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2020]

* Issued as received, in the language(s) of submission only.

GE.20-12167(E)



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Protecting Access to Quality Health Care

For 35 years, the International Women’s Health Coalition (IWHC) has fought to protect and advance the health and human rights of women and girls worldwide. As a feminist organization, IWHC is committed to working toward a just and sustainable world where all people, regardless of gender, enjoy their human rights and health, and have power over their lives.

When religious freedom is invoked to discriminate

We are increasingly concerned that these goals are coming under threat from actors who use religious freedom to enable and excuse discriminatory conduct. Given our partnership with women’s organizations worldwide, we have repeatedly observed how freedom of religion or conscience is used to justify discrimination against women, girls, lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) people, and members of other marginalized groups, particularly when they seek health care.

In many countries, including the United States of America, policies that prioritize freedom of religion at the expense of other rights explicitly allow health providers to refuse care to patients based on the provider’s personal religious views. This support for refusal of care sometimes extends to entire hospitals, and to non-medical staff in those facilities. These policies have devastating consequences for the health of women and girls, as they serve to block access to sexual and reproductive health services, including abortion and modern contraception. These policies may allow providers to refuse health care to LGBTQI people, or create barriers for trans people seeking gender-affirming care, such as hormonal therapy and surgery.

In practice, when a provider refuses a patient access to abortion—a procedure which, by its nature, cannot be delayed—the patient may turn to an unqualified, clandestine provider, or try to terminate their pregnancy using unsafe methods. They may also be forced to continue an unwanted pregnancy, often at great physical, emotional, social and economic cost.

Refusals of care place a difficult burden of securing care on the patient, who may face repeated refusals. Policies or laws that allow refusals absolve providers and health care institutions of any duty of care, and sometimes actively defend discriminatory conduct. This can violate the patient’s rights to life, personal security, non-discrimination, and the highest attainable standard of health.

Policies that allow for refusals generally target two groups: women and girls in need of reproductive health care, and LGBTQI people. In both cases, denying these individuals care undermines their personal security, dignity and autonomy. Furthermore, policies allowing refusal of care trigger multiple and intersecting forms of discrimination. In the case of abortion, refusals most severely affect those who already face challenges – poor women, young women and girls, women living in rural areas, indigenous women, undocumented and migrant women, women of color and women belonging to ethnic and religious minorities.

Refusals of care also condone and reinforce stigma, which already constitutes a significant barrier to health care. In 2011, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental for health reported that “the marginalization and vulnerability of women as a result of abortion-related stigma and discrimination perpetuate and intensify violations of the right to health.” This report reinforced the Committee on the Elimination of Discrimination against Women 1999 General Recommendation on article 12, which found that it is discriminatory for states to refuse to provide certain reproductive health care services that only women need.

Reflections from a global convening on refusals of care

In 2017, IWHC and Mujer y Salud en Uruguay (MYSU) co-organized a global convening¹ of 45 experts from 22 countries in Montevideo to examine the growing issue of refusals of care based on the religion or conscience of the provider. Experts reviewed case studies from various continents and the state of international law. In Uruguay, for example, studies by MYSU showed refusal of service due to conscience claims rising since the enactment of Uruguay's 2012 law that allowed abortion upon request. In rural areas of western and northern Uruguay, 60-80 per cent of Obstetrics and Gynecology institutions refused to provide abortion services, while in the more developed South, 30 per cent objected. Despite the legalization of abortion in Uruguay, access remained predicated on one's location and access to private and specialized providers.

The same has proven true in the United States of America (U.S.). U.S. policies allow recipients of federal funds to refuse to provide medical services based on the provider's religious beliefs. One in six hospital beds in the United States of America is in a hospital owned by or affiliated with a Catholic health system; these are governed by "Ethical and Religious Directives" issued by the US Conference of Catholic Bishops rather than by medical professionals. The Directives prohibit a range of reproductive health services, including contraception, sterilization, many infertility treatments, and abortion, even when a woman's health or life is jeopardized by a pregnancy.

This particularly concerns marginalized groups, who already face significant disparities in health care access. A 2018 report revealed that women of color are more likely to access Catholic hospitals, and thus disproportionately rely on religiously restricted reproductive health care. Since women of color in the United States of America experience significantly worse reproductive health outcomes than white women, policies that allow refusals compound the danger to their health and lives.

Testing limitations on religious freedoms

Article 18 of the International Covenant on Civil and Political Rights recognizes that freedom to manifest one's religion or beliefs may only be limited in rare cases, including protection of the fundamental rights and freedoms of others. We encourage human rights bodies to consider whether states can compel institutions to ensure a patient has access to care when individuals within those institutions refuse. Can a refusing physician be compelled to ensure a patient is referred to a physician who will provide care? Can a state, health institution, or system refuse to employ someone who refuses to fulfill the stated responsibilities and requirements of the position?

Treaty bodies have made clear that limitations of religious freedom along these lines are permissible. The Human Rights Committee has issued numerous comments encouraging governments to ensure that providers do not hinder women's access to abortion services because of the provider's religious views. In 2017, for example, the Committee, while reviewing Italy's compliance, expressed "concern about the reported difficulty in accessing abortion owing to the high number of physicians who refuse to perform abortion for reasons of conscience" and urged the state to take "measures necessary to guarantee unimpeded and timely access to legal abortion services in its territory, including by establishing an effective referral system for women seeking such services." The Committee on Economic, Social and Cultural Rights issued a 2016 general comment recommending that all countries establish norms to guarantee access to sexual and reproductive health care services. The Committee Against Torture has issued numerous opinions raising concerns about policies allowing providers to refuse reproductive health care, and urging states to ensure access to care. Human rights treaty bodies have also affirmed that blanket claims to "conscientious objection" to care must never be exercised by institutions.

Regional human rights mechanisms have taken similar positions. The Inter-American Court uses the standards established by the Colombian Constitutional Court's 2008 decision,

¹ <https://iwhc.org/resources/unconscionable-when-providers-deny-abortion-care/>.

which limited the use of conscience claims in abortion services after a healthcare facility refused a thirteen-year-old girl's abortion, resulting in her forced pregnancy from rape. In Africa, the Maputo Protocol explicitly recognizes abortion as a human right under certain circumstances. The African Commission on Human and Peoples' Rights issued a 2014 General Comment calling on states to "particularly ensure that health services and health care providers do not deny women access to contraception/family planning and safe abortion information and services because of, for example, requirements of third parties or for reasons of conscientious objection."

The Special Rapporteur on freedom of religion or belief reinforced these standards in his 2020 recommendations that call upon governments to "ensure that legal protections for individuals to manifest their religion or belief, such as in healthcare settings, do not have the effect of denying women, girls or sexual orientation or gender identity minorities the right to non-discrimination or other rights; in all cases, States should ensure the right to physical and mental integrity as well as their right to health, including reproductive health, for women, adolescents and LGBTQI people and effective access to reproductive health services and comprehensive sexuality education, in line with international standards."

The international human rights system has elaborated on these critical protections because they are fundamental to the ability of women, girls, and members of marginalized groups to enjoy their human rights. Policies that elevate religious freedom at the expense of other human rights will continue to cause suffering, hardship, injury, and even death when women are turned away by providers.

In light of these international principles, IWHC - as a US-based organization - has specific concerns about the US government's repeated attempts to elevate freedom of religion at the expense of other human rights. In particular, the Trump Administration has sought to subvert reproductive rights, the right to health, and the human rights of LGBTQ persons, most recently in the July 2020 State Department's draft report of the Commission on Unalienable Rights. IWHC remains gravely concerned about the ways the Trump Administration is using this paradigm to undermine the human rights of women, LGBTQ persons, and others.
