



THE RIGHT TO ABORTION

AN ENDLESS FIGHT TO GUARANTEE THE FREEDOM TO HAVE CONTROL OF ONE'S BODY

SUMMARY

Against the backdrop of recent international trends endangering women's rights, Amandine Clavaud, Director of the Fondation Jean-Jaurès Gender Equality Observatory, and Déborah Rouach, Project Officer in the Foundation's International department, took stock of abortion rights in France, in the European Union and worldwide, and made six recommendations to guarantee this right at European and national level.

As we marked International Safe Abortion Day on 28 September, attacks and threats intended to control women's bodies have never been more prevalent. This policy brief attempts to provide an overview of the legislation in force worldwide and the many ways in which the public health crisis impacts women's access to contraception and the right to abortion. Finally, it frames the upcoming French Presidency of the Council of the European Union as an opportunity to put women's rights on the European and international political agenda.



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1. Background

According to the World Health Organization (WHO), nearly one in two abortions between 2010 and 2014 were unsafe, and a third were conducted in dangerous or life-threatening conditions for women.¹ Worldwide, one woman dies every nine minutes from an unsafe abortion.² Against this backdrop, the conservatives – primarily political and religious leaders – continue to deploy strategies around

the world to restrict and violate women's sexual and reproductive health and rights (SRHR). This is illustrated by recent events in Texas, where voluntary termination of pregnancy (VTP) is banned at six weeks or more, even though most women are unaware that they are pregnant at that time, or in Europe, in Poland, where the ruling Law and Justice party has made the ban on abortion a key issue.

2. Abortion: a fundamental right amid divergent international legislation

Abortion is a fundamental and inalienable human right. It is protected by international and regional treaties, and national laws. These international laws include the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1989 International Convention on the Rights of the Child, the 1994 International Conference on Population and Development (ICPD) and the 1995 Beijing Declaration and Platform for Action, following the Fourth UN World Conference on Women. For example, paragraph 96 of the Beijing Declaration and Platform for Action states that 'the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence'.³ Nevertheless, women's freedom to control their own bodies is limited or denied worldwide. Attacks on women are so constant that they are translated into public policies that have a lasting impact on their health and freedom. According to the 'My body is my own' report of the United Nations Population Fund (UNFPA), which measured the index of bodily autonomy in women aged 15 to 49 from 57 countries in Asia, Africa and Latin America,⁴ nearly one woman in two does not have free use of her body. To better explain

this, we provide an overview of abortion rights around the world.

According to the World Health Organization, there are 121 million unwanted pregnancies every year. In 2015–19, 73 million abortions were conducted annually.⁵ However, 45 percent of voluntary terminations of pregnancy worldwide are conducted under conditions that endanger the woman concerned.⁶ According to a study conducted in 61 countries from 2010 to 2014, only one in four abortions is carried out safely in countries where abortion is either totally prohibited or permitted when the woman's survival is at stake.⁷

Globally 41 percent of women of reproductive age live in a country with restrictive abortion laws, that is nearly 700 million women.⁸ In 24 countries, the law prohibits abortion entirely under any circumstances; in 42 countries, it is permitted to save the woman's life; and in 72 countries, it is performed without restriction within a certain time limit.

In the United States, 97 restrictions have been imposed by legislation in 19 states, making 2021 the most devastating year for abortion rights in the country's history.⁹ The latest

attack on abortion rights in the US came on 1 September, when the State of Texas passed a law that financially rewards citizens for suing anyone who aids and abets an abortion six weeks or more into pregnancy, a point at which few women know they are pregnant. The Supreme Court, on which conservatives are in the majority since Donald Trump appointed Justice Amy Barrett following the death of Ruth Bader Ginsburg, refused to give a ruling; this may have the effect of overturning the 1973 *Roe v. Wade* decision, which recognises the right to abortion at federal level.¹⁰ The Democrat administration under Joe Biden has sued Texas, calling its decision unconstitutional. In the US, only 38 percent of women aged 13 to 44 live in a state supportive of abortion rights.¹¹

Recently, Latin America has seen victories on abortion rights in the teeth of entrenched and vigorous resistance to them from conservatives in government and in countries in which religion is important. In 2021, the Argentinian Senate, dominated by conservatives, agreed to the legalisation of abortion up to 14 weeks into pregnancy, as proposed in a bill backed by the centre-left President Alberto Fernandez and constantly campaigned for by members of civil society who adopted the green scarf as the emblem of their movement for abortion rights. This decision marked the end of a long battle in the parliament, which had rejected a bill supporting VTP in 2018. However, it allows medical staff to claim conscientious objection, something the Senate had required as a condition of passing the bill. Argentina joins Cuba and Uruguay, where abortion is available on demand. More recently, the Supreme Court of Mexico, a country that co-chairs the Generation Equality Forum, decided unanimously to decriminalise VTP. Although this decision in fact related only to the state of Coahuila, it does set a precedent for the whole of the country.

Conversely, in countries such as Honduras, Nicaragua and El Salvador, having an abortion is a crime punishable by several years in prison, even in cases of rape or incest, serious foetal abnormality or risk to the woman's life or health. Consequently, hundreds of women are incarcerated in the region for having abortions or miscarriages.¹² In Honduras, following recent constitutional reforms, abortion can be legalised only if three quarters of members of the country's parliament vote in favour of its decriminalisation. In this country, 30% of adolescents become pregnant, the second highest rate in South and Central America.¹³ In this regard, the legal framework creates a climate of violence against Latin American women and girls.

Africa is one of the continents with the most restrictive laws in terms of abortion rights. The disparities in legislation speak volumes.¹⁴ In Africa, VTP is permitted only in Tunisia, Guinea-Bissau and South Africa. Since 2020, the Moroccan Penal Code has allowed abortions in cases of rape, incest, foetal abnormality or mental disorders in women, subject to approval being sought and obtained from a court of law; it took four years of negotiations in the country's parliament for the law to be passed. Abortion is completely banned in Egypt, Mauritania, Senegal, Sierra Leone, Congo and Madagascar. According to the Guttmacher Institute, in 2019, 92 percent of women in sub-Saharan Africa of childbearing age lived in the 43 countries in which abortion is either prohibited or permitted only when the woman's life is at risk.¹⁵ We analyse the situation in five countries of the region in more detail in the report '[For the freedom to have control of one's body. Promoting and ensuring access to women's sexual and reproductive health and rights in sub-Saharan Africa](#)'.¹⁶ In 'the period 2015–2019, more than 6.5 million unwanted pregnancies were recorded in West Africa'.¹⁷ This report also indicates that '8 million

abortions were performed in sub-Saharan Africa [during this same period], three quarters of which were unsafe, possibly resulting in medical complications or even death. In Burkina Faso, 72% of abortions were performed by non-medical staff, as were 63% of abortions in Senegal.¹⁸

In Asia, abortion was decriminalised in Thailand in February this year, and may now be performed in the first 12 weeks of pregnancy. In South Korea, abortion is no longer prohibited as of 1 January 2021, although it is not entirely legal because no new laws have been adopted to replace the old legislation. Conversely, abortion is completely prohibited in the Philippines and Laos, and permitted if there is a danger to the woman's life or health in Bangladesh, Myanmar and Sri Lanka.

In Oceania, we should mention the example of New Zealand, which decriminalised abortion in March 2020 – something Prime Minister Jacinda Ardern had promised during her

election campaign. The situation is also mixed within the European Union (EU). Ireland was the last country to legalise VTP at 12 weeks in 2019, following a referendum and the mobilisation of civil society. However, its application remains difficult given the lack of medical centres and lack of practitioners, in addition to the conscientious objection raised by medical staff.¹⁹

The same is true in Italy, where about 70 percent of gynaecologists refuse to perform abortions because of their personal beliefs.²⁰ Poland's legislation on abortion is among the most restrictive within the EU. It was amended by the Constitutional Court on 27 January 2021. VTP is now permitted only in cases of rape, incest, or if the woman's life is in danger, which amounts to a ban. Indeed, 98 percent of abortions in Poland in 2019 were for foetal abnormality, a condition that is no longer legal. Finally, the only European country that totally prohibits abortion is Malta, where Catholicism is the state religion.

3. The impact of the public health crisis on sexual and reproductive rights and health

This state of affairs was made even more disturbing by the Covid-19 pandemic, from the end of 2019. Its disastrous consequences have been felt since the beginning of the public health crisis, and are long-term in nature.

At the start of the crisis, the UNFPA warned of the impact of lockdowns and the disruption they would cause to family planning services. In April 2020, the UNFPA published a study with Avenir Health, Johns Hopkins University in the US and the University of Victoria in Australia, indicating that six months of disruption could affect 47 million women in low- and middle-income countries, resulting in 7 million unwanted pregnancies.²¹ A year after the start of

the pandemic, it was revealed in another study that 12 million women experienced disruption in their care at family planning services, resulting in 1.4 million unwanted pregnancies during this period.²²

These figures can be explained by several factors, which should prompt states and the international community as a whole to take stock of them in order to better manage crises in the future. Lockdowns have led to a drastic and widespread reduction in travel and hence in the number of consultations in health centres. Meetings with specialists have fallen considerably, as patients have preferred to postpone their consultations for

fear of contracting Covid-19. But even more seriously, in some parts of the world, delays in obtaining appointments have increased and health centres have had to close due to a lack of medical staff, who has been assigned to support units dedicated to treating Covid-19.²³ For women, this situation has constituted a break in the continuity of care relating to sexual and reproductive rights and health.

The public health crisis has also caused supply chain problems for more remote areas due to travel restrictions, as well as shortages in the stocks of certain medicines that promote sexual and reproductive health. This has underscored the international community's dependence on China and India, the main manufacturing sources of contraceptives, abortifacients and maternal health products.²⁴

In order to meet women's sexual and reproductive health needs, some states have nevertheless put in place measures to maintain and provide access to contraception and abortion. In France, for example, since 15 March 2020, women have been able to 'have access to the contraceptive pill directly at the chemist's, without going to a doctor and with an old prescription'²⁵ and 'emergency contraception [was] available without prescription in chemists'.²⁶ The press release from the Ministry of Health and the Secretary of State responsible for equality between women and men also insists on VTPs being 'considered as emergency interventions',²⁷ 'the continuity of which must be ensured'.²⁸ Doctors and midwives have been authorised to prescribe medical abortion by teleconsultation, the use of which has been extended to the ninth week of pregnancy.²⁹ This practice was authorised until the end of September, following which teleconsultation will no longer be an option for women. However, a study conducted by Women on Web³⁰ shows that women are more likely to choose this method because of

its discretion, convenience and, above all, the privacy it affords them, with the public health crisis only having a slight influence on this choice. This raises questions as to how long new practices developed during the Covid-19 pandemic will last.

Another factor is that the closure of borders due to lockdowns has prevented French women, particularly in Europe, from travelling to bordering countries in the event of a late VTP. Every year, between 3,000 and 4,000 French women go abroad, to Spain and the Netherlands in particular, for abortions beyond the 12 weeks authorised in France.³¹ Feminist associations brought this situation to the attention of the authorities and called for a global response to combat sexist and sexual violence, and also for the statutory deadline for performing abortions to be extended by two weeks. This was taken up by the Socialist members of the Senate – notably Laurence Rossignol – who, in 2020, tabled an amendment, although this was rejected.³² In August 2020, a bill was tabled to strengthen the right to VTP by extending the deadline to 14 weeks and abolishing the double conscientious objection clause. However, it was rejected in the Senate, where the right wing has a majority, and then obstructed in the National Assembly by Les Républicains deputies.³³ Non-affiliated deputy Albane Gaillot, who proposed this bill, called for it to be discussed again in December 2021 during the parliamentary majority's initiative week.

For their part, conservative states have used the public health crisis to further restrict women's sexual and reproductive health and rights, considering the use of VTP as a 'non-essential' intervention, as it has been the case in the US, particularly in Ohio, Mississippi, Texas, Alabama, Iowa, Arkansas and Oklahoma.³⁴ These measures were subsequently overturned by the federal courts. In Brazil, where legislation

allows abortion only in cases of rape, maternal life risk or severe foetal abnormality, abortion has been made 'almost impossible' since the pandemic.³⁵ In Europe, not to be outdone, the conservative Law and Justice Party in Poland introduced into the Sejm a bill aimed at a total ban on VTP. The parliament had rejected this bill following the strong mobilisation³⁶ of civil society in the middle of the lockdown period, but it was adopted following the validation of the Constitutional Court. In Slovakia too, the government recommended that hospitals

should stop VTPs 'with the exception of those that may save lives'.³⁷ A bill tabled by conservative Catholic deputies was adopted on its first reading in the parliament in July 2020: it was intended to make access to VTP more difficult, with the compulsory reflection period increasing from 48 to 96 hours and a requirement of two medical certificates from two different doctors (instead of one) in order to be granted a therapeutic abortion in case of foetal health problems. The bill was finally rejected by the parliament in autumn 2020.³⁸

4. Women's right: a component of the rule of law

This international assault on women's rights is part of a much broader conservative movement with the attack on human rights as its cornerstone. It can be found in international forums where coalitions of states – including the United States, Russia, Saudi Arabia, Brazil and the Vatican – are formed to roll back the rights of women and LGBTQ+ people, among others. In the UN Commission on the Status of Women, these countries fight in every session to ensure that the words 'abortion' and 'gender' are not mentioned in the agreed conclusions. In 2019, in the United Nations Security Council, the US put its anti-abortion stance on show by vetoing a resolution for the prevention and treatment of sexual violence in war, on the grounds that 'providing a full range of health care, including sexual and reproductive health services, to survivors of sexual violence without discrimination'³⁹ would encourage abortion.

In this sense, Donald Trump's term in office from 2017 to 2021 strengthened the weight of these coalitions, with the United States, in October 2020, leading the way as a signatory, along with around 30 other states, of the Geneva Consensus Declaration on 'Promoting Women's Health and Strengthening the Family', asserting

its national sovereignty over abortion-related laws.⁴⁰ Donald Trump also reinstated the 'Global Gag Rule', with its devastating consequences for women's rights. This rule prohibits funding to foreign NGOs that implement programmes in the health and public development aid sectors dedicated to sexual and reproductive health and rights. Since his election, President Biden has reversed this decision, but NGO losses were estimated at USD 600 million in 2017.⁴¹

Sadly, this backlash can also be seen in Europe. After Bulgaria in 2018, Slovakia in 2019, and Hungary and Poland in 2020, Turkey announced this year its withdrawal from the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence.

Against this backdrop, faced with the limits of multilateralism, the international community is mobilising in other ways around players – states, civil society representatives, companies, philanthropic foundations – to advance women's rights. The Generation Equality Forum, co-chaired by France and Mexico within the United Nations for the 26th anniversary of the Beijing Declaration and Platform for Action, was

one of the last manifestations of this in July in Paris.

This international summit put in place coalitions for action with the aim of implementing financial commitments over five years. UN Women has announced that all coalitions have pledged USD 40 billion. France, a champion of the Coalition for Action on SRHR, has committed EUR 100 million over five years and EUR 50 million to the French Muskoka Fund until 2026.⁴² Although France's feminist civil society welcomed the funding announcement and the diplomatic advances in this area, a number of associations voiced their disappointment with France's commitment. According to the Feminist Generations Collective (Collectif Générations féministes), at least '200 million euros per year are needed to make a real difference in access to sexual and reproductive rights'.⁴³ International feminist civil society has also raised concerns about funding being redirected to combatting the pandemic, to the detriment of women's rights, since 2020, and the lack of consideration of the gender issue in the various recovery plans at global level, which it calls for.

As it prepares to take over the Presidency of the Council of the European Union in January 2022, France must seize the opportunity to put the defence of women's rights, specifically the fight against gender-based and sexual violence through the Istanbul Convention, and the defence of sexual and reproductive health and rights, on the political agenda.

The French High Council for Gender Equality (Haut Conseil à l'égalité entre les femmes et les hommes – HCEfh) called for this in its latest opinion 'Feminist diplomacy and the European Union: what priorities for the French Presidency of the European Union?',⁴⁴ with a view to making gender equality one of France's priorities during this presidency. The HCEfh also put forward the

following recommendation: to affirm women's rights as 'an essential component of the rule of law, an issue of democracy and a non-negotiable value of the EU'.⁴⁵ The opinion thus proposes to 'explicitly include these rights in the European definition of the rule of law and to integrate this criterion into the European funding conditionality mechanism'. The Europe Abortion, Women Decide Collective (Collectif Avortement Europe, les femmes décident) completes this approach by advocating that 'the statutory time limits for abortion should be harmonised with those of the most progressive countries in Europe and States should move towards total decriminalisation'.⁴⁶

Another interesting recommendation in the HCEfh's opinion is that of 'affirming feminist diplomacy within the EU'.⁴⁷ In fact, France has been promoting its feminist diplomacy on the international scene for a number of years, by making the defence of women's rights one of the pillars of its foreign policy. If, though, France is to show leadership within the EU and thus trigger a movement in other member states, it needs to be consistent at national level.

The public health crisis has highlighted how access to contraception and the right to abortion could be threatened. The measures taken, such as the use of medical abortion up to the ninth week, which will however end on 30 September, have been positive for women's health. As such, they should be made permanent. The announcement that contraception will be free for women up to the age of 25 from 1 January 2022 is welcome news. However, this perpetuates the idea that contraception is solely a woman's responsibility. This measure should go hand in hand with the provision of free condoms. It also comes after the debates on extending the time limit for VTP from 12 to 14 weeks, which more broadly raises the question of equal access to VTP in France, an issue on which the

government has shown a degree of reluctance. Family Planning has been warning for a number of years that social and regional inequalities hinder access to VTP: delays in obtaining appointments, closure of health centres and the long distances between women's homes and health centres, and so on.⁴⁸ Various parliamentary reports attest to this. Thus, all women urgently need equal access to VTP in France and the time limit for abortions should

be extended from 12 to 14 weeks. Finally, the double conscientious objection clause must be abolished so that VTP is not considered a special right but a medical act on the same level as any other. Pursuing these measures nationally would give more weight to France's voice within the EU and internationally in defending women's rights and sexual and reproductive health, for these rights are fundamental, and attacking them represents a step backwards for democracy.

5. Recommendations

At a national level:

- extend the period for abortion from 12 to 14 weeks;
- remove the double conscience clause;
- make the choice of abortion method effective for women;
- allow midwives to perform instrumental abortions.

At a European level:

- include abortion rights in the European Union Charter of Fundamental Rights;
- explicitly include sexual and reproductive health and rights as human rights in the definition of the rule of law at European level.

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ON THE SAME TOPIC

NEWS FOCUS 125

Poland at the edge of political and social transition

Bartosz Machalica

In 2020, Polish politics performed in the shadow of coronavirus. But there were many issues going on: the presidential election, constitutional rights, LGBT rights, the rule of law, anti-refugee laws and the matter of Jarosław Kaczyński's leadership in the right-wing coalition. All of these issues – with the notable exception of the result of the presidential elections – have undermined the position of the governing Law and Justice (PiS) party and have pushed the Polish political system to the verge of a profound transition. This process is illustrated by recent opinion polls which show that average support for PiS fell from 44 per cent in March to only 29 per cent in November. This support now stands at the lowest level since the party came to power in 2005. Furthermore, for the first time since the 2015 elections, approval for parties opposing the government is higher (43 per cent at the end October) than approval for those supporting it (33 per cent). Another significant trend in the polls is the increasing number of undecided voters. In 2020 the whole PiS system started to show cracks, giving opposition parties a hope that the invincible PiS might become winable.

Presidential elections in the shadow of Covid-19

The Covid-19 pandemic developed in Poland in a similar way to in other countries of Central and Eastern Europe. During spring 2020, the number of new infections was below public expectation, especially in comparison with the number of new infections in Southern Europe. While Polish society is not generally convinced of the efficiency of the state and public services, the achievements in fighting the pandemic allowed the government to present its struggle with Covid-19 as a success story. But everything changed in October when the sudden spread of the pandemic exceeded the limit of the efficiency of the state structures, and the government increasingly seemed to have lost control of the virus.

In early 2020, it seemed the main political event of the year in Poland would be the presidential election. The leader in the polls was the incumbent president, Andrzej Duda. The opposition centre-right Civic Platform (PO, PiP) nominated Małgorzata Kidawa-Błońska as its leader, the former speaker of the Polish parliament (the Sejm). After its success in the parties

CONTESTED COMMODITIES MY BODY MY CHOICE?

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Gender as symbolic glue

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