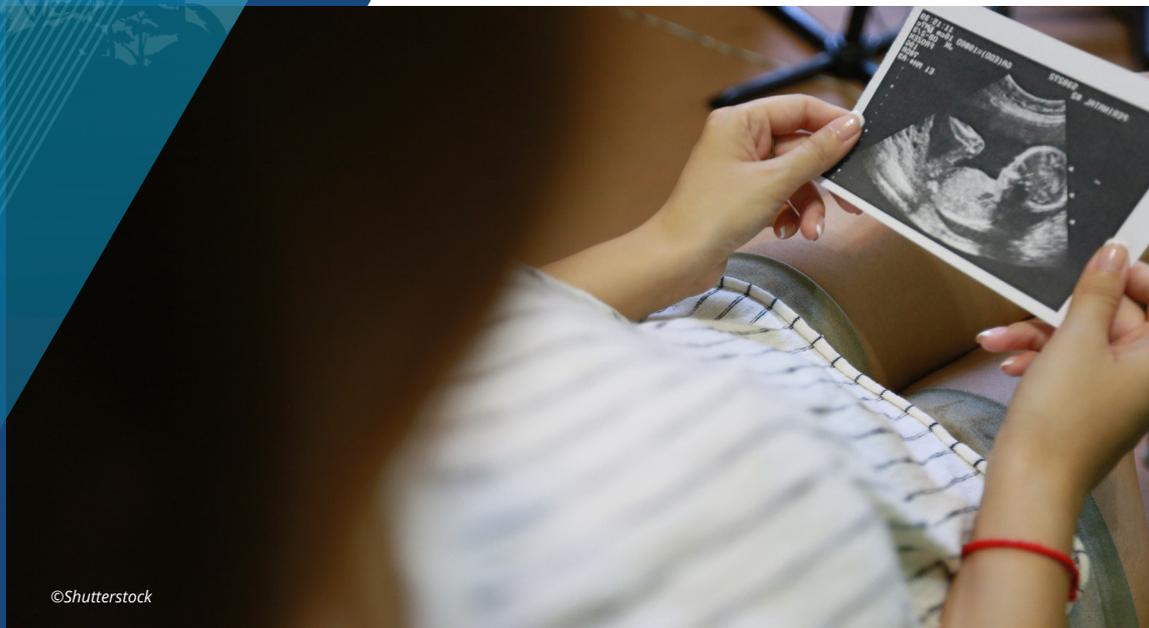


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Research Brief



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WOMEN'S RIGHTS AND ABORTION

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Disclaimer: This research brief is written by young law students who are member of KAS-For Legal Youth 2021 as part of their participation in the program. The views presented in this paper does not necessarily reflect those of the editors, the program or the Konrad-Adenauer-Stiftung Cambodia.

Introduction

The subject of human reproduction and abortion have coincided and become a point of contention for women in the twenty-first century. Law on abortion corroborated in numerous countries provided and enacted a complete abortion ban in a handful of countries. At the same time, in other States, there generally exists an exception for the procedure under the umbrella purpose of saving a woman's life or in cases of rape, incest, or fetal impairment.

Since then, Women's organizations worldwide have increasingly invoked international human rights legal instruments and authoritative interpretation to illustrate women's rights in all matters related to reproduction and the issue of abortion. In this article, we have found that criminalizing abortion does not help lower the number of abortions; in contrast, it makes abortion even more unsafe (Amnesty, n.d.). The section below will be addressing the positive impacts on women's health and well-being in the context of legalizing abortion.

This research aims to:

1. raise awareness on the importance of legalized abortion
2. how safe abortion can only be achievable alongside the legality of abortion
3. provide evidence of progress in Cambodia's law-making when it comes to recognizing women's rights and abortion

Women's abortion under International Human Rights Law

Under the International Human Rights Law framework, this article will explore in detail, particularly on Women's Rights, which is a topic that has been discussed immensely due to the history of women's rights violation and why it matters. Furthermore, this article will specifically center on women's rights to make choices with their own body. Women have been struggling with rights violations and gender inequality for centuries; they were not allowed to do a substantial number of activities such as voting, working, receiving education, and participating in politics.¹ These factors had deprived women of their civil, political, social rights and simply the freedom that should never have been restricted regardless of their race, sex, language, or religion.²

Due to the aforementioned reasons, international committees from different countries such as United Nations Women,³ Committee on the Elimination of Discrimination Against Women,⁴ Women's Rights Committee,⁵ and many more have come together with the same objective to stabilize, maintain and ensure protection for women globally in all aspects of their daily lives.

The reasons why women get an abortion are varied and personal; some are not financially

ready, while others are not capable of having more children. The failure of birth control, living in an abusive household, rape, and incest are also possible schemes of motives.⁶ Nonetheless, there have always been many controversies going on in today's world about whether women should be allowed to get an abortion.⁷

For example, in the United States of America, when it comes to abortion, there is an unsettled question on whether abortion should be legalized. This debate has devised two sides of supporters: the proponents of legalizing abortion who called themselves Pro-Choice and the oppositions who named themselves "Pro-life". Pro-choice raised that abortion is a right that the government or authorities should not restrict. This right is even broader than the right claimed for an embryo or fetus because women will confront unsafe and illegal abortion if there's no legal alternative. On the other hand, Pro-life affirmed that fertilization is a sign of human life starting; thus, abortion is the act of immorally killing an innocent human being.⁸

Concerning the "Pro-life" movement, which proposes the prohibition of abortion, there are factors such as religion, social, economic factors that induce such sentiment. Concerning the "Pro-life" movement, which proposes the prohibition of abortion, there are factors such as religion, social, economic factors that induce such sentiment. In terms of religions such as Buddhism, they maintain that human life begins at conception; therefore, it would be morally wrong to end the unborn child's life.⁹ At the same time, the Islamic religion believe that killing a child is a sin (inscribed in the Quran) to an extent where they also incorporate this belief into their Sharia Law, made binding on everyone.¹⁰

This factor reflects Article 6 of the International Covenant on Civil and Political Rights ("ICCPR") which provides that "Every human being has the inherent right to life" and "No one shall be arbitrarily deprived of his life"; and further explains that the term "human being" involves

all persons, including an unborn child, and that they shall enjoy the right to life as a human; therefore, no one can end their lives. In this case, it can be interpreted that a fetus's right will be violated if mothers undergo abortion.¹¹

Further, regarding social and economic factors, governments in specific regions, particularly Europe (mainly in more economically developed countries), have imposed policies to increase fertility rates to increase population growth; therefore, abortion is not encouraged.¹² These countries want to increase population because underpopulation would lead to a shortage of workers, wasted resources, and fewer people to pay taxes. Consequently, this leads to the closure of services which will inevitably affect both the social and economic well-being of the country.¹³

Nonetheless, there have been critical contests from international organizations namely the Centre of Reproductive Rights ("CRR")¹⁴ towards Article 6 of the ICCPR. A general comment from the CRR's President, Nancy Northup, stated that "The General Comment on the Right to Life provides the international community with a much-needed framework to hold governments accountable for the high rates of death and injury which occur when women are forced to seek out unsafe abortions."¹⁵ It has also been elaborated that when women resort to unsafe abortions because of illegal access, it is likewise considered a violation of the women's right to life because states are not ensuring that women get the proper medical services they should receive.¹⁶

In today's context, despite the majority of the world allowing and legalizing abortion, there are fifteen countries, namely: Iraq, Egypt, Madagascar, Philippines, Laos, Congo, Sierra Leone, Senegal, Mauritania, Suriname, Nicaragua, Honduras, El Salvador, Dominican Republic, and Haiti that are still strictly against this idea and have passed laws that altogether banned women from abortion.¹⁷ Therefore, this leaves women no choice but to have a child that

they do not want or are not ready for.¹⁸ Further, even if it is not a full restriction, most countries have certain conditions that women have to fulfill before they are granted the right to abort their child, such as only when it is to preserve the mother's health or save their lives.¹⁹

Impact of legalized Abortion

It has been found that:

- Globally, unsafe abortion caused around 47,000 women to die,²⁰
- Each year, 5 million women worldwide are hospitalized because of abortion-related complications such as hemorrhage and sepsis, while deaths from abortion have left 220,000 children motherless.²¹
- In developing countries, a woman dies every 8 minutes due to complications from unsafe abortion.²²

Around 121 million unintended pregnancies happened each year from 2015 to 2019, and 61 percent of those were terminated through abortion.²³ This means that approximately 73 million unintended pregnancies induced abortions, including safe and unsafe abortions, are carried out worldwide each year. Restrictive laws were considered one of the obstacles that prevent adolescents or women from accessing safe abortion. In parallel, data from 2010 to 2014 suggested that an estimated nearly half (45 percent) of total abortions were reported as unsafe, especially in developing countries. Moreover, around 4.7 percent to 13.2 percent of maternal deaths worldwide each year are caused by unsafe abortion.²⁴

Additionally, it has also been found that in countries where abortion is strictly confined, whether in law and/or in practice, is where

almost all the deaths and morbidity from unsafe abortion happen.²⁵

Unsafe abortion is defined by the World Health Organization (WHO) as the process of terminating a pregnancy either by an unskilled person or in an environment that does not conform to minimal medical standards or both.²⁶ The outmoded methods for such abortion are: inserting sharp tools into the uterus, using an overdose of antimalarial or birth control medicines, washing the vagina with liquid (bleach), leaping from a high place, prolonged sexual intercourse, or massaging to manipulate the uterus.²⁷ These methods cause women to face long-term and life-threatening consequences.²⁸ Apart from health impacts, there are also other Economic and Social impacts, which will be illustrated below.

Health impacts

The most relevant and main positive impact of having abortion legalized is that it leads to safe abortion, lowering maternal morbidity and mortality risk from unsafe abortion.

Having liberalized abortion law in place implied that there is a skillful healthcare system inside the country to serve for safe abortion. In contrast, restriction abortion would open a way for unskilled abortion service providers to operate unsafe and unsanitary abortions, which can lead to serious health problems and death at any time.²⁹ Moreover, women who cannot access safe abortion are more likely to fall at the risk of having an unsafe abortion³⁰ because women with unwanted pregnancies still go for abortion regardless of whether it is legal or illegal.³¹ Thus, they will jeopardize their life or health to go for a nonprofessional or unhygienic abortion service in a case where abortion is not legalized. That is why the restriction on abortion seems to increase more unsafe abortion rates than non-restriction.³²

This can be proven by comparing the level of safety in abortion between countries with

non-restricted laws on abortion countries and restricted laws on abortion. When referring to the abortion rate between non-restricted law (34 out of 1,000 women) and restricted law countries (37 out of 1,000 women), the number of women seeking out abortion annually is essentially the same. However, if compared between the level of safety in abortion, the result is vastly different as nearly 90 percent of abortions in non-restricted law countries are recognized as safe compared to only 25 percent in restricted law countries.³³

It should be also noted that the risk of complications from abortion is high when abortion is unsafe (carried out by an unskilled service provider under unsanitary conditions). The possible complications from unsafe abortion include incomplete abortion, hemorrhage, vaginal, cervical, and uterine injury, infections, and other medical problems.³⁴ Not only that, hemorrhage, infection, sepsis, genital trauma, and necrotic bowel are considered as the major causes of death from unsafe abortion.³⁵

Besides this, unsafe abortion usually happens where abortion is recognized as illegal.³⁶ Therefore, legalized abortion will lead to safe abortion, which reduces maternal morbidity and mortality risk from unsafe abortion.

Economic impacts:

Access to safe and legal abortion may be of assistance to women and their partners when deciding on their family plan, including when they are ready to start a family and the gap between each child.³⁷ A study has shown that the smaller the family size, the more income that the couple can save; as a result, they could invest that money into education and infrastructure that will lead to increased productivity of the economy, higher employment, and incomes. In contrast, a family that consists of many children may encounter some consequences regarding their financial issues and need to make a difficult decision on which child they should send to school.³⁸ Having additional children would also drag couples to stay closer to or below

the poverty line because the more additional children they have, the less available resources in the family. Thus, if women can access abortion for their unintended pregnancy and only deliver the planned pregnancy, then the planned children will be able to live in excellent educational and economic conditions since their childhood.

Easy access to abortion also dramatically impacts women's economic outcomes because it increases women's participation in the labor market. Women will also have more time to invest in their human capital, such as schooling and job training, which may bring them higher-paying jobs and greater economic security.³⁹

Social impacts:

Legalized abortion will also impact women's education because abortion help in reducing teen fertility, which allows women to continue further education.⁴⁰ Research has witnessed that states which impost laws to refrain women from accessing safe and legal abortion are also the states where women endured lower education and higher levels of poverty, as well as from a lower ratio of female-to-male earnings.⁴¹

Cambodia's context:

There have been many debates surrounding the topic of abortion, notably unsafe procedure, social stigma, and religious ground, etc. Cambodia, in this regard, is one of those countries which chose to legalize abortion. It was contended that this is to ensure and prioritize the safety of the women's well-being and lower mother mortality rates associated with abortions done by unlicensed health practitioners in unsanitary settings.⁴² On October 6, 1997, Law on abortion thereby emerged to serve the purpose of governing the procedure and conditions for abortion in Cambodia.

Condition and procedure under the Law on Abortion in Cambodia

With regards to the legal capacity a fetus may hold, it was stipulated in the Civil Code of Cambodia that fetuses cannot be acknowledged as having legal capacity like any other natural person unless it is birthed (Article 8).⁴³ Right of the fetus, however, can only be invoked if the fetus can completely develop as a natural person and suffer the injury that was perpetrated on them while they were still fetuses (Article 9).

The Law on Abortion defines abortion as a termination of a fetus by medicinal and other means (Article 1). The legality of abortion will be further discussed, with article 8 being of particular interest because it deals with our most important stakeholder, the mother.

Article 8 of Law on abortion:

Abortion may only be carried out for those fetuses which are under 12 weeks old. If the fetus is over 12 weeks old, it may be authorized to be aborted only if after a diagnosis it is found out that:

- there is a probable cause that such a fetus does not develop itself as usual or which may cause danger to the mother's life.
- the baby who is going to be born may have a serious and incurable disease.
- in case, if after victimized of rape and got pregnant, the abortion may be carried out disrespect of the above-stated conditions, however in all cases, there must be a request from the concerned person, if such person is 18 years old or above, or an insistent request from parents or guardian and the concerned person,

if such concerned woman is under 18 years old.

Decision on this above matter, requires approval from a group of 2 to 3 doctors and also a consent from the concerned person. Technical conditions for the application of this article shall be determined by a Proclamation Prakas of the Ministry of Health.

With that being said, the mother has the right to seek for abortion, and the legality is obtained if the mother seeks to abort it under twelve weeks. The legality can further be given to abortion of more than 12 weeks old fetus if it falls within any category of the subparagraph in article 8. Abortion is only justified and allowed on medical grounds, with the prospect of severe or irreversible harm to the woman's health, thereby permitting abortion to save a woman's life and victim of rape, or it is outright prohibited.

Concerning the procedure, the operation may be performed by medical doctors, medium medical practitioners, or midwives with Ministry of Health authorization (Article 5), and this procedure must be carried out in an authorized hospital, health center, public or private clinic, or maternity with sufficient technical capability (Article 16). They play a crucial role in abortion and bear a great deal of responsibility in performing this task since every recurrence of a violation could result in a prison sentence. Hence, any medical doctors, medium medical practitioners, or midwives who could endanger the woman's life through illegal procedure might face a sentence of 5 to 10 years in prison (Article 12).⁴⁴

Current Status of Safe Abortion in Cambodia

Since Cambodia legalized abortion, safe abortion services at referral hospitals and health centers are expanded every year, and it has been reported to increase from 44 places in 2009 to

667 locations in 2017.⁴⁵ Furthermore, according to the report from the Ministry of Health in 2018, there are around 670 public health facilities across the country that provide safe abortion and post-abortion care service compliance to the medical standard. With this regard, 9603 cases of abortion were reported to have used these services.⁴⁶

It should also be noticed that before passing the abortion law in 1990, the maternal mortality rate was 1,200 maternal deaths per every 100,000 live births.⁴⁷ This rate, later on, decreased from 432 to 161 maternal deaths per 100,000 live births between 2000 and 2015, the period after the law on abortion was passed. This has made Cambodia successfully achieve its Millennium Development Goal 5A, which attempts to reduce the maternal mortality ratio by three quarters between 1990 and 2015.⁴⁸

Conclusion

To sum up, after perusing the above mentioned, abortion for women had been suppressed and forbidden under the name of religion and beliefs from society and countries worldwide. Nevertheless, support and prevention are needed concerning abortion, given numerous reasons that drive women to choose the option. As long as breeding continues, the subject of abortion remains, the need for involvement from humanity to reinforce the legality for women to have a safe abortion is demanding.

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