



# Abortion Rights Around the World *Research Report* May 2022

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## Introduction

Abortion, or rather the termination of pregnancy, is and always has been a widely contentious issue worldwide. Abortion is an experience shared by millions of women around the globe and is an essential part in the discussion within Sexual and Reproductive Health (SRH) rights (Popinchalk et al., 2022). The preserving and protecting of SRH rights is discussed during numerous international conventions and protocols, which has pushed many countries to develop better national legislations. However, while some countries in Latin America are liberalising their abortion policies, countries like the United States are becoming more restrictive in the recent years.

On May 2, 2022, Politico published a leaked draft of the U.S Supreme Court opinion regarding overturning the revolutionary Roe v. Wade (1973) that sponsored constitutional protections for abortions (Johnson, 2022). While overturning Roe v. Wade is not yet finalised, the draft opinion underlines the trend in the United States in limiting women's reproductive rights. While overturning Roe v. Wade would reduce access to abortion from a constitutional right to one that individual states could decide on, it has been revealed that more than half of the U.S states plan to ban abortion altogether (Johnson, 2022). Overturning Roe v. Wade has had long-lasting effects on each and every person in the United States.

Abortion bans and restriction on safe and legal abortions violates bodily autonomy and bodily integrity. Abortion access must also be considered within the broader context of SRH care. The deterioration of reproductive rights in the United States might encourage states within the country, and even outside the United States, to continue to adopt restrictive policies concerning women's rights. If Roe v. Wade is successfully overturned, there will be a spill-over effect that would affect international human rights law, endangering numerous women worldwide. Owing to the turn in the tide, this report aims to highlight other countries' abortion policies. While some countries have made tremendous strides, other countries have been emboldened by the conservative trend in the United States that started long before the Supreme Court decision.

## Chapter 1

# Abortion Rights in El Salvador

### Background

El Salvador is a country located in Central America. The country is highly religious with Catholicism being the dominant religion followed by Protestantism (Britannica, n.d). It is considered a middle-income country (IFAD, n.d). However, a GDP growth rate of more than 3% was only observed twice from 2000 – 2020 (World Bank, 2022).

The level of criminal activity is very high with the country declaring a state of emergency due to the high rate of homicide on March 27, 2022 (Pozzebon, 2022). Violence against women is also common. The country was termed one of the most dangerous places for women to live (Oden, 2019). Abortion rights, which are the focus of this research report, are completely restricted and criminalised with no exceptions.

### Abortion Rights – Law and Practice

Abortion is currently completely prohibited under the laws of El Salvador. This was not the case before 1998. Although the Penal Code during this time had not legalised abortion, it provided for certain exceptions. These exceptions included situations where the pregnancy resulted from rape, sex with a minor, put the health of the mother at risk, or a fetal abnormality was observed (Centre for Reproductive Rights, 2014). However, in 1997, when the Penal Code was being revised, these exceptions were removed from the law under the pressure of religious leaders and other conservative groups (Center for Reproductive Rights, 2014). With the exception removed from the law, abortion is now unlawful in the country notwithstanding the risk it may pose to the health of the mother or whether it was a result of rape.

Additionally, in the same year, the legislature of the country moved to amend the Constitution to indicate that a person is recognised as a human being since the moment of conception (Center for Reproductive Rights, 2014). This amendment was ratified and came to effect in 1999 (Constitution of El Salvador).

Moving on to discuss the penalty, according to Article 134 of the El Salvador Penal Code, a woman who causes or consents to someone performing an abortion on her is punished with imprisonment from two to eight years. A person who causes abortion with the consent of the woman is also penalised. The penalty depends on the professional status of the individual. If the person who aided the woman is a regular individual, then that person will be punished with a similar punishment as that

of the woman. On the other hand, if the person who aided the woman with the abortion is a medical professional, that professional will be punished with an imprisonment of six to twelve years as well as deprivation of their medical license.

As problematic as the law is, the implementation of the legislation is even more problematic. A high number of women who suffered miscarriages and still births have been suspected and charged with causing an abortion (Amnesty, 2015). The prosecution also often charges women accused of causing abortion with aggravated homicide, with punishment ranging from thirty to fifty years in prison (Sorensen et al, 2021). This differs from Article 134 of the Penal code, which would have had a much lower sentence.

The problematic legislation, and even more problematic implementation, has resulted in a high level of paranoia in the country with women avoiding going to the hospital when they are facing an obstetric emergency for fear of being accused of abortion. Additionally, the complete ban of abortion has led to women seeking out unsafe abortions. Both of these direct effects have led to an increased rate of maternal mortality.

### **International and Regional Legal Frameworks**

El Salvador is signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Inter-American Human Rights Charter (UNTC, 2022). The complete ban of abortion in the country is in violation of the above human rights instruments to which El Salvador is a party. It specifically violates: the right to life, the right to health, the right to due process of law, the right to privacy, the right to bodily autonomy and the right to dignity.

As part of its Concluding Observations on the combined third, fourth and fifth periodic reports of El Salvador, the Committee on Economic, Social and Cultural Rights (CESCR) stated its concern regarding the complete ban on abortion (CESCR, 2014). The committee highlighted the fact that the ban had resulted in “grave situations of injustice and distress”. The Committee was particularly concerned about the reporting of women who turned to health institutions but were reported under suspicion, the imposition of disproportionate criminal penalties in disregard of due process, and the high number of unsafe and illegal abortions which are one of the main causes of maternal mortality. In the same Concluding Observation, the Committee urged El Salvador to “revise its legislation on the total prohibition of abortion to make it compatible with other Fundamental Rights such as woman's

right to health and life, and consistent with the dignity of women” and “provide quality treatments for complications arising from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution” (CESR, 2014). This Concluding Observation was issued by the Committee in 2014 but the legislation and the practice remains unchanged.

The Inter-American Court of Human Rights (IACHR) also passed a momentous ruling against El Salvador regarding its abortion rights regime on November 30, 2021, in the case *Manuela v. El Salvador* (Center for Reproductive Rights, 2021). The case, which was filed to the court on March 21, 2012, related to a woman named Manuela (not the real name of the person) who was convicted of aggravated homicide and sentenced to 30 years in prison (ICWRSA, 2021). This occurred despite the fact that she had suffered a still-birth. The woman died of cancer in prison in 2010 due to inadequate diagnosis and treatment. In its ruling, the IACHR declared El Salvador responsible for the death of Manuela as well as for violating her right to life, health, due process and other rights (Center for Reproductive Rights, 2021).

### **Conclusion**

El Salvador's complete ban on abortion without exceptions combined with the brutal implementation has led to insecurity. The law and implementation violates various international human rights treaties and human rights of women including the right to life, the right to bodily autonomy, the right to due process of law and others. The recent IAHR decision confirms the problematic nature of the legal regime and the need for reform.

## Chapter 2

### Malaysia

#### 2.1 Introduction

Malaysia is a country in Southeast Asia. Kuala Lumpur is the national capital, the largest city, and the seat of the legislative branch of the federal government. With a population of over 32 million, Malaysia is the world's 44th most populous country. The country is multiethnic and multicultural, about half the population is ethnically Malay, with minorities of Chinese, Indians, and indigenous peoples (Britannica, n.d).

The issue of women's rights in Malaysia, in general, is divided among the people across the peninsula. Although women's rights in Malaysia in the past few years have advanced in a few areas as women in Malaysia are increasingly participating in the workforce as well as in government. However, there is no fundamental change in the status of women. Women in Malaysia still face numerous struggles that prevent them from obtaining many of their rights, such as the right to personal autonomy and the choice of abortion (Kim, 2021).

In spite of sustained advocacy from Sexual and Reproductive Health (SRH) and human rights advocates, the issue of women's rights to abortion, which is the focus of this report, is still very heavily restricted in Malaysia. Due to the social stigma and taboo surrounding the topic most Malaysian women are not aware of when abortion is legal, and because of that, they tend not to seek abortion services in the public health sector and turn to clandestine abortion service providers. These procedures are mostly unsafe as they are performed by providers who may not have the necessary skills or environment that conform to minimum standards to perform a safe abortion. According to reports from Confidential Enquiry into Maternal Deaths (CEMD), unsafe abortion accounts for 1 in 5 maternal deaths in Malaysia (Jegasothy et al, 2012; Tong et al, 2013).

#### 2.2 National law regarding Abortion in Malaysia

The law of abortion was established in Malaysia under the British Empire's Indian 1871 Penal Code. The most relevant provision to be discussed of the Penal Code is Section 312 (Act 574) which states:

“Whoever voluntarily causes a woman with child to miscarry shall be punished with imprisonment for a term which may extend to three years or with fine or with both; and if the woman is quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

This indicates that in Malaysia all kinds of voluntary abortion is illegal and is considered an offence

(Firzaa, 2019). However, Section 312 lays down a few exceptions under which abortion is permitted:

“This section does not extend to a medical practitioner registered under the Medical Act 1971 [Act 50] who terminates the pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental or physical health of the pregnant woman, greater than if the pregnancy were terminated”.

This provision says that under section 312, there are two conditions under which abortion is considered legal in Malaysia. The first is if the abortion is done by a doctor who genuinely thinks the pregnant women’s life is at risk due to her pregnancy, The other condition is if the doctor believes that the pregnancy may harm the pregnant woman’s physical or mental state (Matdura, 2020).

Thus, the above indicates that the Malaysian women under the national law do not have the freedom of choice in case they want to have an abortion. Only the doctor can make that decision and only in limited cases where their life, physical and mental health are explicitly in danger.

### **2.3 Relevant Ratified International Instruments**

Malaysia ratified the CEDAW in 1995 (OHCHR, 2022). The ratification of this Convention requires State Parties to take effective measures to eliminate all forms of discrimination against women within their legal and institutional frameworks, as well as, within their national policies and political patterns. The most relevant provisions of this Convention with regard to a woman's right to abortion are Articles 12 and 16. Article 12 of CEDAW requires states to take all appropriate measures to ensure women's right to access health services including those related to family planning. Further, Article 16 of CEDAW requires states to take all necessary measures to ensure that women have legal and accessible ways to control their reproductive choices. Since this article grants the right to control one's reproductive choices and have access to things necessary to this end, the CEDAW Committee has interpreted it as requiring State Parties to grant the right to abortion access to women (Hunt, 2018). In addition to these obligations, the CEDAW Committee in its General Recommendation No. 24 has recommended State Parties to amend their legislation that criminalises abortions and withdraw punitive measures imposed in case of abortion (CEDAW Committee A/54/38/Rev.1, chap. I, 1999).

### **2.4 Access to Abortion in Malaysia**

Malaysia faces approximately 90,000 abortions every year, according to a report by the Federation of Reproductive Health Associations Malaysia (FRHAM; 2015). Despite this large number, women's access to legal abortion services in Malaysia is faced with several obstacles, the most important of

which are unclear laws and policies regarding the provision of legal abortions. This causes some health care providers to be reluctant in widely interpreting laws and policies and therefore not offer abortions for fear of prosecution. About 43 percent of doctors and nurses in Malaysia are unaware of the legality of abortion according to a survey in 2007 (Yun Low et al, 2014; Archer, 2018). More than 80% of doctors were unsure about the legality of abortion, in cases of rape (Tong et al, 2013). It is necessary to note that before 1989, many medical practitioners were prosecuted and punished for performing abortions in the past, while such cases were not brought to court after 1989 (Archer, 2018). However, even so, it is known that most doctors take a "pro-life" stand when it comes to abortion, and among the medical professionals who provide abortion services privately, albeit not illegally, few are willing to be publicly recognised as "abortion providers" due to the stigma attached to it. This stigmatisation is essentially perpetuated by the State refusing to raise awareness on issues which concern a woman's reproductive health. Additionally, let alone initiating government-funded campaigns, it does not help that all advertisements advising women on abortion practices and procedures are also banned in Malaysia (Whittaker, 2010; Syadza, 2018).

Another issue, which contributed to the inaccessibility of abortion services, is the "Guideline for Termination" (TOP), which was published by the Ministry of Health Malaysia in 2012. These guidelines have laid down that the procedure for medical abortion is allowed until 22 weeks of pregnancy (TOP, 2012). This is an important clarification for medical practitioners, since Section 312 of the Penal Code does not explain or specify 'when' nor at what stage of pregnancy a medical practitioner can perform a legal abortion. However, these guidelines in many ways have further restricted the accessibility of abortion for Malaysian women, specifically in governmental hospitals. The guideline has stated that in order for women to have an abortion at a government hospital, the presence and approval of two medical practitioners is required. Furthermore, abortion services at government hospitals are only permitted to married women, and women who want to have abortion services have to obtain spousal approval, even though these requirements are not specified under Section 312. (TOP, 2012; Tong et al, 2012).

Thus, since abortion access in the public sector is very restricted, most women have to resort to private clinics for abortion services, which are often expensive. There are approximately 240 private clinics offering abortion facilities to women in Malaysia, but most of these are not necessarily inspected for the provision of safe abortion services and treatment. Moreover, these facilities are not accessible to women who cannot afford between \$60 to \$800 US dollars, depending on the stage of

pregnancy (Archer, 2018).

As a result, women have to resort to other economical substitutes if they cannot afford an abortion in private clinics. Medical abortion pills, such as ‘mifepristone’, are one such example but they are not easily accessible to women in Malaysia, as they have not been registered by the government (Archer, 2018). Therefore, many women are known to have ordered such abortion pills online in the past. However, in 2017, the Ministry of Health issued a statement whereby all individuals purchasing abortion pills online would be prosecuted (Archer, 2018). With such increasingly restrictive laws and measures implemented by the government, Malaysian women up until this day do not have easy access to abortion services, and some of them, due to these restrictions, are forced to continue their pregnancies although the circumstances for requesting an abortion may be necessary such as in case of rape, underage pregnancy, or cases of fetal impairment (Kho, 2021). Forcing a woman to complete her pregnancy against her wishes often has dangerous results in Malaysia, such as cases of child drowning. Child dumping is also a serious problem . From 2010 to May 2019, there were a total of 1,010 recorded cases of child dumping. Most of these children were left near residential areas, in toilets, and in rubbish bins (Subramaniam and bin Islam, 2021).

## 2.5 Conclusion

Women's access to safe legal abortion in Malaysia will not be reached until the Malaysian abortion law is liberalised and gives women the full right to make a decision about whether or not they want to carry a baby in their wombs. Amending the national law in this way is needed not only for Malaysian compliance with its obligations under international law, but it will also prevent women's deaths caused each year due to unsafe abortions and stop the practice of dumping babies.

Moreover, lack of awareness campaigns, regulatory bodies, and policies for monitoring and evaluating reproductive health policies in Malaysian legal systems are major issues that Malaysia needs to take action towards, in order to ensure women's accessibility to safe abortions.

## Chapter 3

### Republic of Malawi



Map of Malawi. Source: Encyclopaedia Britannica, 2021.

#### 3.1 Introduction

Malawi, officially known as the Republic of Malawi (formerly known as Nyasaland), is a landlocked country in south-eastern Africa (Phiri et al., 2021). Circumstances unique to Malawi's economic, social, and political trajectory, including its history of British colonialism and its current relationship with external donors, have played a significant role in shaping its abortion policies. Like many postcolonial

countries, Malawi is an “artificial construct” that brought varieties of people together that spoke different languages and had different cultures (McCracken, 2012). Despite its reliance on cash crops, Malawi is considered an impoverished country. According to a 2008 census report, most of the population (84.7 percent) live in rural areas, while the average age of the general population is 17 years (Levandowski et al., 2012).

The country's population faces chronic malnutrition, poverty, high rates of infant mortality (Phiri et al., 2021) and a high maternal mortality ratio (MMR) (Levandowski et al., 2012). The country also faces other health issues like HIV and AIDS. However, Malawi has created a downward trend by increasing accessibility to HIV testing and antiretroviral therapy (ART) (Sasse et al., 2022). Nonetheless, many Malawian women are at risk as there is still HIV related stigma, resulting in the interruption of HIV care, especially during antenatal care.

#### 3.2 National and International Legislation regarding Abortion

##### 3.2.1 National Legislation:

In Malawi, accessing a legal abortion is highly restricted. Induced abortion is only permitted if performed to save a mother's life. According to the Penal Code (Section 149-150), other than saving the mother's life, attempts at abortion are illegal and punishable by up to 14 years in prison.

Section 149 of the Penal Code states,

“Any person who, with the intent to procure a miscarriage of a woman, whether she is or is not with

child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses and force of any kind, or uses any other means whatever, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.”

(Penal Code Malawi Chapter 7:01,1930).

Furthermore, Section 150 of the Penal Code states,

“Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, shall be guilty of a felony and shall be liable to imprisonment for seven years.”

(Penal Code Malawi, Chapter 7:01,1930).

Despite the numerous promises made by the government, the colonial Penal Code based on medical knowledge that is now out of touch with modern medical standards is still used as a theoretical framework for abortion laws in the country. Over the years, the Malawian Reproductive Health Unit and Human Rights Commissions have called to review the abortion law in 2008 and 2011 (Liu & Sudhakar, 2022). However, they all faltered due to insufficient political support. Between 2013 and 2015, Ipas (an international NGO) and the Malawian government empanelled the special Law Commission to review the Malawian abortion law. The Law Commission is composed of individuals from religious councils, health ministries, traditional leaders, the Malawi Law Society and the Malawi College of Medicine. Based on the discussion from various stakeholders, the Law Commission drafted and submitted the Termination of Pregnancy (ToP) Bill or the abortion bill in 2015 (Storeng et al., 2019). The Bill promised to adhere to international treaties while protecting women's rights by repealing Sections 149-151 and 243 of the Penal Code. While the Bill was considered revolutionary, Malawi's National Assembly unanimously rejected even to debate liberalising the abortion law or the ToP Bill in 2021 (Masina, 2021a). Furthermore, following the opposition to the discussion of the proposal, Malawi's parliament withdrew the ToP Bill (Masina, 2021b).

### 3.2.2 Regional and International Commitments to SRH

As a member of the United Nations (UN) and the African Union (AU), Malawi has the legal obligation to respect and protect sexual and reproductive health and rights. Malawi has ratified numerous treaties like the Protocol to the African Charter on Peoples' and Human Rights on the Rights of Women in Africa (Maputo Protocol). Article 14(2)(c) of the Maputo Protocol states that abortion should be provided “in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the foetus (Kangaude et al., 2020). However, the national

legislation in Malawi does not comply with the Protocol. Additionally, as a party to the CEDAW, the Committee has on numerous occasions expressed concern about the criminalisation of abortion, the high maternal mortality ratio and the ambiguity surrounding the exception to the ban (Kangaude & Mhango, 2018). Nonetheless, the Malawian government refuses to discuss any liberalisation of the current abortion ban.

### 3.3 Abortion in Malawi

In the indigenous language of Chichewa, 'pregnancy' is called pakati which translates to “the place between life and death” (Jackson et al., 2011). In Malawi, there is a strong association between pregnancy and death. This is due to the high maternal deaths recorded in the country and the highest MMR rates in the world. It has been stated by numerous organisations that the high rates are a direct result of unsafe abortion practices in the country. In 2015, it was estimated that 140,000 abortion procedures were conducted in the year (Odland et al., 2021). Most recent figures have shown that Malawi's MMR is 439 maternal deaths per 100,000 live births<sup>1</sup> (Odland et al., 2021). The current laws, as illustrated earlier, allow for (legal) abortion only if it risks the mother's health. However, in practice, one needs the endorsement of two independent obstetricians and spousal consent before a legal abortion can be performed (Jackson et al., 2011). The ability to receive approval for abortion in Malawi is considered a tedious process which forces women to choose unsafe methods. Moreover, owing to the law's ambiguity, many abortion providers decline most abortions as they do not want to risk providing an 'illegal' abortion (Jackson et al., 2011).

Despite the restrictions on abortion, Malawian women continue to seek abortion for various factors such as poverty, unplanned pregnancy, fear of being forced out of school or shame (Levandowski et al., 2012). As the practice is considered illegal unless it is to save the mother's life, most of them were illegally procured and unsafe. Unsafe abortion is the second most leading cause of pregnancy-related mortality. Women and girls in Malawi choose unsafe abortion to maintain confidentiality and protect themselves from being arrested. As the procedure is mainly underground, it is performed by unqualified and unskilled providers, traditional healers or by women themselves, leading to post-abortion complications. Therefore, many NGOs and human rights activists push for liberalising the abortion law. However, as mentioned above, there has been no change so far.

It is also important to note the cultural context that impacts not only contraception but also abortion. Malawi also has other sexual and reproductive health issues like low contraceptive prevalence rate, high unmet contraceptive needs, high fertility rates and unwanted pregnancies (Jackson et al., 2011).

1. In 2015, the average MMR in developed countries was 12 maternal deaths per 100,000 live births. In 2015, Malawi recorded 574 maternal deaths per 100,000 live births (Polis et al., 2017).

These factors directly result from the cultural connotation behind contraception and abortion. Culturally, contraception and abortion are taboo topics with a stigma surrounding them. There are many cultural myths surrounding abortion, like “if a woman aborts, she will be unable to bear children thereafter” or “men will die if they sleep with a woman who had an abortion” (Levandowski et al., 2012). Like in many countries, Malawian women who choose to have an abortion are viewed as sinners or evil. Thus, even marriage opportunities for siblings of women who have had an abortion are compromised (Levandowski et al., 2012). The stigmatised nature of abortion leads women that could ask for legal and safe abortion to voluntarily choose unsafe medical abortion as they tend to be more secretive, allowing her confidentiality. Therefore, women often willingly put themselves at risk to protect their families and themselves from social exclusion. According to 2017 research, more than one in four Malawian women have severe or moderate morbidity during Post-Abortion Care (PAC) (Polis et al., 2017). However, these estimates are based on the women that seek medical treatment during PAC. Similarly, NGOs and INGOs often adopt behind the scenes lobbying to liberalise the abortion law as there is so much cultural stigma.

### 3.4 Conclusion

Like many other countries, women's reproductive health rights in Malawi are threatened. Pregnant women and girls often opt for crude methods to induce abortion as the law within the country is incredibly restrictive. While the 160-year-old colonial Penal Code allows an exception to the abortion ban, in practice, many medical professionals deny legal abortions as they do not want to risk providing illegal abortions. As the statistics emphasise, hundreds of girls and women die due to unsafe abortion practices every year. While these deaths can be prevented, Malawian policymakers refuse even to debate abortion, thus, allowing women and girls to die unnecessarily. The conservative trend in the United States that has instituted the 'global gag rule'<sup>2</sup> in 2017 and the recent moves to ban abortion in the United States have directly affected abortion law reform in Malawi.

Moreover, owing to the gag rule, NGOs in Malawi have had to choose between a lesser of two evils; abandon all abortion services and advocacy or see Malawi's health system collapse (Liu & Sudhakar, 2022). NGOs have a difficult choice in low-income countries like Malawi, with high maternal mortality rates due to illegal and unsafe abortions. While many NGOs would like to prioritise women's health, most NGOs rely on U.S funding. Therefore, they all complied with the 2017 global gag rule (Liu & Sudhakar, 2022). The NGOs have been forced not to lobby the Malawian government to make abortion safe or sensitise the Malawian community on safe abortion practices. Because of the conservative trends in the United States, Malawian women and girls continue to die and suffer serious health consequences.

2. The 'Global Gag Rule' dictates that any NGO or INGO that receives U.S global health funding cannot provide legal abortion services or referrals while also barring them from advocating for abortion law reform, even if it is done with their own (non-U.S) funds.

## Chapter 4

### Europe

#### 4.1. Introduction

Europe, as the second smallest continent, includes forty four countries based on United Nations official statistics (Worldometer). These numbers, nevertheless, may vary when analysed from a political or geographic spectrum. Accordingly, apart from 27 European Union members, Europe covers countries such as England, Switzerland, Ukraine, Moldova, Russia, Belarus, Albania, Bosnia and Herzegovina, Serbia and Vatican City. Whereas transcontinental countries, which have territory in both Europe and Asia, are not considered part of Europe. This distinction is made on the grounds that the majority of the population lives in Asia rather than in Europe (Shivili J., 2021). Turkey, for that matter, occupies a unique geographical position, as it has a territory that is partly in Asia and partly in Europe. However, due to its large population living in Anatolia, and only 3 percent living on the European side, it could not be listed as a European country, geographically speaking (Shivili J., 2021). Nonetheless, if one looks at Europe in terms of political boundaries, it is quite possible to see some countries like Turkey, Azerbaijan, Armenia, Georgia, and Kosovo portrayed as European countries. Knowing how many countries are actually in Europe remains a controversial subject as sources indicate different numbers like 44, 47, 49 or even 51 (Countries-of-the-world). But this chapter will look at Europe from a political perspective. Also, most of these countries are parties to the ECHR and its jurisprudence, and thus some harmonisation of human rights frameworks and protections exist within Europe.

In this regard, Europe has hosted many different and diverse languages, cultures, religions and events throughout its long history and still continues to do so. While this diversity plays an important role in the progress and empowerment of Europe, it also causes deep divisions in the implementation of policies on some important issues such as human rights and subsequently women's rights. As an apt example, abortion rights have become a hot topic that politicians can play with to lure a group of conservative and illiberal people based on their cultural and religious backgrounds to support their political gains.

Abortion is legal in almost every European country and complies with international and European human rights standards (Abortion Clinics in Europe). However, this legal framework varies according to the duration of the pregnancy, its condition or even the reason for conception. But before get to that, as we are interested in examining Europe's abortion laws and the level of access in practice in this section, it is equally pertinent to shed light on the silent division of women's sexual and

reproductive rights among European countries.

#### 4.2. Europe's latest abortion rights situation

The last five years have been particularly critical in Europe regarding abortion rights, as policies have been overhauled with changing governments and political situations in some countries. From Ireland to Spain, from Poland to France, the winds of change have been sometimes violent and destructive, sometimes refreshing and hopeful. But to start with the encouraging news, since 2018 in particular, several European countries have enacted significant progressive reforms or taken steps to remove harmful procedural and regulatory barriers that could hinder access to legal abortion (Center For Reproductive Rights, 2021). That is, overturning the once-oppressive Catholic influence on women's bodies and liberalising it by making abortion legal like in Ireland through the referendum in 2018 (Diehn A. S., 2022). Prior to the historic victory in Ireland, “it was estimated in 2007 that over 6,000 Irish women travel to England to have abortions every year” (Abortion Clinics in Europe).

Also, with minors being one of the most affected groups by abortion barriers, the Spanish Council of Ministers approved a draft law in May 2022 that would remove the required parental or guardian consent for 16- and 17-year-olds to terminate a pregnancy (Diehn A. S., 2022). The reason for this initiative lies in the fact that minors who have trouble or are afraid to tell their parents or guardians may later be exposed to more severe conditions or take dangerous paths to have an abortion.

Withal, talking about strengthening or protecting the right to abortion is not just limited to trying to legalise abortion, it also covers a wide range of areas, from the ease of the procedure to its free access to public awareness of the option. Germany, in that regard, has a specific history, as abortion is technically illegal in one of the most developed European countries. Article 128 of the German Criminal Code stipulates that access to abortion can be made without being prosecuted only if the person meets the following conditions (CFFP, 2021) :

- “If the abortion is performed within the first trimester (12 weeks) and the pregnant individual has undergone a process of mandatory counselling beforehand. A three-day waiting period between the counselling and the intervention is also required”
- “If the pregnancy is the result of a sexual assault or if the physical and/or mental health of the pregnant individual is at risk”

Furthermore, Article 129 of the above-mentioned Code also prohibits institutions and individuals from providing necessary information on abortion to anyone (CFFP, 2021). “It is possible for doctors to state that they do provide abortions, but not how and under which conditions” (CFFP, 2021). Ergo,

Nazi-era abortion law dating back to 1933 was finally proposed to be scrapped in Germany in January 2022 (DW, 2022).

However, there is no good news without bad news. Although the ultimate goal is to provide every woman in the world with safe and legal access to abortion, so that they do not have to undergo dangerous procedures or travel to another country, some European countries like Poland - which the United States resembles in terms of turning its clock back on abortion rights - have brought its policies to the point where we can consider a near total-ban in 2020 (Diehn A. S., 2022). Thus, the abortion rights are now subject to stringent measures in Poland, allowed only “in cases where pregnancy threatens the life or health of the pregnant person, or in cases of rape or incest” (Diehn A. S., 2022).

Moreover, even though we have previously stated that abortion is legal and accessible in most European countries, six of them maintain highly restrictive abortion laws and do not allow abortion on request or on broad social grounds (Center For Reproductive Rights, 2021<sup>3</sup>). These are:

- Andorra
- Liechtenstein
- Malta
- Monaco
- Poland
- San Marino

Malta, San Marino, and Andorra consider abortion illegal under all circumstances. Therewith, as a member of the EU, Malta's stern and dangerous stance on abortion has recently been on the agenda, with the European Parliament electing the anti-abortion Maltese MEP, Roberta Metsola, as president (Bencharif S. & Martuscelli C., 2022). In April 2020, during the pandemic, Metsola voted against “a resolution on EU action on Covid-19 that described abortion as a human right” (Rankin J., 2022).

Of the remaining three, on the other hand, Liechtenstein only allows it when a woman's life or health is at risk or if the pregnancy is the result of sexual assault. In addition to Liechtenstein's policy, Monaco and Poland are generously adding a serious case of foetal anomaly. The UK jurisdictions of Northern Ireland and Gibraltar and the Danish jurisdiction of the Faroe Islands also continue to maintain their highly restrictive laws, thus preventing women from accessing safe and legal abortion (Center For Reproductive Rights, 2021).

3. Center for reproductive rights analysed Europe's abortion laws among 47 countries.

To better understand the latest developments in European countries and the current legal requirements regarding the right to abortion, the next section will examine until which week abortion is considered legal and on what grounds. However, it is equally important to underline that, despite all legal adjustments, women, unfortunately, continue to experience difficulties in accessing abortion rights in Europe, especially due to conscientious objectors.

### 4.3. Europe's legal stance on abortion rights

#### 4.3.1. Time barriers to abortion cases

In 41 European countries where abortion is legal, women are subject to certain periods to terminate their pregnancy within the framework drawn by law, in order to avoid prosecution. This period varies from country to country, but the first trimester (12 weeks) is generally accepted as the legal abortion period in Europe (Michas F., 2021). And yet, European countries that have developed and devoted themselves to women's rights are trying to improve women's sexual and reproductive rights by extending the time barriers placed on women in obtaining abortions. France, for instance, passed a law to extend its classic 12-weeks abortion time limit up to 14 weeks as of February 2022 (Chrisafis A., 2022).

Notwithstanding that each country has its own policy and culture, there are considerable differences between European countries when it comes to time barriers. While in the United Kingdom and the Netherlands the legal time frame is set to 24 weeks on request, in Portugal, Bosnia and Herzegovina, Slovenia, Serbia, Kosovo, and Croatia, the same limit for having an abortion is limited to 10 weeks on request<sup>4</sup>. On the other hand, although Austrian law allows abortion in the first trimester of pregnancy, it states "no limits" when there is a risk to health, a risk to life or in case of fetal impairment<sup>5</sup>.

In addition, the length of legal time limits set for abortion also varies depending on the subject or situation. Abortion is not only a health service to terminate an "accidental" pregnancy, but can also be applied to many cases depending on different reasons and occasions. These situations are categorised as on-demand, the risk to life, the risk to health, foetal impairment, socio-economic reasons and rape/incest.

The importance of expanding the abortion period or allowing abortions on a large scale stems from the fact that the more a country imposes legal restrictions and thus criminalises abortion beyond a certain point, the more women flee to other countries or worse, attempt dangerous and untrusted procedures. This increases the risk of death.

4. Wikipedia. (2022). Abortion Law

5. Wikipedia. (2022). Abortion Law

According to a report on Abortion in Europe, in the section by Gunta Lazdane, “fifty per cent of maternal death cases in 2003 in the Republic of Moldova were the result of unsafe abortion and from 1990 till 2002, 30% of all maternal deaths were related to abortion in this country”.

#### 4.3.1.1. Time limits for rape and incest in Europe

Unfortunately, abortion is not something that women seek only for unwanted pregnancies, but it is urgently needed in cases of rape or incest as well. There are only two European countries where laws prohibit abortion even in such sensitive situations as rape and incest. These countries are Andorra and Vatican City<sup>6</sup>.

In terms of time barriers, all other forty-five European countries provide abortion regarding rape and incest, with some even allowing a “no-time limit” like Serbia and Croatia<sup>7</sup>. Albania, Georgia and Ukraine<sup>8</sup> are extending the period of termination of pregnancy up to 22 weeks for women living in their countries, when it comes to the aforementioned reasons.

Furthermore, the European Court of Human Rights (ECtHR) took a landmark decision in *P and S v. Poland* in 2008 “in which the Court held Poland accountable for the failure to guarantee access to legal abortion services to an adolescent who became pregnant as a result of rape” (Center for Reproductive Rights, 2021). The ECHR recognised at the same time that “obstructing access to legal abortion services when pregnancy results from rape can amount to cruel, inhuman, or degrading treatment” (Center for Reproductive Rights, 2021). Thus, it violates Article 3 of the European Convention on Human Rights (ECHR)<sup>9</sup>.

#### 4.3.1.2. Time limits for abortions on request

Across the European countries, 39 out of 47<sup>10</sup> have legalised abortion on request, either without restrictions or on grounds of distress (Center For Reproductive Rights, 2021).

But what does an abortion on request mean? It means that “doctors or other professionals are not required to attest to, or certify, the existence of a particular reason or justification for the abortion” (Center For Reproductive Rights, 2021). That is, a woman can have an abortion due to an unwanted pregnancy without having to justify this with any particular reason. The liberalisation of women's bodies, and as a result the promise of bodily rights, are the main consequences of this possibility.

Generally speaking, any woman can have an abortion on request up to around 10 to 12 weeks in

6. Wikipedia: Abortion Law

7. Wikipedia: Abortion Law

8. Wikipedia: Abortion Law

9. [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

10. Center for reproductive rights analysed Europe's abortion laws among 47 countries

Europe. Some have extended this period such as Belgium (14 weeks), France (14 weeks), Iceland (22 weeks), Luxembourg (14 weeks), Netherlands (24 weeks), Romania (14 weeks), Spain (14 weeks) and Sweden (18 weeks)<sup>11</sup>.

#### 4.3.1.3. Time limits for broad social grounds

Finland and the United Kingdom remain the only two European countries to allow abortion on broad social grounds. According to the Center for Reproductive Rights, “countries allowing abortion on broad social or economic grounds have laws that are generally interpreted liberally to permit abortion under a broad range of circumstances”. So, “these countries often take into account a woman or girl's actual or reasonably foreseeable environment and her social or economic circumstances in considering the potential impact of pregnancy and childbearing”.

In UK, even if the social or economic reasons are not expressly stated in the law, abortion is permitted as it falls under the category of preserving physical and mental health (Abortion Clinics in Europe). The limit is therefore set at 24 weeks, as it would be for abortion on request (Abortion Clinics in Europe). Whereas in Finland, although abortion is not technically legal upon request, women can have an abortion for up to 12 weeks on broad social and economical grounds (HUS). That means, a woman can have an abortion in the first trimester in Finland, but after the expiry of the legal period, it is only under certain circumstances that it would still be allowed (HUS). Thus, abortion is possible in Finland before 12 weeks if (Info Finland, 2022):

- Childbirth would pose a danger to your health
- You are under 17 or over 40 years old
- You have already given birth to four children
- You are unable to take care of the child due to an illness, or
- Giving birth to or taking care of the child would be a considerable strain for you. The reason may be family relationships, financial situation, work situation, housing or plans for the future.

According to Safe Abortion: technical and policy guidance for health systems (2012), the WHO acknowledges evidence showing that “where abortion is legal on broad socioeconomic grounds and on a woman's request, and where safe services are accessible, both unsafe abortion and abortion-related mortality and morbidity are reduced”.

#### 4.3.2. Mandatory waiting period times and counselling

After the obstacle of the legal time limit for abortion, the mandatory waiting and counselling for

11. Wikipedia: Abortion Law

abortion is another grave impediment to women's bodily rights, and to the exercise of their human rights in Europe. This means that despite laws on abortion, women's access to health services may be obstructed due to other requirements.

But first, to offer a clarification, “a mandatory waiting period is a minimum amount of time that is legally required to elapse before a woman who requests an abortion can receive the service” (Center for Reproductive Rights, 2015). In general, mandatory waiting periods apply only to abortions on request and are not mandatory where the abortion is intended for therapeutic purposes or the pregnancy is the result of sexual assault (Center for Reproductive Rights, 2015). Ergo, this mandatory waiting period is applied in some countries to minimise regret and allow the decision to be taken cautiously.

As much as the intention behind the mandatory waiting period is believed to come from a good place, these waiting times jeopardise access to timely and affordable care and limit women's decision-making autonomy (Centre for Reproductive Rights, 2015). WHO underlines that the law should not introduce such medically unnecessary delays (Centre for Reproductive Rights, 2015). Nevertheless, 16 European countries still require it before allowing the service.

Mandatory counselling, on the other hand, is a requirement for women in order to receive information from their doctors prior to abortion. Currently, 13 European countries demand this condition to be met before abortion (Center for Reproductive Rights, 2021). In a number of these countries, such as Germany and Hungary, “laws require biased and directive counselling deliberately intended to influence women's decision-making and dissuade them from having an abortion” (Center for Reproductive Rights, 2021).

In Belgium, a woman who seeks to have an abortion has to wait six days after making the first contact with any counselling body, due to the mandatory waiting period. On top of this time, the same woman must claim to be “in a state of distress” prior to abortion for the first trimester (Bencharif S. & Martuscelli C., 2022). This mandatory waiting period is determined as seven days both in Italy and France (Bencharif S. & Martuscelli C., 2022).

The Netherlands imposes a five-day waiting period between the initial consultation and the abortion. Then, clinics should provide women with information about alternatives to abortion (Matchar E., 2013). Having said that, a new initiative came from the Dutch parliament on February 10, 2022, to scrap the “demanding” waiting period for access to abortion in the country (IFPA, 2022). The Dutch Senate will vote on the proposal later in the year.

On the other hand, some European countries such as Austria, Denmark, Finland, Norway, Spain, Sweden and Switzerland continue to show promising signs by not implementing the mandatory waiting period in their countries<sup>12</sup>.

#### 4.3.4. Conscientious objectors in Europe

Conscientious objection refers to an objection based on moral or religious grounds. In this context, conscientious objectors are people who, for the above reasons, oppose performing an abortion when a woman seeks one. Hence, 25 countries in Europe, 22 of which are EU members, accept the objection for conscientious reasons<sup>13</sup>.

Therefore, recognising the power of conscientious objection is one of the factors that puts the lives of women who want to have an abortion at risk. The prevalence of this situation, on the other hand, is becoming frightening and distressing in Europe. Especially in countries where Catholics have an overwhelmingly dominant influence, conscientious objectors seek to control and restrain women's bodies by manipulating conscientious reasons. Therefore, this situation causes women to be exposed to much greater difficulties both physically, mentally and socio-economically in the future.

Recently, obstruction stems from conscience sparked a wide range of protests in Croatia on May 12, 2022, after hospitals in Zagreb refused to perform an abortion on a pregnant woman whose 24-week-old foetus was diagnosed with a malignant and deadly brain tumour (Rodosavljevic Z., 2022). In Croatia, 60 per cent of gynaecologists refuse to carry out abortion procedures for reasons of conscience, which is the power granted by law in 2003 (Peoples Health Dispatch, 2022). The right to abortion, on the other hand, has a particular history, as Croatia was once part of the former Yugoslavia. That is, the country's current abortion law dates back to 1978, when it still belonged to the former Yugoslavia (Peoples Health Dispatch, 2022). Although Croatia declared its independence in 1991, the country has not made a single reform in this regard and has even gone backwards with increasing conservative and religious influence. Accordingly, “the grounds on which the 1978 law was introduced – an article of the 1974 Constitution of the SFR of Yugoslavia which stated that “It is a human right freely to decide on family planning” – was removed from the Constitution of the Republic of Croatia in 1990 due to pressure from the Catholic Church" (Peoples Health Dispatch, 2022).

Moreover, it can be witnessed that similar manipulations to curb the sexual and reproductive rights of women in Italy exist, where 70% of gynaecologists consider themselves conscientious objectors

12. Christian Fiala, Abortion in Europe: Are the laws and practices patient centred?

13. Wikipedia: Conscientious objection to abortion

(Bencharif S. & Martuscelli C., 2022).

#### 4.4 Abortion Rights and the European Convention on Human Rights

The right to abortion has been subjected to heavy attacks and bigotry by different groups for many years, from politicians to churches to conservatives. One of the debates circulated by these anti-abortion mindsets is the right to life of the foetus versus women's abortion rights. Thus, on this subject, the Grand Chamber of the ECHR explicitly conveyed its position in its landmark judgement *Vo v. France* in 2004 (Katsoni S., 2021). Accordingly, it stressed that “the unborn is not regarded as a 'person' directly protected under the European Convention on Human Rights ('ECHR') Article 2 and that 'if the unborn do have a 'right' to 'life', it is implicitly limited by the mother's rights and interests (para 80)” (Katsoni S., 2021).

Furthermore, the European Commission of Human Rights of the Council of Europe, in its decision *X v. the United Kingdom* in 1980, referred to the barrier to accessing abortion. It is thus stated in paragraph 20 that “already at the time of the signature of the Convention in 1950, all High Contracting Parties, with one possible exception, permitted abortion when necessary to save the life of the mother” (Katsoni S., 2021). Thereafter, the Court re-formulated this in its judgment *Vo v. France*, and said “when pregnant woman's life is risked, access to abortion is non-negotiable” (Katsoni S., 2021).

Therefore, when the right to abortion is associated with the articles of the Convention<sup>14</sup>, there are some articles that appear and are linked to it frequently. These are Article 2 (Right to Life), Article 3 (Prohibition of Torture), and Article 8 (Right to Respect for Private and Family Life). Moreover, there are other conventions that use to give a legal basis for proving violations of women's abortion rights. Such as the International Covenant on Civil on Political Rights in 1966, which is a tool used by the Human Rights Committee to point out that regulations restricting a woman's access to abortion in cases of rape or incest are “incompatible with Article 7 (freedom from torture or cruel, inhuman or degrading behaviour) of the said Covenant” (Katsoni S., 2021).

14. [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

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