

Submission by Human Rights Watch to the UN Special Rapporteur on the Right to Health

June 2021

Human Rights Watch is pleased to have the opportunity to offer input for the special rapporteur’s upcoming thematic report on the right of everyone to sexual and reproductive health—challenges and opportunities during Covid-19. Human Rights Watch has extensively documented the [human rights impacts](#) of the [Covid-19 pandemic](#), including impacts on sexual and reproductive health and rights. This submission focuses on two areas we have documented in our research: 1) obstacles and challenges to the right to sexual and reproductive health during the pandemic; and 2) good practices and opportunities that have emerged.

I. Obstacles and Challenges

Barriers to Accessing Sexual and Reproductive Health Care

Many governments closed facilities providing sexual and reproductive health care or restricted access to certain services during the pandemic. The International Planned Parenthood Federation, a global nongovernmental organization (NGO) that promotes sexual and reproductive health, reported that the pandemic [forced the organization to close thousands](#) of family planning facilities, either due to government orders or social distancing needs. Colombia, El Salvador, Pakistan, Germany, Ghana, Malaysia, Sri Lanka, Sudan, Uganda, Zambia, and Zimbabwe have each had to close at least 100 such facilities.

In [Papua New Guinea](#), where maternal mortality rates are among the highest in the Pacific region, failure to implement measures to ensure women and girls could safely access healthcare facilities amid the Covid-19 pandemic made pregnancy even more unsafe. In Pakistan, where maternal mortality rates were already the [highest in South Asia](#), the closure of several major maternity wards after some staff members tested positive for the virus [exacerbated an already grim situation](#), especially for women and girls living in poverty. In Venezuela, where hospitals were already in the grip of a humanitarian crisis, some maternal health centers [suspended](#) prenatal and postnatal services in 2020 due to the pandemic, and NGOs reported that pregnant women

suspected of having Covid-19 were being denied prompt care.

In March 2021, the United Nations Population Fund [reported](#) that an estimated 12 million women experienced disruptions in access family planning due to the pandemic, leading to 1.4 million unintended pregnancies.

Human Rights Watch research in [Afghanistan](#) showed how declining donor support and the Covid-19 pandemic worsened women's access to health care in multiple ways, including by plunging many families deeper into poverty and reducing the resources available to the government to support health care. Women and girls struggle to access even the most basic information about health and family planning. There is an unmet need for modern forms of contraception; prenatal and postnatal care is often unavailable; specialty care, such as modern cancer and fertility treatment, is largely nonexistent; routine preventative care such as pap smears and mammograms are almost unheard of; and a large proportion of births are still unattended by a professional. Women often have more children than they want because of lack of access to modern contraception; face risky pregnancies because of lack of care; and undergo procedures that could be done more safely with more modern techniques. Maternal and infant mortality remain very high.

In [several countries](#), Human Rights Watch documented barriers to accessing safe and legal abortion care during lockdowns. For example, some hospitals in [Russia](#) suspended provision of legal abortion during the pandemic. Authorities in [Italy](#) did not immediately deem abortion essential health care, with some facilities suspending abortion services or reassigning gynecological staff to Covid-19 care. The Italian Health Ministry clarified on March 30, 2020 that abortion services were nondeferrable, but hospitals and clinics [did not always adhere to this guidance](#), and travel restrictions to stop the spread of Covid-19 exacerbated longstanding obstacles to accessing abortion services, including burdensome requirements and extensive use of conscientious objection. Poor, rural, and migrant women—already facing heightened disadvantage in accessing abortion—were even more likely to be impacted. In [Brazil](#), only [76 hospitals](#), in a country of 210 million people, were performing legal abortions in 2019. In June 2020, that number [shrank to 42](#) due to the Covid-19 pandemic.

A harmful [law in the US state of Illinois](#) requires a young person under 18 seeking an abortion to involve an adult family member in their abortion decision, or go to court to receive a judicial bypass. Before the Covid-19 pandemic, hearings were held exclusively in person during regular

business hours, and young people had to secure transportation to the courthouse and arrange time away from school, work, or other obligations without their parents being alerted. To avoid the spread of Covid-19, since mid-March 2020 Illinois courts have held judicial bypass hearings remotely, using an online platform. Experts said these online hearings have eased logistical barriers for some young people but heightened risks around confidentiality and safety for others, since many young people can only rarely leave the home due to Covid-19 restrictions and precautions. Some young people lacked access to reliable internet for online hearings.

In the United States, disparities in Covid-19 outcomes [reflected](#), and may have intensified, the impacts of structural racism on sexual and reproductive health outcomes, and in particular Black women's sexual and reproductive health. Black women are more than three times as likely to [die from pregnancy-related complications](#) as white women in the US. Research has also shown women of color are more likely to die from cervical cancer than white women. In Alabama, for example, Human Rights Watch's [research](#) in 2018 found that racial discrimination and state neglect of women living in poverty contributed to high cervical cancer mortality rates for Black women, leaving them twice as likely to die from cervical cancer as white women in the state. The Covid-19 pandemic exacerbates many of the barriers Human Rights Watch found to accessing adequate and quality health care. For example, reliance on public transportation, at a time when it is not safe, and a lack of reliable internet access for telemedicine when in-person appointments may not be available or safe create greater challenges to accessing necessary health care for low-income people and people of color, especially for those living in rural areas in the US, access to medical care, including obstetric and gynecologic care, is limited and often requires traveling far distances.

Impact of Widespread School Closures on the Right to Sexual and Reproductive Health

An estimated 90 percent of the world's school-aged children have had their education disrupted by the pandemic. Human Rights Watch published a [report](#) on the pandemic's dire global impact on education, based on interviews with more than 470 students, parents, and teachers in 60 countries between April 2020 and April 2021. Disruptions in education interfered with adolescents' and children's access to information about sexual and reproductive health, reduced their autonomy, and isolated them from pathways to seek support.

A quality education enables children to develop their own identities and emerging autonomy, including exploring and learning about topics that they may be otherwise unable to do with ease

at home in proximity to family members or without privacy. Our research showed that certain topics crucial for a teenager’s development and health, such as comprehensive sexuality education, can be hard to deliver remotely, with children at home.

School shutdowns had particular consequences for lesbian, gay, bisexual, transgender, and gender-diverse children. For some, being away from school meant they were away from bullying and mistreatment from fellow students and even teachers (one global survey found that [42 percent](#) of LGBTI+ youth said they had been “ridiculed, teased, insulted, or threatened at school” before the pandemic, because of their sexual orientation or gender identity, primarily by their peers). For others, school closures meant removal from a school environment where they felt free to express their identity and receive support from teachers, counsellors, or peers, and confinement at home with family members with whom they felt comparatively constrained.

One of the most disturbing consequences of school closures was that of pandemic-produced pressures combined with more time confined inside, which increased the risk of children experiencing or witnessing abusive behavior at home, including sexual violence. Removing children from school also minimized an opportunity for adults outside the home to monitor the health and safety of children.

Regressive Legal and Policy Measures

Covid-19 Response Measures

Some [governments](#) used the pandemic as an [excuse](#) to attempt to block access to abortion. In the US, at least [11 states](#) tried to [limit access to abortion](#). In [Brazil](#), the administration of President Jair Bolsonaro removed two public servants after they signed a technical note recommending that authorities maintain sexual and reproductive health services during the Covid-19 pandemic, including “safe abortion in the cases permitted by Brazilian law.”

In Uganda, Covid-19 was used at least twice as a pretext to arrest LGBT people on charges of “a negligent act likely to spread infection of disease,” in [March 2020](#) and again in [May 2021](#). In both cases, victims were subjected to forced anal examinations.

Laws, Policies, and Practices Unrelated to Covid-19

In addition to regressive Covid-19 response measures, lawmakers in several countries rejected rights-respecting reforms or advanced dangerous and regressive laws, policies, or practices during the pandemic that threaten the right to sexual and reproductive health.

In April 2020, Poland's parliament [debated](#) two dangerous bills that would have eliminated legal access to abortion in cases of severe or fatal fetal anomaly and criminalized anyone providing sexuality education or sexual health information to adolescents. The bill on sexuality education was referred to committee in April 2020 and remains pending at time of writing. In October, Poland's Constitutional Tribunal [ruled](#) that access to abortion on the ground of "severe and irreversible fetal defect or incurable illness that threatens the fetus' life" was unconstitutional, making it virtually impossible for women to access legal abortion in Poland. The ruling officially took effect after publication in the national Journal of Laws in January. There have been [escalating threats](#) against women's human rights defenders, often targeting those defending the right to abortion, amid ongoing public protests following the ruling.

Lawmakers in the [Dominican Republic rejected](#) a proposed criminal code reform to end the country's [total abortion ban](#) and decriminalize abortion in three circumstances: when a pregnancy is life-threatening, unviable, or the result of rape or incest.

[Honduran](#) lawmakers adopted a deeply harmful constitutional amendment that entrenched current harsh restrictions on reproductive rights and the prohibition on same-sex marriage. In addition, a harmful new abortion restriction went into effect in the [US state of Florida](#), requiring anyone under 18 to get consent from a parent or legal guardian, or judicial approval, before having an abortion.

Human Rights Watch found that [Cameroonian](#) security forces arbitrarily arrested, beat, or threatened at least 26 people, including a 17-year-old boy, for alleged consensual same-sex conduct or gender nonconformity between February 2021 and mid-April 2021. At least one of them was forced to undergo an HIV test and anal examination. In [Ghana](#), police arrested 21 human rights defenders for attending a paralegal training on documenting rights violations against LGBT people. Human Rights Watch has often found that government scapegoating of LGBT people is used as a strategy to deflect attention from governance failures, raising the hypothesis that inadequate state responses to Covid-19 may account in part for an apparent increase in persecution in many parts of Africa.

We also documented the persistent barriers transgender people face in [Japan](#) to have their gender identity legally recognized. Under the Gender Identity Disorder (GID) Special Cases Act, the procedure for changing one's legally recognized gender requires sterilization surgery and an outdated psychiatric diagnosis, and is anachronistic, harmful, and discriminatory. In [Spain](#), the legislature rejected a legislative proposal that would have allowed legal gender recognition based on self-determination. Currently, trans people in Spain must provide evidence of a gender dysphoria diagnosis and undergo two years of medical treatment to “adjust” their physical characteristics to those “corresponding” to the gender marker they seek. In Hungary, the government prohibited legal gender recognition altogether. The Constitutional Court later [ruled](#) that the ruling does not apply retroactively to people who had already begun the process of changing their gender markers.

II. Good Practices and Opportunities

Human Rights Watch documented several good practices and opportunities related to the right to sexual and reproductive health during the Covid-19 pandemic.

Rights-Respecting Covid-19 Response Measures

[France](#), [England](#), and [Germany](#), among others, facilitated access to medical abortion (abortion induced through taking medication) in light of pandemic-related travel restrictions and the need to minimize hospital stays. Following pressure from local organizations, the health ministry in [Italy](#) issued new guidelines to allow medical abortion on an outpatient basis up to the ninth week of pregnancy.

Rights-Respecting Laws and Policies Unrelated to Covid-19

In December, Argentina's senate voted in favor of a landmark reform to legalize abortion on any grounds during the first 14 weeks of pregnancy. In [May 2021](#), the national government updated the national guidelines for the comprehensive care of people who choose to access legal abortion.

In several rulings, the Constitutional Court in [Ecuador](#) found certain laws unconstitutional, including those restricting same-sex marriage and abortion in cases of rape. Human Rights Watch has urged the newly elected President of Ecuador, Guillermo Lasso, who took office on May 24, 2021, and the Ecuadorean National Assembly to remove all criminal penalties for abortion. As an

interim step, it should prioritize implementing Constitutional Court rulings that advance human rights protections.

US President Joe Biden [rescinded regressive actions](#) by the administration of former president Donald Trump that made it difficult for pregnant people—both in the US and accessing facilities supported by its foreign assistance—to speak freely with their doctors, access health services, and get information they need to make health decisions, undermining their right to health, right to information, and other rights. In addition, the US State Department re-committed to [reporting on reproductive rights](#) in its annual human rights reports, reversing a Trump Administration policy that cut most mentions of key human rights abuses that disproportionately impact women and girls from its reports, in particular country analyses of maternal mortality and unmet contraceptive needs.

The governor of the US state of Alabama [signed a bill](#) that will update the state’s sexuality education law, removing inaccurate and stigmatizing language about homosexuality. Previously, Alabama [state law required](#) that sexuality education emphasize “that homosexuality is not a lifestyle acceptable to the general public” and “homosexual conduct is a criminal offense under the laws of the state,” even after the US Supreme Court struck down criminal bans on same-sex activity.

In [Brazil](#), the Supreme Court protected access to comprehensive sexuality education by striking down some municipal laws that banned questions of gender or sexual orientation in the classroom. The Supreme Court’s decisions also upheld the right to nondiscrimination by holding that the legislatures neglected their duty to promote politics of inclusion and equality, which can prevent prejudice and violence against LGBT people.

III. Recommendations

We recommend that the Special Rapporteur urge all states to:

- Invest in public healthcare systems so that they are accessible and affordable to everyone without discrimination, including marginalized groups. This is critical not only to respond effectively and adequately to the pandemic as it continues to unfold, but to ensure rights-respecting healthcare systems that can provide care and prevent illness beyond Covid-19;
- Establish and adequately fund inclusivity policies that:

- Support linguistic, ethnic, sexual, gender, disability, and racial diversity in service provision at all levels of health systems; and
 - Acknowledge, confront, and seek to remedy historic and current experiences of racial and other forms of discrimination.
- Create an official, accessible complaint mechanism for patients who experience discrimination or abuse in the health system.
- Recognize that accessible sexual and reproductive health services are essential, and the Covid-19 pandemic or other emergencies should not be used as an excuse to roll back access to reproductive health care or other services. As new lockdown measures may be enforced as the pandemic continues, governments should ensure that everyone has access at all times to safe abortion services, prenatal and postnatal health care, maternal health services, sexuality education, and other essential reproductive health care.
- Ensure that family planning centers have the resources they need in order to stay open, including adequate provision of contraceptives, and that community members are able to access these centers without interruption. Any lockdown measures should explicitly identify reproductive health services as “essential” and ensure that people can safely access them.
- Following [WHO guidelines](#), set the legal time frame for medical abortion at 12 weeks and eliminate requirements for hospitalization, instead providing guidance on self-management of medical abortion with in-person or telemedicine consultations.
- Take all feasible steps to remove financial barriers to public health care and ensure that public healthcare services are accessible, available in sufficient quantity, of good quality, and free from discrimination.
- Invest in increasing the availability of skilled medical personnel, ensuring affordable access to essential medicines, and ensuring that all public health centers are accessible, have scientifically approved equipment, sufficient safe drinking water, and adequate sanitation and hygiene to protect the health of healthcare workers and patients.
- Ensure adequate, acceptable, and affordable menstrual management materials; access to adequate facilities, sanitation, infrastructure, and supplies to enable women and girls to change and dispose of menstrual materials; and knowledge of the process of menstruation and of options available for menstrual hygiene management, so that menstruating people have the enable environment to manage their periods with dignity and safety.
- Take urgent action to decriminalize abortion and lift harmful restrictions on abortion access, including by repealing requirements mandating parental involvement in children’s

and adolescents' abortion decisions, eliminating or strictly limiting circumstances in which conscientious objection can be invoked so that it does not prevent or delay access to abortion, and other burdensome requirements and barriers.

- Implement mandatory comprehensive sexuality education that complies with international standards and is scientifically accurate, rights-based, age-appropriate, and delivered in accessible formats. Ensure that the curriculum reaches students from an early age and builds incrementally to equip them with developmentally relevant information about their health and wellbeing. Ensure that teachers are adequately trained to teach this curriculum, and schools provide safe spaces for children and adolescents to discuss issues in a confidential, non-stigmatizing manner.
- Take measures to combat the stigma around adolescent sexuality and promote healthy sexual practices for all adolescents, including those who are out of school, including through national and local campaigns involving and designed by a diverse range of young people.
- Expand access to appropriate, adolescent-friendly, confidential, non-stigmatizing health services for a full range of sexual and reproductive health needs, without requiring parental notification or consent. Ensure that staff are trained to manage individual cases without stigmatizing young people, particularly children who are already sexually active.
- Ensure uninterrupted availability of services for survivors of sexual and other gender-based violence, including for children and adolescents as well as LGBT people, racial or ethnic minorities, people with disabilities, and other marginalized groups, and explicitly state that such services can be accessed even during lockdowns.
- End arbitrary arrests on the grounds of sexual orientation and gender identity.