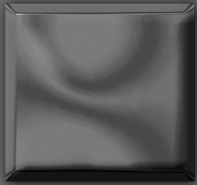
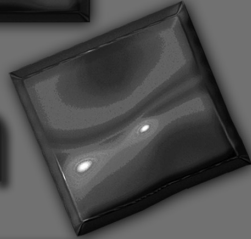
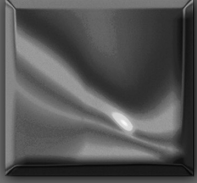






# Health Exception



lawful  
termination  
of pregnancy,  
ethics and  
human  
rights

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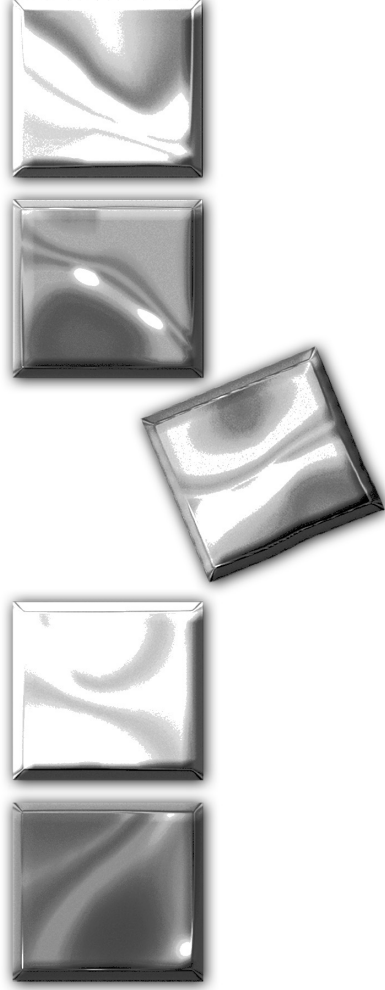












# Position Document





































### c. The social dimension of health<sup>43</sup>

The social dimension of health is explicitly recognized as an element of health. It is defined from the perspective of the underlying determinants of health and covers minimum factors of material well-being, such as access to drinking water, good sanitation conditions, nutrition and adequate housing, healthy conditions at work and in the environment, and access to education and information.

In general the social determinants of health refer to the social conditions in which people live. The structure of these determinants comprises three elements: the political and socio-economic context, structural determinants and intermediary determinants.

The right to health in its social dimension is associated with well-being and includes:

- poverty, understood in a wide sense as any type of hardship, lack or deprivation – the lack of «something»–, something that is in itself morally relevant and the object of policy;
- social exclusion, understood as the inability of society to distribute material benefits and opportunities – basically work and education – to all citizens, and to guarantee their social and political integration due to the existence of cultural or legal barriers;
- marginalization, understood as the presence of a mass of people on the margins of the modern nucleus of society – a nucleus that is capable of guaranteeing, among others, access to good employment, a good income and good public services.

In a wider sense, the social determinants of health are factors related to «being well» and with a person’s life project: education, employment, employment benefits to support the exercise of maternity and paternity, conditions that enable the couple to share responsibility, the number of children wanted, etc. The termination or continuation of a pregnancy that represents a risk to the woman’s health has a profound effect on the definition of her life project and her well-being.

**Vulnerability factors:** Those who participate in the application of the health exception should take into account the fact that the social context in which women live determines their well-being and health; moreover, this context may be a factor that exacerbates physical or mental pathologies. In a country with high rates of unemployment and situations of discrimination against women in the sphere of employment, (for example, lower salaries or the difficulty of gaining access to certain jobs, the impossibility of resorting to mechanisms for demanding that men assume responsibility for food preparation, the lack of nurseries or breaks during periods of lactation, the lack of support for single mothers) the continuation of a pregnancy may diminish or damage the well-being of women or exacerbate different physical or mental health conditions. In the case of rural, indigenous or afro-descendent women, women living with HIV/AIDS, migrant or disabled women and women in prison, for example, discrimination is even greater, implying greater risks to health.

One important aspect of the social dimension of health is that of **the structural determinants that refer to all of the components of socio-economic position that affect health outcomes**. People attain a position according to their social class, employment status, educational achievements and income level.

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<sup>43</sup> See the background document, page 144.







- equality (formal and material: the same rights for all people and the adoption of adequate measures to attend to different needs);
- equity (the elimination of avoidable and unjust inequalities);
- non-discrimination (preventing women from being affected by the absence of services in cases where access to services affects women exclusively, such as the case of LTP).

This chapter addresses the principles that should guide the application and interpretation of the health exception. They are framed in the concepts of human rights and clarify the ethical aspects related to the application of the health exception. This reflection is particularly directed at health care professionals in order for the contents to serve as a guide to reading, interpreting – in the case of doubt, inconsistencies or lacunae – and applying the regulations contained in laws on the legal termination of a pregnancy that exist in each country.

#### a. Respect and protection<sup>48</sup>

According to the obligations relating to respect and protection, **States – including all the public and private actors of each country’s health system – have the obligation to not hinder – directly or indirectly – the exercise of women’s human rights, and among them, the right to health, and to guarantee that third parties do not hinder these rights.**

These types of duties prohibit the State from interfering arbitrarily and illegally in the private sphere of women’s lives in order to restrict or deny their access to the safe termination<sup>49</sup> of a pregnancy for health reasons, when the latter is permitted by law, and require the State to prevent interference by third parties – private actors<sup>50</sup>.

Equally, States should guarantee: (i) the elimination of arbitrary interference in the access to integrated services (either to terminate or to continue the pregnancy), (ii) equal access for all women to integrated services (a timely termination or the prevention of complications) and, (iii) the provision of all necessary information in order for the health exception to be applied equitably, that is, taking into account the differences specific to different women.

The term «all information» includes an explanation for women by health care professionals of the risks associated with the pregnancy and the potential consequences of its continuation.

<sup>48</sup> See the background document, page 158.

<sup>49</sup> For an example illustrating this situation see the background document, pages 158 y 159.

<sup>50</sup> The privatization of the health sector must not represent a threat to the availability, accessibility, acceptability and quality of health care services related to LTP. Therefore the private sector should invoke the requirements of the public health service, respecting the governing role of the State.







































a. The protection of the right to health as well-being<sup>93</sup>

The effective protection of women’s right to health requires the promotion of gender equality and the recognition that special attention is required for the health conditions that affect only women, such as the case of LTP. When there is a risk to women’s health, the woman has the right to decide about a termination of the pregnancy as a measure to protect her interest in preserving her health and well-being. In order for this right to become effective, health services: (i) should contribute to the prevention, detection and treatment of risks to health, in all its dimensions, associated with the continuation and the forced continuation of a pregnancy, (ii) should allow timely access to the safe health care services that are needed for the termination of a pregnancy, (iii) these services should respect women’s human rights, as well as the decisions that women make, and (iv) services should be integrated and attend to the ensuing health needs of women who have decided on an LTP, particularly contraceptive services. None of the people who participate in the application of the health exception for the termination of a pregnancy can legitimately oppose women’s exercise of their right to the protection of their health. The health consequences that may result from a pregnancy affect the life, health and well-being of a woman, thus her choice prevails over the opinions of others.

b. Women’s right to autonomy<sup>94</sup>

As part of the full exercise of the right to health, women have the right to make autonomous decisions about their health. Autonomy, in the field of the application of the health exception, is exercised effectively by a woman when she can freely carry out the decisions she makes. The exercise of women’s autonomy is manifested, at least, when; (1) with a risk to health, she is the only person who decides how much harm or risk of harm to health she is prepared to withstand, being able to choose to terminate the pregnancy; (2) this decision is made without any undue interference from others; (3) nobody can intervene in an attempt to prevent the implementation of the woman’s decision; and, (4) she has at her disposal all the means necessary to carry out her decision without placing herself at greater risk, including access to legal and safe services.

If the participation of «other» people in the application of the health exception coincides with the needs of the woman, their presence is a contribution to the implementation of a decision adopted in the exercise of the right to autonomy. On the other hand, when the participation of these people opposes the woman’s choice, it becomes a disproportionate burden that fails to recognize her autonomous decision to not withstand a particular risk or harmful effect on her health. Opposition may come from different actors:

- from the attending doctor who considers that there is not sufficient risk to health,
- from administrative authorities that should authorize her decision and are opposed to it<sup>95</sup>.

<sup>93</sup> See the background document, page 226.

<sup>94</sup> See the background document, page 228.

<sup>95</sup> As we have explained in other chapters of this document, administrative authorities may only participate in contexts where this is explicitly established in law, similar to the existence of medical committees.



















