

New York, July 5th, 2022

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AMICUS CURIAE BRIEF in the case of Justyna

sygn. akt V K 18/22

oskarżona Justyna Wydrzyńska

Presented by

(1) Fòs Feminista

(2) Anis - Institute of Bioethics

(3) Ecuadorian Center for the Promotion and Action of Women (CEPAM-G), through the Center for Legal Responses.

1. Fòs Feminista is a non-profit corporation with headquarters located at 125 Maiden Lane, 9th Floor, New York NY 10038 (Department of State ID 99826)
2. Anis is a non-profit organization with headquarters at Brasília, Brazil Zip Code 70.673-970.
3. CEPAM-G is a non-profit organization with headquarters at Av. Francisco Robles y, 3 Cj. 44 SE, Guayaquil 090102, Guayaquil, Ecuador,

I. Scope of Brief

1. The right to physical and mental health is defined by the Special Rapporteur on the right to health as “an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health.”¹ The right to health is composed of at least four dimensions, one of them being accessibility and, most importantly for this case, information accessibility. Information accessibility includes the right to seek, receive and impart information and ideas concerning health issues.²

2. Based on this overarching human rights framework of the right to health, this Amicus presents two main ideas. Firstly, that abortion is recognized as an essential part of public health care as determined by the World Health Organization (WHO). Specifically, self-managed medical abortion is a safe and scientifically documented health service that can be performed without the participation of medical professionals.³ Secondly, providing and receiving information about abortion is equivalent to providing and receiving information about health and is thus a fundamental right consistently recognized in Human Rights Treaty Bodies and jurisprudence.

3. Accordingly, when human rights defenders such as Justyna Wydrzyńska inform and educate others about abortion, they are implementing crucial components of public health services. All States have an obligation to ensure accessibility to information about abortion under international human rights law, even in jurisdictions where abortion is criminalized. Where States fail to uphold that obligation, it often falls on human rights defenders to ensure this crucial aspect of the right to health and healthcare. Providing information about self-managed abortion is not an interference in someone else’s pregnancy - rather, it is a duty for human rights defenders who base their work on the highest-quality evidence available in healthcare and human rights law.

II. The right to health and the right to access information about safe abortion

4. Regarding women’s right to health, the International Conference on Population and Development, held in Cairo in 1994, inaugurated a more egalitarian and comprehensive description of the right to health as it included sexual and reproductive health and rights in its spectrum of protection, anticipating what would be an even more complete conception of the right to health.⁴ From this perspective, the fundamental rights of dignity, intimacy and privacy, the right

¹ E/C.12/2000/4, p.3 11 August 2000. Available at: [E/C.12/2000/4 \(undocs.org\)](https://undocs.org/E/C.12/2000/4)

² *Idem* p. 4.

³ Abortion Guidelines.

⁴ Cook, Rebecca J., and Mahmoud F. Fathalla. “Advancing Reproductive Rights Beyond Cairo and Beijing.” *International Family Planning Perspectives*, vol. 22, no. 3, 1996, pp. 115–21. JSTOR, <https://doi.org/10.2307/2950752>. Accessed 3 Jul. 2022

to information and the prohibition of torture and inhuman or degrading treatment are also contemplated in the right to health. The enjoyment of the right to health, therefore, is based on equal treatment, oriented to care and well-being and, above all, freedom from discrimination and criminal charges.

5. The right to life and healthcare extends to the right to control one's health and body.⁵ Restrictions on abortions lead to increased illegal abortions which are more likely to be unsafe.⁶ Unsafe abortions are a threat to women's health as they can lead to complications including death, permanent injury, or infertility.⁷ Therefore, a barrier to information about safe abortions is a barrier to healthcare and the right to health.⁸

III. International frameworks regarding the right to access information about safe abortion

6. In March 2022, the World Health Organization (WHO) published guidelines consolidating the current evidence and best practices for quality abortion care in the realm of policy, law and clinical services.⁹ These guidelines include the self-management of medical abortion defined as: "self-management of the entire process of medical abortion or one or more of its component steps, such as self-assessment of eligibility for medical abortion, self-administration of medicines without the direct supervision of a health worker, and self-assessment of the success of the abortion process."¹⁰

7. The WHO guidelines specifically outline what abortion-related information should be provided to persons seeking an abortion, including "available options for abortion methods and pain management, information related to free and informed consent...when normal activities can be resumed, including sexual intercourse."¹¹ According to the WHO guidelines, abortion information should be provided to persons seeking an abortion regardless of previous authorization of the government or a third party.

8. As the guidelines affirm, even in countries where abortion is illegal, provision of evidence-based information related to abortion is a human right and should not be criminalized. The guidelines emphasize that "dissemination of misinformation, withholding of information and

⁵ [International Human Rights Law and Abortion in Latin America.](#)

⁶ [WHO's factsheet on abortion, 25 November 2021.](#)

⁷ *Id.*

⁸ [International Human Rights Law and Abortion in Latin America.](#)

⁹ Gerds C, O Bell S, Shankar M, Jayaweera RT, Owolabi O. *BMJ Global Health.* June 2022. DOI: 10.1136/bmjgh-2022-009557

¹⁰ WHO Abortion Care Guidelines 2022. <https://www.who.int/publications/i/item/9789240039483> (last entered April 22, 2022).

¹¹ *Id.* at 1.

ensorship should be prohibited.”¹² In other words, “[a]ccess to information should take into account both the need to address and dispel misconceptions about abortion as well as provide access to comprehensive, accurate, and evidence-based information on abortion services...”¹³

9. As discussed below, there is a large body of human rights law consistently reaffirming access to information on abortion services as part of the right to health.

a. United Nations Treaties and Monitoring Bodies

10. The right to information has been recognized by several United Nations Treaty Monitoring Bodies. The Committee on Economic, Social and Cultural Rights has stated that the “right to evidence-based information on all aspects of sexual and reproductive health...should be accessible to all individuals, including adolescents and youth.”¹⁴ Moreover, the Committee on the Right of the Child has affirmed that “children [should] have access to education and guidance on sexual health...[and] safe abortion without the consent of legal guardians.”¹⁵

11. As United Nations Treaty Monitoring Bodies have consistently recognized, access to information on abortion services is a critical component of sexual and reproductive health.¹⁶ Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) establishes that States must recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁷ Article 24(D) of the Convention on the Rights of the Child (CRC) declares that States must take measures to “ensure appropriate pre and post-natal care for expectant mothers.”¹⁸

b. International Jurisprudence

12. The European Court of Human Rights (ECtHR) has also addressed the importance of the free flow of information on abortion services. In *Open Door and Dublin Well Woman v. Ireland*, the ECtHR held that the Irish Supreme Court’s injunction upholding a restriction, which prevented counselling agencies from providing pregnant women with information concerning

¹² *Id.*

¹³ Center for Reproductive Rights. Law and Policy Guide: The Right to Information on Abortion. <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-the-right-to-information-on-abortion/> (last entered April 15, 2022).

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment 22 (2016), para. 18, U.N. Doc. E/C.12/GC/22 (2016).

¹⁵ Committee on the Rights of the Child. General Comment 15 (2013), pg.5 UN Doc. CRC/C/GC/15.

¹⁶ General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Available at docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOaekmaOwDOWsUe7N8TLm%2BP3HJPzjHySkUoHMa vD%2Fpyfcp3YIzg.

¹⁷ [International Covenant on Economic, Social and Cultural Rights | OHCHR.](#)

¹⁸ [Convention on the Rights of the Child | OHCHR.](#)

abortion facilities abroad, violated the right to freedom of expression and information of the European Convention on Human Rights. The Court further held that Ireland's restriction interfered with the ability of women to receive information.¹⁹

13. The UN Human Rights Committee, in turn, concluded that the Ireland Abortion Act was discriminatory because it led to an effective denial of critical information. The Committee observed that "the existing legal framework encourages the withholding of clear and timely information that persons who might choose to undergo a legal abortion outside of Ireland could use in order to arrive at personal decisions regarding their reproductive health."²⁰

14. Crucially, the right to counsel and provide information does not allow healthcare institutions or activities to spread misinformation: the Polish Supreme Court has stated that the dissemination of untrue facts is not covered by freedom of expression if it violates the personal rights of others.²¹

15. The Inter-American Human Rights Commission (IACHR) has stated that "women cannot fully enjoy their human rights without having a timely access to comprehensive health care services, and to information and education in this sphere".²²

16. The Inter-American Court of Human Rights has indicated that:

157. Sexual and reproductive health is certainly an expression of health that has particular implications for women due to their biological capacity for pregnancy and childbirth. It is related, on the one hand, to autonomy and reproductive freedom, in terms of the right to make autonomous decisions about their life plan, their body and their sexual and reproductive health, free from all violence, coercion and discrimination. On the other hand, it refers to access both to reproductive health services and to information, education and the means that allow them to exercise their right to decide freely and responsibly the number of children they wish to have and the birth interval. The Court has considered that "the lack of legal safeguards to take into consideration reproductive health can result in a serious impairment [of] autonomy and reproductive freedom." ... Therefore, **the Court considers that, in matters of sexual and reproductive health, the obligation of active transparency attributable to the State entails the duty of health personnel to provide information that helps people to be in a position to make free and responsible decisions regarding their own body and sexual and reproductive health, which are related to intimate aspects of their personality and private and family life.**²³

¹⁹ ECtHR, *Open Door and Dublin Well Woman v. Ireland*, Application No. 14234/88

²⁰ In the UN Human Rights Committee, *Mellet v. Ireland*, Comm. No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (2016) at 19.

²¹ Polish Supreme Court, IV CSK 638/18, Judgment of January 17, 2020.

²² IACHR, Report No. 21/07, Petition 161/02, Friendly Settlement, Paulina del Carmen Ramírez Jacinto (Mexico), para. 19, March 9, 2007.

²³ Case I.V. vs. Bolivia. November 30, 2016. The victim in the case, whose name is withheld, underwent a cesarean section at the La Paz Women's Hospital in July 2000. After her daughter was born, she

IV. Conclusion

17. To provide quality evidence-based information about self-managed abortion is a form of protecting the right to health and ensuring the crucial component of information accessibility. It is a duty for human rights defenders who base their work on the highest-quality evidence available in healthcare and human rights law.

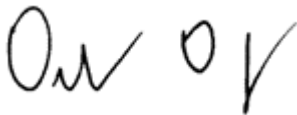
V. Signatures

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By:



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Title: Visiting scholar at Brown University

By:



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Title: Senior Officer, Fòs Feminista

underwent a ligation of the fallopian tubes. There is controversy about whether the victim was consulted in advance and freely, fully and informed regarding this sterilization procedure. According to Mrs. I.V., she found out the day after the procedure was performed. For its part, the State indicated that Mrs. I.V. she had consented verbally during the transoperative period. The victim went to court, but no person has been declared responsible in the disciplinary, administrative or criminal sphere for her non-consensual sterilization, nor was she civilly compensated.

By: *Gabriela Rondon Rossi Leuzada*

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By: *Luciana Steiner Brito*

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By: *Lita Martinez Alvarado*

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Interest of Amici Curiae

The present amicus curiae brief draws upon the basis of the experience and knowledge of three organizations that have been working on sexual and reproductive health and rights:

Fòs Feminista is a non-governmental organization duly organized under the laws of the State of New York, with the stated mission to advocate for sexual and reproductive rights, ensure access to sexuality education for young people, promote law and policy change to guarantee access to safe and legal abortion, defend universal access to health care, and work to eliminate violence against women and girls and gender diverse people. Its work addresses inequalities in sexual and reproductive health outcomes across a range of health policies and programs, institutionalizing an intersectional perspective to protect the life projects of those most impacted by structural racism, precarious work, environmental degradation, forced migration, and armed conflict. Fòs Feminista partners with more than 170 organizations and works in more than 40 countries.

Anis – Institute of Bioethics is a non-for-profit, non-governmental feminist, anticapacitist and anti-racist organization founded in 1999 in Brazil. In more than 20 years of work, we have developed intersectional feminist actions to promote inclusion, gender equality, citizenship, agency, and human rights for all people, especially women and girls. We defend every person's right to make free, informed decisions about their lives, their sexuality, their bodies, and their families, without fear of discrimination, coercion or violence. In order to guarantee these crucial rights for women, girls and gender-diverse people we advocate for universal, quality and evidence-based sexual and reproductive health services, information and education. Hence, we work to hold decision-makers accountable. One of our priorities is to promote social justice and reproductive justice for those in the most vulnerable contexts.

CEPAM-G is a non-for-profit, non-governmental feminist, operating in four different locations in Guayaquil (the main port city in Ecuador) and partners with the Ecuadorian government on multiple fronts, including ongoing training in 15 public health centers, partnering on roll-out of national sexuality education curriculum, and providing sexual and reproductive health and rights (SRHR) services in humanitarian contexts. CEPAM-G's strengths include the provision of legal services for women, community-based sexuality education, gender-based violence prevention and response, and building public sector capacity for rights-based services. CEPAM-G is an influential partner due to its leadership of a national SRHR coalition and innovative approaches to preventing gender-based violence, such as by training women to serve as "Rights Educators" in poor neighborhoods of Guayaquil and surrounding rural communities.

SIGNATURE CERTIFICATE




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