



# Conscientious Objection: International Human Rights Standards in Reproductive Health Care

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# **Conscientious Objection**

## **International Human Rights Standards**

### **in Reproductive Health Care**



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## Summary

Everyone has the human right to the highest attainable standard of physical and mental health. This entails universal access to quality healthcare goods and services on an equal basis, including access to sexual and reproductive health services and abortion services. Conscientious objection in health care enables healthcare practitioners to opt out of certain health practices on grounds of conscience. The topic of conscientious objection in health care, especially regarding abortion care, has been extensively addressed by human rights bodies in over 60 documents. This policy brief describes, systematizes, and analyzes the national and international legislative and regulatory development of conscientious objection in health care in general and around abortion specifically, with the purpose of providing a comprehensive framework for developing health laws and policies that align with international standards and protect the rights of patients and healthcare providers.

The first section provides a high-level overview of the evolving international human rights consensus on conscientious objection in health care. This analysis of human rights bodies' interpretations indicates that international law does not require states to recognize or allow conscientious objection in health care, including regarding abortion care, as a state's primary duty of care is to the individual seeking health care.

The second section lists the key obligations of states that recognize conscientious objection in health care, which are imposed on healthcare providers or discharged by the state itself (also known as "institutional safeguards"). These obligations serve to ensure conscientious objection's invocation respects the rights of both people seeking health care and providers of such services. International and regional human rights bodies have consistently found that a healthcare provider's assertion of conscientious objection should never result in the limitation or denial of access to health care for others, including abortion care. Thus, if a state allows conscientious objection in health care, it must regulate its invocation. The most common procedural requirements for a healthcare provider to invoke conscientious objection are that they: inform the patient in a timely manner that they will exercise conscientious objection, refer the patient to another provider in a timely manner, and inform the patient of their rights. Another limitation on a healthcare provider's assertion of conscientious objection is that they may not invoke the objection in emergencies or urgent care situations. According to human rights bodies, states' obligations include their duties to regulate conscientious objection clearly; prohibit institutional conscientious objection;

establish referral mechanisms; ensure the adequate availability of non-objecting healthcare providers, including by hiring those willing to provide abortion services; and establish and implement monitoring, supervision, and sanction mechanisms.

The third section outlines arguments advanced by human rights bodies for why states must regulate the use of conscientious objection in order to respect and protect certain human rights. Human rights bodies have referred to three groups of rights as the basis for these obligations: the rights of patients accessing health care, including abortion care, the rights of non-objecting healthcare providers, and state obligations regarding the organization and provision of health services. The most prominent patients' rights mentioned are their rights to life, health, and personal integrity; equality and nondiscrimination; and freedom from cruel, inhuman, and degrading treatment. The rights of non-objecting healthcare providers specifically concern their right to work in an environment free from violence and discrimination. Finally, state obligations-based arguments rely on democracy and the negative impact of conscientious objection on health services.

## Background

Conscientious objection in health care enables healthcare practitioners to opt out of certain health care practices on grounds of conscience. Conscientious objection to providing sexual and reproductive health services, such as abortion, has been a central human rights issue during the past few decades. Both the United Nations<sup>1</sup> and regional human rights systems have increasingly addressed conscientious objection in this context in their respective judicial decisions, reports, recommendations, and other statements. At the regional level, this issue is gaining prominence, especially in the European system<sup>2</sup> and progressively in the African<sup>3</sup> and Inter-American systems.<sup>4</sup>

This trend also exists at the domestic level. Various domestic laws and regulations in almost 100 countries provide for conscientious objection in health care and often specifically reference the provision of abortion care.<sup>5</sup>

Although many laws and regulations that recognize conscientious objection try to balance the rights of both people seeking healthcare services and health practitioners, this balance has often been absent, disputed, or difficult to achieve. Conscientious objection-based refusals to provide medical care have been a significant obstacle to women and girls' access to essential health services.<sup>6</sup> As a result, numerous appeals

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<sup>1</sup> Within the UN system, conscientious objection in health care has been explicitly addressed in at least 36 pronouncements, issued by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), the Committee on Economic, Social and Cultural Rights, the United Nations General Assembly, the UN Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Working Group on the issue of discrimination against women in law and practice and the UN High Commissioner for Human Rights.

<sup>2</sup> The European Court of Human Rights has issued six judgments on conscientious objection in matters of abortion, contraception, and prenatal diagnosis, and the European Committee of Social Rights has issued three decisions. In addition, the European Parliament, the Council of Europe, the Commissioner for Human Rights of the Council of Europe, and the Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe have issued at least 13 non-binding pronouncements on conscientious objection.

<sup>3</sup> African Commission on Human and People's Rights (ACHPR), General Comment No.1 on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, <https://achpr.au.int/index.php/en/node/855>, para. 31 (accessed November 19, 2024); and, ACHPR, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights, [https://achpr.au.int/index.php/en/node/854#:~:text=Under%20Article%2014%20\(2\)%20,physical%20health%20of%20the%20mother](https://achpr.au.int/index.php/en/node/854#:~:text=Under%20Article%2014%20(2)%20,physical%20health%20of%20the%20mother), paras. 25 and 26 (accessed on November 19, 2024).

<sup>4</sup> The Inter-American Commission on Human Rights has issued three reports on conscientious objection. The Follow-up Mechanism of the Belém do Pará Convention (MESECVI) has also addressed this topic.

<sup>5</sup> See, Ramón Michel A. and Repka D. M., Global Map of Norms regarding Conscientious Objection to Abortion (*Mapa global de normas sobre objeción de conciencia en aborto*), REDAAS & Ipas, 2021, <https://redaas.org.ar/objencion-de-conciencia/global-map-of-norms-regarding-conscientious-objection-to-abortion/> (accessed November 19, 2024).

<sup>6</sup> There is literature on the negative impact of conscientious objection on women. See, for example: Autorino, T., *The Impact of Gynecologists' Conscientious Objection on Abortion Access*, *Social Science Research*, 87,

have been lodged with courts and international human rights bodies, seeking clarity on when conscientious objection may be invoked and solutions to the practice's impact on women's and girls' access.<sup>7</sup>

Consequently, a robust set of international standards has emerged and become an important tool for governments, decision-makers, activists, and civil society organizations seeking to uphold and promote human rights in the context of conscientious objection in health care, particularly regarding abortion.<sup>8</sup>

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<https://www.sciencedirect.com/science/article/pii/S0049089X20300016>, pp. 8-16 (accessed November 19, 2024); Davis, J. M., Haining, C. M., & Keogh, L. A., *A Narrative Literature Review of the Impact of Conscientious Objection by Health Professionals on Women's Access to Abortion Worldwide 2013-2021*, *Global Public Health*, 17(9), <https://pubmed.ncbi.nlm.nih.gov/35129083/>, pp. 2190-2205 (accessed November 19, 2024); Shanawani, H., *The Challenges of Conscientious Objection in Health Care*, *Journal of Religion and Health*, 55(2), <https://pubmed.ncbi.nlm.nih.gov/26923838/>, pp. 384-393 (accessed November 19, 2024); Ramón Michel, A., Kung, S., López-Salm, A., & Ariza Navarrete, S., *Regulating Conscientious Objection to Legal Abortion in Argentina: Taking into Consideration its Uses and Consequences*, *Health and Human Rights*, 22(2), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7762910/>, p. 271 (accessed November 19, 2024); Bertolè, G., *Abortion in South Africa: The Consequences of Conscientious Objection*, *LSE International Development Review*, 1(2), [https://redaas.org.ar/wp-content/uploads/Abortion\\_in\\_South\\_Africa\\_The\\_Consequences\\_of\\_Conscientious\\_Objection.pdf](https://redaas.org.ar/wp-content/uploads/Abortion_in_South_Africa_The_Consequences_of_Conscientious_Objection.pdf) (accessed November 19, 2024); Haaland, M. E., Haukanes, H., Zulu, J. M., Moland, K. M., & Blystad, A., *Silent Politics and Unknown Numbers: Rural Health Bureaucrats and Zambian Abortion Policy*, *Social Science & Medicine*, 251, 112909, <https://www.sciencedirect.com/science/article/pii/S0277953620301283> (accessed November 19, 2024); and Ramón Michel A., Undurraga V., Cabrera O. (comps.), *La Objeción de Conciencia en el Área de Salud*, Siglo del Hombre, Uniandes, 2024, <https://www.jstor.org/stable/jj.12228591> (accessed November 19, 2024).

<sup>7</sup> See, for example: European Court of Human Rights, *Grimmark v. Sweden* (Appl. No. 43726/17) of 11 February 2020; European Court of Human Rights, *R.R. v. Poland* (Appl. No. 27617/04) 28 November 2011; European Committee of Social Rights, *International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy*, Application No. 87/2012, decision on the merits of 10 September 2013; European Court of Human Rights, "P. and S. v. Poland" (Application No. 57375/08).

<sup>8</sup> Michel, Agustina Ramón, Verónica Undurraga, Óscar A. Cabrera, and Andrés Constantín, eds. *La Objeción de Conciencia En El Área de La Salud En América Latina*. 1st ed. Siglo del Hombre Editores S.A., 2024. <https://doi.org/10.2307/jj.12228591> (accessed November 19, 2024).

## Methodology

For this policy brief, the Centre for the Study of State and Society (Centro de Estudios de Estado y Sociedad, CEDES) conducted exhaustive desk research between May 2020 and December 2023. CEDES surveyed primary legal sources at the national and international level, analyzing a corpus of over 400 laws and regulations from 180 countries and all international and regional human rights systems.<sup>9</sup> CEDES also examined 13 contentious international court cases that explicitly referred to conscientious objection. In addition, CEDES analyzed 53 non-binding documents issued by international and regional human rights bodies, including concluding observations on countries, general comments, recommendations, and other declarations.

Based on its analysis, CEDES determined areas of growing consensus within international and regional human rights systems regarding the regulation of conscientious objection on abortion, which this document outlines.

This document serves to provide a comprehensive, evidence-based framework to guide the development, reform, and implementation of health laws, regulations, and public policies related to conscientious objection in health care in order to ensure they align with the relevant international human rights standards. Thus, it is intended primarily for decision-makers and experts in public health policies and sexual and reproductive rights. It neither prescribes how such laws, regulations, and public policies should be written nor undertakes a sociolegal analysis of why they are written as they are.

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<sup>9</sup> See, Global Map of Norms regarding Conscientious Objection to Abortion, 2024, <https://redaas.org.ar/objencion-de-conciencia/mapa-global-sobre-objencion-de-conciencia/> (accessed November 19, 2024).

# International Standards on Conscientious Objection in Health Care

Various international and regional human rights systems' courts and protection bodies have made increasingly robust, stable, and consistent interpretations of international human rights law regarding conscientious objection in health care. According to analysis of all these documents, there are three legal consensuses:

- States are not obligated to recognize conscientious objection for healthcare providers;
- States that recognize conscientious objection must set limits on its exercise by individual healthcare providers to ensure that it does not become a barrier to healthcare access; and
- Only individual healthcare providers, not institutions, may exercise conscientious objection.

## States Are Not Obligated to Recognize Conscientious Objection for Individual Healthcare Providers

No treaty, convention, or decision under international law imposes mandatory recognition of conscientious objection in general or specifically in relation to abortion. In fact, conscientious objection is only ever explicitly mentioned in these documents in the context of a right that can be invoked in response to forced military conscription. This is seen in article 8 of the International Covenant on Civil and Political Rights (ICCPR) and article 4 of the European Convention on Human Rights (ECHR).

In other words, there is no source of international law imposing an obligation on states to recognize healthcare providers' right to conscientious objection or to guarantee it in their health care systems. Rather, states may choose to prohibit or restrict the scope of conscientious objection in their domestic legal systems.

This is particularly evident in the European human rights system's judgments and interpretations. In *Pichon and Sajous v. France*, the European Court of Human Rights (ECtHR) found that the right to freedom of thought, conscience, and religion (enshrined in article 9 of the ECHR) does not always guarantee the right to behave in public

according to one's beliefs. Specifically, it decided that article 9 does not grant pharmacists a right to refuse to sell medically prescribed legal contraceptives.<sup>10</sup>

In *Grimmark v. Sweden*, the ECtHR held that Swedish laws, which require midwives to perform legal abortions, pursued the legitimate aim of protecting women's health. It also found that the interference with the article 9 rights of the applicant, who refused to perform abortions based on her religion and conscience, was proportionate and necessary in a democratic society.<sup>11</sup>



#### **European Committee of Social Rights, *Federation of Catholic Families in Europe (FAFCE) v. Sweden*, Complaint No. 99/2013**

In 2013, the Federation of Catholic Families in Europe (FAFCE) lodged a complaint against Sweden with the European Committee of Social Rights. FAFCE argued that Sweden was violating the right to health and nondiscrimination by, among other reasons, not having a national legal and policy framework governing conscientious objection by healthcare providers or a right of healthcare providers to refuse to participate in abortion care.<sup>12</sup>

According to FAFCE, this forced healthcare providers to perform abortions against their conscience, among other things.<sup>13</sup>

The committee concluded that Swedish law did not violate the European Social Charter. In reaching that decision, the European Committee of Social Rights found that the right to health enshrined in article 11 of the European Social Charter does not impose a *duty* on States Parties to guarantee the right of healthcare providers to object on grounds of conscience.<sup>14</sup> It also stated that article 11 does not "confer a right to conscientious objection on the staff of the health system of a State Party."<sup>15</sup> It ruled that since article 11 did not apply,

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<sup>10</sup> European Court of Human Rights, *Pichon and Sajous v. France*, Case No. 49853/99, 2001, <https://clacaidigital.info/handle/123456789/1910> (accessed November 20, 2024).

<sup>11</sup> European Court of Human Rights, *Grimmark v. Sweden* (Appl. No. 43726/17) of 11 February 2020.

<sup>12</sup> European Committee of Social Rights, Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Case No. 99/2013, [https://www.coe.int/en/web/european-social-charter/processed-complaints-/asset\\_publisher/5GEFkjmH2bYG/content/no-99-2013-federation-of-catholic-family-associations-in-europe-fafce-v-sweden](https://www.coe.int/en/web/european-social-charter/processed-complaints-/asset_publisher/5GEFkjmH2bYG/content/no-99-2013-federation-of-catholic-family-associations-in-europe-fafce-v-sweden); <https://hudoc.esc.coe.int/eng/?i=cc-99-2013-dmerits-en>, para. 37.

<sup>13</sup> Ibid.

<sup>14</sup> European Committee of Social Rights, *Federation of Catholic Families in Europe (FAFCE) v. Sweden*, Decision on the Merits, 2015, <https://hudoc.esc.coe.int/eng/?i=cc-99-2013-dmerits-en>, para. 70.

<sup>15</sup> Ibid., para. 71.

no discrimination occurs if healthcare providers are not entitled to exercise conscientious objection.<sup>16</sup>

In contrast, it held that the right to health requires States Parties to ensure access to adequate health care, which includes the right to health of women seeking abortion care. To highlight this point, the Committee mentioned a complaint filed against Italy.<sup>17</sup> The facts of that complaint were that as a result of poor implementation of the law regarding conscientious objection, about 70 percent of gynecologists were conscientious objectors in 2009, thwarting access to abortion service for women, girls, and pregnant people in large parts of Italy.<sup>18</sup>



### Worldwide

Only three countries have explicitly prohibited conscientious objection in the field of health in all cases: Ethiopia, Finland, and Sweden. They are entitled to adopt this stance under international law.

Some countries remain silent on the issue. However, most national legal systems allow health personnel to opt out on the grounds of conscience, albeit subject to conditions and limits.

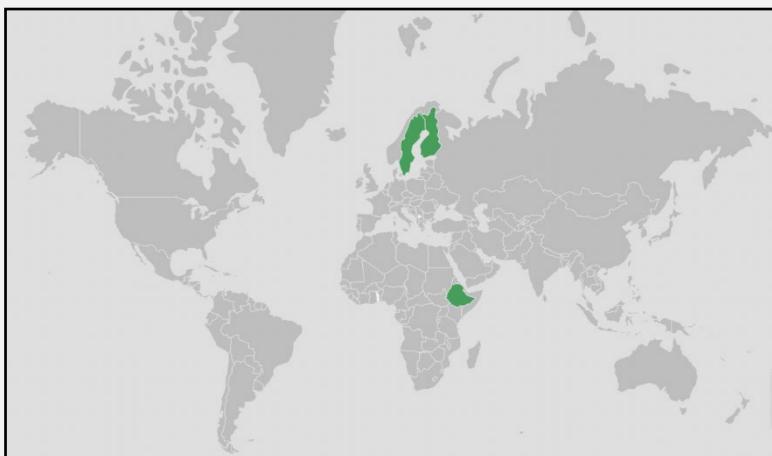


Image 1: Countries banning conscientious objection in health care. © Ramón Michel A, Repka D., Global Map of Norms regarding Conscientious Objection to Abortion, Buenos Aires: REDAAS & Ipas, 2021 [updated to June 2024], available at <https://redaas.org.ar/objencion-de-conciencia/global-map-of-norms-regarding-conscientious-objection-to-abortion/>.

<sup>16</sup> Ibid., paras. 69, 72.

<sup>17</sup> Ibid., para. 70.

<sup>18</sup> Ibid., paras. 27, 169, and 174.

## States That Recognize Conscientious Objection Must Set Limits on Its Exercise by Individual Healthcare Providers

Numerous international and regional rulings and pronouncements stipulate that states that choose to recognize conscientious objection in health care must set limits on its exercise.

Although not all regional human rights courts have issued rulings on this question, four ECtHR judgments<sup>19</sup> outline the need for a clear delimitation of conscientious objection in health care. These rulings emphasize that states must organize their health system such that individual healthcare providers' exercise of conscientious objection does not obstruct women's and girls' rights to access health services permitted by law.

This position also exists in international and regional soft law instruments. While soft law instruments are not legally binding, they often have a significant influence on the decisions and behavior of states, organizations, and private actors, as they set standards and provide guidance on human rights.

Fifty-four soft law pronouncements, including concluding observations on countries, general comments, recommendations, or other declarations, emphasize the need to impose limits on conscientious objection. These pronouncements come from eight UN human rights mechanisms,<sup>20</sup> five European mechanisms,<sup>21</sup> two American mechanisms,<sup>22</sup> and one African mechanism,<sup>23</sup> indicating broad consensus that the use of conscientious objection must be constrained.

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<sup>19</sup> European Court of Human Rights, *Tysiąc v. Poland*, September 24, 2007, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-76165%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-76165%22]) (accessed November 20, 2024); European Court of Human Rights, *R.R. v. Poland*, Appl. No. 27617/04, November 28, 2011, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-104911%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-104911%22]) (accessed November 20, 2024); European Court of Human Rights, *Grimmark v. Sweden*, Appl. No. 43726/17, 11 February 2020, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-201915%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-201915%22]) (accessed November 20, 2024); and European Court of Human Rights, *Steen v. Sweden*, Appl. No. 62309/17, 11 February 2020, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-201732%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-201732%22]) (accessed November 20, 2024).

<sup>20</sup> The eight UN mechanisms are: the Committee on the Elimination of All Forms of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, the General Assembly of the United Nations, the UN Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Working Group on the issue of discrimination against women in law and practice and the UN High Commissioner for Human Rights.

<sup>21</sup> The five European mechanisms are: the European Parliament, the Council of Europe, the Council of Europe Commissioner for Human Rights, the Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe; and the European Court of Human Rights.

<sup>22</sup> The two American mechanisms are: the Inter-American Commission on Human Rights and the Follow-up Mechanism of the Belém do Pará Convention (MESECVI).

<sup>23</sup> African Commission on Human and Peoples' Rights, the body that monitors the African Charter on Human and People's Rights, the most important human rights convention in the region.

In contrast, no international or regional instrument or pronouncement demands that states recognize a broad right to conscientious objection, as outlined by the Inter-American Commission on Human Rights (IACHR) in its 2011 report, “Access to Information on Reproductive Health from a Human Rights Perspective.” This report approvingly refers to the 2008 decision of Colombia’s Constitutional Court that outlined clear restrictions on the use of conscientious objection, as detailed in the textbox below.<sup>24</sup>

 **Inter-American Commission on Human Rights, “Access to Information on Reproductive Health from a Human Rights Perspective,” OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 97 and 98**

The IACHR listed some factors worth noting with respect to the scope of conscientious objection, as determined by the Constitutional Court of Colombia:

- Conscientious objection is not a right to which juridical persons or the state are entitled; it can be recognized only for natural persons.
- In cases in which a physician invokes a conscientious objection, he or she must proceed to refer the woman to another physician who can provide the medical service being requested, without prejudice to a later determination as to whether the conscientious objection was applicable and relevant through the mechanisms established by the medical profession.
- Conscientious objection is an individual, not an institutional or collective, decision.
- Conscientious objection applies only to direct providers and not to administrative personnel.
- Conscientious objection applies when it truly involves a religious conviction that is properly reasoned and submitted in writing. The physician who invokes it must follow the obligation to immediately refer the woman to a physician who can provide the reproductive health service being requested, this is to prevent the refusal from becoming a barrier in access to reproductive health services.

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<sup>24</sup> Inter-American Commission on Human Rights, “Access to Information on Reproductive Health from a Human Rights Perspective,” OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, [https://www.oas.org/en/iachr/docs/annual/2012/women\\_access\\_information.pdf](https://www.oas.org/en/iachr/docs/annual/2012/women_access_information.pdf), paras. 97-98 (accessed November 20, 2024)

The IACHR also noted that the Constitutional Court of Colombia underscored that the exercise of the right to conscientious objection may not be used for discrimination or the violation of women's rights.

The demand to limit conscientious objection has been translated into two kinds of legal duties: duties of states, also known as "institutional safeguards," and duties on objecting healthcare providers. Both types of duties ensure that the exercise of conscientious objection does not compromise the rights of patients and other healthcare providers or access to essential health services, especially in emergencies.



### Worldwide

Most of the countries that have chosen to recognize conscientious objection have imposed limits on its use, whether in the form of institutional safeguards and/or duties on healthcare providers.



Image 2: Countries that have laws permitting healthcare providers to invoke conscientious objection but subject to several limitations.

Source: Ramón Michel A, Repka D. Global Map of Norms regarding Conscientious Objection to Abortion. Buenos Aires: REDAAS & Ipas, 2021, updated to December 2024. Available in <https://redaas.org.ar/objecion-de-conciencia/global-map-of-norms-regarding-conscientious-objection-to-abortion/>.

## Only Individual Healthcare Providers, Not Institutions, May Exercise Conscientious Objection

All of the 67 international and regional binding and non-binding decisions on conscientious objection in health care analyzed for this document state that conscientious objection can only be invoked by individual healthcare providers. None of them allow for institutions to exercise it.<sup>25</sup>

Similarly, the UN special rapporteur on freedom of religion or belief, the UN expert responsible for identifying and overcoming obstacles to the enjoyment of the right to freedom of religion or belief, expressly stated: “conscientious objection should only be permitted, if at all, for individual medical providers.”<sup>26</sup>

This view has been supported in other pronouncements by the Committee on the Elimination of Discrimination against Women (CEDAW Committee),<sup>27</sup> the Committee on

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<sup>25</sup> European Court of Human Rights, *Tysiąc v. Poland*; European Court of Human Rights, *R.R. v. Poland*; European Court of Human Rights. *P. and S. v. Poland*, (Appl. No. 57375/08), 30 October 2012, [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-7226%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7226%22]}) (accessed November 20, 2024); European Committee of Social Rights, *International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy*, complaint No. 87/2012, decision on the merits of 10 September 2013, [https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkjmH2bYG/content/no-87-2012-international-planned-parenthood-federation-european-network-ippf-en-v-italy](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkjmH2bYG/content/no-87-2012-international-planned-parenthood-federation-european-network-ippf-en-v-italy) (accessed November 20, 2024); European Committee of Social Rights, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint no. 91/2013, decision on the merits of 12 October 2015, [https://hudoc.esc.coe.int/eng/#%22sort%22:\[%22escpublicationdate%20descending%22\],%22escdcidentifier%22:\[%22cc-91-2013-dadmissandmerits-en%22\]}](https://hudoc.esc.coe.int/eng/#%22sort%22:[%22escpublicationdate%20descending%22],%22escdcidentifier%22:[%22cc-91-2013-dadmissandmerits-en%22]}), (accessed November 20, 2024); European Court of Human Rights, *Grimmark v. Sweden*, (Appl. No. 43726/17), 11 February 2020, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-12769%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-12769%22]}) (accessed November 20, 2024); European Court of Human Rights. *Steen v. Sweden*; Inter-American Commission on Human Rights, *Paulina del Carmen Ramírez Jacinto v. Mexico*, Case No. 161-02, Friendly Settlement of 9 March 2007, <https://clacaidigital.info/bitstream/handle/123456789/1887/146%20a%20informe%202021%2007%20Peticion%202016-02.pdf?sequence=1&isAllowed=y> (accessed November 20, 2024); UN Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003, <https://reproductiverights.org/wp-content/uploads/2020/12/KL-HRC-final-decision.pdf> (accessed November 20, 2024); UN Human Rights Committee, *L.M.R. v. Argentina*, Communication No. 1608/07, UN Doc. CCPR/C/101/D/1608/2007, <https://www.escr-net.org/caselaw/2013/lmr-v-argentina-un-doc-ccprc101d16082007/> (accessed November 20, 2024); Committee on the Elimination of Discrimination against Women, *L.C. v. Peru*, Communication No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009, [https://www2.ohchr.org/english/law/docs/cedaw-c-50-d-22-2009\\_sp.pdf](https://www2.ohchr.org/english/law/docs/cedaw-c-50-d-22-2009_sp.pdf) (accessed November 20, 2024); European Court of Human Rights, *Costa and Pavan v. Italy* (Application no. 54270/10), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-167455%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-167455%22]}) (accessed November 20, 2024); and European Committee of Social Rights, *Federation of Catholic Families in Europe (FAFCE) v. Sweden*.

<sup>26</sup> United Nations General Assembly, Report of the Special Rapporteur on Freedom of Religion or Belief of the Human Rights Council, “Gender-based violence and discrimination in the name of religion or belief”, 43rd session, item 3, A/43/48, 24 August 2020, <https://documents.un.org/doc/undoc/gen/g20/217/76/pdf/g2021776.pdf>, para. 43 (accessed November 20, 2024).

<sup>27</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations: Romania, UN Doc. CEDAW/C/ROU/CO/7-8, 2017, [https://digitallibrary.un.org/record/1305060/files/CEDAW\\_C\\_ROU\\_CO\\_7-8-EN.pdf](https://digitallibrary.un.org/record/1305060/files/CEDAW_C_ROU_CO_7-8-EN.pdf), para. 33(c) (accessed November 20, 2024).

Economic, Social and Cultural Rights (CESCR),<sup>28</sup> the Committee on the Rights of the Child,<sup>29</sup> the Working Group on the issue of discrimination against women in law and in practice,<sup>30</sup> the IACHR,<sup>31</sup> the Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe,<sup>32</sup> the European Parliament,<sup>33</sup> and the African Commission on Human and Peoples' Rights.<sup>34</sup> The African Commission's decision is notable for including language limiting conscientious objection to personnel directly involved in the provision of specific services, as detailed in the textbox below.

No international or regional binding or non-binding instrument recognizes the possibility of institutional conscientious objection in health care. This is logical, as conscientious objection is intended for individual actions in specific circumstances. Allowing for institutional conscientious objection would create a broad exemption, extending this concept to entities not directly involved in abortion services, resulting in an unwarranted expansion.

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<sup>28</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22, para. 43.

<sup>29</sup> Committee on the Rights of the Child, Concluding Observations: Slovakia, UN Doc. CRC/C/SVK/CO/3-5 (2016), <https://mzv.sk/documents/30297/2698893/009%20Rights%20of%20the%20Child%20-%20Concluding%20observations%20of%20the%20Committee%20on%20the%20Rights%20of%20the%20Child%20on%20the%20combined%20third%20to%20fifth%20periodic%20reports%20of%20Slovakia.pdf> ec60d604-98fb-4500-859d-161c71e5668b, para. 41(f) (accessed November 20, 2024).

<sup>30</sup> United Nations General Assembly, Report of the Working Group on the issue of discrimination against women in law and in practice, (A/HRC/32/44), 2016, <https://documents.un.org/doc/undoc/gen/g16/072/19/pdf/g1607219.pdf>, para. 93 (accessed November 20, 2024).

<sup>31</sup> Inter-American Commission on Human Rights, Paulina del Carmen Ramírez Jacinto v. Mexico, Case No. 161-02, Friendly Settlement of 9 March 2007, <https://clacaidigital.info/bitstream/handle/123456789/1887/146%20a%20informe%202021%2007%20Peticion%20161-02.pdf?sequence=1&isAllowed=y> (accessed November 20, 2024); Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22, November 2011, paras. 93-99; Inter-American Commission on Human Rights, Merits Report on the case of Beatriz v. El Salvador (Report 9/20), [https://www.oas.org/es/cidh/decisiones/corte/2022/sv\\_13.378\\_es.pdf](https://www.oas.org/es/cidh/decisiones/corte/2022/sv_13.378_es.pdf) (accessed November 20, 2024).

<sup>32</sup> Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection," Doc. 12347, 2010, clause 4.

<sup>33</sup> European Parliament, Report on Sexual and Reproductive Health and Rights (2013/2040(INI)), A7-0426/2013, Presented to the European Parliament, Motion for a Parliament resolution that was not passed, para. 34.

<sup>34</sup> General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 28 November 2014.

 **African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2014), para. 26**

The African Commission interpreted the relationship between women's rights to sexual and reproductive health and to nondiscrimination and conscientious objection as follows:

The right to freedom from being subjected to discrimination prohibits any deprivation concerning access to family planning/contraception services by health care providers for reasons of conscientious objection. While it is true that they may invoke conscientious objection to the direct provision of the required services, State parties must ensure that ... only the health personnel directly involved in the provision of contraception/family planning services enjoys the right to conscientious objection and that it is not so for the institutions.

 **Worldwide**

At the national level, states have generally recognized conscientious objection solely as an individual right. Only four countries go against this trend and allow institutions to exercise conscientious objection: Chile, France, United States, and Uruguay.



Image 3: Countries permitting institutions to invoke conscientious objection.

Source: Ramón Michel A, Repka D., Global Map of Norms regarding Conscientious Objection to Abortion, Buenos Aires: REDAAS & Ipas, 2021, updated to june 2024, Available in <https://redaas.org.ar/objencion-de-conciencia/global-map-of-norms-regarding-conscientious-objection-to-abortion/>

## **Obligations of States That Recognize Conscientious Objection in Health Care**

As mentioned, there is robust, stable, and consistent consensus in international and regional human rights law and standards that if states permit healthcare providers not to participate in a medical procedure, including abortion services, for moral or religious reasons, they must adequately regulate such conscientious objection, including by imposing limits on its exercise. States must also ensure that the refusal of healthcare providers to perform certain activities based on their conscience does not deny any patient's access to health care, including abortion care.

### **Limits and Duties Imposed by States on Healthcare Providers Invoking Conscientious Objection**

International human rights law and standards require states to impose duties and limits on healthcare providers invoking conscientious objection. The most common ones are that the healthcare provider invoking conscientious objection:

1. Must refer the patient to another available provider in a timely manner;
2. Must inform the patient of their rights;
3. Must inform the patient in a timely manner that they will exercise conscientious objection; and
4. May not invoke conscientious objection in emergencies or urgent care situations.

#### *Healthcare Providers Invoking Conscientious Objection Must Refer the Patient to Another Available Provider*

Where states permit individuals to invoke conscientious objection under domestic law, international human rights bodies have considered that the objecting healthcare provider has an obligation to refer the user to another available practitioner. Indeed, all of the human rights bodies that have issued pronouncements on the need to regulate conscientious objection have included this limitation on the practice. Many of them

have placed this duty on the healthcare provider,<sup>35</sup> but others have imposed it on the state<sup>36</sup> or on health facilities.<sup>37</sup>

Some of these rulings describe what this referral should entail in order to respect the human rights of women, girls, and pregnant people. They state that the healthcare provider invoking conscientious objection should:

- Refer the patient to another healthcare provider who is competent,<sup>38</sup> has capacity,<sup>39</sup> is willing<sup>40</sup> to carry out the medical procedure, and is located in the same jurisdiction;<sup>41</sup>

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<sup>35</sup> For court decisions, see, European Court of Human Rights, *R.R. v. Poland*. For soft-law pronouncements, see, Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22, November 2011, paras. 93-99; Inter-American Commission on Human Rights, Merits Report on the case of Beatriz v. El Salvador (Report 9/20), [https://www.oas.org/es/cidh/decisiones/corte/2022/sv\\_13.378\\_es.pdf](https://www.oas.org/es/cidh/decisiones/corte/2022/sv_13.378_es.pdf) (accessed November 20, 2024); Report of the Special Rapporteur on the Right to Health to the United Nations General Assembly, Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Sixty-sixth session, item 69 b, A/66/254, 3 August 2011, paras. 24 and 65; Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4; Committee on the Elimination of Discrimination against Women, Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33(c); Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, UN CEDAW entitled "Women and Health (Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women)", 20th session, February 2, 1999, para. 11.

<sup>36</sup> European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," Council of Europe - Parliamentary Assembly - Text adopted by the Assembly on 7 October 2010 (35th Sitting); African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 28 November 2014, point 26; Committee on Economic, Social and Cultural Rights, 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), 2 May 2016, paras. 12 and 43; Committee on the Elimination of Discrimination against Women, Concluding Observations: Slovakia, UN Doc. CEDAW [A/63/38] (2008), paras. 42 and 43; UN Human Rights Committee, Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21; UN Human Rights Committee, Concluding Observations: Italy, Doc. CCPR / C / ITA / CO / 6 (2017), para. 16; Committee on the Elimination of Discrimination against Women, Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9 (2018), paras. 41-42; Committee on Economic, Social and Cultural Rights, Concluding Observations: Poland E/C.12/POL/CO/5 Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, para. 28; European Parliament, Report on Sexual and Reproductive Health and Rights (2001/2128 (INI)). Committee on Women's Rights and Equal Opportunities, para. 11; Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe, Commissioner Dunja Mijatovic, Report following her visit to Austria from 13 to 17 December 2021, <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>, paras. 75 and 105 (accessed November 21, 2024).

<sup>37</sup> European Court of Human Rights, Supervision of the execution of the European Court's judgments H46-18 "Tysiąc and R.R. v. Poland" (Application No. 5410/03, 27617/04); "P. and S. v. Poland" (Application No. 57375/08), CM/Notes/1398/H46-18, March 2021, p. 3.

<sup>38</sup> European Court of Human Rights, *P. and S. v. Poland*.

<sup>39</sup> Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe following her visit to Austria.

<sup>40</sup> General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights).

<sup>41</sup> European Committee on Social Rights, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy.

- Refer the patient to another provider in a timely manner;<sup>42</sup> and
- Ensure swift access to abortion,<sup>43</sup> which might mean performing the procedure if failure to do so could seriously endanger the patient's life or health.<sup>44</sup>

*Healthcare Providers Invoking Conscientious Objection Must Inform the Patient of Their Rights Irrespectively of Their Objection*

Ten pronouncements from international and regional human rights bodies indicate that the exercise of conscientious objection impacts the right to be informed about, as well as access to, other sexual and reproductive health services.<sup>45</sup> Thus, to prevent disruptions to access to health care, including access to services and health information, these pronouncements require health practitioners to inform the patient of their rights and about the available medical procedures, regardless of their objection to taking part in them.

The CESCR has emphasized that healthcare providers exercising conscientious objection cannot misinform their patients and that doing so constitutes an obstacle to accessing sexual and reproductive health services.<sup>46</sup>

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<sup>42</sup> Report "Access to Information on Reproductive Health from a Human Rights Perspective," OAS/Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99.

<sup>43</sup> European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," Council of Europe - Parliamentary Assembly - Text adopted by the Assembly on 7 October 2010 (35th Sitting), para. 4(3).

<sup>44</sup> For more information, see: Section II, point (4) of this document.

<sup>45</sup> Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) (CRC/C/GC/15), para. 69; CEDAW Committee, *L.C. v. Peru*, UN Doc. CEDAW/C/50/D/22/2009, Communication No. 22/2009; Special Rapporteur of the Human Rights Council, Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sixty-sixth session, item 69 b, A/66/254, 3 August 2011, paras. 24 and 65; Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99; UN Human Rights Committee, General Comment No. 36, Article 6: right to life (CCPR/C/GC/36); European Parliament, European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health, paras. 36-38; Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4; European Parliament, Report on Sexual and Reproductive Health and Rights; African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 28 November 2014; Human Rights Council, Working Group on the issue of discrimination against women in law and practice, Report of the Working Group on discrimination against women in law and practice.

<sup>46</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 (on the right to sexual and reproductive health, para. 43).

 **Interim report prepared by Anand Grover, Special Rapporteur of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 66th session, item 69 b, A/66/254, August 3, 2011**

The Special Rapporteur on the right to health identified the impact of conscientious objection on access to information:

Conscientious objection laws create barriers to access by permitting health-care providers and ancillary personnel, such as receptionists and pharmacists, to refuse to provide abortion services, information about procedures and referrals to alternative facilities and providers.<sup>47</sup>

***Healthcare Providers Invoking Conscientious Objection Must Inform the Patient in a Timely Manner That They Will Exercise Conscientious Objection***

Healthcare professionals must inform the patients of their decision to object based on conscience in a timely manner. This limit has been considered essential at the European level, including by a pronouncement of the European Court of Human Rights, insofar as it prompts the provider's duty to refer and the state's obligation to ensure the availability of other providers to carry out the procedure.

 **European Court of Human Rights, *R.R. v. Poland* (Application No. 27617/04), November 28, 2011**

In *R.R. v. Poland*, the ECtHR found that healthcare providers violated the patient's rights to information and to decide about her private life by refusing to carry out tests on the viability of the fetus without informing her that their refusal was based on conscience and not on medical or scientific criteria.<sup>48</sup>

The ECtHR connected timely access to health information, personal autonomy, and pregnancy-related decisions as follows:

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<sup>47</sup> Special Rapporteur of the Human Rights Council, Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sixty-sixth session, paras. 24.

<sup>48</sup> European Court of Human Rights, *R.R. v. Poland* (Appl. No. 27617/04), 28 November 2011; Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum "Women's Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection," Doc. 12347 (2010), clause 4; European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," Council of Europe- Parliamentary Assembly, Text adopted by the Assembly on 7 October 2010 (35th Sitting).

The effective exercise of this right [right to information] is often decisive for the possibility of exercising personal autonomy, also covered by Article 8 of the Convention ... by deciding, on the basis of such information, on the future course of events relevant for the individual's quality of life (e.g. by refusing consent to medical treatment or by requesting a given form of treatment).

The significance of timely access to information concerning one's condition applies with particular force to situations where rapid developments in the individual's condition occur and his or her capacity to take relevant decisions is thereby reduced. In the same vein, in the context of pregnancy, the effective access to relevant information on the mother's and foetus' health, where legislation allows for abortion in certain situations, is directly relevant for the exercise of personal autonomy.<sup>49</sup>

### *Healthcare Providers May Not Invoke Conscientious Objection in Emergencies or Urgent Care Situations*

Seven international and regional human rights bodies, with at least one in every human rights system analyzed, have stated that an adequate balance between patients' rights and healthcare providers' conscience may require the objecting professional to provide the necessary care, regardless of their conscientious objection, if failing to do so would expose the patient to serious risks to their life or health.<sup>50</sup> Some pronouncements have also indicated that in cases of emergency the health practitioners have a special duty to ensure that the patient receives adequate treatment from the alternate provider, which is directly connected to the duty to refer.<sup>51</sup>

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<sup>49</sup> European Court of Human Rights, *R.R. v. Poland*, para. 197.

<sup>50</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 43; Committee on the Elimination of Discrimination against Women, Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9, 2018, paras. 41-42; WHO, Safe Abortion: Technical and Policy Guidance for Health Systems, 2012, chapters 3.3-6 and 4.2.2.5, [https://iris.who.int/bitstream/handle/10665/173586/WHO\\_RHR\\_15.04\\_eng.pdf;sequence=1](https://iris.who.int/bitstream/handle/10665/173586/WHO_RHR_15.04_eng.pdf;sequence=1) (accessed November 21, 2024); Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection", 2010, clause 4; African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 28 November 2014; Human Rights Council, Working Group on the issue of discrimination against women in law and practice, Report of the Working Group on discrimination against women in law and practice, (A/HRC/32/44).

<sup>51</sup> Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection", 2010, clause 4.1.2.3.; European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," Council of Europe - Parliamentary Assembly - Text adopted by the Assembly on 7 October 2010 (35th Sitting), para. 4(3).

 **Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum “Women’s Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection,” Doc. 12347 (2010), section A clause 4.**

The Parliamentary Assembly invites States to:

oblige the healthcare provider to provide the desired treatment to which the patient is legally entitled despite his or her conscientious objection in cases of emergency (notably danger to the patient’s health or life), or when referral to another healthcare provider is not possible (in particular when there is no equivalent practitioner within reasonable distance).<sup>52</sup>

## **Institutional Safeguards in States That Recognize Conscientious Objection in Health Care**

International law has developed an increasingly precise range of institutional safeguards aimed at ensuring that individual healthcare providers’ refusal does not hinder patients’ access to health care.

These safeguards impose obligations on states that recognize conscientious objection in health, reaffirming their responsibility to ensure that this refusal does not obstruct access to health care for patients or adversely affect health teams or the health system as a whole.

Institutional safeguards complement the duties and limits imposed on healthcare providers who object, as detailed above. They exist to alleviate problems caused by conscientious objection, which include: the barriers it creates for patients seeking to access abortion services, tensions within health teams resulting from the increased workload on providers who do not invoke conscientious objection, and the extra efforts/steps needed to maintain organized and efficient health services.<sup>53</sup>

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<sup>52</sup> Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled “Women’s Access to Lawful Medical Care: The Problem of the Unregulated Use of Conscientious Objection,” Doc. 12347 (2010), clause 4.

<sup>53</sup> Ramón Michel, A. and Repka, D., *Regulaciones sobre la OC en aborto: un estudio global*.

International law has expressly confirmed that states have a duty to take effective measures to ensure that the exercise of conscientious objection does not jeopardize timely and effective access to health care for women in nine decisions in cases before human rights courts and bodies<sup>54</sup> and 39 soft law pronouncements by human rights bodies.<sup>55</sup>

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<sup>54</sup> European Court of Human Rights, *Tysiąc v. Poland*; European Court of Human Rights, *R.R. v. Poland* (Appl. No. 27617/04) of 28 November 2011; European Court of Human Rights, *P. and S. v. Poland*; European Court of Human Rights, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy; European Court of Human Rights, Confederazione Generale Italiana del Lavoro (CGIL) v. Italy; European Court of Human Rights, *Grimmark v. Sweden*; European Court of Human Rights, *Steen v. Sweden*; UN Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003; UN Committee on the Elimination of Discrimination against Women. L.C. v. Peru, Communication No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009. At this point, it is worth mentioning, although not technically a decision, the friendly settlement reached by the Inter-American Commission on Human Rights and the Mexican State of Baja California in Case No. 161-02, 'Paulina del Carmen Ramírez Jacinto v. Mexico', 9 March 2007. In this case, the State acknowledged its international responsibility for not having an adequate regulatory framework on abortion and CO, accepting that this was what led all health providers who attended to Paulina to refuse to provide care, forcing her to give birth and thereby violating her human rights protected by the ACHR, <https://clacaigital.info/bitstream/handle/123456789/1887/146%20a%20informe%202021%2007%20Peticion%202016-02.pdf?sequence=1&isAllowed=y> (accessed November 21, 2024).

<sup>55</sup> African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, Sixtieth session, 15 January-2 February 2007, para. 392 (report on Poland); Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe. Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4; European Court of Human Rights. Supervision of the execution of the European Court's judgments H46-18 "Tysiąc and R.R. v. Poland" (Application No. 5410/03, 27617/04), "P. and S. v. Poland" (Application No. 57375/08), CM/Notes/1398/H46-18, March 2021, p. 3; Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser. L/V/II. Doc. 61, 22 November 2011, paras. 93-99; Committee on Economic, Social and Cultural Rights, 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), 2 May 2016; United Nations General Assembly, Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sixty-sixth session, item 69 b, A/66/254, 3 August 2011, paras. 24 and 65; United Nations General Assembly, Report of the Special Rapporteur on Freedom of Religion or Belief of the Human Rights Council, "Gender-based violence and discrimination in the name of religion or belief," 43rd session, item 3, A/43/48, 24 August 2020, para. 43; UN Human Rights Committee, General Comment No. 22, General Comments adopted by the Human Rights Committee, Article 18, Freedom of thought, conscience and religion, 48th session, UN Doc. HRI/GEN/1/Rev.7 at 179, 1993, <https://www.refworld.org/legal/general/hrc/1993/en/13375> (accessed November 20, 2024); Committee on the Elimination of Discrimination against Women, Concluding Observations: Slovakia, UN Doc. CEDAW [A/63/38], 2008, paras. 42 and 43; UN Human Rights Committee, Concluding Observations: Poland, UN Doc. CCPR / C / POL / CO / 6, 2010, para. 12, <https://documents.un.org/doc/undoc/gen/g10/466/84/pdf/g1046684.pdf> (accessed November 21, 2024); European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," Council of Europe, Parliamentary Assembly, Text adopted by the Assembly on 7 October 2010 (35th Sitting); Committee on the Elimination of Discrimination against Women. Concluding Observations: Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 30; European Parliament, Report on Sexual and Reproductive Health and Rights (2013/2040(INI)), A7-0426/2013, para. 34; Committee on the Elimination of Discrimination against Women, Concluding Observations: Poland, UN Doc. CEDAW/C/POL/Q/7-8/Add.1 (2014), para. 43; Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, Follow-up Mechanism of the Belém Do Pará Convention, Eleventh Meeting of the Committee of Experts (18-19 September 2014), OAS/Ser.L/II.7.10 MESECVI/CEVI/DEC.4/14 19 September 2014, <https://www.oas.org/es/MESECVI/docs/CEVI11-Declaration-ES.pdf> (accessed November 21, 2024); UN Human Rights Committee. Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21; Committee on the Elimination of Discrimination against Women. Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review, para. 7, Committee on the Elimination of Discrimination against Women Fifty-seventh session (10-28 February 2014); UN Human

These sources generally focus on the following three roles, and accompanying obligations, of the state in connection to healthcare services, especially those related to sexual and reproductive rights, particularly abortion:

- The state as a political entity and its obligation to adopt and implement laws and policies that manage conscientious objection in ways that prevent abuse and protect the rights of women, girls, and people seeking abortion care as well as other healthcare providers who do not object.
- The state as the provider of public health services and its obligation to guarantee public health services are accessible by either ensuring the availability of healthcare providers in public institutions who do not invoke conscientious objection or, where necessary, preventing the employment of objectors in public institutions; and
- The state as the administrator of justice and its obligations to ensure that healthcare providers use conscientious objection in accordance with the law and sanction abuses in its exercise.

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Rights Committee, Concluding Observations: Argentina, UN Doc. CCPR/C/ ARG/CO/5 (2016), para. 11; Committee on the Elimination of Discrimination against Women, Concluding Observations: Argentina, UN Doc. CEDAW / C / ARG / CO / 7 (2016), para. 33; Committee on the Rights of the Child, Concluding Observations: Slovakia, UN Doc. CRC / C / SVK / CO / 3-5 (2016), para. 41 (f); UN Human Rights Committee, Concluding Observations: Italy, UN Doc. CCPR / C / ITA / CO / 6 (2017), para. 16; Committee on the Elimination of Discrimination against Women, Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33(C); Committee on the Elimination of Discrimination against Women. Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9 (2018), paras. 41-42; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, UN CEDAW entitled "Women and Health (Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women)," 20th session, 2 February 1999, para. 11; Committee on Economic, Social and Cultural Rights, Concluding Observations: Poland (E/C.12/POL/5), Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, para. 28; European Parliament, European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health (2020/2215(INI)), paras. 36-38; Committee on Economic, Social and Cultural Rights, Concluding Observations: Committee on Economic, Social and Cultural Rights: Spain (6 June 2012); Working Group on the issue of discrimination against women in law and practice, Report of the Working Group on the issue of discrimination against women in law and in practice. Human Rights Council (A/HRC/32/44); UN Human Rights Committee. General Comment No. 36. Article 6: right to life (CCPR/C/GC/36) (para. 8); United Nations High Commissioner for Human Rights, Practices in adopting a human rights-based approach to eliminate preventable maternal mortality and human rights, Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/18/27), (para. 30); World Health Organization, Regional Office for Europe, Action plan for sexual and reproductive health: towards achieving the 2030 Agenda for Sustainable Development in Europe - leaving no one behind, para. 30; Committee on the Rights of the Child, General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, article 24, (CRC/C/GC/15), para. 69, <https://documents.un.org/doc/undoc/gen/g13/428/14/pdf/g1342814.pdf> (accessed November 21, 2024); European Parliament, Report on Sexual and Reproductive Health and Rights (2001/2128 (INI)), Committee on Women's Rights and Equal Opportunities, para. 11; Ad Hoc Committee of Experts on Bioethics (CAHBI), Report on Human Artificial Procreation; Office of the United Nations High Commissioner for Human Rights, Follow-up report on good practices and challenges in the application of a human rights-based approach to the elimination of preventable maternal mortality and morbidity; Council of Europe, Sexual and Reproductive Health and Rights in Europe: Progress and Challenges; Council of Europe; and Report of the Commissioner for Human Rights of the Council of Europe following her visit to Austria from 13 to 17 December 2021.

The most common institutional safeguards cited in the sources are that states must:

- Clearly regulate conscientious objection;
- Prohibit institutional conscientious objection;
- Establish referral mechanisms;
- Ensure there is an adequate number of public healthcare providers who do not invoke conscientious objection in public health care; and
- Establish relevant monitoring, supervision, and sanction mechanisms.

### *Clearly Regulate Conscientious Objection*

International and regional human rights bodies have agreed that states have an obligation to regulate conscientious objection in health care, which has been articulated by 21 decisions and pronouncements by 11 different bodies.<sup>56</sup>

Broadly speaking, at the international level, the Human Rights Committee, the CESCR, and the CEDAW Committee have found that states have a duty to adequately regulate

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<sup>56</sup> Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe. Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4; Inter-American Commission on Human Rights. Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99"; Committee on Economic, Social and Cultural Rights. 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), 2 May 2016, paras. 12 and 43; United Nations General Assembly. Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sixty-sixth session, item 69 b, A/66/254, 3 August 2011, paras. 24 and 65; Committee on the Elimination of Discrimination against Women. Concluding Observations: Slovakia, UN Doc. CEDAW [A/63/38] (2008), paras. 42 and 43; UN Human Rights Committee. Concluding Observations: Poland, UN Doc. CCPR / C / POL / CO / 6 (2010), para. 12; European Parliament. Resolution 1763. "The right to conscientious objection in lawful medical care". Council of Europe-Parliamentary Assembly. Text adopted by the Assembly on 7 October 2010 (35th Sitting); Committee on the Elimination of Discrimination against Women. Concluding Observations: Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 30; Committee against Torture. Concluding Observations: Poland, UN Doc. CAT / C / POL / CO / 5-6 (2013), paras. 22 and 23; European Parliament. Report on Sexual and Reproductive Health and Rights (2013/2040(INI)). A7-0426/2013. Presented to the European Parliament. Motion for a Parliament resolution that was not passed (para. 34); Committee on the Elimination of Discrimination against Women. Concluding Observations: Poland, UN Doc. CEDAW/C/POL/Q/7-8/Add.1 (2014), para. 43; Committee on the Elimination of Discrimination against Women. Concluding Observations: Argentina, UN Doc. CEDAW / C / ARG / CO / 7 (2016), para. 33; Committee on the Rights of the Child. Concluding Observations: Slovakia, UN Doc. CRC / C / SVK / CO / 3-5 (2016); para. 41 (f); Committee on the Elimination of Discrimination against Women. Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33 (C); Committee on the Elimination of Discrimination against Women. Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9 (2018), paras. 41-42; European Parliament. European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health (2020/2215(INI)) (paras. 36-38); Committee on Economic, Social and Cultural Rights. Concluding Observations: Committee on Economic, Social and Cultural Rights: Spain (6 June 2012); European Parliament. Resolution 1607 (2008). Access to safe and legal abortion in Europe; Working Group on the issue of discrimination against women in law and practice. Report of the Working Group on the issue of discrimination against women in law and in practice. Human Rights Council (A/HRC/32/44); Office of the United Nations High Commissioner for Human Rights. Follow-up report on good practices and challenges in the application of a human rights-based approach to the elimination of preventable maternal mortality and morbidity; Inter-American Commission on Human Rights. Merits Report on the case of Beatriz v. El Salvador (Report 9/20).

conscientious objection, so it does not prevent anyone from accessing sexual and reproductive healthcare services.<sup>57</sup>

The Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe found that the unregulated use of conscientious objection was problematic.<sup>58</sup> It invited states to “develop comprehensive guidelines that define and regulate conscientious objection.”<sup>59</sup> The ECtHR, in *P. and S. v. Poland*, emphasized that a state that permits conscientious objection must ensure it is carried out in accordance with the law, including any “procedural requirements” established by law (such as the duty of the invoking provider to refer the patient to another provider).<sup>60</sup>



#### European Court of Human Rights, *Tysiak v. Poland*, September 24, 2007

In Poland, a woman with a health-threatening pregnancy was denied access to a legal abortion after multiple doctors refused to certify that her condition met the legal requirements for termination.<sup>61</sup> As a result, she was forced to carry the pregnancy to term, leading to a severe deterioration of her eyesight.<sup>62</sup>

The ECtHR found that Poland had failed to establish "transparent and clearly defined" procedures to ensure access to lawful abortion.<sup>63</sup> The lack of clear guidelines left women vulnerable to arbitrary refusals by medical professionals, effectively denying them a right recognized under Polish law.<sup>64</sup>

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<sup>57</sup> Committee on Economic, Social and Cultural Rights. 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), 2 May 2016, paras. 12 and 43; Committee on the Elimination of Discrimination against Women. Concluding Observations: Slovakia, UN Doc. CEDAW [A/63/38] (2008), paras. 42 and 43; UN Human Rights Committee. Concluding Observations: Poland, UN Doc. CCPR / C / POL / CO / 6 (2010), para. 12.

<sup>58</sup> Committee on Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe. Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), para. 3.

<sup>59</sup> Committee on Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe. Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), para. 4.

<sup>60</sup> European Court of Human Rights, *P. and S. v. Poland*, para. 107.

<sup>61</sup> European Court of Human Rights, *Tysiak v. Poland*, 24 September 2007, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-76165%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76165%22]}), (accessed November 20, 2024), paras. 8-15.

<sup>62</sup> *Ibid.*, paras. 16-17.

<sup>63</sup> *Ibid.*, para. 92.

<sup>64</sup> *Ibid.*

The Court ruled that Poland violated its obligations under the European Convention on Human Rights<sup>65</sup> and required the state to implement effective procedural safeguards to prevent similar violations.<sup>66</sup>

This case remains a landmark ruling on the state's duty to regulate medical refusals and ensure effective access to legal abortion.<sup>67</sup>

The court found Poland to be in violation of its obligations under the European Convention on Human Rights and ordered it to implement transparent and clearly defined regulations governing conscientious objection to prevent such violations.<sup>68</sup>

This is also one of the most significant cases regarding institutional refusal decided in a human rights court.

### *Prohibit Institutional Conscientious Objection*

UN and regional human rights bodies have recommended that states expressly prohibit institutional conscientious objection in 10 pronouncements.<sup>69</sup>

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<sup>65</sup> Ibid., para. 164.

<sup>66</sup> Ibid., para. 116.

<sup>67</sup> European Court of Human Rights, *Tysiąc v. Poland*, 24 September 2007, <https://hudoc.echr.coe.int/eng?i=001-79812>.

<sup>68</sup> Ibid., para. 114.

<sup>69</sup> African Commission on Human and Peoples' Rights. General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 28 November 2014; Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe. Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4, Inter-American Commission on Human Rights. Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99, Committee on Economic, Social and Cultural Rights. 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), 2 May 2016, paras. 12 and 43, United Nations General Assembly. Report of the Special Rapporteur on Freedom of Religion or Belief of the Human Rights Council, "Gender-based violence and discrimination in the name of religion or belief", 43rd session, item 3, A/43/48, 24 August 2020, para. 43, Committee on the Elimination of Discrimination against Women. Concluding Observations: Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 30, European Parliament. Report on Sexual and Reproductive Health and Rights (2013/2040(INI)). A7-0426/2013. Presented to the European Parliament. Motion for a Parliament resolution that was not passed (para. 34), Committee on the Rights of the Child. Concluding Observations: Slovakia, UN Doc. CRC / C / SVK / CO / 3-5 (2016), para. 41 (f), Committee on the Elimination of Discrimination against Women. Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33 (C), Working Group on the issue of discrimination against women in law and practice. Report of the Working Group on the issue of discrimination against women in law and in practice. Human Rights Council (A/HRC/32/44).

 **Concluding Observations on Slovakia, UN Doc. CRC/C/SVK/CO/3-5 (2016); para. 41 (f), from the Committee on the Rights of the Child**

The Committee on the Rights of the Child recommended that Slovakia “amend the legislation to explicitly prohibit institutions from adopting policies or institutional practices of refusal based on conscience.”<sup>70</sup>

*Establish Referral Mechanisms*

UN and regional human rights bodies have produced 15 documents outlining the duty of states and health services to provide for mechanisms that ensure that patients who encounter a healthcare provider invoking conscientious objection are referred to other providers who will provide the requested care.<sup>71</sup>

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<sup>70</sup>Committee on the Rights of the Child, Concluding Observations on Slovakia, UN Doc. CRC/C/SVK/CO/3-5 (2016); para. 41 (f).

<sup>71</sup> African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2014; European Court of Human Rights, Supervision of the execution of the European Court's judgments H46-18 "Tysiąc and R.R. v. Poland" (Application No. 5410/03, 27617/04), "P. and S. v. Poland" (Application No. 57375/08), CM/Notes/1398/H46-18, March 2021, p. 3; Inter-American Commission on Human Rights, "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99; Committee on Economic, Social and Cultural Rights. General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, paras. 12 and 43; United Nations General Assembly, Interim report prepared by Anand Grover, Special Rapporteur of the Human Rights Council: the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sixty-sixth session, item 69 b, A/66/254, 3 August 2011, paras. 24 and 65; Committee on the Elimination of Discrimination against Women, Concluding Observations: Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 30; European Parliament, Resolution 1763. "The right to conscientious objection in lawful medical care," Council of Europe- Parliamentary Assembly, Text adopted by the Assembly on 7 October 2010 (35th Sitting); UN Human Rights Committee, Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsvdnCkCH1ZNza%2FmH1Yi62160cRVzjfoUllrhYroSGfkkK3tlQjOruxH1HydgYglnHdFT6a%2Fjked42AnhUK3laPzu%2FVrvGWUdjlhjibfDobN> (accessed November 21, 2024); UN Human Rights Committee, Concluding Observations: Italy, UN Doc. CCPR / C / ITA / CO / 6 (2017), para. 16; Committee on the Elimination of Discrimination against Women. Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33 (C); Committee on the Elimination of Discrimination against Women. Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9 (2018), paras. 41-42; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, UN CEDAW "Women and Health (Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women)", 20th session, 2 February 1999, para. 11, <https://www.refworld.org/legal/general/cedaw/1999/en/11953> (accessed November 20, 2024); Committee on Economic, Social and Cultural Rights, Concluding Observations: Poland (E/C.12/POL/5), Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, para. 28, <https://www.refworld.org/policy/polrec/cescr/2009/en/96790> (accessed November 20, 2024); European Parliament, Report on Sexual and Reproductive Health and Rights (2001/2128 (INI)), para. 11, [https://www.europarl.europa.eu/doceo/document/A-5-2002-0223\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-5-2002-0223_EN.html) (accessed November 20, 2024); Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe following her visit to Austria from 13 to 17 December 2021, <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/168oa6679a> (accessed November 21, 2024).

The Human Rights Committee noted that referral mechanisms must be “effective” in ensuring women’s “effective, prompt” access to abortion services.<sup>72</sup> The Inter-American Commission on Human Rights referred to the provider’s obligation to “immediately refer.”<sup>73</sup> Finally, the African Commission on Human and Peoples’ Rights specifically stated that “State parties must ensure that the necessary infrastructure is set up to enable women to be knowledgeable and referred to other health care providers on time.”<sup>74</sup>

### *Ensure There Is an Adequate Number of Public Healthcare Providers Who Do Not Invoke Conscientious Objection*

The ECtHR’s judgment in *Grimmark v. Sweden* held that Sweden had the right to refuse to recognize conscientious objection in order to fulfill its positive obligation of ensuring the availability of abortion services.<sup>75</sup> It clarified that the state can legitimately decide not to employ objecting healthcare providers, without violating their freedom of conscience or discriminating against them, as part of its duty to ensure there are professionals willing to provide abortion services.<sup>76</sup>

The CESCR recognizes that the obligation to have certain institutional guarantees in place for patients to access health services stems from the right to reproductive health.<sup>77</sup>

### *Establish Relevant Monitoring, Supervision, and Sanction Mechanisms*

International and regional human rights bodies have recognized the duty of states to monitor and sanction the misuse of conscientious objection by healthcare providers. Six of them, including the Human Rights Committee, the CEDAW Committee, and the

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<sup>72</sup> UN Human Rights Committee. Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21; UN Human Rights Committee. Concluding Observations: Italy, UN Doc. CCPR / C / ITA / CO / 6 (2017), para. 16.

<sup>73</sup> Inter-American Commission on Human Rights. Report “Access to Information on Reproductive Health from a Human Rights Perspective”, OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99.

<sup>74</sup> African Commission on Human and Peoples’ Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2014, para. 26.

<sup>75</sup> European Court of Human Rights, *Grimmark v. Sweden* (Appl. No. 43726/17) of 11 February 2020, para. 26.

<sup>76</sup> *Ibid.*

<sup>77</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, paras. 12-13 and 43.

Committee on the Rights of the Child, have mentioned this institutional safeguard in at least seven pronouncements.<sup>78</sup>

### Worldwide

States' use of institutional safeguards is an incipient trend: 24 states already recognize at least some kind in their laws or regulations.

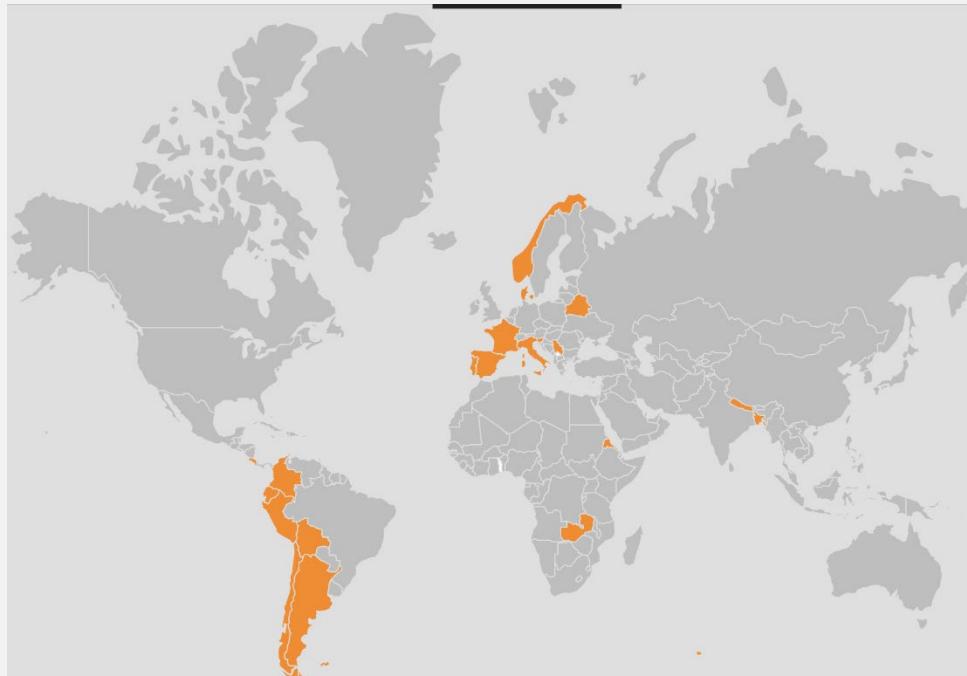


Image 4: Countries recognizing institutional safeguards.

Source: Ramón Michel A, Repka D. Global Map of Norms regarding Conscientious Objection to Abortion. Buenos Aires: REDAAS & Ipas, 2021, updated to June 2024, available in <https://redaas.org.ar/objencion-de-conciencia/global-map-of-norms-regarding-conscientious-objection-to-abortion/>.

<sup>78</sup> Committee on Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4; Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99; UN Human Rights Committee, Concluding Observations: Poland, UN Doc. CCPR/C/POL/CO/6, 2010, para. 12; European Parliament, Report on Sexual and Reproductive Health and Rights (2013/2040(INI)), A7-0426/2013, para. 34; Committee on the Elimination of Discrimination against Women. Concluding Observations: Poland, UN Doc. CEDAW/C/POL/Q/7-8/Add.1 (2014), para. 43; Committee on the Elimination of Discrimination against Women. Concluding Observations: Argentina, UN Doc. CEDAW/C/ARG/CO/7, 2016, para. 33; Committee on the Rights of the Child. Concluding Observations: Slovakia, UN Doc. CRC/C/SVK/CO/3-5, 2016, para. 41(f).

# Human Rights that Require States to Adequately Regulate Conscientious Objection in Health Care

When assessing the adequacy of states' regulation of conscientious objection, human rights bodies have generally balanced three factors: the rights of patients, the rights of non-objecting healthcare providers, and the role and responsibilities of the state in respecting, protecting, and fulfilling the right to health.

More specifically, arguments based on the rights of patients have concerned patients' rights to life, health, and personal integrity; equality and nondiscrimination; and freedom from cruel, inhuman, or degrading treatment. Arguments based on the rights of non-objecting healthcare providers have considered their right to work in an environment free from violence and discrimination. Finally, arguments based on the role and responsibilities of the state have discussed democracy and the negative impact of conscientious objection on health services.

## Patients' Rights

### *Rights to Life, Health, and Personal Integrity*

Human rights bodies have stressed that states must adopt institutional measures to safeguard patients' rights to life, health, and personal integrity. In doing so, these bodies have recognized that conscientious objection—especially in contexts without adequate regulatory framework<sup>79</sup> or those with a large proportion of objecting healthcare providers<sup>80</sup>—has a direct impact on women, girls, and pregnant people as it impedes their access to healthcare services, which violates their rights to life, health, and personal integrity.<sup>81</sup>

Human rights bodies have also expressed concern that the exercise of conscientious objection by healthcare providers forces women, girls, and pregnant people into unregulated settings to access abortion care.<sup>82</sup> Unsafe abortion is one of the primary

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<sup>79</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations: Poland, UN Doc. CEDAW/C/POL/Q/7-8/Add.1 (2014), para. 43.

<sup>80</sup> Committee on Economic, Social and Cultural Rights. General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paras. 12 and 43.

<sup>81</sup> UN Human Rights Committee. Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21.

<sup>82</sup> Committee on the Elimination of Discrimination against Women. Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review of 10 February 2014.

causes of maternal mortality globally.<sup>83</sup> These bodies have also highlighted health risks associated with delays in accessing abortion services as a result of the exercise of conscientious objection by healthcare providers.<sup>84</sup>

To prevent or mitigate these rights violations, human rights bodies have emphasized the obligations of states to adequately regulate conscientious objection, prohibit institutional conscientious objection, ensure an adequate geographic distribution of teams providing abortion services, and adopt measures that protect women's right to access safe and quality health services.

 **Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health, May 2, 2016**

According to the CESCR, the availability of comprehensive sexual and reproductive health care should not be impeded by conscientious objection:

Unavailability of goods and services due to ideologically based policies or practices, such as the refusal to provide services based on conscience, must not be a barrier to accessing services. An adequate number of health-care providers willing and able to provide such services should be available at all times in both public and private facilities and within reasonable geographical reach.<sup>85</sup>

The committee also specified States Parties' obligation to protect the right to sexual and reproductive health as requiring them to "prohibit and prevent private actors from imposing practical or procedural barriers to health services."<sup>86</sup> Regarding conscientious objection:

Where health-care providers are allowed to invoke conscientious objection, States must appropriately regulate this practice to ensure that it does not inhibit anyone's access to sexual and reproductive health care, including by requiring referrals to an accessible provider capable of and willing to provide

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<sup>83</sup> UN Human Rights Committee. Concluding Observations: Argentina, UN Doc. CCPR / C / ARG / CO / 5 (2016), para. 11.

<sup>84</sup> Human Rights Committee, K.L. v. Peru, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, para. 6.3.

<sup>85</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paras. 11 and 14.

<sup>86</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paras. 39 and 43.

the services being sought, and that it does not inhibit the performance of services in urgent or emergency situations.<sup>87</sup>

This argument stands out as having been adopted with notable consistency by virtually all treaty bodies, including: the CEDAW Committee;<sup>88</sup> the Human Rights Committee;<sup>89</sup> the CESCR;<sup>90</sup> the Committee Against Torture;<sup>91</sup> and the Committee on the Rights of the Child.<sup>92</sup>

The African,<sup>93</sup> the Inter-American,<sup>94</sup> and the European systems<sup>95</sup> have also articulated institutional safeguards based on patients' rights to life, health, and personal integrity in their reports and pronouncements.

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<sup>87</sup> Ibid.

<sup>88</sup> Committee on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination against Women, Sixtieth session, 15 January-2 February 2007, para. 392; Committee on the Elimination of Discrimination against Women, Concluding Observations: Croatia, UN Doc. A/53/38/Rev.1, 1998, para. 109; Committee on the Elimination of Discrimination against Women, Concluding Observations: Poland, UN Doc. CEDAW/C/POL/Q/7-8/Add.1 (2014), para. 43 (2014); Committee on the Elimination of Discrimination against Women, Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review, para. 7; Committee on the Elimination of Discrimination against Women, Concluding Observations: Romania, UN Doc. CEDAW / C / ROU / CO / 7-8 (2017), para. 33 (C); Committee on the Elimination of Discrimination against Women, Concluding Observations: Mexico, UN Doc. CEDAW / C / MEX / CO / 9 (2018), paras. 41-42; Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic report of Ecuador, CEDAW/C/ECU/CO/8-9, para. 32; Committee on the Elimination of All Forms of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic report of Uruguay, CEDAW/C/URY/CO/8-9 para. 35 and 36, 2016, 2015, para. 37.

<sup>89</sup> UN Human Rights Committee, Concluding Observations: Colombia, UN Doc. CCPR/C/COL/CO/7 (2015), paras. 20 and 21; UN Human Rights Committee, Concluding Observations: Argentina, UN Doc. CCPR / C / ARG / CO / 5, 2016, para. 11; UN Human Rights Committee, Concluding Observations: Italy, UN Doc. CCPR / C / ITA / CO / 6, 2017, para. 16; and UN Human Rights Committee, General Comment No. 36. Article 6: Right to life (CCPR/C/GC/36), para. 8, 2019.

<sup>90</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, Concluding Observations: Poland (E/C.12/POL/5), Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, para. 28.

<sup>91</sup> Committee against Torture, Concluding observations on the second periodic report of the Plurinational State of Bolivia, as approved by the Committee at its 50th session, 6-31 May 2013, para. 23, <https://www.refworld.org/policy/polrec/cat/2013/en/53569> (accessed November 21, 2024).

<sup>92</sup> Committee on the Rights of the Child, Concluding Observations: Slovakia, UN Doc. CRC / C / SVK / CO / 3-5, 2016, para. 41 (f).

<sup>93</sup> African Commission on Human and Peoples' Rights, General Comment No.1 on Article 14 (1) (d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa , 2012.

<sup>94</sup> Inter-American Commission on Human Rights, Report "Access to Information on Reproductive Health from a Human Rights Perspective", OAS/ Ser.L/V/II. Doc. 61, 22 November 2011, paras. 93-99 (2011); Mesecvi (OAS), Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, Follow-up Mechanism of the Belém Do Pará Convention, Eleventh Meeting of the Committee of Experts (18-19 September 2014), OAS/Ser.L/II.7.10 MESECVI/CEVI/DEC.4/14 19, September 2014; Inter-American Commission on Human Rights, Merits Report on the case of Beatriz v. El Salvador (Report 9/20), 2020.

<sup>95</sup> Committee on Social, Health and Family Affairs of the Parliamentary Assembly of the Council of Europe, Explanatory Memorandum entitled "Women's Access to Lawful Medical Care: The Problem of Unregulated Use of Conscientious Objection", Doc. 12347 (2010), clause 4 (2010); European Court of Human Rights, Supervision of the execution of the

### *Right to Equality and Nondiscrimination*

Human rights bodies have referred to the right to equality and nondiscrimination as grounds for requiring states to mitigate the adverse effects of medical refusals. They emphasize the disproportionate impact that unregulated conscientious objection has on women and girls living far from urban areas and on people of lower socioeconomic status, both of whom have more difficulties accessing health services. These human rights bodies see the regulation of conscientious objection as a means to mitigate its disproportionate impact on certain people and to protect the rights of women and girls to equality and nondiscrimination. The Human Rights Committee,<sup>96</sup> the CEDAW Committee,<sup>97</sup> the CESCR<sup>98</sup> (especially in the protection of migrant women and adolescent girls), the European Parliamentary Assembly,<sup>99</sup> and the European Committee of Social Rights<sup>100</sup> have adopted this approach.

**European Committee of Social Rights, *International Planned Parenthood Federation European Network (IPPF-EN) v. Italy*, Application No. 87/2012, decision on the merits, September 10, 2013**

In 2012, the IPPF-EN registered a complaint with the European Committee of Social Rights, arguing that the high number of doctors in Italy invoking conscientious objection to refusing to provide abortion care violated the right to equality and nondiscrimination protected by the European Social Charter.

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European Court's judgments H46-18 "Tysiąc and R.R. v. Poland" (Application No. 5410/03, 27617/04), "P. and S. v. Poland" (Application No. 57375/08), CM/Notes/1398/H46-18, March 2021, p. 3; European Parliament, Resolution 1763, "The right to conscientious objection in lawful medical care," 2010; European Parliament, Report on Sexual and Reproductive Health and Rights, para. 34; European Parliament, Resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the frame of women's health (2020/2215(INI)), paras. 36-38; European Parliament, Resolution 1607 (2008), Access to safe and legal abortion in Europe (2008); European Parliament, Report on Sexual and Reproductive Health and Rights (2001/2128 (INI)), para. 11; Council of Europe, Sexual and Reproductive Health and Rights in Europe: Progress and Challenges, 2024; Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe following her visit to Austria from 13 to 17 December 2021.

<sup>96</sup> UN Human Rights Committee, General Comment No. 22, General Comments adopted by the Human Rights Committee, Article 18 - Freedom of thought, conscience and religion, 48th session, UN Doc. HRI/GEN/1/Rev.7 at 179 (1993).

<sup>97</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations: Slovakia, UN Doc. CEDAW [A/63/38] (2008), paras. 42 and 43; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, UN CEDAW entitled "Women and Health (Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women)," 20th session, 2 February 1999, para. 11.

<sup>98</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: Spain, 6 June 2012.

<sup>99</sup> European Parliament, Resolution 1763 on the right to conscientious objection in lawful medical care, 7 October 2010.

<sup>100</sup> European Committee of Social Rights, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, Application No. 87/2012, decision on the merits of 10 September 2013.

The IPPF-EN argued that women in vulnerable or marginalized groups were denied effective access to abortion services and that the authorities did not take the necessary measures to compensate for the deficiencies in service provision caused by objecting healthcare providers.

The European Committee of Social Rights concluded that the lack of healthcare providers willing to provide abortion care forced women to move from one hospital to another within Italy or even to travel abroad. It found that this situation particularly disadvantaged migrant women and those with fewer resources to travel as well as increased the incidence of unsafe abortions. This could completely deprive women denied access to abortion in their local region of any effective opportunity to exercise their legal entitlement to such services.

As a result, the committee concluded that women faced intersectional discrimination and were unjustifiably treated differently in terms of their access to health care. It therefore condemned and compelled Italy to take measures to ensure access for all women in all jurisdictions in the country.

#### *Right to Freedom from Cruel, Inhuman, or Degrading Treatment*

Denial of access to abortion services on the grounds of conscientious objection has been framed as a violation of the right of women, girls, and pregnant people to live free from cruel, inhuman, or degrading treatment. This right is particularly implicated when refusals based on conscientious objection leaves them without access to safe abortion, forcing them to face forced motherhood, to continue a pregnancy against their will—or against medical advice—or to seek ways to terminate their pregnancy outside of the healthcare system. The Human Rights Committee specifically developed this argument in *K.L. v. Peru*, as detailed in the textbox below.<sup>101</sup>

#### **Human Rights Committee, *K.L. v. Peru*, CCPR/C/85/D/1153/2003, Communication No. 1153/2003**

An adolescent girl in Peru was pregnant with a fetal diagnosis of anencephaly, a severe condition in which the brain does not develop properly, making the fetus unviable and threatening the health of the pregnant person.<sup>102</sup> She decided to obtain an abortion for

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<sup>101</sup> Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, para. 6.3.

<sup>102</sup> Ibid., para. 2.7.

therapeutic reasons, but Health Ministry medical personnel refused to provide her the legal abortion sought.<sup>103</sup> She was forced to continue the pregnancy and give birth against her wishes.

The Human Rights Committee found that forcing the adolescent girl to continue the pregnancy and to breastfeed the baby during the four days it survived caused her “severe” emotional and psychological suffering. This suffering was considered cruel, inhuman, or degrading treatment in violation of article 7 of the ICCPR.

Accordingly, the committee directed Peru to provide an effective remedy to the complainant, including financial compensation, and to take measures to avoid similar violations in the future, by ensuring the protection of human rights for women and girls in similar circumstances.<sup>104</sup>

## **Rights of Non-Objecting Healthcare Providers to Work in an Environment Free from Violence and Discrimination**

Some human rights bodies have argued that conscientious objection can lead to employment discrimination and negatively affect the working environment of non-objecting healthcare providers.

These bodies have asserted that in contexts where non-objecting providers are in the minority, they are exposed to work overload, discrimination, and ill-treatment. The European Court of Human Rights<sup>105</sup> and the European Committee of Social Rights<sup>106</sup> have used this reasoning. In accordance with their decisions, the state must hire willing healthcare providers to make up the health teams that provide medical care to pregnant people, sanction discriminatory behavior toward those non-objecting providers, and prevent stigma.

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<sup>103</sup> Ibid., para. 2.4.

<sup>104</sup> Ibid., para. 8.

<sup>105</sup> European Court of Human Rights, *Grimmark v. Sweden* (Appl. No. 43726/17) of 11 February 2020; European Court of Human Rights, *Steen v. Sweden* (Appl. No. 62307/17) of 11 February 2020.

<sup>106</sup> European Committee of Social Rights, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, complaint no. 91/2013, decision on the merits of 12 October 2015.

**European Committee of Social Rights, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 91/2013**

In 2013, CGIL (a trade union) registered a complaint with the European Committee of Social Rights alleging that Italy violated the right to work of non-objecting medical personnel who provide abortion services through its failure to protect their rights.<sup>107</sup> It also contended Italy violated the right to health due to its inadequate application of the law regulating conscientious objection to abortion because this does not protect women's right to access abortion services.<sup>108</sup>

In support of this, CGIL informed the Committee that about 70 percent of gynecologists, 52 percent of anesthetists, and 44 percent of non-medical personnel were conscientious objectors; percentages that generally increased over the previous six years.<sup>109</sup> Consequently, non-objectors who provided abortion care faced excessively long working hours and isolation.<sup>110</sup>

The committee held that the right to work requires nondiscrimination, which Italy violated by exposing non-objectors to discriminatory treatment in terms of workload, distribution of tasks, and career development opportunities compared with conscientious objectors.<sup>111</sup>

The ruling confirmed states' duties to ensure that its health institutions employ personnel willing to provide abortion services<sup>112</sup> and to take preventative actions to protect those who offer such services from discriminatory treatment, including "moral harassment."<sup>113</sup>

## **Role and Responsibilities of States in Fulfilling the Availability of Health Services**

### *Democracy*

In *Grimmark v. Sweden*, the ECtHR relied on a democracy-based argument to uphold the validity of a Swedish hospital's decision not to employ a healthcare provider who refused to perform abortions based on conscientious objection.

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<sup>107</sup> Ibid., para. 22.

<sup>108</sup> Ibid., para. 21.

<sup>109</sup> Ibid., para. 98.

<sup>110</sup> Ibid., para. 266.

<sup>111</sup> Ibid., paras. 243, 246.

<sup>112</sup> Ibid., para. 281.

<sup>113</sup> Ibid., para. 297.

The ECtHR recognized a value in the free expression, plurality, and tolerance of information and ideas, which characterize a democratic society.<sup>114</sup> In particular, the ECtHR held that the Swedish law requiring employees to perform all work duties, as applied to midwives and legal abortions, permits interfering with freedom of conscience. Interfering with freedom of conscience in order to protect the health of women seeking a legal abortion was accepted as arguably “necessary in a democratic society” like Sweden that provides abortion services and “proportionate.”<sup>115</sup> In other words, to allow conscientious objection to frustrate the provision of abortion services, would undermine the interest of the democratic state in fulfilling a core right and fail to give appropriate weight to the interests of those seeking services.

### *Negative Impact of Conscientious Objection on Health Services*

Several human rights courts and bodies have recognized that attempts to prevent pregnant people from accessing abortion care—for example, through deterrence, misinformation, delays, and abuse of power—based on conscientious objection negatively impact and lead to the mismanagement of the state’s organization.

Institutional safeguards such as the state’s duty to clearly regulate conscientious objection, prohibit institutional conscientious objection, and monitor and penalize individuals’ misuse of conscientious objection are essential mechanisms to prevent, control, and sanction the mismanagement of health services that could result from the use of conscientious objection.

The Human Rights Committee,<sup>116</sup> CEDAW Committee,<sup>117</sup> ECtHR,<sup>118</sup> the European Committee of Social Rights,<sup>119</sup> and IACtHR<sup>120</sup> have justified imposing obligations on states due to the negative impact of conscientious objection on health services and the need to mitigate that effect.

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<sup>114</sup> European Court of Human Rights, *Grimmark v. Sweden* (Appl. No. 43726/17), 11 February 2020, para. 31.

<sup>115</sup> Ibid., paras. 25-26.

<sup>116</sup> Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003; and UN Human Rights Committee, *L.M.R. v. Argentina*, Communication No. 1608/07, UN Doc. CCPR/C/101/D/1608/2007.

<sup>117</sup> Committee on the Elimination of Discrimination against Women, *L.C. v. Peru*, Communication No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009.

<sup>118</sup> European Court of Human Rights, *Tysiak v. Poland* (Appl. No. 5410/03) of 24 September 2007; European Court of Human Rights, *R.R. v. Poland* (Appl. No. 27617/04) of 28 November 2011; and European Court of Human Rights, *P. and S. v. Poland* (Appl. No. 57375/08) of 30 October 2012.

<sup>119</sup> European Committee of Social Rights, International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, Application No. 87/2012, decision on the merits of 10 September 2013.

<sup>120</sup> Inter-American Commission on Human Rights, *Paulina del Carmen Ramírez Jacinto v. Mexico*, Case No. 161-02, Friendly Settlement of 9 March 2007.

## Conclusion

According to international and regional human rights instruments and bodies' binding and non-binding decisions:

1. No international legal instrument obliges states to recognize conscientious objection in either health care generally or abortion specifically.
2. States that recognize conscientious objection must impose clear limits on its exercise. The most common ones in comparative legislation are the individual healthcare provider's duties to inform the patient in a timely manner that they will exercise conscientious objection, refer the patient to another available provider in a timely manner, inform the patient of their rights, and respect any other procedural requirements for objecting, as well as the prohibition against invoking conscientious objection in emergencies or urgent care situations.
3. International and regional human rights systems, as well as states, lean toward recognizing conscientious objection as a right that only individuals, not institutions, may exercise.
4. International and regional human rights systems establish the need for states to have in place institutional safeguards to ensure women have access to health care. The most commonly mentioned are the duties to clearly regulate conscientious objection; prohibit institutional conscientious objection; establish referral mechanisms; ensure an adequate number of non-objecting healthcare providers in public institutions, which may entail not hiring objecting professionals in certain contexts; and establish monitoring, supervision, and sanction mechanisms.
5. International human rights bodies have justified states' duty to regulate the exercise of conscientious objection using three categories of rights-based arguments, based on:
  - a. patients' rights, which concern their rights to life, health, and personal integrity; equality and nondiscrimination; and freedom from cruel, inhuman, and degrading treatment;

- b. the rights of non-objecting healthcare providers to work in an environment free from violence and discrimination; and
- c. the role and responsibilities of states in providing health services, which concerns democracy and the negative impact of conscientious objection on health services.

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