



The Role of International Law in Reducing Maternal Mortality

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“Safe motherhood is a human rights issue... The death of a woman during pregnancy or childbirth is not only a health issue but also an issue of social injustice.”

- World Health Organization et al., “Reduction of Maternal Mortality: A Joint WHO/UNFPA/UNICEF/World Bank Statement” (1999).

The United States Constitution primarily establishes limits on federal power by prohibiting the federal government from regulating certain areas. However, this is not true of the constitutions of many other countries, which may establish affirmative duties of government to provide certain rights and benefits to the country’s citizenry. Similarly, many United Nations (UN) treaties obligate governmental parties to take affirmative steps to protect and promote the rights described within the treaty. This piece will briefly describe how constitutional and international law may be utilized to reduce maternal mortality in critical areas.

What is Maternal Mortality?

On September 15, 2010, the UN issued a heartening statement: maternal deaths worldwide have dropped by a third since 1990. However, the new annual figure remains staggeringly high at 358,000 a year, or nearly 1000 women dying every day from pregnancy and childbirth related causes. Maternal mortality is defined as the death of a woman while pregnant or within 42 days of the termination of the pregnancy (via birth, miscarriage or abortion), from any cause related to or aggravated by the pregnancy or its management. The most common causes of death include: severe bleeding (hemorrhage) during or after birth; indirect causes aggravated by pregnancy (such as anemia and malnutrition, malaria, hepatitis, or complications from HIV/AIDS); infection; complications from unsafe abortion; obstructed labor; and eclampsia. Additionally, it is estimated that for every woman who dies from pregnancy-related causes, approximately thirty are injured or disabled; common results include infertility, infection, and obstetric fistula.

Maternal deaths are largely preventable, and ninety-nine percent take place in developing countries. Most labor-related deaths are attributable to delay: in recognizing the problem and deciding to seek care, in reaching a health institution capable of addressing the complication, and in obtaining proper care once the health facility is reached. If delays are shortened or eliminated, many complications of labor can be treated by medications, antibiotics, and the availability of safe and appropriate cesarean sections. The availability of family planning and safe abortion services can reduce maternal mortality related to unsafe abortion or pregnancy-related health problems. Such deaths are much rarer in industrialized nations, which tend to have greater access to pre-natal services, delivery care and family planning for a greater percentage of the population (though significant disparities still exist within industrialized nations). Trends in maternal death and injury are also more easily recognized in industrialized nations due to better record-keeping capabilities. Few developing countries have the systems in place to ensure accurate recording of maternal mortality data, though the UN and the World Health Organization (WHO) have developed guidelines to assist in this process. Statistical modeling is used to estimate maternal mortality figures for many countries.

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IMPOWR (the International Models Project for Women’s Rights), established by the American Bar Association, is an innovative initiative to harness the information sharing power of the internet to empower advocates and defenders of gender equality under the law around the world. The project is focused on the establishment of a global, collaborative, online database of information on gender-equality laws, law reform efforts and law enforcement strategies. More information on IMPOWR can be found online: www.impowr.org.

The WHO has stated that “Maternal mortality is an indicator of disparity and inequity between men and women and its extent a sign of women’s place in society and their access to social, health and nutrition services and to economic opportunities.” It additionally notes that “The poor health and nutrition of women and the lack of care that contributes to their death in pregnancy and childbirth also compromise the health and survival of the infants and children they leave behind.” A woman’s risk of dying in childbirth greatly depends on her status within the community, and her community’s status within the population; her risk greatly increases if she is poor, lives in a rural community, and/or is uneducated. These factors influence a woman’s access to contraception, age at first pregnancy, and access to resources for pre-natal care and childbirth.

In developing countries, pregnancy-related death is the leading cause of death for girls from age 15 to 19. Child marriage is linked to maternal mortality due to a lack of health care and information for adolescents as well as an increased risk of birth obstruction due to smaller pelvic size. Malnutrition and anemia, which increase the risk of infection and hemorrhage, may be linked to gender-based discrimination for access to food that is prevalent in many communities; birth obstruction is also an effect of the smaller size of women and girls due to malnutrition. The risk of infection, increased bleeding, and fistula may be heightened where girls or women were subjected to certain types of female genital mutilation (FGM), such as infibulation. Education is one of the strongest indicators of maternal mortality, as it affects fertility rates, a delay in marriage and procreation, and access to employment and health services.

It is worth noting that although many births in developing nations take place at home, simply encouraging women to give birth in a health care facility may not, in itself, necessarily reduce maternal mortality. Facilities may turn away women who are unable to pay, or discriminate against ethnic minorities or women of lower social status. Additionally, many health care facilities are underequipped and do not provide adequately trained personnel, and may even increase the risk of infection or complication in some cases due to lack of sanitation or poor care decisions. In regard to one country’s efforts to move births to hospitals, a WHO bulletin stated that “high maternal mortality ratios in many urban settings serve as a warning against [moving births to a hospital setting] too quickly: cesarean section rates have continued to escalate and costs have risen sharply without there being any certainty of an improvement in the quality of care.” One of the most effective options may be to simultaneously promote safer home births through the proper training of midwives while working to better equip health care facilities for births requiring intervention. The White Ribbon Alliance for Safe Motherhood recommends increased promotion of family planning, skilled attendance at birth, and access to emergency obstetric care should complications arise. Interestingly, significant reductions in maternal mortality have been achieved in countries even in populations where poverty remains pervasive; examples include Sri Lanka, Tunisia, Cuba, and China. The White Ribbon Alliance states, “Maternal mortality can be reduced even in economically disadvantaged communities. We do not need to wait for economic development.”

Application of International Human Rights Law to Maternal Mortality

International law can be used as a tool to reduce maternal mortality, as many of the countries with the highest maternal mortality rates have ratified international treaties that provide a legal basis for the argument that there is a human right to survive pregnancy. United Nations Treaty Monitoring Bodies employ a formal process to investigate and measure party state compliance with treaty provisions, and then issue reports with corrective comments and instructions. Additionally, committees are enabled by the UN to issue general comments or recommendations to provide interpretation of treaty provisions. This form of public international accountability and pressure has the capacity to influence party states’ actions to reduce maternal mortality. A brief description of how treaty provisions have been used to combat maternal mortality follows.

The Right to Life

Several international treaties protect the right to life, and UN Treaty Monitoring Bodies and Committees have indicated that parties have an affirmative duty to work to protect women’s lives in pregnancy and childbirth. The Committee on the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) has recognized maternal mortality as a violation of a women’s right to life. The Committee has repeatedly documented the efforts—or lack thereof—of specific countries to combat maternal mortality. The International Covenant on Civil and Political Rights, Art. 6(1), states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The Human Rights Committee states that parties should take all possible measures to increase life expectancy, including increasing access to reproductive health

services. The Committee has, in respect to specific nations, linked maternal mortality to early childbirth, child and forced marriage, and female genital mutilation. The Committee has also stated that the health risks due to illegal abortion implicate a woman's right to life. Additionally, the Convention on the Rights of the Child requires that parties ensure the survival and development of the child. The Committee on the Rights of the Child has noted that parties should "take measures to reduce maternal morbidity and mortality in adolescent girls" due to early pregnancy and unsafe abortion, and work to prevent child marriage.

The Right to Health

Article 16 of CEDAW specifically recognizes the right of women to determine the number and spacing of their children and the right to the information and means to do so. Additionally, Article 12 of the International Covenant on Economic, Social, and Cultural Rights protects the right to the highest attainable standard of physical and mental health, and includes a provision that parties take necessary steps to reduce the stillbirth rate and infant mortality rate and provide for healthy child development. The Committee on Economic, Social and Cultural rights has interpreted this provision as guaranteeing the right to maternal, child, and reproductive health, and requires states to implement measures and resources accordingly. The Committee has drawn attention to disparities within party states regarding the right to health, and notes that the right to health is comprised of availability, accessibility, acceptability and quality. The CEDAW Committee has noted that a high maternal mortality rate is indicative of a state's failure to ensure access to health care for women. Further, Article 24 of the Convention on the Rights of the Child requires that states take steps to ensure proper health care for mothers and children, and the Committee has expressed concern over the criminalization of abortion, indicating that severe criminal policies lead to higher rates of unsafe abortion and hence maternal mortality.

Right to Equality and Nondiscrimination

Article 12(2) of CEDAW explicitly prohibits discrimination against women in health care. CEDAW requires states to provide appropriate pre-natal and obstetric care to women that should include free services where necessary and access to adequate nutrition during pregnancy and lactation. The CEDAW Committee has additionally categorized women's lack of access to reproductive health information as discriminatory. It has noted that certain groups of women (including sex workers, the young, the poor, and women from marginalized communities) are particularly likely to suffer from discrimination. CEDAW instructs states to "eliminate discrimination against women in all matters relating to marriage and family relations" and has identified eighteen as the youngest appropriate age for marriage. The United Nations Rapporteur on Violence Against Women specifically identified the complications from early pregnancy and childbirth in declaring child marriage to be a form of violence against women. The Human Rights Committee has also indicated that a lack of access to health care is a violation of women's rights to equality.

Many constitutions of countries that suffer high maternal mortality rates also implicate the state's duty to protect the rights to life, health, and nondiscrimination of its citizens. Some litigators have used the courts to attempt to enforce these rights as applied to maternal mortality, with some degree of success. For example, several recent Indian Supreme Court decisions indicate the willingness of the high court to enforce governmental obligations to ensure maternal health care for women.

Work of Organizations using a Human Rights Law approach to Maternal Mortality

In addition to UN Committees, non-governmental rights organizations have employed human rights law in attempts to reduce maternal mortality. The Center for Reproductive Rights has coordinated a global effort to promote the use of litigation in addressing maternal mortality. As one example, its efforts have included training lawyers in India, where more women die of pregnancy-related causes than in any other country. According to the most recent UN report, India's maternal mortality rates have declined significantly, with its maternal mortality ratio (the number of deaths per 100,000 live births) reduced by 59% between 1990 and 2008. Despite this decline in maternal mortality, a great deal of advocacy work remains. For example, in India, half of all maternal deaths for adolescents age 15-19 are attributed to unsafe abortion, although abortion is legal in India under many circumstances. Studies have shown that many Indian women do not know that abortion is legal, and many lack access to information or services and thus turn to unsafe options.

Many public health organizations, local grass-roots activist communities, and women's rights organizations also utilize international and constitutional human rights law in their work against maternal mortality. Numerous legal

organizations sue governments or health care providers for not complying with international or domestic law, and work with legislators to ensure greater allocation of resources to women's health programs. Organizations use human rights law to promote greater enforcement of child-marriage bans and access to safe abortion services. In the United States, Law Students for Reproductive Justice provides training materials for a program entitled "Maternal Mortality Here and Abroad" in its work to better equip law students for reproductive justice advocacy. The White Ribbon Alliance notes "Maternal mortality is not merely a 'health disadvantage,' it is a 'social disadvantage.' Health, social and economic interventions are most effective when they are implemented simultaneously." Law has a role in the struggle against maternal mortality. The news of reduced maternal mortality rates is heartening but much remains to be done.

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