IPPF

From choice, a world of possibilities

December 2016

IMAP Statement

on conscientious objection: refusal of care and professional conduct of reproductive health services in the context of legal restrictions

Sexual and reproductive health is related to multiple human rights, including the right to life, the right to health, the right to privacy and the prohibition of discrimination.

Introduction and background

This Statement has been prepared by the International Medical Advisory Panel (IMAP) and was approved in November 2016.

Sexual and reproductive health is related to multiple human rights, including the right to life, the right to health, the right to privacy and the prohibition of discrimination. The United Nations Committee on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women both clearly indicate that women's right to health includes their sexual and reproductive health. This means that states have obligations to respect, protect and fulfil the rights related to women's, and indeed men's, sexual and reproductive health.

Yet the role of individual rights – whether in selecting a contraceptive method or in meeting job requirements as a health provider – is often hotly debated. As individuals, we do not lose these inherent human rights when we agree to take on the role of client, when we speak on a controversial issue in a public forum, or when we serve as a provider of sexual and reproductive health services.

Nevertheless, the perspectives of one group in a society may not be readily understood or accepted by others, because of legal, ethical, social, cultural or moral objections, and this is where the rights of one group may collide with the perceived rights, interests and privileges of others. Literature on rights and medical ethics offers guidance on how to resolve the seeming impasse between the rights of individuals or providers *versus* the roles of the state or private health networks, on topics where there is marked disagreement about what constitutes reasonable expectations and behaviour.

The purpose of this Statement

The purpose of this Statement is to familiarize IPPF Member Associations and relevant partners with the concept of 'conscientious objection' and its application in service delivery settings, with particular emphasis on its implications for the provision or denial of sexual and reproductive health services, including abortion services provided by IPPF. It is also a call for action to develop guidance on how Member Associations should address this issue in both public policy and practice in a range of service settings.

Intended audience

This IMAP Statement is intended for Member Associations and their counterparts in public sector institutions and professional associations. It also targets global sexual and reproductive health organizations, public and private providers, legal and ethical scholars, and the broader development community.

Given that the refusal to provide services may potentially restrict or limit the exercise of women's or men's human right to health, the right to the use of conscientious objection is commonly subject to limitations.

Review of the problem, common challenges and current state of affairs

The right to conscientiously object to provide health services means that health care professionals may legitimately be able to refuse to provide certain services because they are contrary to their personal convictions, or linked to faith or moral standards.[1] However, given that the refusal to provide services may potentially restrict or limit the exercise of women's or men's human right to health, the right to the use of conscientious objection is commonly subject to limitations. Much of the policy and legal literature on conscientious objection focuses on military service; however, unlike military service, providing elective services in reproductive health does not imply an obligation. No one is required to become a health provider or counsellor; it is a conscious choice. Yet a provider's conscientious objection affects another person, whose rights to autonomy, respect, health and justice, and sometimes life, depend on the timely provision of a health service. For example, in other settings, providers may also decide to use their conscience, professional skills and discretion in the provision of health services – such as abortion, contraception, assisted fertility – that might be restricted by law or practice to women in need of care.

Like other human rights, the right to freedom of conscience and the practice of religion cannot be suspended or ignored. However, its expression has limitations in cases where it is proscribed by law and where it might be necessary for public safety, order, health or morals, or the rights or freedoms of others. In these cases, the state must guarantee that both women and men, as holders of individual rights, receive the reproductive health services they need when their lives or health are threatened, especially where a provider's exercise of conscientious objection would be a barrier to access.

Generally, the balance between the rights of health care professionals and the rights of patients is maintained through timely and effective referrals, but some religious health institutions do not even allow counselling and referrals among staff, because of the moral code of the sponsoring institution. Institutions may hold policies and procedures influenced by religion, morals and medical ethics; however, the issue of conscience can only be attributed to individuals, not institutions.

Examples of services which are restricted based on objections of faith and morals include:

- abortion under many circumstances, including not only termination of pregnancies due to rape and incest, but also abortions beyond the first trimester
- provision of modern contraception, including permanent methods such as tubal ligation or vasectomy, and emergency contraception
- most fertility treatments, including in vitro fertilization and assisted reproduction
- treatments involving embryonic stem cells, including research where donations from patients are made after informed consent (see recent IMAP Statement)[2]
- hormone therapy for transgender individuals (see recent IMAP Statement)[3]

In countries where health services are largely provided by religious missions, these represent significant exclusions to care as well as potential violations of the individual's right to health.

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Countries with a perspective on conscientious objection

The Sustainable Development Goals call for the fulfilment of human rights for all.

The Sustainable Development Goals call for the fulfilment of human rights for all.[4] Freedom of conscience is considered a fundamental right in many European countries and it is often protected and promoted by national legislation. In recent years, anti-choice activists, several churches, public officials and professionals in various fields have increasingly expanded the use of conscience clauses to deny the rights of women, and people who are lesbian, gay, bisexual, transgender or intersex, on the grounds of freedom of conscience.

The consequences of allowing unregulated appeal to conscience are alarming. In Italy, Poland, Scotland, Slovakia and Spain, for instance, it has led to stigma, discrimination and delays in care for women seeking a legal abortion in public hospitals. Women in Italy, in particular, are facing great difficulties in getting timely care because of the many health care providers invoking conscientious objection and refusing to perform abortions and related services. IPPF has successfully started a legal action in Italy in the Council of Europe to put the government under pressure to fulfil its responsibilities to protect the health of women.

Objection of conscience is not only a barrier in relation to abortion.[5] It has been used in diverse countries – in Latin American countries such as El Salvador, Honduras and Peru, as well as in more developed countries such as France, Italy and Spain – to limit access to emergency contraception by pharmacists or use of embryonic cells for medical research. Conscientious objection has also put at risk states' commitments to protect sexual rights, even where same-sex civil partnership and/or marriage is legal. In response, the Colombian Constitutional Court has established standards that strike a balance between protecting the right to religious freedom, while guaranteeing women's right to reproductive health care. These standards seek to ensure that conscientious objection is real and consistent, by establishing accountability mechanisms, and by ensuring the provision of reproductive health services for women. It also limited the exercise of conscientious objection to those directly involved in the service.[6]

In health services, conscientious objection is usually associated with service providers, including counsellors, but in some settings it has also been applied inappropriately to auxiliary personnel and administrative staff. In the UK, the Abortion Act 1967 carries a conscientious objection clause that allows doctors to refuse to participate in terminations but that obliges them to provide necessary treatment in an emergency when the woman's life may be jeopardized. The British Medical Association considers "other preliminary procedures such as checking in the patient or assessing the patient's fitness for anaesthetic" as 'incidental to the termination' and are considered outside the scope of the conscience clause.

Other progressive European states have supported this position. Swedish law provides no right of conscientious objection to doctors, and both doctors and other health personnel have contractual obligations to assist in the termination of pregnancy. In France, Italy and Norway, doctors are not legally required to perform abortions, but are obliged to participate in pre-operative care. In Denmark and the Netherlands, one can conscientiously object to being involved in pre-operative care, but there is nonetheless a legal obligation to refer the woman seeking an abortion to another colleague. Beyond abortion, the European Commission on Human Rights[7] established that conscientious objection is not a justification for refusing to sell contraceptives in pharmacies, guaranteeing individuals the right to the services to which they are legally entitled.

In recent years, anti-choice activists, several churches, public officials and professionals in various fields have increasingly expanded the use of conscience clauses to deny the rights of women, and people who are lesbian, gay, bisexual, transgender or intersex, on the grounds of freedom of conscience.

Perspectives from the World Health Organization and the International Federation of Gynecology and Obstetrics

The World Health Organization underscores the principles of human rights in the provision of care that must be respected by all providers. In doing so, WHO recognizes conscientious objection as a barrier to lawful abortion services which impedes women from accessing the services for which they are eligible and contributes to unsafe abortion.[8] In such cases, health care providers must refer the woman to a willing and trained provider in the same, or another easily accessible health care facility, in accordance with national laws. Where referral is not possible, the health care professional who objects must provide safe abortion to save the woman's life and to prevent damage to her health. The World Health Organization further recommends that health services should be organized in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation. Local laws and regulations should not entitle providers and institutions to impede women's access to lawful health services.

The World Health Organization maintains that health providers owe their patients an ethical obligation, which requires them to inform patients of all the treatment options available. WHO also recommends that the training for abortion service providers includes the ethical responsibility to provide abortion (or to refer women when the health care professional has conscientious objection to providing abortion) and to treat complications caused by unsafe abortion.

Similarly, the International Federation of Gynecology and Obstetrics (FIGO) concludes that all practitioners have a professional duty to abide by scientifically and professionally determined definitions of reproductive health services and to exercise care and integrity not to misrepresent or mischaracterize them on the basis of personal beliefs. At the same time, providers have a right to their conscientious convictions, both to undertake and not undertake the delivery of lawful services, and not to suffer discrimination on the basis of their convictions. However, in emergencies, to preserve life or physical or mental health, practitioners must provide the medically indicated care chosen by their patients regardless of the personal beliefs of the practitioner. The issue of competency must, of course, be taken into account to ensure the necessary quality of care to preserve the health and well-being of the patient. FIGO reminds its members and other stakeholders that individuals, particularly those who have been marginalized or under-served in the past, have the right to enjoy the benefits of new scientific knowledge.[9]

The International Federation of Gynecology and Obstetrics concludes that all practitioners have a professional duty to abide by scientifically and professionally determined definitions of reproductive health services and to exercise care and integrity not to misrepresent or mischaracterize them on the basis of personal beliefs.

Consensus from cases involving conscientious objection in reproductive health

Diverse legal analyses in the international arena have reached the following conclusions on the exercise of conscientious objection:

- The right to conscientious objection to health services is derived from the right to freedom of conscience, but it is not an absolute right in that it may not be an obstacle for access to health services for others.
- Conscientious objection is a right that can only be held by individuals; it may not be held by businesses, legal entities or the state.
- Conscientious objection is an individual decision; it is not a collective or institutional one. It must be based on duly grounded conviction, and must be presented in writing and be exercised consistently.
- Conscientious objection only applies to direct providers and not to administrative or support personnel.
- A provider who asserts conscientious objection has an obligation to immediately refer the patient to another health care worker who can provide the requested medical service.
- Essentially, states are responsible for regulating and supervising the provision of health care services to ensure the effective protection of the rights to life and humane treatment. In this context, the use of conscientious objection cannot violate a person's right to life or to humane treatment.

Moreover, the European Court of Human Rights found that for conscientious objection to be protected under law, the belief must have sufficient force, seriousness, cohesiveness and importance.

Whether within Member Associations or counterpart institutions, the application of conscientious objection should meet the standard that the belief in question must have "sufficient force, seriousness, cohesiveness and importance."

Professional conduct in the context of legal restrictions

Health professionals frequently want to use their full set of skills and services to address the specific needs of their clients. These providers often believe that their oath to "protect the health of their patients" permits them to place the needs and health of their patients above the restrictions of local law and policy. Although less well documented than cases in which providers deny services, these providers work at the margins of legal frameworks to preserve and protect the health and interests of their patients.

Providers also reserve the right to consider their work ethical from a professional perspective. Examples include counselling on how to obtain a safe abortion, or providing an abortion, in a context where the service is legally sanctioned; or providing support to couples interested in infertility treatments or contraceptive services in a facility that does not allow the practice. In this context, the concept of conscientious objection is the refusal to be limited in their practice by adhering to guidelines that do not reflect the best interests of their clients. Pharmacists do not hold their position as individuals, but as qualified and licensed members of the pharmacists' pharmacy profession. According to Cook et al, they are entitled to invoke their professional code of ethics to follow that code.[10]

The role of the private sector in the protection of human rights

The role of the private sector and private health systems has become increasingly important in the conflict about health benefits, including reproductive health services, in the workplace.

While states remain the ultimate duty bearers to protect human rights, there is now wide recognition that businesses should also respect human rights, including the right to sexual and reproductive health services. Many businesses invest in protecting the health of their employees through insurance or workplace health programmes. This is partly the result of intensive international and national efforts to clarify the human rights responsibilities of the business world, as well as the potential benefits to both workers and the workplace of maintaining a healthier workforce.

The state has the duty to protect individuals within its territory against human rights abuses committed by non-state actors, including business, in the denial of care. Although states are not responsible for human rights abuses by private actors, they must take steps to prevent, punish and redress such abuses through legislation and regulation. While states play a role in governance and accountability, there is also a corporate responsibility to set up complaint mechanisms at company level to provide early warning and resolve grievances. States have a particular duty to ensure access to judicial and non-judicial mechanisms for effective remedies, such as ombudspersons or human rights commissions.

Challenges facing IPPF in considering conscientious objection as a policy issue

The IPPF Strategic Plan (2016–2022) reiterates the commitment to rights and accountability for all reproductive health services. While this statement addresses the needs of clients, it does not mention the role of conscientious objection in the denial of services in some Member Associations or the 'off-label' use of medical services to address the expressed needs of clients, regardless of the legal context. The commitment to ensure no Member Association refuses support to any woman seeking a safe abortion is, however, articulated in the IPPF Abortion Policy (clauses 9.3 and 12.6)[11] endorsed by the IPPF Governing Council in 2010.

Whether within Member Associations or counterpart institutions, the application of conscientious objection should meet the standard that the belief in question must have "sufficient force, seriousness, cohesiveness and importance." It should also be provided in writing and the context well documented to ensure that it would meet the legal standards in the civil courts or in arbitration. Making explicit the requirements of providers in their employment contract would give fair warning about what services may or may not be provided to clients, including sanctions for ignoring guidance.

Recommendations for Member Associations and government policy

- Member Associations need to develop and implement a policy to address the issues associated with rights and conscience. Member Associations' policies must reflect the IPPF Abortion Policy and the mission and values of the Federation.
- Where relevant, Member Associations should define what tasks staff may opt out of (for example, second trimester abortion) or, conversely, what tasks staff may engage in (for example, abortion care where the legal status is ambiguous) as part of the review of rights and conscience. While it is the provider who is required to refer cases for appropriate care, it is the institution and the state that have the duty to protect the rights and health of clients seeking care.
- Member Associations should be aware of sound policy elements in relation to conscientious objection and ensure that their policy adheres to good medical practices and accepted ethical principles in terms of addressing physical, mental health and legal risks and the protection of the right to health.
- Member Associations should encourage health systems – both public and private, as well as workplace health services and pharmacies – to become more aware of their impact on human rights and health. It will be useful to highlight the potential of business enterprises to promote human rights and reproductive health in their operations, for example in the area of non-discrimination.
- Where denial of care or lack of compliance with facility guidance in reproductive health is a public issue, Member Associations can offer training, along with other professional organizations, on the implementation of conscientious objection within health services.

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WHO WE ARE

The International Planned Parenthood Federation (IPPF) is a global service provider and a leading advocate of sexual and reproductive health and rights for all. We are a worldwide movement of national organizations working with and for communities and individuals.

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