POLICY ANALYSIS

Addressing Gaps in Safe Abortion Services in Nepal

CREHPA

Mahesh Puri, Anand Tamang and Susheela Singh

Safe abortion care is an essential component of a comprehensive approach to fulfilling individuals' sexual and reproductive health and rights.[1] Nepal amended its Penal Code (Muluki Ain) in 2002 to allow abortion on certain grounds and to ensure Nepalese women's right to decide on their fertility choices.[2] Abortion was highly restricted prior to this amendment, and women were imprisoned for acts of abortion. Deaths from unsafe and clandestine abortions contributed immensely to the country's high maternal mortality ratios.[3] The 2002 amendment to the Penal Code allowed abortion under the following conditions, contingent on the woman's consent: up to 12 weeks' gestation on any ground; up to 18 weeks' gestation in cases of rape or incest; and at any gestation if the pregnancy posed a danger to the woman's life, physical health or mental health, or if there was a fetal abnormality. Termination of a pregnancy because of the sex of the fetus was legally prohibited.[2] The earlier Penal Code was replaced in 2017 by the Muluki Aparadh (Sanghita) Act, which has the same legal provisions about abortion as in the previous Penal Code.

In 2018, the parliament passed a separate act known as the Safe Motherhood and Reproductive Health Rights (SMRHR) Act, which guaranteed women's rights to legal and safe abortion care on wider grounds. Under the Act, abortion is permitted with the consent of the pregnant woman up to 12 weeks' gestation. It is permitted up to 28 weeks' in cases of rape, incest or the following situations: if the pregnant woman is living with HIV or some other incurable disease; if the pregnancy poses a danger to the woman's life, physical health or mental health; or if there is a fetal anomaly. The SMRHR Act endorsed the Penal Code by disallowing sex determination and abortion on the basis of fetal sex.[4]

This policy brief summarizes the achievements made in the provision of safe abortion services to women and girls in Nepal, current barriers and challenges, and what needs to be done to overcome these.

Achievements in safe abortion services

Sexual and reproductive health and rights, including the provision of safe abortion services, is one of the priority programs of Nepal's Ministry of Health and Population (MOHP). Since the conditional legalization of abortion in 2002, the Nepal government has taken important steps to provide safe and legal abortion services:

- The country's new Constitution of 2015 and the 2018 SMRHR Act guarantee the right to an abortion as a fundamental right for every woman.
- The MOHP has developed and updated regulations, strategies and directives for implementing the abortion law and for expanding access to safe and legal abortion services.
- The expansion of training centers has enabled more clinicians to receive skills in the safe provision of surgical and medical abortions, and task shifting for medical abortion has enlarged the base of abortion providers by training outreach health service providers, such as auxiliary nurse midwives, to provide medical abortions for up to 10 weeks' gestation. Medical abortion was introduced in Nepal in 2009—initially as a pilot program in six districts—and has been gradually scaled up to the entire country.[5] Since 2017, all abortions at public-sector hospitals are provided free of cost.
- As a result, as of 2021, about 4,500 clinicians— 1,833 auxiliary nurse midwives, 743 nurses, 1,853 Bachelor of Medicine–Bachelor of Surgery (MBBS) doctors, and 92 obstetrician-gynecologists and general practitioners—have been trained.[6] Per government policy,[7] auxiliary nurse midwives are allowed to provide medical abortion care only up to 10 weeks' gestation; staff nurses are allowed to perform both manual vacuum aspiration (MVA) and medical abortion up to 10 weeks' gestation, while MBBS doctors are allowed to perform MVA up to 12 weeks'. Only obstetrician-gynecologists and general practitioners are allowed to perform abortion at 13–28 weeks' gestation (second-trimester abortions). As of 2021, 34 public-sector and private hospitals have been accredited to provide second-trimester abortions in Nepal, while overall, 1,516 facilities are accredited for the provision of safe abortion services.[6] Safe abortion services are available in all federal, provincial and municipality-level hospitals and at the majority of outreach public health facilities, as well as at selected hospitals and clinics operated by nongovernmental organizations (NGOs) and private-sector health agencies.
- Under the present federal system, the tasks of procuring medical equipment and supplies required for providing surgical and medical abortion, meeting the training needs of clinicians and nurses, and ensuring sustained availability of medical abortion drugs have been entrusted to the different levels of government (federal, provincial or local), according to level and type of health facility.

- All public-sector health facilities receive unit costs (as reimbursements) from their respective provincial government for the provision of free abortion care—800 Nepalese rupees (NPR) for abortions up to 12 weeks' gestation, NPR 2,000 for abortions at 13–28 weeks and NPR 3,000 for management of complications of induced abortion.[7]
- The MOHP implemented interim guidelines in May 2020 to ensure the availability of essential reproductive, maternal, neonatal and child health services (including safe abortion services) during the COVID-19 pandemic. The guidelines allowed service providers to offer medical abortion at home and via telemedicine. Nepal's safe abortion service directive for 2022 has now endorsed this interim guideline for medical abortion through self-care and telemedicine.
- Before making any new policy decisions or revising existing laws and policies on safe abortion service provision, the Family Welfare Division/MOHP confer with development partners/NGOs engaged in the provision of sexual and reproductive health and safe abortion services, NGOs working on women's rights (including those focused on disabled populations) and research organizations.

Through all of these efforts, about 90,000 women and girls obtain safe abortion services each year.[6] Maternal mortality and morbidity in Nepal have declined as a result. The maternal mortality ratio has dropped substantially, from 539 maternal deaths per 100,000 live births in 1996 to 239 per 100,000 in 2016.[8] The severity of complications from unsafe abortion has also been drastically reduced over the years.[9]

Challenges to safe abortion services

Despite concerted efforts to expand legal and safe abortion services, many Nepali women and girls face challenges in exercising their fundamental right to obtain abortion services. The major challenges are as follows:

- **Inconsistencies in legal provisions between the SMRHR Act and the Penal Code:** The 2017 Penal Code specifies that an abortion can be performed at up to 18 weeks' gestation in cases of rape or incest, while the SMRHR Act says this can be done up to 28 weeks' gestation. In addition, the Penal Code states that abortion can be performed at any gestation if the pregnancy poses a risk to the life of the woman or if there is a fetal anomaly, whereas the SMRHR Act does not allow abortion after 28 weeks' gestation, even in cases of life endangerment or fetal anomaly. The contrasting provisions in these two policy documents have created confusion among service providers and users about safe abortion care.
- **Abortion is still under the purview of criminal law:** The SMRHR Act failed to remove abortion-related provisions from the purview of criminal law. In matters pertaining to the punishment for abortion undertaken beyond legal conditions, the SMRHR Act refers to provisions of the Penal Code and specifically states that abortion-related punishment provisions will be dealt with in accordance with the Penal Code.[4] Partly because of this, some women and service providers have been incarcerated for obtaining or performing abortions.

  Apart from this, the definition of abortion in the SMRHR Act includes "spontaneous… termination of the fetus from the uterus before it becomes capable of natural birth."[4] As a result, even a miscarriage caused accidentally or without any external intervention would fall under the purview of "abortion." This misleading definition could lead to the wrongful prosecution of women experiencing a miscarriage.[10]
- **Absence of acts, regulations or directives for providing abortion at the province or local level:** Though four out of seven provinces (Madhesh Pradesh, Bagmati, Karnali and Sudurpaschim) have formulated health policies or enacted a Public Health Services Act, none of them have as yet prepared provincial-level strategies, regulations or directives to implement safe abortion services. In the absence of such documents, provincial and local governments are not always clear on how safe abortion services should be incorporated into their reproductive health care delivery system and how such services can be implemented more effectively. Allocating and managing a budget for providing free abortion services can also be a challenge. In addition, abortion is sometimes not considered a priority health service, particularly by local government stakeholders.
- **Lack of awareness and fear of stigma:** Knowledge of the cost of abortion services and of sources of care, especially that these services are free at public health centers, is essential for ease of access. Research has revealed that lack of awareness about the legal provisions for abortion and about the availability, location and costs of services prevents many women from accessing safe and legal abortion services.[11,12] According to Nepal's 2016 Demographic and Health Survey, only 41% of women aged 15–49 were aware of the legal status of abortion, and just 23% knew that abortion can be obtained up to 12 weeks for any reason.[8] Of those who knew that abortion is legal, only 48% knew where to obtain safe services. Awareness of legal abortion was inversely related to wealth.

  Lack of awareness may lead women to rely on medication from unscrupulous or unapproved providers. Indeed, despite the legalization of abortion and improvements in access to safe services, of the estimated 323,200 abortions that were carried out in Nepal in 2014, 58% were performed by unapproved providers or at uncertified facilities.[12] Unsafe abortion alone contributes to 7% of all pregnancy-related maternal deaths in Nepal.

  Fear of social stigma, lack of autonomy and other cultural barriers can also prevent some women from seeking safe abortion services.[13] According to one study, many young women do not seek abortion following an unintended pregnancy, due to such factors as partner objections, family influences and poverty.[14]
- **Limited numbers of service providers and facilities:** Although the number of service providers trained in safe abortion service provision and placed at

government-accredited safe abortion service facilities has increased over the years, most of these facilities are in urban and semi-urban areas. In addition, a 2014 national study showed that of all public facilities permitted to provide safe abortion services, only 38% reported offering such services. Furthermore, at that time, fewer than half of all public facilities in Nepal that were permitted to provide postabortion care reported doing so.[15] Likewise, the 2015 Nepal Health Facility Survey revealed that among all health facilities offering delivery services, only 45% provided surgical abortion, 26% provided medication abortion and 36% offered postabortion care.[16] The COVID-19 pandemic has further affected the availability and quality of abortion services in Nepal.[17] Many women continue to rely upon private pharmacy outlets for abortion due to their high accessibility, low cost and privacy. Although there is sufficient evidence that mid-level providers and pharmacists can provide medical abortion as safely and effectively as physicians, the government has been slow to scale up the training and involvement of such mid-level providers and pharmacists.[5]

- **Lack of effective implementation of free abortion services policy:** The policy stating that abortion is to be provided free of charge in government facilities is not always implemented effectively. Per the policy, all public-sector health facilities accredited to provide safe abortion services need to procure registered medical abortion drugs from listed drug suppliers and seek reimbursement from their respective local governments. However, a recent study by the Center for Research on Environment, Health and Population Activities (CREHPA) revealed that staff at many public health facilities are ignorant of the reimbursement policy; as a result, they have stopped providing medical abortion services on the grounds of "lack of medical abortion drug supply." In addition, fees for abortion services at private facilities are not regulated and are often high.[17] Since many women and girls rely on private clinics for safe abortion services, paying for such care out of pocket could represent a sizable financial burden.
- **Denial of access to abortion services:** Many women remain unable to access legal abortion services, especially those who are poor or socially marginalized or who live in remote locations. A study on the denial of abortion services in Nepal showed that about 26% of women did not receive legal abortion services on the day of their visit to an approved health facility. The most common reasons for abortion denial included being beyond 12 weeks' gestation, seeking a sex-selective abortion and having a possible health contraindication.[18] One study that collected data from providers in Nepal suggested that many women who should legally qualify for free public services are denied care, even those who are under the 12-week gestational limit.[19] Many providers do not know the criteria for obtaining services beyond 12 weeks' gestation and thus do not correctly screen women for eligibility for such services.
- **Sex-selective abortion:** Sex-selective abortion is an extreme manifestation of son preference, whereby female fetuses may be intentionally selected over male fetuses for abortion, leading to skewed sex ratios at birth. Such gender-biased sex-selective abortions clearly occur in Nepal: One study using data from the 2011 Population Census found that 12 districts had significantly skewed sex ratios at birth (110–127 males per 100 females). An estimated 22,540 girl births were missing over the five years before the 2011 population census. Sex-selective abortion is geographically concentrated, occurring especially in the Kathmandu Valley and in Lumbini Province, with 53% of cases of "missing girls" found in only 11 of Nepal's 77 districts.[20] It is important to stress that the solution to this growing issue is not to ban abortion or ultrasound tests during pregnancy. Many lives have been—and continue to be—saved by legal abortion and by such tests. However, policy and program responses are needed as a matter of urgency before the practice of sex-selective abortion becomes any more entrenched and the sex ratio in Nepal becomes more imbalanced. Tackling sex-selective abortion requires both demand-led and supply-led policies and approaches, bearing in mind that increases in sex-selective abortion can occur due to rising demand for them, rather than to the supply of abortion services.

What needs to be done

The following actions are needed to overcome some of the challenges to expanding legal and free access to abortion services in Nepal:

- Take immediate steps to amend the SMRHR Act to broaden access to legal abortion by decriminalizing abortion in all cases, including ending a pregnancy after 28 weeks of gestation when this is necessary to save the life or health of the woman or girl, or in cases of pregnancies involving fetal anomalies. To fully decriminalize abortion, concrete steps must be taken to eliminate punitive measures for women who undergo abortions and for health care providers who provide them, including by repealing the penal provisions on abortion under the Penal Code.
- Facilitate and organize campaigns to advocate for the formulation of health policies and relevant acts, regulations and directives at the provincial level to provide safe and legal abortion to all women and girls.
- Use effective channels of information dissemination to increase awareness among women, girls, men and boys about the legal provisions for abortion and about the availability, locations and costs of abortion services.
- Monitor the implementation of the free abortion service policy and remove barriers hindering it.
- Expedite the process for accrediting health facilities (public, private and nongovernmental) to provide abortion services.
- Further expand the base of safe abortion service providers, increase training in abortion provision and permit mid-level health professionals to provide abortion care.
- Assess the feasibility and acceptability of providing medical abortion services via telemedicine and self-care, as envisaged in the MOHP's Safe Abortion Services Program Management Directive 2022.
- Integrate pharmacies into the legal network of abortion providers, to improve access to safe care, particularly for rural women facing financial and practical limitations on their ability to travel.

- Design programs and policies that ensure all women and girls who are legally eligible to obtain abortions can get these services. Such programs should address potential bias, lack of knowledge, and inadequate supplies and capacity among providers and should focus on comprehensive provider training (including on legal eligibility for abortion) and streamlined referral processes.
- Address sex-selective abortion by implementing the recently formulated National Strategy to Prevent Gender-biased Sex Selection, 2021–2030.

References

1. Starrs AM et al., Accelerate progress— sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission, *Lancet,* 2018, 391(10140): 2642–2692, http://dx.doi.org/10.1016/S0140-6736(18)30293-9.

2. Nepal Ministry of Health, National safe abortion policy, 2002, http://www.mohp.gov.np/images/pdf/policy/National%20abortion%20Policy.pdf.

3. Thapa PJ, Thapa S and Shrestha N, A hospital-based study of abortion in Nepal, *Studies in Family Planning,* 1992, 23(5):311e8.

4. Nepal Law Commission, Government of Nepal, The right to safe motherhood and reproductive health act, 2075, 2018, http://www.lawcommission.gov.np/en/archives/20866Policy.pdf.

5. Puri M, Providing medical abortion services through pharmacies: evidence from Nepal, *Best Practices & Research: Clinical Obstetrics & Gynaecology,* 2019, 63:67−73.

6. Ministry of Health and Population, Annual Report Department of Health Services 2076/77 (2019/20), https://dohs.gov.np/wp-content/uploads/2021/07/DoHS-Annual-Report-FY-2076-77-for-website.pdf.

7. Ministry of Health and Population, Family Health Division, *Safe Abortion Service Program Management Directives,* 2022, Chapter 5, 18 kha (11).

8. Nepal Ministry of Health, New ERA and ICF, *Nepal Demographic and Health Survey 2016,* Kathmandu, Nepal: Ministry of Health, 2017.

9. Henderson JT et al., Effects of abortion legalization in Nepal, 2001–2010, 2013, *PLOS ONE,* 8(5):e64775.

10. Center for Reproductive Rights (CRR) and Forum for Women, Law and Development (FWLD), *Decriminalization of abortion in Nepal: Imperative to uphold women's rights,* fact sheet, New York: CRR, 2021, https://reproductiverights.org/wp-content/uploads/2021/06/Decriminalization-of-Abortion-in-Nepal_02June021_-Final-Version-1.pdf.

11. Rocca C et al., Unsafe abortion after legalisation in Nepal: a cross-sectional study of women presenting to hospitals, *British Journal of Obstetrics and Gynecology,* 2013, 120(9):1075–1084.

12. Puri M et al., Abortion incidence and unwanted pregnancy in Nepal, *International Perspectives on Sexual and Reproductive Health,* 2016, 42(4):197–209.

13. Puri M et al., 'Sometimes they used to whisper in our ears': Health care workers' perceptions of the effects of abortion legalization in Nepal, *BMC Public Health,* 2012, 12(297).

14. Puri M, Ingham R and Matthews Z, Factors affecting abortion decisions among young couples in Nepal, *Journal of Adolescent Health,* 2007, 40(6):532–542.

15. Singh S et al., Abortion service provision in South Asia: a comparative study of four countries, *Contraception,* 2020, 102(3):210–219.

16. Nepal Ministry of Health et al., *Nepal Health Facility Survey 2015,* Kathmandu, Nepal: Ministry of Health, 2017.

17. Center for Research on Environment, Health and Population Activities (CREHPA), United Nations Population Fund (UNFPA) and UK Aid, Assessment of the impact of COVID-19 pandemic on functionality and utilization of RMNCAH services by clients in public sector health facilities of Nepal, Lalitpur, Nepal: UNFPA, 2021.

18. Puri M et al., 'I need to terminate this pregnancy even if it will take my life': a qualitative study of the effect of being denied legal abortion on women's lives in Nepal, *Women's Health,* 2015, 15:85.

19. Puri M et al., Providers' perspectives on denial of abortion care in Nepal: a cross-sectional study, *Reproductive Health,* 2018, 15(1):170.

20. Channon MD et al., Prevalence and correlates of sex-selective abortions and missing girls in Nepal: evidence from the 2011 Population Census and 2016 Demographic and Health Survey, *BMJ Open,* 2021, 11:e042542.

www.crehpa.org.np

Center for Research on Environment, Health and Population Activities (CREHPA)
Kusanti, Lalitpur
PO Box 9626, Kathmandu, Nepal
+977-1-5193087
crehpa@crehpa.org.np

Acknowledgments

This policy brief was written by Mahesh Puri and Anand Tamang, of the Center for Research on Environment, Health and Population Activities (CREHPA), and by Susheela Singh, of the Guttmacher Institute. It was edited by Michael Klitsch. The authors gratefully acknowledge Sophia Sadinsky, formerly with the Guttmacher Institute, and Preeti Gautam, CREHPA, for providing valuable input on drafts of this brief.

This policy brief was made possible by grants from the Norwegian Agency for Development Cooperation and the Swedish International Development Cooperation Agency. The findings and conclusions contained within do not necessarily reflect the positions or policies of the donors.

https://www.guttmacher.org/article/2022/05/addressing-gaps-safe-abortion-services-nepal

© Guttmacher Institute, 2022

Good reproductive health policy starts with credible research

guttmacher.org

125 Maiden Lane
New York, NY 10038
212.248.1111
info@guttmacher.org

May 2022