

Accommodating Women's Differences under the Women's Anti-Discrimination Convention

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Why Are Equality Arguments Important in the Abortion Context?

- Move from reproductive choice to justice
- Move from formal to substantive equality (de jure to de facto equality)
- Country specific issues

Move from reproductive choice to justice

- transform patriarchy (moving beyond the health paradigm)
- address historically determined male paradigms of power
- examine underlying contextual causes of sex inequality, and inequality among subgroups of women

Move from formal to
substantive equality
(*de jure* to *de facto* equality)

- disproportionate impact on women of sexual intimacy in contrast to men
- disproportionate impact on subgroups of women (age, income, race, stereotypes)
- abortion exceptionalism/abortion stigma

Country specific issues

- - degree of protection of equality rights vs other rights, for ex rights to security, liberty, privacy
- - degree of understanding of patriarchy in the health system & broader society
- - degree of resonance of human rights in civil society (South Africa)

Canada, Colombia, Mexico, Poland, South Africa,
US

Equality: treating like cases alike, and treating different cases according to their *legitimate* differences

- Differences among men and women
- Differences among subgroups of women
- Differences among health procedures

Discrimination in the Abortion Context

- Neglecting Health Care that only Women Need
- Expropriating Women's Bodies
- Reducing Women's Moral Agency

Neglecting Health Care that only Women Need (CEDAW Gen Rec 24)

- Lack of evidence-based (dysfunctional regulations)
- Lack of transparency (therapeutic, eugenic, life indications)
- Lack of fair/equal access (merry-go-round, income disparities)

Expropriating Women's Bodies

- Forced pregnancy, child bearing/rearing
- Question: protecting the unborn or imposing a stereotype of:
 - selfless mother (Brazil, Ireland, Peru)
 - subservient or incapable decision makers
- Punishing women (imprisonment, denial of anesthesia)
- Stigmatizing women and their health needs
 - dignity denying treatment in the clinical context
 - picketing abortion clinics
 - awfulizing abortion in civil society (fetus-dumping)

Reducing Women's Moral Agency

- Third Party Authorization Requirements
(imposition of moral and patriarchal authority)
- Abuse of Conscientious Objection
(denying women their conscience)
- Diminishing the Personhood of Women
(personification of the fetus)

Further Reading

- Cook & Howard, Accommodating Women's Differences under the Women's Anti-Discrimination Convention (2007) 56 *Emory Law Journal* 1039-1091
- Cook & Ngwena, Women's Access to Healthcare: the Legal Framework, World Report on Women's Health (2006) 94 *Int'l J. of Gyn & Obs* 216-225
- Access to Abortion Reports: annotated bibliography, University of Toronto Law School, draft 2007

Further Reading

- Fegan and Rebouche, Northern Ireland's Abortion Law: The Morality of Silence or the Censure of Agency (2003) 11 *Feminist Legal Studies* 221-254; Fletcher (2005) 15 *Feminist Legal Studies* 123-134
- Siegel, Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression (2007) 56 *Emory Law Journal* 815-842
- University of Toronto Law Sch briefs in *RR v. Poland* (ECHR) and Mexican case (Mexico Supreme Court)