Women's Right to Abortion in Lebanon

A Position Paper by Nasawiya

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Abortion laws have become an international political issue, resulting in continuing debates leading to social change and policy reforms throughout the years. Visible efforts to address abortion started in 1994 at the International Conference on Population and Development (ICPD) that was held in Cairo, in which the international community agreed on a common position regarding abortion, which stated in paragraph 8.25 of the ICPD Program of Action (PoA) that

> *All governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern . . .. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion.* (Center for Reproductive Rights, 2011)

Subsequently, in 1995, the Beijing Platform for Action reaffirmed the aforementioned agreement and recommend that countries should

> *Consider reviewing laws containing punitive measure against women who have undergone illegal abortion.* (Center for Reproductive Rights, 2011)

These conferences and subsequent international consensus documents that supported the removing of legal barriers to abortion reflected a global trend toward the liberalization of abortion law. Consequently, since 1994, 26 countries have removed some level of legal restriction on abortion, resulting in a total of 73 countries (constituting 61% of the world's population) permitting induced abortion for a wide range of reasons (Center for Reproductive Rights, 2009).

For example, in 1996, South Africa amended its abortion law, which initially allowed abortion only to save a woman's life and in cases of rape, incest, or fetal impairment, into a law permitting abortion without restriction as to reason during the first 12 weeks of pregnancy, and thereafter on numerous grounds (Center for Reproductive Rights, 2011). Observing research from countries where abortion laws have become more liberal, data shows that the number of unsafe abortions and related maternal morbidities and death has

declined. Exemplifying the case of South Africa, the number of maternal deaths due to unsafe abortions has decreased by 90% from 1994 to 2001(Dabash & Roudi-Fahimi, 2008).

In the Middle East and North Africa (MENA)* region, 55% of women (aged between 15-49) live in countries where abortion is prohibited except to save the woman's life and 24% live in countries where abortion is permitted to preserve the woman's physical or mental health, resulting in about 80% of women facing some form of legal barrier(s) to abortion (Dabash & Roudi-Fahimi, 2008). This leaves only about 20% of women in the region, ones who live in Turkey and Tunisia, with access to legal abortion in the first trimester without any restrictions (Dabash & Roudi-Fahimi, 2008).

Turkey and Tunisia, the only two countries where abortion is allowed in the first trimester without restrictions in the MENA

Observing data produced from Turkey and Tunisia (only two countries in the region with non restrictive abortion laws) it suggests that the legalization of abortion resulted in safer abortions as well as a reduction in the number of abortions sought especially that their family planning programs have expanded. For example, in Turkey, the number of abortions dropped to 11% in 2003 from an 18% of pregnancies in 1993, while the number of women married using contraceptive methods, during that same period, increased from 34% to 42% (Dabash & Roudi-Fahimi, 2008).

With medical and scientific advances abortion has become a safe procedure when performed under trained medical supervision and high standards of care (Dabash & Roudi-Fahimi, 2008); however, till now, millions of women in the developing world go through unsafe abortions resulting in tens of thousands maternal deaths each year, accounting to about 13% of all maternal deaths in developing countries (WHO, 2007). This makes unsafe abortions a public health challenge that has been clearly neglected in our region and that needs to be addressed (Dabash & Roudi-Fahimi, 2008).

Abortion law prohibit: dissemination of information on abortion, methods used to facilitate it, selling or acquisition of item that perform abortions.

In Lebanon

The wave of change hasn't reached Lebanon yet. Today under the Lebanese law, that was drafted in 1943 based on the French penal code at the time (Hessini, 2007) articles 539-546 state that abortion is illegal under all circumstances. It wasn't until October 1969, that the Presidential Decree No.13187 allowed abortion only to preserve the woman's life, if in danger (United Nations, 2001).

Legal consequences

The law that is governed by eight articles prohibits the dissemination of information on abortion or methods used to facilitate it, the selling or accusation of objects that are designed to perform it, in addition to punishing any woman who induces abortion and any other person who aids her to do so (United Nations, 2001). Even with the woman's consent, under the law, the person who performs an abortion is subjected to one to three years of imprisonment and the woman herself is subjected to six months to three years imprisonment (see Appendix 1)[1].

The woman and whoever is aiding her, in inducing the abortion are punished from 6months to 3 yrs of imprisonment and 1-3 years, respectively.

There are no official statistics that accurately estimate the prevalence of abortion in the Lebanon; yet, the procedure is sought in the "black market" where it is performed in private clinics or at homes in unsafe environments mostly with no psychological support or post abortion care (Human Rights Council, 2010). According to statistics by World Health Organization (WHO), the estimated number of unsafe abortions (performed in unsanitary setting, by unskilled providers or both) in the Eastern Mediterranean Region (EMR)*[2] in 2003 was around 2,800,000 abortions, accounting for 12% of all maternal deaths in the region (World Health Organization, 2007).

This position paper was drafted in consultation with a number of young feminist activists who are part of Nasawiya, the feminist collective in Lebanon, and highlights their views on abortion rights in Lebanon. It also suggests a policy alternative to the current abortion law, promoting for abortion to be framed within a framework that respects women's bodily autonomy and their right to make choices in relation to their reproductive rights.

I. Women's Right to Choose

The right of women to choose falls under the larger umbrella of reproductive and bodily rights, and women's rights to control their own reproductive health. In 1994, ICPD introduced new paradigms in addressing reproductive health and individual freedoms including those of women. In chapter VII of PoA titled "Reproductive Rights and Reproductive Health" it was stated that

* **MENA Region include**: Algeria, Bahrain, Djibouti, Egypt, Islamic Republic of Iran, "Israel", Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Syria Arab Republic, Tunis, United Arab Emirates, West Bank & Gaza, Yemen.
* **EMR include:** Afghanistan, Bahrain, Djibouti, Egypt, Islamic Republic of Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, South Sudan, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates & Yemen.

> *"Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."* (Cook, 1994)

Laws criminalizing abortion, including the Lebanese law, prohibit women from acclaiming these rights to reproductive health and freedom to choose.

A. Control over the body and reproductive self-determination.

Abortion is an issue related to women's bodies in a male dominant culture. A pro-choice stand on abortion is backboned by the belief in women's right to sovereignty. Forcing a woman to have a child and denying her the right to choose to terminate a pregnancy, unjustly pushes her into motherhood, when she might not be ready for it.

This right of women to choose to bear children or not was addressed and reaffirmed in several international conventions. In 1994, the Committee on the Elimination of Discrimination against Women (CEDAW) also adopted a general recommendation for the empowerment of women and their right to choose. In relation to article 16(l)(e) of the Women's Convention, CEDAW stated:

> *The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.* (Cook, 1994)

The Beijing Declaration also stated that:

> *The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment.* (Cook, 1994)

However, this right has not been exercised in our region and more specifically in Lebanon. In the MENA region, it is estimated that one in four pregnancies are unintended, meaning that women either wanted to have the child later or didn't want any more children (Dabash & Roudi-Fahimi, 2008). Moreover, according to a 2010 study, it was estimated that 29% of all pregnancies in Lebanon where unintended, where 14% of the women did not want the pregnancy at all, and 15% wanted to have children later. Not having the freedom to legally terminate these unintended pregnancies jeopardizes the health and well-being of women, in addition to exerting unnecessary burdens on their countries' health care systems (Roudi-Fahimi, F. & Abdul Monem, A., 2010).

B. Sexual and reproductive health education: an empowerment tool

One of the main strategies that can lower the burdens and mortalities of unsafe abortion is to work at reducing the rates of unintended pregnancies (Dabash & Roudi-Fahimi, 2008). This can be done by creating awareness among women, men and youth through sexual and reproductive education and by providing family planning services; such as supplying and counseling on the most effective contraceptive methods and their most effective usages (for example the pill vs. withdrawal).

Data from regional countries suggests that family planning that promotes the use of contraceptive methods has the potential to significantly reduce the number of unintended pregnancies; however, the availability of contraceptive methods alone without proper education on its use showed to render ineffective. For example, 2006 data from Syria showed that half of the women who had unintended pregnancies were using family planning methods when they became pregnant, which resulted from them relying on traditional methods that are prone to failure (Dabash & Roudi-Fahimi, 2008). Raising awareness about the different types of contraceptive modern methods and their relative affectivity is an essential preventive measure needed to lower unintended pregnancies and thus unsafe abortions.

Population Reference Bureau (2011) documented that the latest data (prior to 2006) in Lebanon showed that 58% of married women between the ages of 15-49 use some kind of contraceptive method, with 34% of them using modern methods. This leaves the remaining 40% of those women with an unmet need for family planning resources, not mentioning those engaging in pre-marital sexual activities. In addition, according to the 2004 report on the follow up of the implementation of the Beijing Platform for Action and the outcome of the twenty third session of the General Assembly, the National Commission for Lebanese Women stated that there is “a failure to spread health awareness though training courses and lectures country-wide and across the media as well as through wider health education” (National Commission for Lebanese Women, 2004).

The lack of comprehensive access to proper contraceptive methods and the lack of national wide sexual and reproductive education for Lebanese women demonstrate the absence of preventive measures and strategies provided by the state to lower unwanted pregnancies. This lack of preventive measures constitutes a duty for the need of other ways to ensure that women are not forced into motherhood when they are not ready; one of these ways is ensuring the access to legal and safe abortion to terminate unwanted pregnancies when needed.

II. The problem with religious patriarchy

As a result of the sectarian system in Lebanon, political decisions are highly influenced and determined by religious leaders, which limits the participation of other interest and/or pressure groups in policy making processes and thus inducing change. The structure of policymaking system in Lebanon, as is in other developing countries, is rather non responsive to population needs, lacks civil participation, and lacks measures on accountability (Kaddour, Alameh, Melekian & El Shareef, 2002). This results in the monopolization of the decision making process by the political elite who image religious leader, making policy reform unfeasible.

Even though CEDAW adopted a general recommendation in article 16(l)(e) of the Women's Convention that stated:

> *Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government* (Cook, 1994)

Implying that the choice to bear children must not be limited by any external entity; however, the abortion law is no different than other social issues, as it is still governed by the pressures of religious groups and leaders rendering successful attempts to amend it scarce. This is exemplified by the Lebanese pro-life organization "Min Hakky Al-Hayyat" that works in collaborations with religious leaders in its campaigns, aimed at promoting the current abortion law and its implementation ("Min Hakky Al-Hayyat", n.d.)

This urge to keep the abortion law at its status quo, despite the fact that it doesn't reflect or serve the needs of the society, is probably resultant from the religious leaders' fear of losing their share of political power, especially if they were perceived to be promoting premarital sex or increasing women's status in the society when they give them the right to control their body and sexuality.

A. Control over women's bodies

Since the process of political decision making in Lebanon is intertwined with religious ideology, the state became the one exercising "state sponsored patriarchy" on women bodies. As a result of this law, women are stripped from their legal power to exercise their reproductive rights to choose to stay pregnant or not. This law demonstrates the legislators' support of men's power over their wives, exemplified by the Penal code, which denies a woman the right to terminate her pregnancy, even in the legally acceptable cases, without her husband's approval. This law is another exertion by the

state to preserving the patriarchal ideology within the society, denying women autonomy over their body.

The patriarchal control of women's sexuality is not merely limited to Articles 539-546 but is rather reflected in the general nature of the Lebanese Penal Code and therefore embodied within several articles. For example articles 503-522 that dictate the laws in cases of rape also exemplify the dominance of patriarchal ideology in drafting laws that sexually objectify women. This is mainly presented in Article 522 of the code which exonerates the rapist of his crime if he agrees to marry the "victim" even if she were a minor, molested or sexually harassed as a child, exploited while in a "weaker position", or is mentally or physically disabled.

III. Public health concern

In developing countries as is the case in Lebanon "Restrictive abortion laws do not seem to affect the overall rate of induced abortions; rather they increase the proportion of unsafe and illegal abortions" (Arawi & Nassar, 2011, 42). Unsafe abortions have been associated with multiple morbidities and sever medical complications including hemorrhage, sepsis, pelvic infection, urinary track infections, uterine perforation (Arawi & Nassar, 2011; Kaddour et al., 2002), and in worst cases end up with maternal mortality. According to WHO, unsafe abortions constitute 13% of all maternal deaths in member states and a 12% of maternal deaths in the EMR (WHO, 2007).

Conversely, in states where abortion is legal, maternal complications and mortality have been recorded to be lower, probably due to the fact that abortion is readily and easily accessed and performed safely by trained medical professionals (Rahman et al, 1998). Therefore, benchmarking with evidence from other nations with more progressive abortion laws, it seems rather logical to push for policy change.

A. Access to safe Abortion: service quality

Lebanese women are constantly breaking the law in order to meet their needs of terminating pregnancies, but as a result of the restrictive law and punishment, women tend to resort to a black market with an unofficial network of doctors and medical staff who are willing to perform these procedures. While some are performed in equipped centers and hospitals under the cover of another procedure, the rest are usually done in bad environments and by untrained medical staff, which in many cases result in maternal morbidities and may lead to maternal deaths.

Due to the restrictive nature of the law, after weighing the risk of punishment, many women may refrain from post operational follow up with medical staff. It has been documented that in countries with restrictive abortion laws, as is the case in Lebanon, there is a lack of access to post abortion care, which is essential to women's well being.

According to a study in Egypt, which has a highly restrictive law similar to the one in Lebanon, data showed that only one in five obstetrical and gynecological admissions were for post-abortion care (Dabash & Roudi-Fahimi, 2008). This lack of follow up especially in cases where abortion is performed illegal under unsafe condition puts a risk on women's lives; according to a report by WHO, it is estimated that 390 women die per 100,000 of unsafe abortions in EMRO region every year (WHO, 2007).

Moreover, women who seek abortion for whatever reason are also at a disadvantage of reporting to authorities if their procedures weren't performed well. Because medical staff that aid in abortion are also punished by the Lebanese law, many physicians tend to not document these procedures, leaving women without protection against malpractice in case of complications (Arawi & Nassar, 2011, 42) and without any mechanism of accountability.

B. Access to affordable service: financial exploitation

Abortion has become a safe procedure when performed by trained personnel and under hygienic conditions. There are several surgical and non-surgical (medication) methods to terminate a pregnancy (Dabash & Roudi-Fahimi, 2008). Surgical methods, which require anesthesia and sterilized equipment, include dilation and curettage (D&C) and manual vacuum aspiration (MVA); where MVA is considered to be safer and rather easier to perform by a wider range of trained medical providers. Non-surgical methods usually use one or several types of drugs/medication to induce the termination of early pregnancy; these medications include methotrexate, mifepristone, and misoprostol (Dabash & Roudi-Fahimi, 2008).

When it comes to surgical methods, due to the high risk on the Lebanese specialists performing these procedures under the law, physicians usually end up charging clients for their work and for the risk of legal prosecution, which can go up to very high unaffordable prices. With no regulation on the prices of abortion, the client is usually charged between $300 -$1200 depending on the geographical location and the space in which the procedure performed: home, clinic or hospital (Kaddour et al., 2002).

Even though some physicians claim that the price of an abortion can be negotiable based on the woman's economic situation; however, visible inequality in access to care is evident. Married women have better access to abortion than the unmarried. Young unmarried women have to protect themselves from social occlusion, where even if they had wanted to remain pregnant, it's socially very difficult to do so out of wedlock. Even more, the Lebanese law still does not recognize women's rights to pass their nationality to their children if married to a foreigner; however illegitimate children would be registered as Lebanese. Other inequalities are also evident among women who are older

and more financially secured since they are at an advantage of accessing safer abortions with better quality of care through their networks much easier than teenage girls. It is essential to state that migrant women who are subject to sexual violence that results in unwanted pregnancies would have even less access to their legal rights and to financial means to secure the healthcare service industry that Lebanese women would have more privilege to. As such, light should be shed on these less privileged communities of those less financially capable women who might be in most need of access to abortions and who should have an equal chance of accessing it.

Conclusion

Every woman has the right to bodily integrity, the highest level of reproductive health, privacy, self-determination, dignity and personal liberty. Nasawiya believes in women's right in Lebanon to access safe and legal abortions under the highest levels of reproductive health attainable. This includes removing all legal restrictions to providing information on safe abortions and post-abortion care, in addition to decriminalizing healthcare providers and women seeking abortions.

References:

Arawi, T. & Nassar, A. (2011). Prenatally Diagnosed Foetal Malformations and Termination of Pregnancy: the Case of Lebanon. *Developing World Bioethics*, 11(1), 40-47.

Center for Reproductive Health. (2009). *The World's Abortion Laws.* Retrieved from http://reproductiverights.org/en/document/world-abortion-laws-2009-fact-sheet

Center for Reproductive Health. (2011). *Abortion Worldwide: Seventeen Years of Reform*. Retrieved from http://reproductiverights.org/en/document/abortion-worldwide-seventeen-years-of-reform

Cook, R.J. (1994). *Women's health and human rights: the promotion and protection of women's health through international human rights law.* Switzerland, Geneva: World Health Organization.

Dabash, R. & Roudi-Fahimi, F. (2008). *Abortion In the Middle East and North Africa.* Washington, DC: Population Reference Bureau

Human Rights Council. (2010). Report on Lebanon 9th Session of the Universal Periodic Review – November 2010. Retrieved March 22, 2012 from: http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/Nasawiya_JS.pdf

Hessini, L. (2007). Abortion and Islam: Policies and Practice in the Middle East and North Africa. *Reproductive Health Matters*, 15(29):75-84

Kaddour, A., Alameh, H., Melekian, K., & El Shareef, M. (2002). *Abortion in Lebanon: Practice and Legality?*. Al Raida, XX(99), 55-58.

Min hakki lhaya. Retrieved from http://www.minhakkilhayat.org/home/index.php/2012-04-03-14-09-18

National Commision for Lebanese Women. (2004). *Official report on follow-up of the implementation of the Beijing Platform for Action (1995) and the outcome of the twenty-third special session of the Generl Assembly (2000)*. Lebanon, Beirut.

Population Reference Bureau. (2011). *Contraceptive use among married women ages 15-49 by method type.* Retrieved from http://www.prb.org/DataFinder/Topic/Rankings.aspx?ind=42

Roudi-Fahimi, F. & Abdul Monem, A. (2010). *Unintended Pregnancies in the Middle East and North Africa*. Washington, DC: Population Reference Bureau.

United Nations. (2001). *Abortion Policies: a Global Review (Vol II).* New York .

World Health Organization. (2007). *Unsafe abortion: global and regional estimates of incidence of unsafe abortion and associated mortality in 2003 (5th ed.)*. Switzerland, Geneva: Ahman, E.

Appendix 1:

Table (1): Abortion Lebanese Penal Code: Articles 539-546

Article 539-	All propaganda carried out through one of the means specific in Article 209, second and third paragraphs, for the purposes of propagating or facilitating the use of abortive practices, shall be punished by imprisonment from two months to two years and by a fine of fifty to two hundred and fifty Lebanese pounds
Article 540-	The same punishment shall be inflicted upon whoever sells, displays, or holds for the purpose of selling, objects aimed at producing abortion or who facilitates using them by any means.
Article 541-	Any woman who, by whatever it means, whether utilized by herself or a third person with her consent, aborts herself, shall be punished by imprisonment from six months to three years.
Article 542-	Whoever aborts, or attempts to abort, a woman with her consent by whatever means, shall be punished by imprisonment from one to three years. If the abortion or the methods leading to the abortion result in the death of the woman, the abortionist shall be sentenced to hard labour from four to seven years. The punishment shall be imprisonment from five to ten years if the death was caused by methods more dangerous than those which the woman accepted for the purpose of abortion.
Article 543-	Whoever deliberately causes the abortion of a woman without her consent shall be sentenced to hard labour for at least five years. If the woman dies as a result of the abortion or the means utilized for that purpose, the punishment shall not be less than ten years.
Article 544-	Punishments provided for in Articles 542 and 543 shall be applied even if the woman who was subjected to abortive practices was not pregnant.
Article 545-	The woman who aborts herself to save her honour, and the guilty person under Articles 542 and 543 who acts with the purpose of saving the honour of his descendant or relative to the second degree, shall benefit from a mitigating excuse.
Article 546-	If any of the crimes mentioned in this section were committed by a doctor, surgeon, midwife, drugstore keeper, pharmacist, or by any of their employees, whether as a principal or accessory, the punishment shall be increased by the application of Article 257. The punishment shall be the same if the committer of the crime habitually sells pharmaceutical products or objects meant to procure abortion. In addition, the criminal shall be forbidden to practice his profession or activity even if this required no certificate or licence authorization. The closing of the place of business may also be ordered.