

# I. INTRODUCTION

In line with the objectives and goals of its predecessors, this third volume of the *Legal Grounds* series provides analytical summaries of the main jurisprudence from African courts that have addressed the protection of reproductive and sexual rights from 2010, when the last volume was published, until early 2016.

The first volume of *Legal Grounds* was a preliminary step toward enhancing access to and knowledge about some of these decisions in African Commonwealth countries, with an emphasis on cases that directly and indirectly affect women's reproductive and sexual health and rights. The second volume advanced that goal and also provided a crucial starting point for women's rights advocates to develop and strengthen litigation strategies at the national level, and for researchers who continue to analyze existing gaps in interpretation and adjudication and propose solutions.

*Legal Grounds III* builds on the previous two publications in many aspects. It includes, for the first time, jurisprudence from civil law jurisdictions, and broadens the discussion from Commonwealth courts to those in Sub-Saharan African countries, and beyond women and children to other vulnerable individuals and groups. This volume is also more focused on health issues. Whereas previous volumes had included cases on women's rights involving marriage or property, *Legal Grounds III* includes only two such cases (on disparate treatment of adultery and polygamy) in its new chapter on Francophone Africa. The remaining 52 cases directly impact reproductive and sexual health.

While the case summaries and analyses show that gender-based discrimination remains a great threat to women's and adolescent girls' health and lives, a notable trend is the increase in the number of decisions that are now protecting and advancing these rights. Another trend is the willingness of courts in some of the countries to distinguish themselves from previous decisions that failed to uphold these rights in the past.<sup>1</sup>

As in 2005 and 2010, when the first two volumes of *Legal Grounds* were published, still relatively few publications examine the interpretation and application of human rights norms by national courts in Africa. Even fewer consider whether and how national courts interpret and apply regional and international human rights laws. Further, the scarcity of accessible information on national courts' jurisprudence, particularly regarding how they analyze and adjudicate legal issues that deal with women's rights, continues to be a challenge in Sub-Saharan Africa. Accordingly, this publication remains a vital tool for human rights advocates and all other stakeholders working to advance sexual and reproductive rights in the region.

This volume addresses many of the health issues that the previous volumes addressed as well as new and emerging issues. The case summaries include those involving child marriage; adoption and surrogacy; criminalization of consensual adolescent sexual conduct; sexual violence, including in schools; maternal mortality, morbidity, and poor quality of care; access to safe and legal abortion; contraceptive provision; wrongful birth or life claims; rights of intersex persons and sexual minorities; and HIV-based discrimination.

Advocates can use the information in this volume of *Legal Grounds* to develop and strengthen litigation strategies; highlight existing gaps in the enactment, reform, interpretation and implementation of laws; and sustain grassroots and other advocacy strategies to compel governments and others to respect, protect and fulfil the sexual and reproductive rights of all.

## STRUCTURE OF THIS REPORT

Each chapter begins with a brief introduction explaining the significance of each issue, drawing attention to how certain aspects of the cases advance sexual and reproductive rights, or indicating noticeable trends in jurisprudence. “Highlight” boxes throughout the report also discuss important themes and the cases pertaining to them in order to show how these cases may be used in broader contexts.

The cases are organised by issues or themes. Each case is discussed in the following manner:

**Court Holding** briefly highlights key aspects of the decision.

**Summary of Facts** outlines the relevant facts.

**Issue(s)** identifies the central question(s) addressed by the court. Although some cases address several legal issues, the summaries selectively focus on issues that affect the rights of women, children, and other groups who are vulnerable to violations of their reproductive and sexual rights.

**Court's Analysis** delineates key portions of the court's reasoning.

**Conclusion** summarises the outcome of the case.

**Significance** provides additional context and comments on each case summary from a progressive human rights perspective and draws attention to the broader impact of the decisions.

Links to the full texts of the cases and helpful online legal resources are listed at the end of the report.

As always, we have made an extensive effort to provide the most up-to-date information. However, some of the cases may have been appealed or superseded after going to press. Accordingly, the case summaries should be viewed as a preliminary source of information that can provide much needed support to accountability, advocacy, and research efforts aimed at addressing ongoing violations of sexual and reproductive rights in the African region.