

**LEGAL AND POLICY DIMENSIONS
OF
RAPE-RELATED ABORTION SERVICES**

(COURT DECISIONS, TREATY RESOURCES, POLICY GUIDANCE and PUBLICATIONS)

A working Bibliography prepared by
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Revised: December 17, 2019

A sister-bibliography of Spanish resources is [online here](#).

Please send any suggestions for possible additions to either bibliography to
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Introduction:

This working bibliography, *Legal and Policy Dimensions of Rape-Related Abortion Services*, was compiled during various legal research, policy and advocacy projects on the delivery of abortion services as a result of rape. It is a work in progress, and only includes a few references to the literature and cases on delivery of emergency contraceptives following rape, post-exposure prophylaxis for sexually transmitted infections, and social services including trauma counselling. Its objective is to provide resources to stimulate further legal research, policy and advocacy projects to ensure the timely delivery of dignified health care of women who have been raped.

Domestic Court Decisions

Argentina

F, A L s/ Medida Autosatisfactiva, Expediente Letra “F”, N° 259, Libro XLVI (13 March 2012) (Argentina, Supreme Court of Justice of the Nation), [Decision in Spanish](#). [Unofficial English translation](#)

The Court interpreted article 86 of the Penal Code broadly to permit abortion wherever pregnancy results from rape. The Court also noted that given the time-sensitive nature of the procedure, judicial authorization is not required to obtain an abortion in such circumstances.

S.G.N s/situación, Causa 30.790. Tribunal de Familia de Bahía Blanca [Family Court of the City of Bahía Blanca] October 1, 2008, [Not online].

The facts of this case were similar to *L.M.R.*, in which the mother of a rape victim requested an abortion for her mentally disabled daughter, but they took place in the province of Buenos Aires where guidelines had clarified the procedures to provide abortions for rape victims. The *S.G.N.* case showed that access to abortion for mentally disabled victims of rape was not available, in spite of the resolution requiring its provision. (Bergallo, “The Struggle against Informal Rules on Abortion in Argentina,” p. 153).

N.R.F. s/abuse sexual, 2010, Criminal Court of Appeal [Decision in Spanish](#)

A girl who was raped went to court for an abortion under art 86(2) of the Criminal Code of Argentina which excluded women from criminal liability when they have been raped and were mentally disabled. The lower court judge granted the abortion. On appeal, the Criminal Court of Appeal overturned the decision on the basis that the rights of the fetus had been violated as the mother did not suffer any disability. Although the abortion had taken place and therefore the appeal proper was moot. The Court also said that health authorities should stop abortions until the definitive decision was issued on the matter.

[*L.M.R. v. Argentina*, Communication No. 1608/2007, U.N. Doc. CCPR/C/01/D/1608/2007 (2011). [Decision in Spanish](#). [English translation](#). For abstract, see Human Rights Committee below.]

F, A.L. s/ Medida Autosatisfactiva, Expediente Letra "F", No 259, Libro XLVI (13 March 2012) [Unofficial English translation online](#)

A 15-year-old girl was raped by her mother's husband. She sought an abortion with the support of her mother. The abortion was granted at the Supreme Court of Chubut and performed. The public defender took the case to the National Supreme Court on behalf of the fetus, arguing that the right to life of the fetus had been violated. The Court denied the case – noting that s. 86 of the criminal code (which criminalizes abortion), allows for abortion on the grounds of rape – no judicial permission is needed to get an abortion on these grounds. The Court urged the state to implement protocols for the provision of safe abortion in these cases.

Bolivia

Sentencia Constitucional Plurinacional 0206/2014, Bolivia (Feb 27, 2015) [Decision in Spanish](#).

The Constitutional Court ruled that women need not obtain judicial authorization in such cases removes a substantial procedural barrier. Additionally, the Court's decision to lift the requirement that women report that they have been raped in order to obtain an abortion is also an important step forward in ensuring that that women have access to abortion in such cases by removing procedural barriers. The decision allows doctors to perform legal abortions without fear of criminal prosecution. In its ruling, the Court ordered Bolivia to develop a policy regarding sexual education, which may also have positive impacts on women's reproductive rights. Finally, the Court did not eliminate the possibility of further decriminalization of abortion.

Update: Abortion has been legal in cases of rape, incest and immediate risk to a woman's health or life. New penal code amendments, passed Dec 15, 2017, expanded range of circumstances, including child pregnancy. Unfortunately, the entire new penal code was repealed Jan 21, 2018 for other reasons. [Details from Ipas Bolivia](#).

Canada

Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario (2019 ONCA 393) [Decision online](#)

The Ontario Court of Appeal unanimously upheld a lower court decision which provides that the Policies of the College allowing for conscientious objection to not participate in procedures that violate their religious beliefs (such as abortion), must provide the patient seeking the procedure with an effective referral. The Policies of the College claimed that an effective referral was “a referral made in good faith, to a non-objecting, available and accessible physician, other health-care professional, or agency.” The appellants had claimed that effective referral also offended their religious convictions. The Court of

Appeal agreed with this premise – while the effective referral could be classified as a rights violation under freedom of religion, they were demonstrably justified under s. 1 of the Charter on the basis that a publically funded and regulated service such as healthcare is focused on the public interest, rather than on the interest of the practitioners.

Chile

STC Rol N° 3729(3751)-17 CPT (Constitutional Court of Chile, August 28, 2017. Unofficial translation of [Decision in English](#) with Synthesis and Table of Contents for both English and Spanish editions. [Synthesis in English](#) (unofficial translation). [Spanish Decision](#).

The Court upheld the constitutionality of the government's new law decriminalizing the voluntary termination of pregnancy on three grounds, including pregnancy in the case of rape, but only within 14 weeks for girls under 18 and 12 weeks for women 18 and over. Regarding the ground of rape, this new law gives the woman a belated defense from the vexatious attack to which she was subject. The woman need not take charge of the crime's consequences. Pregnancy lasts a while, but motherhood lasts a lifetime. In addition, various international treaties, establish the State's duty to avoid physical, sexual and psychological violence against the woman.

The new law imposes a duty to report the criminal complaints with the following distinction. A woman over 18 years -- in accordance with article 369 of the Criminal Code -- is not obliged to make a complaint to the justice system or the Public Ministry. Nevertheless, if the raped woman does not make a complaint, the heads of hospitals or private clinics must report the crime to the Public Ministry. For minors under the age of 18, the same heads of the hospital or private clinic must make the complaint and notify the National Service of Minors. The criminal complaint is not a condition for the abortion.

Colombia

Decision C-355/2006, Constitutional Court of Colombia, May 10, 2006. [Decision in Spanish](#). [Official English summary](#).

The Court held that an absolute criminal prohibition of abortion violates women's rights to equality, autonomy, and dignity. The Court concluded that abortion must be legally permitted in certain events, including cases where the pregnancy was the result of rape. To access an abortion in cases of rape, the woman must first report the rape to the authorities. However, the case restricts legislators from imposing regulations requiring forensic evidence of the rape or evidence of lack of consent to the sexual activity.

Case T-209/08 Constitutional Court of Colombia, 2008 [Decision translated into English](#)

13-year-old girl was raped and became pregnant as a result. Both a private healthcare company and a university hospital refused to provide an abortion on the basis of conscience. The girl carried the pregnancy to term and delivered a baby. The mother of the girl brought a petition alleging violation of rights of her daughter not to be raped. The two lower courts denied the petition on the basis that there was no proof the pregnancy

occurred by way of rape. The Constitutional Court overturned these decisions, holding that conscientious objection is not a right to which institutions or the state is entitled to – it is a right that can only be exercised by natural persons AND that conscientious objection is not an absolute right in that it cannot violate a woman’s fundamental human rights. As such, health care systems must provide an adequate number of health providers who will provide the services.

X and XX v. Colombia, Precautionary Measure 270/09, IACHR, OEA/Ser.L/V/II., doc. 51, corr. 1, Ch. III, para. 17 (21 September 2009) [Summary in English](#). [Spanish: MC 270/09](#) For abstract, see Inter-American Commission on Human Rights below.

India

Jamana Suthar v. State of Rajasthan, S.B Civil Writ No. 6683/2009 (August 6, 2009) (Rajasthan High Court – Jodhpur) [Decision online](#).

A petition arose for abortion of a minor girl who was kidnapped by three men and raped resulting in pregnancy. The Court questioned whether the pregnancy was the result of rape as there was a pending investigation into the matter. Additionally, she was 24 weeks pregnancy at the time she filed the application, and no reason for the delay was given. The request for abortion was denied.

X v. Govt of NCT of Delhi, W.P.(CRL) 18262 of 2013, H.C. Del., at 3, 6 Dec. 2013 (Delhi High Court) [Decision online](#).

The petitioner was rescued from a human trafficking ring. She was 19 years of age, HIV+ and 19 weeks pregnant. As the pregnancy was conceived by way of rape she requested medical termination of the pregnancy. The Court noted that “to carry a child in her womb by a woman as a result of conception through an act of rape is extremely traumatic, humiliating and psychologically devastating” (para 9). The abortion was allowed to proceed.

Bashir Khan v. State of Punjab, 14058 of 2014, Punjab-Haryana High Court., August 2, 2014 (Punjab-Haryana High Court) [Decision online](#).

A 14 year old child was raped and became pregnant as a result. The Court reiterated the sensitivity of time in cases of rape where pregnancy results and noted that in all cases, the need to apply for court permission for abortion would only arise in situations where there is a conflict over whether termination should occur – where there is proof of rape and consent, abortion can be completed on its own within the 20 week limit, no need to go to the courts for permission. The Court noted that in cases of rape, it should be presumed that pregnancy would cause severe mental harm.

Vijender v. State of Haryana and others, CWP No. 20783 of 2014, October 7, 2014 (Punjab-Haryana High Court) [Decision online](#)

Rape victim sought an abortion with the assistance of her father. Court insists it was not necessary for the petitioner to apply for court for permission to terminate the pregnancy. AS long as the pregnancy is more than 12 weeks, the petitioner needs a committee of two doctors to examine her – if approved an abortion can take place. The Court noted that a rape victim is further traumatized by going through the process to ask the court for permission for an abortion.

Kavita v State of Aryana and Ors., LPA No. 538/2015, High Court of Punjab & Haryana
[Decision online](#)

Kavita's 12 year old daughter was raped and became pregnant. The pregnancy was discovered after 20 weeks had passed (the legal limit for termination of pregnancy). Kavita applied to the Court under s. 5 of the Medical Termination of Pregnancy Act, 1971 on the basis that an abortion was urgently necessary to save the life of the mother who was a minor rape victim. The judge in this case denied the abortion. On appeal, the child was 34 weeks pregnant. The appeal court denied the appeal after medical examination by a number of doctors on the basis that termination of pregnancy would provide greater risk than an abortion. The Court did order medical care and psychiatric counselling – the child was moved into a medical facility where her costs were paid by the medical board.

Bhavikaben D/O. Rameshbhai Solanki v. State of Gujarat, S.C.A.(D) 1155 of 2016, H.C. Guj., at 1-3, 16 Feb. 2016. [Decision online](#).

In this case an 18 year old girl petitioned the state court at 24 weeks for an abortion that resulted from rape. She was scared of the stigma experienced by victims of rape and of women who become pregnant outside of marriage and tried to commit suicide by consuming acid. She needed surgery to the resulting harm to her esophagus but was denied on the basis she was pregnant and abortion was prohibited beyond 20 weeks. The six-doctor panel who examined the claimant's health noted her mental health and that it would continue to suffer if she continued the pregnancy. The Court allowed an abortion in this case, recognizing the poor health of the claimant, that she experienced poverty which led to delays in accessing the courts, her age and how the trauma of rape had impacted her physical and mental health.

Indu Devi v. the State of Bihar and Others [2017] Petition(s) for Special Leave to Appeal (C) No. 14327/2017, Judgment of May 9, 2017 (Supreme Court of India). [Decision online](#).
[Earlier decision – Institutional access](#)

The Supreme Court of India refused an abortion to a HIV-positive woman who had become pregnant as a result of rape. The petitioner had initially requested an abortion in March 2017, while 17 weeks pregnant. Under Indian law, pregnancies resulting from rape can be terminated up to 20 weeks. She experienced significant delays at the government hospital, eventually bringing her request to the High Court, which rejected her plea. When the case reached the Supreme Court, the petitioner was 26 weeks pregnant. The Supreme Court based its decision on the opinion of a medical board that at

26 weeks the abortion procedure posed a risk to the life of the petitioner and the fetus. The Court directed the state to provide medical treatment to the petitioner to ensure that her health is not further jeopardized and to reduce the risk of HIV-transmission to the child. The Court awarded the petitioner 300,000 rupees compensation.

Ms. Z v, State of Bihar and Others [Civic Appeal No. 10463 of 2017] (August 2017) (Supreme Court of India) [Decision online](#).

A destitute woman brought to a shelter by her family was found to be pregnant by way of rape. She consented to termination of pregnancy. Delays were incurred at the hospital even with a signed form of her brother and husband consenting to the procedure. She was also HIV+. The Court allowed the abortion, noting that time is extremely significant when it comes to pregnancy and that doctors are advised to conduct themselves in a way that does not hinder the rights of women.

Murugan Nayakkar v. Union of India & Others [2017] Writ Petition (Civil) No. 749/2017, Judgement of September 6, 2017 (Supreme Court of India). [Decision online](#).

The Supreme Court of India allowed a 13-year-old rape survivor to have a late abortion, based on advice from a Medical Board citing state of fetus, age of the victim, and the trauma she suffered because of the sexual abuse and subsequent pregnancy.

Alakh Alok Srivastava v. Union of India & Ors., W.P. (C) 565 of 2017, S.C.C. 28 July 2017 [Decision online](#).

A 10-year-old rape survivor was denied an abortion by the Supreme Court of India notwithstanding that she was a child and she had a congenital heart defect. At the time of hearing at the Supreme Court the pregnancy was at 32 weeks. The Court determined that it was not in the interest of the girl, nor the fetus to terminate the pregnancy.

Ireland

Attorney General v. X, [1992] IESC 1; [1992] 1 IR 1 (5th March, 1992) (Supreme Court of Ireland) [Decision download RTF online](#). [Decision online and printable RTF](#).

Ireland does not allow abortion in cases of pregnancy from rape. When an adolescent girl, who was pregnant by rape, was enjoined from traveling abroad for an abortion, the Irish Supreme Court overturned the injunction, reasoning that the young woman's risk of suicide satisfied the standard of "real and substantial risk" to the pregnant girl's life.

A. and B. v EHB and C. [1997] IEHC 176; [1997] IEHC 176; [1998] 1 IR 464 (28th November, 1997) (High Court of Ireland). [Decision online](#).

Ms. C was raped by a family friend and became pregnant as a result. She was suicidal due to the pregnancy and made a court application to travel to the UK for an abortion.

Following the precedent set in *X* case, the High Court upheld a ruling by the District Court permitting *C* to travel abroad for an abortion.

Northern Ireland Human Rights Commission, Re Judicial Review, [2015] NIQB 96 (November 30, 2015) (High Court of Justice in Northern Ireland) [Decision online](#).

Commission brought an application that the rights of women in Northern Ireland who become pregnant with a serious malformation of the fetus or as a result of sexual crimes are breached under the 1861 *Offences Against the Person Act* as they are unable to procure an abortion in these instances. The Court found that abortion legislation in Northern Ireland breaches Article 8 of the European Convention on Human Rights by failing to provide an exception on abortion in cases of fetal abnormality or where the pregnancy is the result of sexual crime. The Court also looked to international law and CEDAW for this proposition and highlighted General Recommendation No. 24 of the CEDAW committee for the proposition that states should withdraw punitive measures for women who undergo abortion.

Kenya

Federation of Women Lawyers (Fida-Kenya) & 3 others v Attorney General & 2 others [2016] eKLR (Nairobi High Court). [Online](#).

In 2013, Kenya's Ministry of Health withdrew the *Standards and Guidelines on Reducing Maternal Mortality and Morbidity from Unsafe Abortion*, which had far-reaching consequences on access to safe abortions, particularly in cases of pregnancy arising from rape where the legality of abortions are now unclear. In 2015, a petition was filed by the Federation of Women Lawyers (FIDA) Kenya, two community human rights mobilisers, an adolescent rape survivor who suffers from kidney failure and other complications of an unsafe abortion, and on behalf of all Kenyan women of reproductive age who were denied access to safe abortions. The petition called on the government to restore the *Standards and Guidelines* and to clarify when legal abortion can be provided. A hearing was held by the Nairobi High Court in 2016, but the case was postponed. On May 22-24, 2018, the case was re-opened in the Judicial Review Division at the High Court of Kenya, where a decision is pending regarding the reinstatement of the *Standards and Guidelines*. See the [press release](#) posted by the International Campaign for Women's Right to Safe Abortion for more info.

Federation of Women Lawyers (Fida – Kenya) & 3 others v Attorney General & 2 others; East Africa Center for Law & Justice & 6 others (Interested Party) & Women's Link Worldwide & 2 others (Amicus Curiae) [2019] eKLR (Nairobi High Court) [Online](#)

The continuation of this case relating to the withdraw of the *Standards and Guidelines on Reducing Maternal Mortality and Morbidity from Unsafe Abortion* in response to an adolescent rape survivor who suffered from kidney failure and other complications arising from an unsafe abortion. While the Court reiterated that abortion is illegal in Kenya, there are exceptions provided in the Constitution including when pregnancy

results from “rape and defilement, if in the opinion of a trained health professional, poses a danger to the life or the health (physical, mental and social well-being) of the mother may be terminated under the exceptions provided under Article 26(4) of the Constitution”. The Court determined that the withdraw of the Guidelines resulted in the violation of the petitioners’ right to health, right to non-discrimination, right to information, consumer rights and right to benefit from scientific progress.

Mexico

Paulina Ramirez v. Mexico, Case 161-02, Report No 21/07, Inter-American Commission on Human Rights, Friendly Settlement (2007), [in English in Spanish](#). For abstract, see Inter-American Commission on Human Rights below.

Suprema Corte de Justicia de la Nación, Segunda Sala 2018, Amparo en Revisión 601/2017 [Case of "Marimar"] (Ciudad de Mexico) April 4, 2018. [Decision in Spanish](#). Summary at the [Safe Abortion website](#).

This case represents the first Mexican Supreme Court ruling regarding the denial of a woman’s access to abortion. “Marimar” was raped in November 2015 when she was 17 years old. In her efforts to secure a legal abortion, she was forced to confront endless bureaucratic delays, discrimination and unnecessary barriers from authorities and was ultimately denied a legal abortion. She filed a legal stay for the cruel and inhumane treatment to which she was subjected in the hospital. the Supreme Court voted unanimously in favour of “Marimar”, recognising that the denial of a legal abortion after rape constitutes a violation of reproductive rights.

Suprema Corte de Justicia de la Nación, Segunda Sala [Supreme Court] 2018, Amparo en Revisión 1170/2017 [Case of "Fernanda"] (Ciudad de Mexico) April 18, 2018. [Decision in Spanish](#). Summary at the [Safe Abortion website](#).

Fernanda was raped by an acquaintance and became pregnant in 2016. Fernanda requested access to an abortion several times from the health services of Oaxaca, but the hospital was on strike and did not do anything but acknowledge receipt of her requests. Fernanda, like Marimar, was denied access to abortion care. The Supreme Court delivered the same ruling as in the “Marimar” case, recognizing that the denial of legal abortiton after rape constitutes a violation of reproductive rights.

Paraguay

Asunto niña Mainumby respecto de Paraguay. [Case of the girl Mainumby with respect to Paraguay] Resolución 22/2015. Medidas cautelares No. 178/15. June 8, 2015 (Inter-American Commission on Human Rights) [Precautionary Measures in Spanish](#). [English summary in Equality Now/CLADEM 2017 submission to UN CAT](#). For abstract, see Inter-American Commission on Human Rights below.

Peru

L.C. v. Peru, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011)
[Decision in English](#). [Decision in Spanish](#). For abstract, see CEDAW below.

Poland

P and S v. Poland, no 57375/08, [2012] ECHR 1853, [Decision online](#). For abstract, see European Court of Human Rights below.

Resolution of the Supreme Court of 22 February 2006, III CZP 8/06, OSNC 2006/7-8/123 [the case of M.A.]

M.A. was raped in July 1996 by an unknown perpetrator. Though she obtained a confirmation of pregnancy stating that the age of the foetus was 11 weeks, she was subsequently denied an abortion at the hospital where the age of the foetus was deemed to be 14 weeks and outside of the time limit denied by law. M.A. sued the state for damages arising from the wrongful birth. The case made its way through several levels of court, until the Supreme Court made a final ruling in 2006. It was held that in cases of illegal prevention of termination of pregnancy arising as a result of rape, the state is liable for the “costs of maintaining the child in the scope that the mother of the child making personal efforts to maintain it and bring it up is not able to satisfy the justified needs of the child.” The court further stated that in these cases, “it is desirable to initiate legislative work enabling the acceptance by the state of the maintenance costs of the child”. See the [2008 report](#) (p.46) by the Federation for Women and Family Planning for more details.

Rwanda

Case No. RPA 0787/15/HC/KIG (2015) Unreported, (High Court of Rwanda, Kigali) [2015] Unreported. [Official English translation, redacted](#). [Case summary and analysis from Legal Grounds III](#).

Court held that a 13-year-old rape victim IC had the right to access abortion, since for the purposes of the rape exception to the prohibition of abortion, being defiled is the same as having been raped, so every girl under age 18 who is pregnant as a result of sexual intercourse ought to be considered as having been raped.

South Africa

Nvumeleni Jezile v. The State, High Court Case No: A 127/2014 (March 23, 2015) High Court of South Africa [Decision online](#).

Appellant had negotiated a customary marriage with a relative of a 14-year-old girl. The girl was then forcibly abducted, married and raped. The child ran away from the abductor and was returned to him. The appellant was convicted at trial of human trafficking, rape, common assault and assault with intent to cause grievous bodily harm. His appeal was dismissed by the High Court of South Africa. The practice of *uukuthwala*, often known as forced customary marriage is not customary marriage at all – no consent of the girl was

obtained. Customary marriage was simply being used as an excuse for the coercion and crimes committed.

Solomon Islands

Regina v. Gua [2012] SBHC 118; [2013] 3 LRC 272 (October 8, 2012) (High Court of Solomon Islands) [Decision online](#).

Accused was charged with rape of his wife, 11 days after she left him. The case turned on whether the accused could be held liable because the accused contended there was a marital rape exemption in the law of the Solomon Islands. The Court disagreed, and determined that the law allowing for the exemption is no longer applicable and a husband can be lawfully convicted of raping his wife.

United Kingdom

R. v. Bourne, [1938] 3 All E.R. 615 (Crown Court of England and Wales). [Decision online](#).

Case involved a surgeon, Dr. Bourne, who performed an abortion on an adolescent girl who became pregnant due to rape. The surgeon was charged with unlawfully procuring an abortion under the Offences against Persons Act 1861, s.58. Mcnaghten J. directed the jury that “If the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are entitled to take the view that the doctor is operating for the purpose of preserving the life of the mother.” Mcnaghten J. further noted that for Dr. Bourne the victim’s age and the trauma of the rape necessitated the termination as a means of preserving the victim’s life.

In the Matter of an Application for Judicial Review by the Northern Ireland Human Rights Commission in the Matter of the Law on the Termination of Pregnancy in Northern Ireland [2015] NIQB 96 [Decision online](#).

High Court held that art 8 of the ECHR (private and family life) was breached by the prohibition of abortion in cases of fatal fetal abnormality and pregnancies as a consequence of sexual crimes, did not find on inhuman and degrading and discrimination. Pending appeal to the Northern Ireland Court of Appeal ([\[2017\] NICA 42](#)).

United States

Brownfield v. Freeman Marina Hospital. 208 Cal. App. 3d 405 (1989). [Decision online](#).

California Court of Appeals ruled that a hospital could be held liable for a physician’s failure to provide information about and access to EC [emergency contraception]. Furthermore, the court stated that a law protecting religious hospitals from liability for failure to perform abortions did not apply to such hospitals’ failure to provide EC, because EC prevents rather than terminates a pregnancy. (Polis et al., “Accessibility of emergency contraception in California’s Catholic hospitals,” p. 175.)

Zimbabwe

Mapingure v. Minister of Home Affairs et al, Judgment No. 22/14, 25 March 2014, Civil Appeal No. SC 406/12, Supreme Court of Zimbabwe, [Decision online](#). [Summary in Legal Grounds III](#).

Case involved a negligence action arising from the state's failure to provide assistance to the applicant in preventing and terminating her pregnancy, which was the result of a rape. Under Zimbabwean law, a woman may terminate a pregnancy that is the result of non-consensual sex. The Supreme Court of Zimbabwe held that the police were liable for not fulfilling a duty to assist the applicant in preventing her pregnancy. In addition, the Court held that the doctor who refused to prescribe the emergency contraception without the presence of a police officer liable. Even though the Supreme Court highlighted the lack of clarity in the law regarding the process by which to obtain abortion in case of rape, it did not find that public officials, including police, prosecutors, and a magistrate, were liable for failing to assist the applicant terminate her pregnancy. The applicant's award in damages was limited to the period between when she was sexually assaulted and when the pregnancy was confirmed.

Treaty Resources: Regional and International Treaty Bodies - Decisions, Comments and Observations

Regional

African Commission on Human and Peoples' Rights

General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. [General Comment 2 online](#).

This General Comment provides interpretive guidance to the implementation of the Article 14 of the "Maputo Protocol" (i.e. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa), which calls for the right to safe abortion in cases of sexual assault, rape, and incest, among other enshrinements of reproductive rights. These Comments can be used to hold signatory states accountable for failing to implement their treaty obligations effectively.

European Court of Human Rights

P and S v. Poland, no 57375/08, [2012] ECHR 1853, [Decision online](#).

European Court of Human Rights ruled that barriers faced by an adolescent girl in terminating a pregnancy resulting from rape violated article 3 of the European Convention on Human Rights, which prohibits inhuman or degrading treatment. The Court further held that Poland violated article 8, the right to respect for private and family life, and article 5, the right to liberty and security. Specifically, the Court held that the

applicants, the adolescent victim and her mother, had been provided misleading information, and that the challenges they faced were exacerbated by the unclear legal framework, procrastination of medical staff, and harassment by anti-abortion activists.

Inter-American Commission on Human Rights

“IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women’s Sexual and Reproductive Rights.” Press Release 165/17, October 23, 2017.

[Press Release in English.](#) [Press Release in Spanish.](#)

Emphasizes that “laws criminalizing abortion in all circumstances have a negative impact on women’s dignity and their rights to life, to personal integrity, and to health, as well as on their general right to live free from violence and discrimination. The absolute criminalization of abortion, including in cases . . . when the pregnancy results from a rape or incest, imposes a disproportionate burden on the exercise of women’s rights and creates a context that facilitates unsafe abortions and high rates of maternal mortality. -- -

“Victims of sexual violence or incest are in a particularly vulnerable situation by definition, even more so if they are girls or adolescents. Therefore, women, girls, and adolescents should be guaranteed the possibility of making this decision in a way that is timely and informed, in a legal and safe context, to protect their health, their physical integrity, and even their life. Denying access by women and girls to legal and safe abortion services or post-abortion care can cause prolonged and excessive physical and psychological suffering to many women, especially in cases involving risks to their health, unviability of the fetus, or pregnancies resulting from incest or rape. Without being able to effectively exercise their sexual and reproductive rights, women cannot realize their right to live free from violence and discrimination.”

Friendly Settlement

Paulina Ramirez v. Mexico, Case 161-02, Report No 21/07, Inter-American Commission on Human Rights, Friendly Settlement (2007), [in English](#) [in Spanish](#).

Paulina Ramirez Jacinto was raped at fourteen years old and as a result became pregnant. Health providers and law enforcement denied her an abortion, even though abortion is permissible in cases of rape under the relevant legislation, the Baja California Criminal Code. The Mexican State and Ramirez Jacinto came to a settlement agreement. The terms of the agreement included that the State provide Ramirez Jacinto and her child with health services, psychological care, her child with school supplies, enrollment, fees and text books up to high school for the child, and Ramirez Jacinto with \$265,000 pesos for moral damages. Further, the State agreed to promote legislative amendments and to conduct a national survey regarding the health care needs of women who have experienced sexual and domestic violence.

Precautionary Measures

Asunto niña Mainumby respecto de Paraguay. [Case of the girl Mainumby with respect to Paraguay] Resolución 22/2015. Medidas cautelares No. 178/15. June 8, 2015 (Inter-American Commission on Human Rights) [Precautionary Measures in Spanish](#). [English summary in Equality Now/CLADEM 2017 submission to UN CAT](#)

On June 8, 2015, the IACHR asked Paraguay to adopt specific precautionary measures to protect the health, life, and rights of 10 year old girl Mainumby in Paraguay, pregnant allegedly by her mother's partner. Hospital noted high-risks in this pregnancy.

Update: Mainumby survived Caesarean birth.

X and XX v. Colombia, Precautionary Measures 270/09, IACHR, OEA/Ser.L/V/II., doc. 51, corr. 1, Ch. III, para. 17 (21 September 2009) [Summary in English](#). [Spanish: MC 270/09](#)

On September 21, 2009, the IACHR granted precautionary measures for two individuals in Colombia whose identity the IACHR decided to withhold. The request for precautionary measures alleges that X and her 15-year-old daughter XX had been followed and subject to physical aggressions, threats, and a kidnapping attempt after they reported the sexual violation of XX, which allegedly occurred in December 2006. The request also indicates that XX showed after-effects of having been sexually violated and having carried a high-risk pregnancy. The request alleges that the adolescent's physical and mental health had deteriorated in recent months as a result of the acts of violence to which her immediate family had been victim and due to the alleged absence of adequate medical treatment. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries; guarantee that XX can have proper medical treatment for the effects of having been sexually violated and having carried a pregnancy under allegedly risk circumstances; reach agreement with the beneficiaries and their representative on the measures to be adopted; inform the IACHR within a 20-day period about any actions taken to investigate the facts that led to the adoption of the precautionary measures and update the information periodically; and adopt all necessary measures so that the beneficiaries' identity is duly protected in the implementation of the precautionary measures.

Inter-American Commission of Women

Follow-up Mechanism to the Belém do Pará Convention/Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI), *Hemispheric Report on Child Pregnancy in the States Party to the Belém do Pará Convention*, at pp. 45-50 [Download in English](#). Disponible en Español como: *Informe hemisférico sobre violencia sexual y embarazo infantil en los Estados Parte de la Convención de Belém do Pará* (OAS. Documentos oficiales, OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.234/16 Rev.1 OEA/Ser.L/II), 2016, pp. 47-53 [Descargar PDF en Español](#).

International

Committee Against Torture (CAT)

Concluding Observations (examples)

El Salvador, U.N. Doc. CAT/C/SLV/CO/2 (2009), para. 23;

Nicaragua, U.N. Doc. CAT/C/NIC/CO/1 (2009), para. 16;
Paraguay, U.N. Doc. CAT/C/PRY/CO/4-6 (2011), para. 22;
Peru: U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15.

Committee on Economic, Social and Cultural Rights (CESCR)

General Comments

General Comment 14 (right to health) [online here in 6 languages](#).

General Comment 22 (right to reproductive and sexual health) [online here in 6 languages](#).

Concluding Observations (examples)

Chile, E/C.12/1/Add.105 (2004), para. 53;
Dominican Republic, E/C.12/DOM/CO/4 (2016), para. 60.
Ecuador, E/C.12/ECU/CO/3 (2012), para. 29;
Guatemala, E/C.12/GTM/CO/3 (2014), para. 23;
Ireland, E/C.12/IRL/CO/3 (2015), para. 30;
Mauritius, E/C.12/MUS/CO/4 (2010), para. 25;
Nicaragua, E/C.12/NIC/CO/4 (2008), para. 26;
Peru, E/C.12/PER/CO/2-4 (2012), para. 21;
Philippines, E/C.12/PHL/CO/4 (2008), para. 31;
Sri Lanka, E/C.12/LKA/CO/2-4 (2010), para. 34;
United Kingdom of Great Britain & Northern Ireland, E/C.12/GBR/CO/5 (2009), para. 25;

Committee on the Elimination of Discrimination against Women (CEDAW)

General Recommendations

General Recommendation No. 19 (1992) on Violence against women, revised in [General Recommendation 35](#) (2017)

General Recommendation No. 24: Article 12 (Women and Health) (1999)

[General Recommendation 24](#).

[All CEDAW General Recommendations](#).

Concluding Observations (examples)

Andorra, CEDAW/C/AND/CO/2-3 (2013), para. 32;
Angola, CEDAW/C/AGO/CO/6 (2013), para. 32;
Bahrain, CEDAW/C/BHR/CO/3 (2014), para. 42;
Bangladesh, CEDAW/C/BGD/CO/8 (2016), para. 35;
Costa Rica, CEDAW/C/CRI/CO/5-6 (2011), para. 33;
Côte d'Ivoire, CEDAW/C/CIV/CO/1-3 (2011), para. 41;
Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), para. 37;
Democratic Republic of Congo, CEDAW/C/COD/CO/6-7 (2013), paras. 31-32;

Honduras, CEDAW/C/HND/CO/7-8 (2016), paras. 36-37;
Ireland, CEDAW/C/IRL/6-7 (2017), para. 43;
Jordan, CEDAW/C/JOR/6 (2017), para. 48.
Lebanon, CEDAW/C/LBN/CO/4-5 (2015), para. 42;
Malta, CEDAW/C/MLT/CO/4 (2010), para. 35;
Mauritius, CEDAW/C/MUS/CO/6-7 (2011), para. 33;
Pakistan, CEDAW/C/PAK/CO/4 (2013), para. 32;
Peru, CEDAW/C/PER/CO/7-8 (2014); paras. 35-36.
Qatar, CEDAW/C/QAT/CO/1 (2014), para. 40;
Rwanda, CEDAW/C/RWA/7-9 (2017), para. 39;
United Kingdom of Great Britain & Northern Ireland, CEDAW/C/GBR/CO/7 (2013), par. 51.

Communication Decision

L.C. v. Peru, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011)
[Decision in English](#), [Decision in Spanish](#)

Case involved an adolescent girl, LC, who became pregnant as a result of sexual abuse, and subsequently attempted suicide, injuring her spine. Doctors refused to operate on LC because she was pregnant. Although abortion is permissible in Peru where there is a serious and immediate risk to pregnant woman's health, the hospital denied LC's request for a therapeutic abortion. She eventually miscarried, after which she received spinal surgery. The surgery had minimal effect, and LC remains paralyzed from the neck down.

The Committee found that Peru's lack of reproductive health protections for women survivors of sexual abuse and rape contributed to LC's situation. The Committee held that Peru violated its obligations under the Convention, including article 2(c), to establish institutions that protect women against discrimination, article 2(f), to take appropriate measures, including legislation, to eliminate discrimination against women, article 3, to promote the advancement of women to guarantee their exercise of fundamental freedoms on an equal basis as men, and article 12, to ensure women's access to health care services. The Committee recommended that Peru amend its laws to decriminalize abortion in cases of rape or sexual abuse. The Committee further recommended that Peru implement mechanisms to ensure accessible reproductive health services for women who have experienced sexual violence.

Inquiry Report

Northern Ireland: Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/OP.8/GBR/1, Advance Unedited Version, 23 February 2018. Paras 36-38. [Report of Northern Ireland Inquiry](#).

Pregnancies resulting from rape and incest

"There is no exception allowing abortions in cases of rape or incest, not even when the victims are children. . . . very high rates of sexual abuse" . . . 61% were children in

2013/14, increasing over past decade. “The criminalisation of abortion places female victims of rape or incest at risk of being treated as criminals themselves and has contributed to the underreporting of rape, fearing prosecution and conviction. No data exists on the number of pregnancies resulting from rape or incest or of victims seeking an abortion. However, the fact that these crimes can and do result in pregnancies is recognised by the NI Criminal Justice Compensation Scheme, which awards a victim the amount of £5,500 where a pregnancy is directly attributable to a sexual offence irrespective of the victim’s age. According to NI authorities, four awards were made between 2011 and 2016. It is unknown whether State-provided support exists for rape or incest victims who do not wish to continue the pregnancy. This includes psycho-social services during and after pregnancy; facilitating adoption where requested; and financing for raising an unplanned child.” (see paras. 36-38).

Committee on the Rights of the Child (CRC)

General Comments

General Comment No. 4 on adolescent health. CRC/GC/2003/4 (2003), para 27. [Gen. Comm 4](#)
General Comment No. 15, on rights to highest standard of health, CRC/C/GC/15 (2013), para 70
[Gen. Comment 15](#).

General Comment No. 20, on implementation of rights during adolescence, CRC/C/GC/20 (2016), paras 13, 39, 59, 60 [Gen. Comment 20](#).

Concluding Observations (examples):

Chile CRC/C/CHL/CO/4-5 (2015), para. 61;
Costa Rica, CRC/C/CRI/CO/4 (2011), paras. 63-64;
India, CRC/C/IND/CO/3-4 (2014), para 66(b).

Human Rights Committee

General Comment

General Comment 28: on Equality of rights between men and women (article 3)
[General Comment 28](#).

Communication Decision

L.M.R. v. Argentina, Communication No. 1608/2007, U.N. Doc. CCPR/C/01/D/1608/2007 (2011). [Decision in Spanish](#). [English translation](#).

LMR, a young woman with a permanent mental impairment, was raped by her uncle. Argentina’s Criminal Code permits abortions where a pregnancy is the result of a rape of a mentally impaired woman. The Human Rights Committee found that delays experienced by LMR in terminating the pregnancy, which eventually led her to have an illegal abortion, violated various articles of the International Covenant on Civil and Political Rights, including article 7 (right to freedom from torture, or cruel, inhuman or

degrading treatment or punishment) and article 17 (the right to privacy). The United Nations Human Rights Committee found that delays to LMR's abortion, leading her to seek an illegal abortion, violated various articles of the International Covenant on Civil and Political Rights.

United Nations General Assembly

A/RES/48/104. Declaration on the elimination of violence against women. December 20, 1993. [UN Resolution to eliminate violence against women](#)

A/RES/73/148. [Intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment](#). January 11, 2019

Policy Guidance

Domestic

Ethiopia

Family Health Department, Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, (2006) [Guidelines for Safe Abortion - Ethiopia](#)

After the Ethiopian government liberalized abortion law in 2005 under the Criminal Code, the Ministry of Health developed guidelines for the safe provision of abortion, clarifying the law and procedures surrounding abortion services. The guidelines remove certification requirements for access to abortion in cases of rape and incest. Furthermore, the regulations provide that service providers will not be prosecuted if the information upon which they relied to provide an abortion is later found to be incorrect. This prevents the possibility of providers being deterred from providing lawful abortions due to fear of prosecution.

“Where the pregnancy is a result of rape or incest:

- Termination of pregnancy shall be carried out based on the request and the disclosure of the woman that the pregnancy is the result of rape or incest. This fact will be noted in the medical record of the woman.
- Women who request termination of pregnancy after rape and incest are not required to submit evidence of rape and incest and/or identify the offender in order to obtain abortion services.” (page 9)

Kenya

Ministry of Health (Kenya), *Medical Management of Rape/Sexual Violence Guidelines*, (3rd ed. 2014). [Online](#).

Under Kenya's constitution, abortion is not permitted unless, in the opinion of a trained

health professional, there is need for emergency treatment, or the life or health of the mother is in danger (p.15). However, these guidelines explicitly state that survivors of sexual violence have a right to access termination of pregnancy and post-abortion care in the event of pregnancy arising from rape (p.78).

India

Ministry of Health and Family Welfare, Government of India, *Comprehensive Abortion Care: Training and Services Guidelines*, (2010). [Online](#).

In India, pregnancy can be terminated if the continuation of pregnancy involves the risk to the life of the pregnant woman or of grave injury to her physical or mental health. However, according to these guidelines, the anguish caused by rape or incest will be presumed to cause grave injury due to the mental health of the pregnant woman (p.2).

United States

U.S. Department of Justice. Office on Violence against Women. A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents. Second Edition, April 2013. NCJ 228119. [US Sexual Assault Protocol](#)

Sexual violence continues to plague our Nation and destroy lives. All members of society are vulnerable to this crime, regardless of race, age, gender, ability, or social standing. When sexual assault does occur, victims deserve competent and compassionate care. This second edition of the *National Protocol for Sexual Assault Medical Forensic Examinations* provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. We know that effective collection of evidence is of paramount importance to successfully prosecuting sex offenders. Just as critical is performing sexual assault forensic exams in a sensitive, dignified, and victim-centered manner. For individuals who experience this horrendous crime, having a positive experience with the criminal justice and health care systems can contribute greatly to their overall healing.

As we have learned in the years since the implementation of the 1994 Violence against Women Act, coordinated community efforts are the best way to stop violence against women, hold offenders accountable for their crimes, and promote victim healing and recovery. That is why this protocol was designed as a guide for practitioners who respond to victims of sexual assault, including health care professionals, law enforcement officers, prosecutors, interpreters, advocates, and others. Combining cutting edge response techniques with collaboration among service providers will greatly enhance our ability to treat and support victims as well as identify and prosecute the sex offenders. We hope that this protocol lays the foundation for these efforts.

International

International Federation of Gynecology and Obstetrics (FIGO)

FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health, "Ethical Issues after Sexual Assault," in *Ethical Issues in Obstetrics and Gynecology* (London: FIGO, 2015) [English, pp. 10-14, \(13-17 of PDF\)](#) [Espanol pp. 391-394 \(393-397 of PDF\)](#)

Official FIGO guidelines for obstetricians and gynecologists, approved 2014, recommend sensitivity, confidentiality, access to rapid examination and services (including offer of medical forensic examination, for which consent is required). "The two finger test" is discredited and violates human rights. Risks of STI or HIV or unplanned pregnancy.

FIGO Committee for the Study of Ethical Aspects of. Human Reproduction and Women's Health, "Ethical guidance on healthcare professionals' responses to violence against women," in *Ethical Issues in Obstetrics and Gynecology* (London: FIGO, 2015) [English, pp. 15-19, \(18-22 of PDF\)](#); [Espanol pp. 385-390 \(388-393 of PDF\)](#)

Sexual violence against women has special relevance to gynecologists and obstetricians. It can lead to unintended pregnancy, a termination, whether by safe and legal means or by unsafe means, when women are or feel isolated. Women's termination of pregnancy is more likely to present health risks when it is illegal. Sexual violence can also lead to other gynecological problems, such as direct injury to the reproductive tract, or sexually transmitted infections including HIV. Violence during pregnancy increases the likelihood of spontaneous abortion, stillbirth, preterm delivery, and the birth of low birth-weight babies.

... Women presenting shortly after sexual assault should be offered appropriate protection against sexually transmitted infections and emergency contraception. If presenting later or emergency contraception fails, women should be offered abortion services in accordance with applicable law. Care options for patients pregnant at the time of assault should be discussed with them, and administered in conformity with their choices.

Personnel who have religious or other objections to advising, prescribing, administering, or participating in indicated treatment should comply with FIGO Ethical Guidelines on Conscientious Objection to ensure timely treatment on patients' requests.

FIGO Committee for the Study of Ethical Aspects of. Human Reproduction and Women's Health, "Violence against Women" in *Ethical Issues in Obstetrics and Gynecology* (London: FIGO, 2015) [English, pp 9-10, \(12-13 of PDF\)](#); [Espanol pp. 384-385 \(387-388 of PDF\)](#)

Official FIGO guidelines for obstetricians and gynecologists, approved in 2007, emphasized raising awareness, declaring VAW unacceptable, treating physical and psychological harms "Affirm women's right to be free of physical and psychological violence, including sexual violence, examples of which range from war crimes in conflicts between and within states to sexual intercourse without consent within marriage..."

World Health Organization (WHO)

World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health systems*, 2nd ed (Geneva: WHO, 2012) [WHO Technical Guidelines](#). (NOTE: 3rd edition, forthcoming 2020)

Guidelines note that pregnancy resulting from rape necessitates special sensitivity and that burdensome certification requirements, such as reporting to police, may have a chilling effect on both women seeking treatment and service providers. “Women who are pregnant as a result of rape have a special need for sensitive treatment, and all levels of the health system should be able to offer appropriate care and support. Standards and guidelines for provision of abortion in such cases should be elaborated, and appropriate training given to health-care providers and police. Such standards should not impose unnecessary administrative or judicial procedures such as requiring women to press charges or to identify the rapist. The standards should ideally be part of comprehensive standards and guidelines for the overall management of survivors of rape, covering physical and psychological care, emergency contraception, post-exposure prophylaxis for HIV prevention, treatment for sexually transmitted infections (STIs) and injuries, collection of forensic evidence, and counselling and follow-up care”. (page 69)

“The protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or forced sexual acts can lawfully access safe abortion services. Nearly 50% of countries reflect this standard and permit abortion in the specific case of rape, or more generally where pregnancy is the result of a criminal act, such as in cases of incest. Some countries require as evidence the woman’s report of the act to legal authorities. Others require forensic evidence of sexual penetration or a police investigation to confirm that intercourse was involuntary or exploitative. Delays owing to such requirements can result in women being denied services because they have exceeded gestational age limits prescribed by law. In many contexts, women who have been victims of rape may fear being stigmatized further by the police and others and will therefore avoid reporting the rape at all, thus precluding access to legal abortion. Either situation can lead women to resort to clandestine, unsafe services to terminate their pregnancy. Prompt, safe abortion services should be provided on the basis of a woman’s complaint rather than requiring forensic evidence or police examination. Administrative requirements should be minimized and clear protocols established for both police and health-care providers as this will facilitate referral and access to care.” (page 92)

WHO, “Guidelines for medico-legal care for survivors of sexual violence” (Geneva: WHO, 2003) [Guidelines, 154 pages](#).

The aim of these guidelines is to improve professional health services for all victims of sexual violence by providing:

- health care workers with the knowledge and skills that are necessary for the management of victims of sexual violence;
- standards for the provision of both health care and forensic services to victims of sexual violence;

- guidance on the establishment of health and forensic services for victims of sexual violence.

Health professionals can use the guidelines as a day-to-day service document and/or as a tool to guide the development of health services for victims of sexual violence. The guidelines can also be used to prepare in-service training courses on sexual violence for health care practitioners and other members of multidisciplinary teams.

These guidelines are meant to be adapted to specific local and national circumstances, taking into account the availability of resources and national policies and protocols.

WHO, *Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Persons* (2004) [Guidelines, 76 pages.](#)

This guide includes detailed guidance on the clinical management of women, men and children who have been raped. It is intended for use by qualified health-care providers in developing protocols for the management of rape survivors in emergencies, taking into account available resources, materials, and drugs, and national policies and procedures. It can also be used in planning health-care services and training health-care providers.

WHO, *Responding to Intimate Partner Violence and Sexual Violence against Women: WHO Clinical and Policy Guidelines* (2013) [Guidelines, 56 pages.](#)

These guidelines are an unprecedented effort to equip healthcare providers with evidence-based guidance as to how to respond to intimate partner violence and sexual violence against women. They also provide advice for policy makers, encouraging better coordination and funding of services, and greater attention to responding to sexual violence and partner violence within training programmes for health care providers. The guidelines are based on systematic reviews of the evidence, and cover:

- identification and clinical care for intimate partner violence
- clinical care for sexual assault
- training relating to intimate partner violence and sexual assault against women
- policy and programmatic approaches to delivering services
- mandatory reporting of intimate partner violence.

The guidelines aim to raise awareness of violence against women among health-care providers and policy-makers, so that they better understand the need for an appropriate health-sector response. They provide standards that can form the basis for national guidelines, and for integrating these issues into health-care provider education.

[Databases legislation and countries that allow abortion in cases of rape](#)

Center for Reproductive Rights. *The World's Abortion Laws* (New York: Center for Reproductive Rights, 2018) [Map online.](#)

Color-coding provides overview of restrictiveness. Deeper sorting system includes “R” (abortion provided in cases of rape) and “R1” (abortion provided in cases of rape when woman has a mental disability). To view all countries with 1 provision, click: Country Icon> R (or R1). For further detail, click individual country. Circled “i,” where available, links to abortion provisions in national law. To reach country comparison function, click on first country of interest.

United Nations, Department of Economic and Social Affairs, Population Division (2014). *Abortion Policies and Reproductive Health around the World* (N.p.: United Nations, 2014) 52 pages. [Abortion Policies 1996 to 2013](#)

Report shows changes in legal grounds for abortion from 1996 to 2005 to 2013, by country and by population. Rape or incest indication for abortion changed from 43 to 52% of countries, and 72 to 75% of world population.

World Health Organization. *Global Abortion Policies Database* (Geneva: World Health Organization, 2018) [GAP Database](#).

Yields similar data as CRR’s map, but in textual form, easier to copy, with more data and more country details, plus links to treaties signed by each country, and WHO Guidance on each abortion indication (e.g. Rape is in *Safe Abortion: Technical Guidance*, p. 102). Updates much country- and region-specific data from *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law*, Part III (2003).

Publications

Articles and Book Chapters

Bates, Charlotte, “Abortion and a Right to Health in International Law: *LC v. Peru*” *Cambridge J Intl & Comp L* 2.3 (2013): 640-656. DOI: 10.7574/cjicl.02.03.118. [Elgar Online for subscribers Online through Academia](#).

This article focuses on the 2011 ruling of the Committee on the Elimination of Discrimination against Women, *LC v. Peru*, which concerned an adolescent who was denied an abortion for a pregnancy resulting from rape, as was necessary for an urgent surgery. The article contextualizes the decision in human rights laws and considers the impact it may have on abortion law in Peru. The article notes that “Committee bodies have in general recommended that abortion should be allowed where the pregnancy should be allowed where the pregnancy is the result of rape or incest, including in their recommendations to Peru” (649-650). While these recommendations fall within the state’s margin of appreciation, they are widely held across committees, suggesting a strong consensus on this issue.

Bedone, Aloisio José; Faúndes, Anibal. Comprehensive healthcare for female victims of sexual violence: the experience of the Women's Comprehensive Healthcare Center, State University in Campinas, Brazil. *Cadernos Saude Publica* 23(2): 465-9, 2007 Feb. [Text in Portuguese](#). [Abstract in English](#) [Abstract in Portuguese](#)

In Brazil, there are not enough public services to treat female victims of sexual violence who require legal abortion. Nationwide implementation of new services should be encouraged, in addition to all measures known to reduce the problem such as sex education in schools and widespread information and easy access to effective contraception. Since 1998, a special multidisciplinary team has been in charge of emergency and long-term care for victims of sexual violence. From August 1998 to May 2006, 1,174 women were treated, with an average of 150 per year in the last five years. During the same period, 71/109 women who became pregnant after rape had their pregnancies terminated, 23/109 continued the pregnancy to term, and 15/109 did not undergo abortion due to gestational age greater than 20 weeks.

Bergallo, Paola, and Agustina Ramón Michel, "Abortion," chapter 3 in *The Latin American Casebook: Courts, Constitutions and Rights*, ed. Juan Gonzalez-Bertomeu and Roberto Gargarella (Farnham, UK: Ashgate, 2016). 36-59.

Survey of constitutional developments in Latin American abortion law in the last decade, especially the inclination of courts towards a "model of indications," situations where abortion is considered legal, such as rape. Three noteworthy cases: (1) In its 2006 ruling, C-355/06, the Colombian Constitutional Court held that specific indications for legal abortion were required, including in the case of rape. The Court specified that women seeking to access services under the rape indications must have previously reported the rape. The judgment relied heavily on the idea of dignity. In its proportionality analysis, it reasoned that requiring women to act as a reproductive instrument in certain instances, including cases of rape, violates their dignity. The decision assisted in generating new policies for the provision of safe abortion services in Colombia. (2) In the 2012 case of *F.A.L.*, the Supreme Court of Argentina concluded that criminal code provisions permitting abortion in instances of rape were constitutional. Also, prior judicial authorization was not necessary to access an abortion in cases of rape. Rather, victims of rape were only required to provide an affidavit notifying the rape. Finally (3) in 2014, the Plurinational Constitutional Court of Bolivia held that burdensome requirements for accessing abortion in cases of rape—specifically, for prior judicial authorization and the initiation of criminal proceedings—constitute torture and cruel treatment.

Bergallo, Paola and Agustina Ramón Michel, Constitutional Developments in Latin American Abortion Law, 135 *Int'l Journal of Gynecology and Obstetrics* (2016): [Article PDF on SSRN](#).

An overview of the turn toward more liberal rules and the resolution of abortion disputes, including those relating to rape, by reference to national constitutions. For such purposes, the main legal changes of abortion laws in the last decade are first surveyed. Landmark decisions of the high courts of Argentina, Bolivia, Colombia, and Mexico are then analyzed. It is shown that courts have accepted the need to balance interests and

competing rights to ground less restrictive laws. In doing so, they have articulated limits to protection of fetal interests, and basic ideas of women's dignity, autonomy, and equality. The process of constitutionalization has only just begun. Constitutional judgments are not the last word, but they are important contributions in reinforcing the legality of abortion, including in cases of rape.

Bergallo, Paola, "The Struggle against Informal Rules on Abortion in Argentina," Chapter 7 in *Abortion Law in Transnational Perspective: Cases and Controversies*, Rebecca J. Cook, Joanna N. Erdman and Bernard M. Dickens eds. (Philadelphia: University of Pennsylvania Press, 2014) 143-165 and notes 415-19. [English book information](#). [Spanish edition information](#).

This chapter explores the procedural turn in Argentina through a contest between formal law and informal norms in access to abortion. She recounts how the legal grounds permitting abortions in case of rape and risk for the life or the health of a woman have been continually undermined through the use of informal norms by conservative groups, leading to a de facto total prohibition of the practice. Since 2005, she argues, several initiatives put forward by women's organizations, the issuance of health regulatory guidelines, and court decisions mandating the supply of legal abortions, have helped to destabilize the total prohibition of the practice reinstating the formal law allowing abortions in the cases mentioned above. Lastly, the chapter explores how the struggle to implement the legal indications for abortion has helped to promote a gradual change in conceptions of the rule of law, revealing a fertile terrain for moving toward decriminalization through the use of the unworkability argument, i.e., that guidelines have not solved the unworkability of regulating abortion through legal grounds. The chapter concludes that the procedural turn in Argentina may ultimately show its greatest potential in reinforcing the normative claims for decriminalization. It discusses rape cases such as L.M.R. and S.G.N. and F., A.L.

Billings, DL et al., "Constructing Access to Legal Abortion Services in Mexico City" (2002) 10:19 *Reproductive Health Matters* 86-94. [DOI link to article](#).

This article describes a collaborative project between Ipas Mexico and the Mexico City Department of Health to provide legal abortions in cases of rape and to ensure that comprehensive health services for survivors of sexual violence are available and accessible. It describes a model of care being introduced into 15 public general and maternal-child health hospitals in Mexico City through a programme of multi-disciplinary consciousness-raising workshops and training courses on sexual violence and legal abortion. Few health care providers have had prior training in service provision for survivors of sexual violence or abortion service delivery. Workshop participants showed a high level of willingness to participate in legal abortion services for survivors of sexual violence when and if they are receive solid institutional support.

Bridges, Khiara, "When Pregnancy is an Injury: Rape, Law, and Culture" (2013) 65 *Stanford Law Review* 457-516 [Article online](#).

This Article examines criminal statutes that grade more severely sexual assaults that result in pregnancy. These laws, which define pregnancy as a “substantial bodily injury,” run directly counter to positive constructions of pregnancy within culture. The fact that the criminal law, in this instance, reflects this negative, subversive understanding of pregnancy creates the possibility that this idea may be received within culture as a construction of pregnancy that is as legitimate as positive understandings. In this way, these laws create possibilities for the reimagining of pregnancy within law and society. Moreover, these laws recall the argumentation that proponents of abortion rights once made – argumentation that one no longer hears and sees in the debates surrounding abortion. However, recent developments in antiabortion argumentation – namely the notion accepted in *Carhart II* that it is abortion that injures women – counsel the retrieval of the argument that unwanted pregnancies are injuries to women. Thus, the sexual assault laws are means to legitimize a claim that may serve as an effective counter discourse to prevailing antiabortion argumentation.

Cohen, I. Glenn, “Are all abortions equal? Should there be exceptions to the criminalization of abortion for rape and incest?” (2015) 43.1 *Journal of Law, Medicine & Ethics* 87-104, [Article online](#). [Wiley Online Library](#) DOI: 10.1111/jlme.12198

Politics, public discourse, and legislation restricting abortion has settled on a moderate orthodoxy: restrict abortion, but leave exceptions for pregnancies that result from rape and incest. The author challenges that consensus and suggests it may be much harder to defend than those who support the compromise think. From both Pro-Life and Pro-Choice perspectives, there are good reasons to treat all abortions as equal.

Cook, R. “Developments in Abortion Law: Comparative and International Perspectives,” *Medical Ethics at the Dawn of the 21st Century. Annals of the New York Academy of Sciences* 913 (Sept 2000):74-87 DOI: 10.1111/j.1749-6632.2000.tb05163.x [Wiley Online Library](#).

In some Islamic countries e.g. Pakistan – woman accuser who cannot supply extensive proof of rape might be convicted of adultery or fornication (78). Where abortion is lawful due to rape, criminal procedure may require the rape victim’s immediate complaint and compelling evidence that intercourse was non-consensual. Women who are terrified and ashamed may not complain, and are fearful to complain against men who have authority over their lives or in their communities. Further, police may be slow to follow complaints, particularly against their colleagues. Some laws compel physicians to report abuse of their patients, often breaching doctor-patient confidentiality. Some countries provide no facilities through which women entitled to terminate pregnancies due to rape can avail themselves of lawful procedures. Under criminally restrictive laws, rape indication rarely used or, worse, misapplied. Unreasonable evidentiary standards are not appealable, allowing judges to find that the conditions of the rape are not satisfied. Authoritative legal evidence particularly difficult to show re rape because determination of intercourse and consent are often contested (78-79). Brazilian health advocacy group “developed collaborative arrangements with the police to investigate rape complaints and provide timely access to abortion services in legally justifiable cases, where the evidence of sexual aggression is persuasive.” Highly publicized cases of rape causing suffering or

injustice sometimes trigger public outrage that lead to liberalization (85).

Cook, R. et al “Legal abortion for mental health indications” (2006) 95 *Int'l Journal of Gynecology & Obstetrics* 185.] [Article in English](#). [Spanish translation](#).

Rape indication as part of mental health indication. Excerpts about rape: “Many legal systems now recognize a mental health indication for lawful abortion, although they may lack clarification for uniform application, such as the 2002 legal reform in Mexico City. For instance, some specify rape as a separate justification, but this is usually absorbed into a general mental health indication. In Britain, for example, before enactment of the internationally reformative Abortion Act 1967, the courts had accepted legality of abortion to prevent a pregnant woman physically capable of safe delivery from becoming a mental wreck. The 1967 Act does not address rape, but provides that abortions shall be lawful when doctors are of the opinion formed in good faith that continuation of pregnancy would risk injury to the physical or mental health of the pregnant woman. Account may be taken of the woman’s actual and reasonably foreseeable environment. . . . The scope of mental disorder has grown to include psychological distress or mental suffering associated with loss of personal integrity and self-esteem caused, for instance, by pregnancy following rape or exploitive incest bordering on rape ... Risk of future negative mental health outcomes. This criterion for abortion refers to situations in which a woman is not currently mentally ill or suicidal, but there is reason to believe that continuation of pregnancy would risk her future mental health, due to vulnerability, precipitating, and/or maintaining factors (Section 4 above). Risk might arise when pregnancy has resulted from rape.”

Cook, Rebecca J. “Stigmatized Meanings of Criminal Abortion Law,” in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman and Bernard M. Dickens (Philadelphia: University of Pennsylvania Press, 2014) 347-69 and notes 450-6. [English book information](#). [Spanish edition information](#).

In this chapter, the author examines how criminal abortion laws create stigma, and explores how legal reasoning can more fully acknowledge their stigmatizing harms. She begins by sketching the prevailing normative justifications for criminalizing abortion, and explores how these justifications create negative social meanings about women, which in turn reinforce the need for criminalization. She applies social psychology scholarship to better articulate the stigmatizing harms of criminalization of abortion. She then examines how formal criminal abortion laws, informal laws, and background rules are used to spoil the identity of abortion-seeking women. About the rape indication, she comments: “The burden to escape social stigma is on the woman to show that she is a legitimate victim, such as of rape, or of life-or-health-endangering pregnancy....Administrative requirements, such as of third party authorizations, rape certifications or reflection delays.” increase the stigma (p. 358) “Regulations that require third parties, such as doctors, police officers or courts, to certify that women have been raped in order for them to access abortions signal that heightened scrutiny is necessary to guard against women’s deceptive resort to exceptions. The state disproportionately degrades women as liable not to be telling the truth about suffering a

serious violation, or not being worthy of respect for the decisions they make in good faith about their health and well-being.”(p.359) In short, she suggests that the stigmatizing harms that degrade pregnant women with unintended pregnancies outweigh the reasons for regulating abortion through criminal law.

De Londras, Fiona. “Intersectionality, Repeal, and Reproductive Rights in Ireland” in Shreya Atrey and Peter Dunne (eds.) *Intersectionality and Human Rights* (forthcoming). [Abstract and chapter](#)

Evaluates how reproductive activism in Ireland has failed in its intersectionality during the referendum campaign to repeal the 8th Amendment in Ireland. The piece focuses on how reproductive justice is not adequately delivering for certain groups of people including trans and non-binary individuals as well as migrants living in Ireland.

De Toledo Blake, Marcia, Jefferson Drezett, et al, “Factors Associated with the Delay in Seeking Legal Abortion for Pregnancy Resulting from Rape” (2015) 8:29 *Int’l Archives of Medicine* 1-14 [Article online](#). DOI: <http://dx.doi.org/10.3823/1628>

About 7% of rape cases in Brazil result in pregnancy. Brazilian women generally are unaware of the right to legal interruption of pregnancy after rape and try to end abortion in an unsafe manner or late to request the procedure. This study analyzes factors associated with delays in seeking legal abortion after rape in a public hospital. Conclusion: women without partners, who suffered intimidation with threats, in a vulnerable condition, who made a police report and, above all, who were raped by relatives, composed the group who took longer to get the health service.

Dickens, Bernard. “Post abortion care: Ethical and Legal duties” (2019) *International Journal of Gynecology and Obstetrics* 147 273-275 [Online](#)

Women need access to healthcare when they experience complications from abortion, whether that abortion was lawful or unlawful. Providing care for abortion complications is not illegal, not an abortion procedure and does not justify conscientious objection. States need to ensure effective post-abortion care.

Diniz, Debora, Alberto Madeiro & Critsiao Rosas, “Conscientious objection, barriers and abortion in the case of rape: a study among physicians in Brazil” (2014) 22:43 *Reproductive Health Matters* 141-148, [RHM archives](#). [DOI link](#).

“In Brazil, to have a legal abortion in the case of rape, the woman’s statement that rape has occurred is considered sufficient to guarantee the right to abortion. The aim of this study was to understand the practice and opinions about providing abortion in the case of rape among obstetricians-gynecologists (OBGYNs) in Brazil. A mixed-method study was conducted from April to July 2012 with 1,690 OBGYNs who responded to a structured, electronic, self-completed questionnaire. In the quantitative phase, 81.6% of the physicians required police reports or judicial authorization to guarantee the care requested. In-depth telephone interviews with 50 of these physicians showed that they frequently tested women’s rape claim by making them repeat their story to several health

professionals; 43.5% of these claimed conscientious objection when they were uncertain whether the woman was telling the truth. The moral environment of illegal abortion alters the purpose of listening to a patient – from providing care to passing judgment on her. The data suggest that women’s access to legal abortion is being blocked by these barriers in spite of the law. We recommend that FEBRASGO and the Ministry of Health work together to clarify to physicians that a woman’s statement that rape occurred should allow her to access a legal abortion.”

Diniz, Debora; Vanessa Canabarro Dios; Miryam Mastrella; Alberto Pereira Madeiro. Rev. bioét. (Impr.) The truth of the rape at reference abortion services in Brazil, Verdad de la violación en los servicios de aborto legal en Brasil / A verdade do estupro nos serviços de aborto legal no Brasil / *Revista bioética (Impr.)*; 22(2): 291-298, maio-ago. 2014. [Original in Portuguese](#) | LILACS | ID: lil-719391 [English edition](#) 22.2 (May-Aug 2014): 288-295. [Spanish edition](#): 22 (2): 292-9

This paper analyzes how the truth of the rape is constructed in order to authorize a woman victim of rape to have a legal abortion. We have interviewed 82 health care professionals (physicians, nurses and technicians, social workers and psychologists) at five reference facilities for legal abortion in Brazil. The interviews aimed to understand the procedures and practices imposed on a woman in order to be allowed to have the legal abortion. In spite of the particularities of each facility, we have identified a shared regime of suspicion of the woman's narrative, which investigates the fact of the violence and the victim's subjectivity. The truth of the rape for the legal abortion is not a woman's narrative with a status of veracity, but it is a moral and discursive construction shaped by the victims' submission to the forensic regimes of the services.

Faúndes, Anibal, Elcylene Leocadio and Jorge Andalaft “Making Legal Abortion Accessible in Brazil” (2002) 10:19 *Reproductive Health Matters* 120-127. [DOI link](#)

Abortion is legal in Brazil if it is the only means to save the woman’s life or if the pregnancy is the result of rape. Although this has been the law for over 60 years, it has almost never been applied until recent years. In the past five years, the number of hospitals providing care to women victims of sexual violence has increased from 4 to 63, of which 40 are currently providing legal abortions. This paper describes a sensitization project and advocacy work carried out from within the obstetric and gynaecology establishment which has succeeded in motivating many key individuals and hospital staff to provide services for pregnancy termination in cases of rape. The dialogue between medical leaders and women’s rights advocates and the emphasis on comprehensive care of women who have suffered sexual violence are key elements in the success of this initiative. The support of medical professionals, the organization and strength of the women’s health and rights movement, the political support at federal, state and city government levels, including from the Federal Ministry of Health, and ongoing advocacy within the medical establishment have all been important elements in making the provision of services a reality.

Feltoe, G. Case note on *Mapingure v. Minister of Home Affairs & Ors*, *The Zimbabwe Electronic Law Journal - Commentary on Contemporary Legal Issues* 2017 Part 1, S-22-14. [Case note online](#).

The author concludes that “The Mapingure case clearly points to the urgent need to amend the Termination of Pregnancy Act as soon as possible to place the duty squarely upon the police and other authorities dealing with rape victims to guide and assist rape victims through the processes necessary to obtain contraception to avoid pregnancy or, where the victims wish this, to obtain termination of pregnancies. The amendment should require the authorities to act with expedition in this sort of case.”(p.5)

Fletcher, Ruth, “Judgment in *Attorney General v. X*” and McGuinness, Sheelagh, “Commentary on *Attorney General v. X*” in Mairead Enright, Julie McCandless and Aoife O’Donoghue eds., *Northern/Irish Feminist Judgments*, (Oxford: Hart, 2017) pp.361-378 and 379-393 respectively. Ruth Fletcher's imagined decision: [Submitted text](#).
Sheelagh McGuinness's commentary: [peer review version](#)

In *Attorney General v. X*, [1992] I.E.S.C. 1, (Supreme Court of Ireland) had decided that an attempt to prevent a 14-year old girl who was pregnant as a result of being raped, from traveling from Ireland to England in order to access abortion care was not justified. [Actual decision online](#).

In *Northern/Irish Feminist Judgments*. Ruth Fletcher rewrites the Irish Supreme Court’s landmark decision in the X case. Sheelagh McGuinness writes a commentary on it, explaining the ways in which Fletcher J. illustrates how the Eighth Amendment to the Irish Constitution (acknowledging the “right to life of the unborn... with due regard to the equal right to life of the mother...”) is an instrument of gendered harms. McGuinness contrasts the “progressive constitutionalism” of Fletcher J.’s reasoning with the “conservative constitutionalism” of the original judgment. Fletcher J. crafts a judgment that considers the text of the Eighth Amendment, examines the evidence of the substantial difference between the contingency of unborn life and the life of the pregnant woman that sustains that life to decide, consistently with the original judgment, that X is entitled to an abortion. She tries to rise above her own partiality by putting herself in X’s shoes to explain how her pregnancy in such circumstances would impose “an impracticable burden on her rightful life.”

Francome, Colin, and Wendy Savage, “Attitudes and practice of gynaecologists towards abortion in Northern Ireland.” *Journal of Obstetrics and Gynaecology* 31(1): 50-3, 2011. DOI: 10.3109/01443615.2010.522273. [DOI link](#).

Women from Northern Ireland (NI) must travel to Britain and pay for their terminations as the Abortion Act (1967) does not apply in that part of the UK. 88% of gynecologists responded. Results show these gynaecologists’ attitudes to abortion in cases of rape. Where the woman has been raped, 25 (68%) said women should be able to get an abortion, eight said they should not and four were not specific. Just under half of the respondents would carry out an abortion in the case of rape.

Hall, Megan “Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis” (2014) *PLOS Medicine* 1-25 [Open access article](#).

Intimate partner violence (IPV) and termination of pregnancy (TOP) are global health concerns, but their interaction is undetermined. The aim of this study was to determine whether there is an association between IPV and TOP. Women in violent relationships were more likely to have concealed the TOP from their partner than those who were not. Demographic factors including age, ethnicity, education, marital status, income, employment, and drug and alcohol use showed no strong or consistent mediating effect. Few long-term outcomes were studied. Women welcomed the opportunity to disclose IPV and be offered help. Conclusions: IPV is associated with TOP. Novel public health approaches are required to prevent IPV. TOP services provide an opportune health-based setting to design and test interventions.

Hansson, Desiree and Diana Russell, “Made to Fail: The Mythical Option of Legal Abortion for Survivors of Rape and Incest” (1993) 9:4 *South African Journal on Human Rights* 500-524. [DOI link](#). [Article behind paywall](#).

“At first glance, the existing South African law on abortion, which outlaws abortion except under a few, limited circumstances, is less restrictive than might be expected. Very few countries with restrictive abortion laws make an exception for rape and incest survivors. From an anti-abortion perspective such an exception is viewed as too liberal, since it condones the termination of unwanted pregnancies that do not pose a significant risk to a woman's physical health. It is noteworthy then, that South African abortion law does permit the survivors of rape and incest to have legal abortions. The catch, however, is that in practice this legal option is of little value to all but the most economically and racially privileged pregnant rape and incest survivors. Legislation that grants the notional option of legal abortion, while effectively blocking access in practice, is ineffective. It is thus important to analyse how the existing abortion law manages severely to restrict women's access to abortion even in the few exceptional circumstances in which abortion is legally permitted. The remainder of this article then, is an in-depth examination of why the existing legal exceptions for rape and incest survivors are useless to the large majority of women who find themselves in these traumatic circumstances.”(p. 506) followed by sections on: Application Procedure, Proof Requirements.

Hessini, Leila. “Abortion and Islam: Policies and Practice in the Middle East and North Africa.” *Reproductive Health Matters* 15.29 (2007): 75–84. [Article online](#).

Overview of legal, religious, medical and social factors that support or hinder women's access to safe abortion services in the 21 predominantly Muslim countries of the Middle East and North Africa (MENA) region, where one in ten pregnancies ends in abortion. Only Sudan allows abortion in cases of rape, and that must be within 90 days of gestation. Religious fatāwa issued in Egypt and Algeria recommend allowing abortions in cases of rape, but these were not translated into law. Egyptian mufti urged rape exception and hymen reconstruction to preserve female virginity and marriageability. In Algeria

(amid concern with rape of war victims) “some women’s groups” resisting intrusion of religion, “said that the secular law already included a mental health indication for abortion.”(p.78). Only Algeria has an indication that includes mental health. Kuwaiti decision to disallow abortion in cases of war rape assumes that life begins at conception, an idea more Christian than Islamic.

Hessini, Leila. “Islam and Abortion: The Diversity of Discourses and Practices.” *IDS Bulletin* 39.3 (2008): 18–27. [Article online](#). [IDS archive](#).

Overview of 57 countries that are official members of the Organisation of the Islamic Conference (OIC). Similar to previous article, but in question and answer format, plus useful chart: Origins and current status of abortion laws in OIC countries. This shows rape exceptions allowed only in Benin (2003), Burkina Faso (1996), Cameroon (1967), Guinea (2000), Mali (2002), Togo (2007). (Mental health exception: Algeria (1976, 1985); Malaysia (1969). Mental health removed from Iran law in 1991 reversion to sharia.)

Hevia, Martin. "The Legal Status of Emergency Contraception in Latin America," *Int'l Journal of Gynecology and Obstetrics* 116 (2012): 87-90. [English article](#). [Spanish translation](#).

[Abstract] Timely access to emergency contraception (EC) can contribute to reducing the number of unwanted pregnancies, and ultimately, the number of unsafe abortions and maternal fatalities. In Latin America, where all countries are parties to international human rights treaties that recognize the rights to autonomy, privacy, and health, and recognize sexual and reproductive rights including the right to family planning, the legal status of EC has been discussed in the courts. This article focuses on the analysis of the principal arguments voiced in the courts: the difference between contraceptives and abortifacients, the scientific status of available research on EC, and the age at which people develop a legal right to make decisions about their personal health. The conclusion is that Latin American countries whose laws or regulations ban access to EC in the public and/or the private sector fail to fulfill their obligations under international human rights law.

Kelly, Lisa. “Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation.” in Rebecca Cook, Joanna Erdman and Bernard Dickens, eds., *Abortion Law in Transnational Perspective* (Philadelphia: University of Pennsylvania Press, 2014) 303-326, and notes 440-46. [English book information](#). [Spanish edition information](#).

Kelly analyzes the power and peril of narratives of innocent suffering in contemporary transnational abortion rights litigation from Latin America. She identifies in these cases a recurring narrative that invokes sexual innocence, violation, and parental beneficence: an adolescent girl, figured often as a child, is raped, becomes pregnant, and with the support of her parents seeks to terminate the pregnancy. When she is denied access to a lawful abortion in a public hospital, the state emerges as the shameful antagonist. Kelly warns that with these legal and discursive openings, reproductive rights advocates face a “knife-edge dilemma.” By narrating sympathetic cases of violated young girls, advocates risk

reinforcing ideas of the “reasonable” or “deserved” abortion. Likewise, while parents and family can provide an important cultural and legal counterweight to the state when it restricts abortion access, advocates run the risk of vesting greater legal authority in *all* parents, including those who may disagree with their daughters’ decision to continue or terminate a pregnancy. Kelly aims to foreground young people’s decision-making and highlight the ways in which these cases may advance or undermine their autonomy in larger reproductive justice struggles. This chapter emphasizes cases of rape involving minors: *P and S, LC, LMR, X and XX, Paulina* case in Mexico, Rosa – a 9 year old from Nicaragua (precautionary measures against Colombia (IAComm HR), and *KL v. Peru*.

Kilonzo, N., Theobald, S.J., Nyamato, E., Ajema, C., Muchela, H., Kibaru, J., Rogena, E., & Taegtmeier, M. (2009). “Delivering Post Rape Care services: Kenya’s experiences in developing integrated services.” *Bulletin of the World Health Organisation* 87:555-59. [Article online](#).

Sexual violence is increasingly documented in Kenya but only limited post-rape care services exist. Survivors of sexual violence experience complex needs, and many countries have developed one-stop facilities that enable survivors to access medical, legal and social support services. These do not translate easily to the resource-poor Kenyan setting. This paper summarizes the context of the Kenyan health system, presents findings from a situation analysis on post-rape care conducted in 2002 and outlines the lessons learned from the subsequent implementation of services in three district hospitals in Kenya between 2003 and 2007.

Kim, J.C., Askew, I., Muvhango, L., Dwane, N., Abramsky, T., Jan, S., Ntlemo, E., Chege, J., & Watts, C.al. (2009). “Comprehensive care and HIV prophylaxis after sexual assault in rural South Africa: the Refentse intervention study.” *British Medical Journal* 338:b515. [Article online](#).

A nurse-driven model of post-rape care was integrated into existing hospital services; the before and after study design evaluated impacts on quality of care, reviewing 334 hospital charts and conducting interviews with 16 service providers and 109 patients. After completing baseline research, we introduced a five-part intervention model, consisting of a sexual violence advisory committee, hospital rape management policy, training workshop for service providers, designated examining room, and community awareness campaigns.

Kismödi, Eszter, Judith Bueno de Mesquita, Ximena Andiön Ibañez; Rajat Khosla, and Lilian Sepúlveda, “Human rights accountability for maternal death and failure to provide safe, legal abortion: the significance of two ground-breaking CEDAW decisions” (2012) 20:39 *Reproductive Health Matters* 31-39. [RHM Archives](#). [DOI link](#).

This article addresses the 2011 landmark ruling of the Committee on the Elimination of Discrimination against Women (CEDAW), *LC v. Peru*. The decision concerned a 13-year-old rape victim who was denied a therapeutic abortion and had a spinal operation delayed, rendering her severely disabled. The case established that the State should guarantee abortion where a woman’s physical or mental health is in danger, decriminalize abortion in cases of rape, and implement procedures to ensure health care providers and

facilities have a complete understanding of reproductive rights. The article notes that the case, along with another significant 2011 ruling of CEDAW, *Alyne da Silva Pimentel v. Brazil*, affirmed the following: “that accessible and good quality health services are vital to women’s human rights and [the need to] expand States’ obligations in relation to these”; “that States must ensure national accountability for sexual and reproductive health rights, and provide remedies and redress in the event of violations;” and, “the importance of international human rights bodies as sources of accountability for sexual and reproductive rights violations, especially where national accountability is absent or ineffective” (p. 31).

Lara, Diana, Sandra Garcia, Olivia Ortiz, and Eileen A. Yam, “Challenges in accessing legal abortion after rape in Mexico City.” *Gaceta Medica de Mexico*; 142 Suppl 2: 85-9, 2006 Sep-Oct. MEDLINE | ID: mdl-19031683. [Article behind paywall](#).

Women and physicians agreed that the process to obtain legal authorization for an abortion is time-consuming and bureaucratic. There is a lack of information about places and procedures to report the rape and to obtain a legal abortion. A majority of the women experienced a denial process of the rape that contributed to their delayed access to abortion services, exacerbated by the cumbersome legal process. Therefore, in Mexico City, physicians and rape survivors face structural barriers and personal barriers to providing or obtaining legal abortion.

Marcus, April. "Grassroots Women's Organizations' Fight for Freedom from Sexual Violence and Recognition under Domestic and International Law." 14 *CUNY Law Review* 329 (2010-2011). [Article online](#).

This article details how KOFAVIV successfully filed a petition for precautionary measures with the Inter-American Commission of Human Rights in order to integrate KOFAVIV into the aid being provided for rape victims in displacement camps.

Mavundla, Simangele and Charles Ngwena, “Access to legal abortion for rape as a reproductive health right: A commentary on the abortion regimes of Swaziland and Ethiopia,” in Charles Ngwena and Ebenezer Durojaye eds., *Strengthening the protection of sexual and reproductive health and rights in the African region through human rights*, University of Pretoria Law Press, 2014, 61-78. [Book online](#).

A woman who becomes pregnant due to an act of rape is the victim of a violent and morally reprehensible crime. The chapter revolves around the premise that abortion laws and practices that deny ready access to abortion are a violation of women’s human rights. The chapter is a commentary on the abortion regimes of two countries – Swaziland and Ethiopia. Its focus is on highlighting their differences in terms of progress in implementing abortion law. Though both countries liberalised their abortion laws in 2005, they provide contrasting examples in commitment to implement abortion law, with Ethiopia demonstrating progress towards translating abortion rights into meaningful access, but Swaziland demonstrating a lack in this regard. The chapter highlights the

importance of implementing abortion law so that it provides clearer guidance to service providers and tangible access to women seeking abortion services, not just as a matter of best practices in provision of health care, but also as a human rights duty incumbent on the state.

McKeon Olson, Rose, and Solomon Kamurari. “Barriers to safe abortion access: Uterine rupture as complication of unsafe abortion in a Ugandan girl.” *BMJ Case Reports* 2017; DOI 10.1136/bcr-2017-222360. [DOI Link](#).

Uganda has one of the highest rates of maternal mortality in the world. The Ugandan Penal Code of 1950 states that anyone who has or is involved in the execution of an abortion can be criminally charged, except in the circumstance of saving the mother's life. In 2006, the Ministry of Health's National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights outlined exceptions in cases of fetal anomaly, rape or incest, or if the mother is HIV positive. [Policy [online here](#)] Unfortunately, laws and policies are interpreted inconsistently, and many healthcare personnel report fear of legal repercussions. In addition, many women are unaware of the law's expansion.

In this case study, skilled healthcare workers refused to provide a 15 year old rape victim with abortion due to fear of legal repercussions. The patient subsequently obtained an unsafe abortion . . . She developed profuse vaginal bleeding and haemorrhagic shock. After uterine rupture, emergent hysterectomy was performed. Young and poor women are at high risk of unplanned pregnancy and subsequent mortality during pregnancy and childbirth. Unsafe abortion is a leading and entirely preventable cause of maternal mortality worldwide. Multiple barriers restrict access to safe abortions including social and moral stigma, gender-based power imbalances, inadequate contraceptive use and sexual education, high cost and poor availability, and restrictive abortion laws.

McNaughton Reyes, Heather Luz; Charlotte E. Hord, Ellen M. H. Mitchell, and Marta Maria Blandon, “Invoking Health and Human Rights to Ensure Access to Legal Abortion: The Case of a Nine-Year-Old Girl from Nicaragua” *Health and Human Rights*, 9.2 (2006): 63-86. [Article online](#).

This article examines the case of “Rosa,” a nine-year-old Nicaraguan girl who became pregnant following a rape and whose family faced challenges in their petition for an abortion on her behalf. The authors consider the possibilities and weaknesses of health and human rights approaches to overcoming the challenges of Rosa's case. The authors argue that Rosa's case highlights how restrictive abortion laws that require health care approval for access undermine human rights principles. Because a significant number of countries' national laws permit abortion only where pregnancy poses a rise to the mother's health/life or if the pregnancy is the result of rape, the experiences of Rosa and her family have far-reaching implications. Often, women legally entitled to abortions in these jurisdictions struggle to obtain abortion services, particularly where they do not

have the resources to terminate the pregnancy with a private health care provider, as was the case for Rosa.

Monte, María Eugenia, "Abortion, sexual abuse and medical control: the Argentinian Supreme Court decision on F., A.L." *Sexualidad, Salud y Sociedad* no.26 Rio de Janeiro May/Aug. 2017. [Article online](#). Spanish forthcoming.

In Argentina, during the 2000s but increasingly since 2005 up to 2016, women and feminist organizations and lawyers disputed over the abortion juridical regulation at Courts facing conservative resistance. These disputes could be located in a broader process of judicialization of the socio-political conflict over abortion. The Argentinian Supreme Court took a decision over one of these judicial processes on March 13th, 2012, F., A.L. This paper analyses the Argentinian Supreme Court decision on F., A.L. regarding non-punishable abortion boundaries, medical and judicial practices and, specifically, sexual abuse and medical control. It also analyses its material effects on a subsequent struggle and judgment in the province of Córdoba.

Naylor, N.M. "'Cry the Beloved Continent...': Exploring the Impact of HIV/AIDS and Violence on Women's Reproductive and Sexual Rights in Southern Africa", *Journal for Juridical Science*, 30: 52-79 (2005), republished in Cook, R.J. & C. Ngwena, eds. *Health and Human Rights*, International Library of Medicine, Ethics and Law series (Aldershot, UK: Ashgate, 2007) 21-48. [Institutional Access /paywall](#).

The impact of violence on women's personal, sexual, social and reproductive life reduces their autonomy and destroys their sense of personal safety and quality of life. In the context of HIV/AIDS, the issue of sexual violence takes on alarming proportions since violence against women fuels the epidemic and the epidemic exacerbates the impact of violence against women. This paper considers the extent to which violence against women and reproductive autonomy have become "actionable" for women in Southern Africa, and whether countries have adequately managed to protect women by contextualising violence against women as a reproductive rights issue and vice versa, or whether they have failed to protect women by silencing and masculinising women's realities. It will be argued that all jurisdictions have made progress toward a feminisation of the law but that significant lacunae and problems remain, particularly in relation to a masculinist approach to violence against women and reproductive autonomy in the context of HIV/AIDS. State responses in the form of protective and coercive measures are examined with issues such as violence against women as a pre-disposing factor to HIV and violence upon disclosure of women's status being considered. In addition, coercive practices such as the criminalisation of HIV-related behaviour and forced sterilisation are considered.

Ngwena, Charles, 'A Commentary on *LC v. Peru*: The CEDAW Committee's First Decision on Abortion' (2013) 57(2) *Journal of African Law* 310-324. [Article online](#). [DOI Link](#).

In *LC v. Peru*, the Committee on the Elimination of Discrimination against Women held that Peru was in breach of its obligations under the Convention on the Elimination of All

Forms of Discrimination against Women when it denied a 13 year old girl emergency surgery as well as an abortion. This commentary discusses the human rights significance of *LC v. Peru*, especially in relation to the advancement of abortion jurisprudence in the African region. It is submitted that *LC v. Peru* makes an important contribution towards the development of abortion laws that are transparent and accountable to women, as well as responsive to equal protection under the law. The duty of states to operationalize *LC v. Peru* in their domestic law is an innovative juridical resource for reforming abortion laws. This is particularly so in those regions, including the African region, where the continued criminalization of abortion serves as a significant incentive for unsafe, illegal abortion.

Ngwena, Charles, “Protocol to the African Charter on the Rights of Women: Implications for Access to Abortion at the Regional Level” (2010) 110 *Int’l Journal of Gynecology and Obstetrics* 163-166. [Download PDF from SSRN](#).

Article 14(2)(c) of the Protocol to the African Charter on the Rights of Women enjoins States Parties to take appropriate measures “to protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.” This paper considers the implications of Article 14 for access to safe, legal abortion. It is submitted that Article 14 has the potential to impact positively on regional abortion law, policy, and practice in 3 main areas. First, it takes forward the global consensus on combating abortion as a major public health danger. Second, it provides African countries with not just an incentive, but also an imperative for reforming abortion laws in a transparent manner. Third, if implemented in the context of a treaty that centers on the equality and non-discrimination of women, Article 14 has the potential to contribute toward transforming access to abortion from a crime and punishment model to a reproductive health model.

Olaide, Gbadamosi and Titilayo O. Aderibigbe, “Justification of Women’s Right of Access to Safe and Legal Abortion in Nigeria” (2014) 7:2 *African Journal of Legal Studies* 177-202. DOI 10.1163/17087384-12342025. [Brill Online](#).

Nigeria’s restrictive abortion laws do not provide for abortion in cases of rape and incest. This is contrary to norms of international human rights law and “negate[s] the constitutionally guaranteed equality and human rights of Nigerian women” (p. 184).

Perry, Rachel, Molly Murphy, Sadia Haider, Bryna Harwood, “‘One Problem Became Another’: Disclosure of Rape-Related Pregnancy in the Abortion Care Setting” (2015) 25:5 *Women’s Health Issues* 470-475. [Article online](#). [DOI Link](#).

Rape-related pregnancy disclosure in the abortion care setting can lead to opportunities for interpersonal support and open options for funding, legal recourse, and mental health care. Those working in abortion care should create environments conducive to disclosure and opportunities for rape survivors to access these additional options if they desire.

Perry, Rachel et al., “Prevalence of Rape-Related Pregnancy as an Indication for Abortion at Two Urban Family Planning Clinics” (2015) 91:5 *Contraception* 393-397. [Science Direct](#). [DOI Link](#).

U.S. study: Rape-related pregnancy as an indication for abortion had a low, but clinically significant prevalence at two urban Chicago family planning centers. Later gestational age was associated with abortion for rape-related pregnancy. Rape-related pregnancy may occur with higher prevalence among some subgroups of women seeking abortion than others. Efforts to address rape-related pregnancy in the abortion care setting are needed.

Perry, Rachel et al., “Practices Regarding Rape-related Pregnancy in U.S. Abortion Care Settings.” *Women’s Health Issues* 26.1 (2016 Jan-Feb): 67-73 [DOI link](#).

The study concludes that practices for identifying and providing care to women with rape-related pregnancy in the abortion care setting are variable. Further research should address barriers to care provision, as well as identifying protocols for care.

Polis, Chelsea, Kate Schaffer and Teresa Harrison. “Accessibility of Emergency Contraception in California’s Catholic Hospitals.” *Women’s Health Issues* 15 (2005): 174-178. [Abstract and article](#).

This study assessed the likelihood that a woman calling a Catholic hospital in California to inquire about emergency contraception (EC) could access the medication. During September 2003, we contacted an ER staff member in each of California’s 45 Catholic hospitals using a mystery caller approach. *Results:* 66% percent of staff contacted stated that their hospital would not provide EC under any circumstances, including rape. Of those that would not dispense EC, fewer than half provided a referral. Of the 14 referrals given, only about one third (=5 hospitals) led to a facility that provides EC. Findings suggest that access to EC in California’s Catholic hospitals is minimal, even for rape victims. As many as two-thirds of these hospitals may be violating state legislation requiring hospitals to provide EC to sexual assault survivors upon request. Mentions relevant case law *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal. App. 3d 405 (1989).

Sahin-Hodoglugil, Nuriye Nalan et al. “Making Abortion Safer in Rwanda: Operationalization of the Penal Code of 2012 to Expand Legal Exemptions and Challenges,” *African Journal of Reproductive Health* 21.1 (2017): 82-92. [Article online](#).

Rwanda’s Penal code, revised in 2012, allows legal termination of pregnancy resulting from rape, incest, forced marriage, or on medical grounds . . . Massive survey to assess operationalization showed that, since the legal reform, there was only one abortion for a pregnancy resulting from rape. Abortion stigma and court order requirements are major barriers to access services. This evaluation demonstrates that further work is required to reach the goal of providing safe abortion services to all eligible women. Addressing abortion stigma at the community, organizational and structural levels; further strengthening of service provision; and streamlining legal requirements to protect

particularly young women from sexual violence and making abortion a realistic option for GBV victims are some of the important next steps.

Silva, Martha, Deborah L. Billings, Sandra G. Garcia, and Diana Lara, "Physicians' agreement with and willingness to provide abortion services in the case of pregnancy from rape in Mexico," *Contraception* 79.1 (2009): 56-64. [DOI link](#). [Article at Science Direct](#).

In Mexico, abortion is not penalized when a woman gets pregnant as a result of rape, yet access to abortion services is limited. Understanding physicians' opinions about abortion is critical to creating strategies that will broaden women's access to services. Physicians who had performed legal abortions, knew about existing abortion legislation and practiced general or family medicine were significantly more likely to agree that abortion should be legal when pregnancy is caused by rape and were more likely to be willing to provide abortion in the case of rape. Physicians who held a negative attitude towards women who seek abortion and those with greater church attendance were less likely to agree with the legality of abortion. . . . A majority of Mexican physicians agree that abortion should not be legally penalized under certain circumstances. Yet, many also hold negative attitudes towards women who seek abortion. Physicians' support for women's access to safe abortion services is key to ensuring that such services will exist in Mexico.

Smugar, Steven S., Bernadette J. Spina, and Jon F. Merz, "Informed Consent for Emergency Contraception: Variability in Hospital Care of Rape Victims," *American Journal of Public Health* 90.9 (Sept 2000): 1372-76. [Article PDF online](#).

Institutions such as Catholic hospitals should reevaluate their restrictive policies that prohibit discussion of emergency contraceptives with rape victims. These are contrary of Catholic teaching and they undermine a victim's right to information about her treatment options and jeopardize physicians' fiduciary responsibility to act in their patients' best interests.

Summer, et al, "Prevalence of Sexual Violence against Children and Use of Social Services – Seven Countries, 2007-2013." *Morbidity and Mortality Weekly Report*, June 5, 2015 / 64(21); 565-569 [Short online overview of report](#).

This report is a national household survey of children and youth aged 13-24 to measure the extent of violence against children in Cambodia, Haiti, Kenya, Malawi, Swaziland, Tanzania, and Zimbabwe. The lifetime prevalence of experiencing any form of sexual violence in childhood ranged from 4.4% among females in Cambodia to 37.6% among females in Swaziland, with prevalence in most countries greater than 25.0%. In most countries surveyed, the proportion of victims that received services, including health and child protective services, was $\leq 10.0\%$. Both prevention and response strategies for sexual violence are needed.

Susskind, Yifat. "Many Voices: Combining International Human Rights Advocacy and Grassroots Activism to End Sexual Violence in Haiti," 14 *CUNY Law Review* (2010-2011). [PDF online.](#)

This paper chronicles the advocacy approach behind the broader human rights "Campaign to End the Epidemic of Rape in Haiti." The campaign has succeeded in opening political and policymaking spaces previously closed to Haitian grassroots women activists and generated a landmark legal decision. These advances reflect a model in which the expertise of an international women's human rights organization is mobilized in the service of a community-based women's group. The approach enables international human rights mechanisms that are far removed from the local context to be activated in a manner responsive to the self-identified needs and political demands of women who are themselves the survivors of gross human rights violations. While legal advocacy for human rights is often most effectively undertaken in the international arena, human rights violations are necessarily local events. Crafting a legal strategy that is an organic extension of a broader grassroots political mobilization serves to bridge the gap between the local and international arenas of advocacy, strengthening the work of each.

Teklehaimanot, Kibrom Isaak, and Charlotte Hord-Smith, "Rape as a Legal Indication for Abortion: Implications and Consequences of the Medical Examination Requirement" (2004) 23:1 *Medicine and Law* 91-102. [Hein Online.](#)

A number of countries adopt abortion laws recognizing rape as a legal ground for access to safe abortion service. As rape is a crime, these abortion laws carry with them criminal and health care elements that in turn result in the involvement of legal and medical expertise. The most common objective of the laws should be providing safe abortion services to women survivors of rape. Depending on purposes of a given abortion law, the laws usually require women to undergo a medical examination to qualify for a legal abortion. Some abortion laws are so vague as to result in uncertainties regarding the steps health personnel must follow in conducting medical examination. Another group of abortion laws do not leave room for regulation and remain too rigid to respond to changing socio-economic circumstances. Still others require medical examination as a prerequisite for abortion. As a result, a number of abortion laws remain on the books. The paper analyzes legal and practical issues related to medical examination in rape cases.

Zureick, Alyson, "(En)gendering suffering: denial of abortion as a form of cruel, inhuman or degrading treatment" (2015) 38 *Fordham Int'l Law Journal* 99-140, [Online through SSRN.](#)

Abstract: The regulation of abortion has long been considered a prerogative of the state. In recent years, however, international human rights bodies have begun to consider the conformity of domestic abortion regulations with a state's human rights obligations. This paper examines a notable trend among human rights bodies: namely, finding that denying or obstructing a woman's access to abortion can amount to cruel, inhuman, or degrading treatment under multiple human rights treaties. First, human rights bodies have found that states can be responsible for CIDT inflicted on women who are harassed and denied services that are legally available to them under the state's laws. Second, human rights

bodies have found that the application of restrictive abortion laws themselves may inflict CIDT by depriving women of an abortion in particularly serious cases, such as rape or when the woman's life is threatened. I argue that these findings reflect an understanding that certain restrictions on abortion — or the state's failure to act to prevent de facto restrictions from arising — are unjustifiable and disproportionate to lawful state aims. They also demonstrate a limited but important recognition that deprivations of autonomy in the reproductive rights context can lead to the kind of pain and suffering that is unacceptable in modern societies. At the same time, I argue that human rights bodies should further strengthen their understanding of women's autonomy interests in this context, particularly the ways in which the frustration of their reproductive autonomy can inflict severe and unacceptable pain or suffering tantamount to CIDT.

Reports and Resources

Governmental Bodies

Canada

Canada. *Report of the Committee on the Operation of the Abortion Law* (Ottawa: Minister of Supply and Services Canada, 1977) (Chair: Robin Badgley).

This historical report provides an in-depth look at the landscape of abortion services across Canada at a time when the procedure for obtaining therapeutic abortions was governed by the Criminal Code. Ultimately, the report concluded that the procedures set out for the operation of Abortion Law were not working equitably across Canada, partly due to varying interpretations of the requirements and guidelines by doctors and abortion committees.

At the time, rape and incest were not specifically mentioned in the Abortion Law as indications for therapeutic abortion (p.253). However, most therapeutic abortion committees would justify abortion in cases of rape or incest where there were consequences on the woman's health, depending upon their definition of health. Nonetheless, a survey of hospitals with committees indicated that 80.6% considered the occurrence of pregnancy resulting from rape or incest as valid reasons for the approval of a therapeutic abortion (p.265). Further, in a general population survey, only 61.7% percent of Canadian women and 58.7% of men felt that induced abortions should be permitted on indication of rape or incest (p.257).

India

Ministry of Health & Family Welfare, Government of India, *Guidelines & Protocols: Medico-legal care for survivors/victims of Sexual Violence* (2014) [100-page report](#).

The report notes the need for safe abortion services for victims of sexual violence. The report identified a number of physical health consequences from sexual assault including that of unsafe abortions. Page 34 also has information on undergoing abortion and how to save the products of conception so they can be used at trial for establishing paternity and identifying the accused.

Ireland

The Citizens' Assembly, *First Report and Recommendations of the Citizens' Assembly: THE EIGHTH AMENDMENT OF THE CONSTITUTION* (2017). [141-page report](#).

The Assembly is a body comprising the Chairperson and 99 citizens, randomly selected to be broadly representative of the Irish electorate, established to consider some of the most important issues facing Ireland's future. In 2017, they met to discuss changes to the Eighth Amendment of Ireland's Constitution and to make recommendations to the Oireachtas (Ireland's legislative body). 64% of the members recommended that termination of pregnancy without restriction should be lawful. In addition, 89% of members recommended that pregnancy as a result of rape should be lawful grounds for an abortion.

Malawi

Law Commission of Malawi, *Report of the Law Commission of Malawi on the review of the Law on Abortion* (Penal Code Cap. 7:01 of the Laws of Malawi).

The government of Malawi appointed a special Law Commission to review the law on termination of pregnancy and possibly recommend reforms to the existing framework. The findings and recommendations of this report culminated in the proposal of new legislation entitled the "Termination of Pregnancy Bill" (appended at p. 83). As part of the proposals, the Commission recommended the adoption of a provision permitting the termination of pregnancy in cases of rape, incest or defilement (p. 42).

This permission is subject to a requirement that the pregnancy is terminated prior to 16 weeks from the date of conception, as the commission concluded that this was sufficient time to make a decision regarding termination (p.48). There is a further requirement that the pregnant woman report the crime to police prior to seeking termination (p.70). This is the only evidentiary hurdle to overcome in order to access abortion services in cases of rape, incest, or defilement.

Finally, the Commission suggested the enactment of a criminal offence for making a false declaration of rape, incest, or defilement in the context of seeking abortion services, subject to a maximum penalty of five years imprisonment upon conviction (p.70).

Nepal

Government of Nepal Ministry of Health and Population *et al. Unsafe Abortion: Nepal Country Profile* (2006). [68-page report](#).

The purpose of this report was to document the effectiveness of the abortion law in improving access to safe abortions since the legalization of abortion in Nepal in 2002. The law permits pregnant women to obtain an abortion on the grounds of rape or incest for up

to 18 weeks of gestation (p.13). The results of a public opinion poll showed that only 7% of respondents were aware that abortions were legal in these circumstances (p.16). Of the 62% of women who used abortion services in the surveyed maternity hospital that were aware of legalization, only 10% knew that abortions in cases of rape or incest were permitted (p.38).

Non-Governmental Organizations

Abortion Rights Campaign [Ireland]. Submission to the United Nations Committee Against Torture (UNCAT) 24 July-7 August 2017: Adoption of a List of Issues to Ireland (Dublin, Abortion Rights Campaign, 2017) [10 page submission](#).

Focus on the cruelty of inaccessibility of abortion, and information about abortion, in Ireland. Cites Sir Nigel Rodley's 2014 statement to news media that for Ireland to deny abortion services to rape victims is to treat them as "vessels, and nothing more." (pp. 1-2)

Amnesty International, *The State as a Catalyst for Violence against Women* (London, Amnesty International, 2016) [88-page English report](#), [92-page Spanish report](#)

The pandemic of violence against women continues unabated in Latin America and the Caribbean. This report documents examples in eight countries that highlight patterns of violence against women, including torture or other ill-treatment, in the areas of sexual and reproductive health. These patterns are repeated throughout the region and include ill-treatment and the denial of health services, breaches of patient confidentiality, the imposition of certain moral or religious precepts on patients and the abuse of conscientious objection. The report analyzes the denial of abortion to a raped 10-year old girl as torture in the *Case of the girl Mainumby with respect to Paraguay* in which the Inter-American Commission on Human Rights issued a precautionary measure (see above: Precautionary Measures).

Center for Reproductive Rights, *Abortion Worldwide: 20 Years of Reform*, 2014, [Briefing paper, 21 pages](#).

Historical overview "This publication provides an overview of international human rights standards on abortion and identifies trends in abortion law reform within each of the world's regions. Additionally, it documents the changes to abortion laws in countries across the globe since the PoA [Platform of Action adopted by 179 countries at ICPD in 1994] and includes a discussion of measures to enhance or restrict access to abortion services within each region.

Center for Reproductive Rights, *Ensuring Reproductive Rights: Reform to Address Women's and Girl's Need for an Abortion After 20 Weeks in India* (New York: CRR, 2019) [56-page report](#).

Generally in India, where there is a prohibition on abortion post 20 weeks, cases have been brought before courts in India seeking abortions past the 20-week gestational limit largely on grounds of rape and fetal impairment. Courts have taken a case by case approach, approving some and denying others (court cases canvassed are found in the domestic decision section of this bib). Misconception of the law is a big problem in this

arena, and leads to significant delays in abortion (p. 13-14). The report advocates that health grounds should include mental health risks from pregnancies involving rape (p. 38-39).

Center for Reproductive Rights. *Breaking Ground 2018: Treaty Monitoring Bodies on Reproductive Rights* (New York: CRR, 2018) [54-page report](#).

Compiles statements of treaty monitoring bodies by theme, with pinpoint references: CAT Committee calls for emergency contraception without prescription for rape victims, including adolescents (page 18 and note 106). Treaty monitoring bodies that call for legal abortion on grounds of risk to life, rape and fetal anomaly (p.31 and note 179). The CRC Committee has noted that states should ensure that adolescents have access to safe abortion and post-abortion care, regardless of the legal status of abortion. CEDAW advises states to “ensure that sexual and reproductive health care includes access to... safe abortion services,” without qualification (p.31 and notes 183, 184). The CAT Committee advises states to ensure free access to abortion in cases of rape. (p. 32 and note 194 re Peru, 2012) and has noted cases in which requirements that women obtain judicial authorization before accessing an abortion may constitute an “insurmountable obstacle” to accessing abortion, and that when denial of such judicial authorization occurs for victims of rape, it may constitute torture or ill-treatment (p. 35 and note 212 CRC re India, 2014).

Centre for Reproductive Rights. *In Harm's Way: The Impact of Kenya's Restrictive Abortion Law* (New York: CRR, 2010). [144-page report](#).

This report provides a comprehensive overview of the harms caused by the criminalization of abortion in Kenya. The report focuses extensively on the uncertain legal status of pregnancy termination as a result of rape within Kenya's restrictive abortion regime, as well as the negative consequences arising from such uncertainty. Through a review of jurisprudence and interviews with medical professionals, it is heavily suggested that rape falls under the existing mental health exception as a grounds for termination of pregnancy. The CRR further suggests that Kenya should explicitly legalize abortion in cases of rape or incest and fulfill their obligations under the Maputo Protocol.

Center for Reproductive Rights. *Reproductive Rights Violations as Torture or Ill-Treatment: CAT Committee Jurisprudence on Violations of Reproductive Rights*. 4 pages (New York: CRR, 2014). [4-page report](#).

The CAT Committee has recommended that abortion be legal in a variety of instances where a pregnancy may cause a woman severe physical or mental suffering" including "access to abortion for women whose health or life is at risk, who are the victims of sexual violence, or who are carrying non-viable fetuses" Cites CAT comments about Paraguay (2011), Nicaragua, El Salvador (2009) Ireland, Also comments re denial of emergency contraception in Peru (2012).

Center for Reproductive Rights. *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis*, Briefing paper (New York: CRR, 2010) [40-page Briefing paper](#).

Detailed discussion of case-in-progress, then called "S. and T v. Poland" later renamed *P and S v Poland*, which was decided in 2012. Notes the Committee Against Torture (CAT) expressed concern about laws that restrict or ban access to abortion in Concluding Observations to Peru, Nicaragua and El Salvador, as well as human rights to Post-Abortion Care (pp. 21-24.)

Center for Reproductive Rights. *European Abortion Laws: A Comparative Overview* (New York: CRR, 2019) [9 page fact sheet](#)

Comparative fact sheets on European abortion access that covers topics such as grounds for legal access to abortion, access barriers and a useful comparative chart.

Doctors without Borders (2016). *Return to Abuser: Gaps in Services and a Failure to Protect Survivors of Family and Sexual Violence in Papua New Guinea* [68-Page Report](#)

This report examines the shocking levels of family and sexual violence in Papua New Guinea, which are among the highest in the world outside of conflict zones. It details how a dire lack of protection mechanisms, a weak justice system, and a culture of impunity endanger the health and lives of patients even if they manage to reach medical care. The report includes comprehensive data from more than 3,000 survivors of family and sexual violence that MSF treated in 2014-15 in its two projects in both rural Tari, in Hela Province, and the capital, Port Moresby. It reveals the repeated, often escalating, violence women and children endure in the places they should be safe, their homes and communities.

GIRE, *Motherhood or Punishment: Criminalizing Abortion in Mexico* (Mexico, GIRE, 2019) [57 Page English Report online](#)

Looks at the scheme of criminalization of rape in Mexico and its impacts on women and health professionals who provide the service and the criminal risks both parties undertake in securing an abortion. Rape is showcased as an allowable exception to the ban on abortion. However, the report is fraught with examples of hardships and delay in procuring an abortion from a pregnancy resultant of rape. It also includes instances of non-existent or poor post-abortion care. Tale the case of Patricia who became pregnant by way of rape when she was 16. She was eventually able to obtain an abortion after much stigma and discrimination. After the procedure, she bled for a month and the clinic would not examine her.

Human Rights Watch, *The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico*, Report, 18 No. 1(B). (New York: HRW, 2006) [96-page Report in English PDF](#). [Summary in English](#). *Víctimas por partida doble: Obstrucciones al aborto legal por violación en México* [Resumen en Español](#).

Each year, thousands of girls and women in Mexico get pregnant as a result of rape. Having already suffered one traumatizing violation of their physical and moral integrity - the rape -- rape survivors often think their situation cannot possibly get any worse. Then some discover they are pregnant. Mexico's laws, at least on paper, take the only humane response: they permit legal abortion after rape. For many rape survivors, however, actual access to safe abortion procedures is made virtually impossible by a maze of administrative hurdles as well as . . . official negligence and obstruction.

The Second Assault is based on field research in Mexico in October and December 2005, as well as prior and subsequent research conducted by Human Rights Watch throughout 2005 and the beginning of 2006. Human Rights Watch conducted more than one hundred interviews with lawyers, doctors, prosecutors, public officials, rape victims and their families from Baja California Norte, Chiapas, the Federal District (Mexico City), Guanajuato, Jalisco, Morelos, Nuevo Len, San Luis Potos, and Yucatan. . While HRW investigated dozens of cases, the report draws most heavily on in-depth Human Rights Watch interviews with ten rape victims who became pregnant as a result of the rape (seven women and three girls) and eleven family members of these victims, and on detailed trial transcripts from five other cases.

Human Rights Watch. *Life or Death Choices for Women Living Under Honduras' Abortion Ban: Women Tell Their Stories* (New York: HRW, 2019) [Available online](#)

Abortion is illegal in Honduras under all instances, including pregnancy resulting from rape. If an abortion is obtained, the woman and anyone who has helped her can be criminally charged and imprisoned. The piece includes a section on rape and the double victimization that occurs. The age of sexual consent in Honduras is age 14. In 2017, 820 girls between the ages of 10-14 gave birth, which would all be the product of rape. The report recommends removing criminal penalties for abortion from the penal code; allowing safe abortion and allowing legalization of the emergency contraception.

Human Rights Watch. *"It's Your Decision, It's Your Life": The Total Criminalization of Abortion in the Dominican Republic* (New York: HRW, 2018) [84 paged report online](#)

Report looks at Recommendations, Abortion in the Dominican Republic, impacts of the total abortion ban, including in instances of rape and incest, as well as human rights obligations. The report includes stories of how rape victims, often young girls, are forced to carry pregnancies to term as a result of rape and sexual abuse.

International Campaign for Women's Right to Safe Abortion,
<http://www.safeabortionwomensright.org/>

This blog provides frequent updates on law, policy, advocacy publications, country highlights and online resources.

Ipas (de Bruyn, M.) "Violence, pregnancy and abortion: Issues of women's rights and public health: a review of worldwide data and recommendations for action," 2nd ed. Chapel Hill, N.C.: Ipas. 2003. [82 page report](#).

- 1: Context and manifestations of the problem
- 2: What can and needs to be done – legal policy and service delivery. Bibliographical references.

Ipas. "Sexual violence and unwanted pregnancy: Protecting the human rights of adolescent girls and young women," Ipas, 2013. [2-page briefing paper](#).

Statistics and citations re Nicaragua with endnotes. E.g.: "Between 2009 and 2011, 84 percent of all the rape cases handled by Nicaragua's Institute for Legal Medicine were girls younger than 17. Girls younger than 13 were almost half of the total case load."

New York City Bar, Committee on African Affairs (E. Horvath et al.) *Gender-Based Violence Laws in Sub-Saharan Africa*, (New York, 2007) [82-page report](#).

This report documents examples of legislation in sub-Saharan Africa designed to combat gender-based violence and evaluates how law can effectively address the challenges associated with violence against women. Specifically, it looks at gender-based violence legislation with regard to rape, sexual assault, and domestic violence. It does not address the many other forms such violence may take, including female genital mutilation, trafficking in women, and forced prostitution. In addition, this report is confined to gender-based violence against women; although men and boys are sometimes also subject to gender-based violence, the majority of victims are women and girls. In light of this, the terms "gender-based violence" and "violence against women" are used interchangeably.

We first provide an overview of the widespread prohibitions on gender-based violence in international and regional instruments, as well as of the recognition and application of these prohibitions by international tribunals in Part II of the Report. We then consider the pertinent constitutional provisions of selected sub-Saharan African States in Part III. Parts IV and V focus on the specific legislative provisions of selected sub-Saharan African States with regard to "rape," "sexual assault" and "domestic violence" as forms of gender-based violence. Throughout Parts IV and V, the Report highlights general considerations to be taken into account in drafting and implementing such legislation. In addition, Part VI highlights particular good and best practices embraced by States – namely, training for public officials, providing services to victims, monitoring the effectiveness of legislation, and raising awareness – that are prerequisites

to ensuring proper implementation of gender-based violence legislation. The final part of the Report provides a brief conclusion.

Planned Parenthood Global, *Stolen Lives: A Multi-Country Study on the Health Effects of Forced Motherhood on Girls 9-14 Years Old*. (N.p.: Planned Parenthood Global, 2014)
[104-page report in English](#). [Report in Spanish](#)

This report analyzes cases of pregnant girls, and their health impact. The assumption applied in the report is that pregnant girls under 14 years old have been raped. This is the legal situation in the Latin American countries that the report covers: Ecuador, Guatemala, Nicaragua and Peru.

Population Council (Jill Thompson, Chi-Chi Undie, & Ian Askew), *Access to Emergency Contraception and Safe Abortion Services for Survivors of Rape: A Review of Policies, Programmes, and Country Experiences in Sub-Saharan Africa*, STEP UP (Nairobi, Population Council, 2014). [34-page Research Report](#).

This study examined how pregnancy prevention and management services (specifically, the provision of emergency contraception, pregnancy testing and counselling, and termination or referral for termination of pregnancy services) feature within post-rape care (PRC) services in sub-Saharan Africa. National laws policies and guidelines reviewed: Botswana, Burkina Faso, Burundi, Ethiopia, Ghana, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Swaziland, Tanzania, Uganda, and Zambia. In some countries, a distinction is made between ‘rape’ (unlawful sex with an adult) and ‘defilement’ (unlawful sex with a child). In this report, the term ‘rape’ is used to refer to unlawful sex with adults or children.

Several key messages emerge from the study’s overall findings:

1. National PRC guidelines consistently identify pregnancy prevention as an essential element of sexual assault management and all include provisions on emergency contraception for eligible survivors. Nonetheless, the study reveals a disconnection between PRC guidelines and guidelines for reproductive health/family planning, with the latter less likely to address the specific needs of rape survivors although many contain general provisions on emergency contraception.
2. Pregnancy management and safe abortion for survivors do not feature prominently in national sexual violence guidelines in the region, with only a few exceptions. Existing provisions for pregnancy management and abortion also tend to lack detailed guidance or country-specific information that would facilitate access to these services. Pregnancy counseling is unevenly addressed across the national protocols examined.
3. Of the eight national protocols reviewed, only three treat safe abortion as an essential element of care to be provided for rape survivors, with clear guidance on its provision.

Population Council (Jill Thompson, Chi-Chi Undie, Avni Amin, Ronald Johnson, Rajat Khosla, Ian Askew, Leopold Ouedraogo, Triphonie Nkurunziza, Sarah Rich, Elizabeth Westley, and Melissa Garcia) 2017. *Harmonizing National Abortion and Pregnancy Prevention Laws and*

Policies for Sexual Violence Survivors with the Maputo Protocol. Regional Technical Report. Nairobi: Population Council, WHO, & UCEC (hosted by Management Sciences for Health [MSH]). [35-page Report](#).

In April 2016, the Population Council, the World Health Organization (WHO), and the International Consortium for Emergency Contraception (ICEC) convened a three-day regional technical meeting aimed at helping participating countries meet their obligations under the Maputo Protocol to protect and promote the reproductive health rights of women and girls, with a special emphasis on survivors of sexual and intimate partner violence. Participants included representatives from Botswana, Ethiopia, Kenya, Malawi, Rwanda, and Zambia and international and regional experts on reproductive health, law, and human rights. Presentations and discussions focused primarily on the prevention and management of pregnancy in the context of sexual violence (SV) and intimate partner violence (IPV), as well as the broader requirements of Maputo relating to emergency contraception (EC) and safe abortion services. The regional meeting was the first activity in a joint project of technical assistance by the Population Council, WHO and ICEC, aimed at strengthening access to EC and safe abortion for survivors of sexual violence within the context of comprehensive post-rape care.

Reproductive Health Law and Policy Advisory Group, McNeilly, K., Pierson, C., & Bloomer, F. (2016). *Moving Forward from Judicial Review on Abortion in Situations of Fatal Foetal Abnormality and Sexual Crime: The Experience of Health Professionals*. Queen's University Belfast. [18-page report](#).

The Reproductive Health Law and Policy Advisory Group is a joint initiative between Queen's University Belfast School of Law, Ulster University School of Criminology, Politics and Social Policy and Manchester Metropolitan University. It was established in early 2016 to provide expertise and knowledge on policy and legal matters related to reproductive health. This report summarizes a roundtable discussion about key issues affecting healthcare professionals following the 2015 High Court judicial review decision which deemed the current legal framework governing abortion in Northern Ireland incompatible with human rights commitments in relation to fatal foetal abnormality and pregnancy following sexual crime. Recommendations are made regarding changes to the law, policy and guidelines surrounding fetal abnormalities and abortion.

Acknowledgments:

We are immensely grateful to University of Toronto Law students: Michelle Hayman, Hanna Kofman, Jacqueline Stroz, Mercedes Cavallo and Saul Moshé-Steinberg for helping develop this bibliography, and to Marge Berer, Millicent Bogert and Jaime Todd-Gher for insightful comments on previous drafts.