

**ANNOTATED BIBLIOGRAPHY ON LEGAL ASPECTS OF
FETAL ANOMALY AND THEIR IMPLICATIONS FOR COUNSELING,
SERVICE DELIVERY AND ABORTION LAWS AND POLICIES**

A working Bibliography prepared by
[the International Reproductive and Sexual Health Law Program](http://www.law.utoronto.ca/sites/default/files/documents/reprohealth/fetal_indications_bib.pdf)
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Domestic Court Decisions

Brazil

Supremo Tribunal Federal [Supreme Court] April 12, 2012, ADPF 54/DF, (Supreme Court of Brazil) [Fatal Fetal Anomaly - anencephaly] [Judgement online](#).

The Brazilian Supreme Court voted in favour of decriminalizing abortions involving anencephalic fetuses. Prior to this decision, Brazil's Penal Code criminalized abortion in all circumstances except in cases of rape and when the life of the woman is at risk.

Chile

Tribunal Constitucional de Chile, STC Rol N° 3729(3751)-17 CPT, *Requerimientos de inconstitucionalidad presentados por un grupo de Senadores y Diputados, respecto de normas del proyecto de ley que regula la despenalización de la interrupción voluntaria del embarazo en tres causales, correspondiente al boletín N° 9895-11*. Decision of August 28, 2017. [Decision in Spanish: 295 pages](#). [Accompanying documents](#). [Other Submissions](#) ([English Decision: 149 pages](#) includes a Table of Contents for both English and Spanish editions).

Provisions of the Bill – abortion allowed on 3 grounds including: (second ground) The embryo or fetus has a congenital pathology, acquired or genetic, incompatible with independent extrauterine life, in any case of lethal character. (pp. 4 and 9 of Spanish)

Petitioners (e.g. Spanish p. 14)

President's defense of Bill: (Spanish around p. 19-20, 31-32) discusses the second ground

Majority Decision, sections 6: (around pages 46-53 of Spanish), 19: viability of the fetus (*Roe v. Wade*, 1973); Sections 82 and 96-104

Dissenting arguments: Spanish p. 177, section 62°-72°,

“Previsiones”/Reservations: para 3 B etc pp 247-253 of Spanish

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 whenever the physician came to the conclusion that the fetus would suffer from serious malformations that would eventually result in endangering or terminating its life.

India

Meera Santosh Pal & Ors v Union of India & Ors, Writ Petition (Civil) No.17 OF 2017, January 16, 2017 (Supreme Court of India). [Fatal Fetal Anomaly – anencephaly]
[Decision online.](#)

Ms. Pal sought permission to undergo medical termination of her pregnancy after discovering that her fetus was diagnosed with Anencephaly (i.e. defect leaving foetal skull bones unformed). She was into her 24th week of pregnancy – the statutory limit is 20 weeks. The Court allowed the abortion, noting that the dangers to the mother’s life caused by the fetal condition gave rise to her right to protect and preserve her life and exercise her reproductive autonomy. The Court further noted that there would be no point in letting the pregnancy run its full course, as the fetus would not be able to survive outside of the uterus without a skull.

Mrs. X & Ors vs Union Of India & Ors, Writ Petition (Civil) No. 81 OF 2017, February 7, 2017 (Supreme Court of India). [Fatal Fetal Anomaly – bilateral renal agenesis]
[Decision online.](#)

Mrs. X sought permission to undergo medical termination of her pregnancy, claiming that the 22-week old fetus had the conditions of bilateral renal agenesis and anhydramnios. The Court followed the ruling in *Pal*, upholding the right of a mother to preserve her life in view of foreseeable danger in case the pregnancy is allowed to run its full course. The Court found it of particular importance that there was no current curative treatment available for bilateral renal agenesis.

Ireland

Ms D v District Judge Flan Brennan, Health Services Executive, Ireland and the Attorney General (“Case of Miss D”). High Court. 2007. Unreported. [Fatal fetal anomaly - anencephaly] [copy from IFPA on file]

Miss D became pregnant under the care of Ireland’s Health Service Executive (HSE). It was discovered that the fetus was suffering from anencephaly, a fatal abnormality. D wanted to travel to the UK for an abortion, but the HSE took measures to stop her from doing so, including falsely telling her they had a court order preventing her from travelling, as well as physically restraining her. The High Court ruled that D had the legal right to travel to the UK for an abortion, and ordered the HSE to pay an estimated 1 million euros in costs.

South Africa

H v Fetal Assessment Centre [2014] ZACC 34 (Constitutional Court of South Africa) [Wrongful Life] [Decision online](#).

H brought a claim for damages on behalf of her minor child against the Fetal Assessment Centre for allegedly misdiagnosing the child's high risk of Down syndrome. She maintained that, had she been made aware of the high risk, she would have terminated the pregnancy. The High Court ruled that the claim was bad in law and dismissed the claim as having no merit. The Constitutional Court granted H leave to appeal and held that it was not appropriate to make a final determination on the question of the child's claim due to the factual and legal complexities of the case. After considering the law in other jurisdictions, as well as the implications for the South African law of delict, the Court emphasised that a child's claim in this context may in principle potentially exist. However, whether it does and in what form, must be decided by the High Court.

United Kingdom

Department of Health, R (on the application of) v Information Commissioner [2011] EWHC 1430 (High Court – Administrative) (20 April 2011). [Online](#).

The High Court upheld a decision by the Information Tribunal where it was ruled that the government must release full statistical data on abortions arising from foetal abnormality after 24 weeks of pregnancy. ProLife Alliance, an anti-abortion group, originally requested the information and was refused by the Department of Health.

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 risks to the life of the fetus, among other

enshrinements of reproductive rights. This Comment explicitly states that this is to be interpreted as providing for abortion “where it is demonstrated that the foetus which is developing suffers from deformities that are incompatible with survival, so being forced to carry the pregnancy to term would constitute cruel and inhuman treatment” (para 40). These Comments can be used to hold signatory states accountable for failing to implement their treaty obligations effectively.

European Court of Human Rights

D v Ireland, App. No. 26499/02, Admissibility Decision [2006] ECHR 1210 (28 June 2006). [Fatal Fetal Anomaly – Edwards syndrome] [Online](#).

D was pregnant with twins. Tests revealed that one twin had died and that the other had Edwards syndrome – a condition which usually ends in miscarriage or death shortly after birth. D complained to the ECHR about the need about the need to travel abroad to have an abortion in the case of a lethal fetal abnormality. Ireland responded that she could have sought an order from the Supreme Court declaring that termination for fatal fetal abnormalities is legal, as the X case left open the possibility for that interpretation under the Constitution. The Court ultimately dismissed the complaint as D did not exhaust all possible domestic remedies as regards the availability of abortion in Ireland in the case of fatal fetal abnormality.

R.R. v. Poland, App. No. 27617/04, ECHR, Judgment, 26 May 2011 European Court of Human Rights. [Fetal Impairment – Turner Syndrome] [Online](#).

RR was consistently refused diagnostic care while pregnant after an ultrasound detected a cyst on the fetus’ neck. Genetic tests were repeatedly stalled, preventing her from obtaining timely information on the health of the fetus and hindering her from seeking a legal abortion. The Court found Poland in violation of Article 3 - the right to be free from inhuman and degrading treatment, and Article 8 - the right to respect for private life, of the European Convention on Human Rights (ECHR). The Court held that, in order to comply with its obligations under the Convention, Poland must ensure that pregnant women have access to diagnostic services relevant for establishing the conditions for a lawful abortion.

Inter-American Court of Human Rights

Matter of B, Provisional Measures with regard to El Salvador, May 29, 2013 (ordered appropriate treatment for a woman pregnant with an anencephalic fetus), Inter-American Court of Human Rights. [Online](#).

B suffered from lupus and was pregnant with an anencephalic fetus. Abortion is completely criminalized in El Salvador, preventing doctors from terminating the pregnancy in order to protect the mother's health. The Court ordered El Salvador to adopt the necessary measures in order for B's doctors to perform the procedures they considered "opportune and desirable" to avoid irreparable harm to her rights to life, personal integrity and health.

International

United Nations Human Rights Committee

Amanda Jane Mellet v. Ireland, CCPR/C/116/D/2324/2013, March 31, 2017, published November 17, 2016 (United Nations, Human Rights Committee) [Fatal Fetal Anomaly – Edwards syndrome]. [Decision online in several languages](#).

Mellet was pregnant and scans showed that the fetus was suffering from Edwards syndrome, a fatal condition. The hospital said she had to travel outside of Ireland to obtain an abortion. Mellet incurred significant costs and hardship as a result of the travel and lack of support post-termination in Ireland. The UNHRC ruled that Ireland's abortion law violated the United Nations International Covenant on Civil and Political Rights and called for the Government offer her compensation, counselling and also change its laws to allow for abortion in cases of fatal fetal abnormality.

KL v Peru, Comm. No. 1153/2003: Peru. 22/11/2005, U.N. Doc. CCPR/C/85/D/1153/2003 (2005). UN Human Rights Committee. [Fatal fetal anomaly]. [Online](#).

K.L. was pregnant with an anencephalic fetus. Peru permits abortion when the life or health of the mother is in danger, but K.L. was denied an abortion and had to deliver the baby and breastfeed her for the four days she survived. The UNHRC decided that denying access to a legal abortion in the case of *K.L. v. Peru* constitutes a violation of the International Covenant on Civil and Political Rights (ICCPR). The ruling specifically establishes violations to the right to be free from cruel, inhumane, and degrading treatment (Art. 7), privacy (Art. 17), and special protection of the rights of a minor (Art. 24), among other things.

Siobhàn Whelan v. Ireland, Comm. No. 2425/2014: Ireland 12/06/2017, U.N. Doc. CCPR/C/119/D/2425/2014 (UN Human Rights Committee), 12 June 2017. [Fatal Fetal Anomaly] [Decision online](#).

Similar to the *Mellet* case, Whelan was denied an abortion by the government of Ireland despite being diagnosed with fatal fetal syndrome and was forced to travel from Ireland to the UK to terminate her pregnancy. The UNHCR ruled again that Ireland's abortion law violated Whelan's human rights along with the International Covenant on Civil and Political Rights, subjecting Whelan to a cruel, inhumane and degrading treatment, and called for legalization of and access to safe abortions.

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. Legally, abortion services are provided for where “the fetus has an incurable or serious deformity” (p.9). This implementation guide suggests that if a physician makes the diagnosis of a physical or genetic abnormality that is incurable and/or serious, then termination of pregnancy can be conducted under this ground (p.10).

India

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

These guidelines provide an outline of the legal indications for abortion under India's Medical Termination of Pregnancy Act (MTP). Accordingly, pregnancy can be terminated if there is substantial risk that if the child were born, they would “suffer from such physical or mental abnormalities as to be seriously handicapped” (p.2)

Thailand

Thai Medical Council, *Regulation On Criteria for Performing Therapeutic Termination of Pregnancy In accordance with Section 305 of the Criminal Code of Thailand B.E. 2548* (2005). [Online](#).

These regulations published by the Thai Medical council outline the conditions for when termination of pregnancy is to be performed, as well as the standards by which medical practitioners must abide. It provides for termination in the case of necessity due to risks to the mental health of the woman. Importantly, the regulations further clarify that “in the case of severe stress due to the finding that the fetus has, or has a high risk of having, severe disability, or has or has a high risk of having severe genetic disease...the said pregnant women shall be regarded as having mental health problem”.

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 in the Management of the Severe Congenital Anomalies,” in *Ethical Issues in Obstetrics and Gynecology* (London: FIGO, 2015). [pp. 114-116](#).

Approved in 2012, this FIGO official guideline provides several recommendations on the termination of pregnancy for severe and fatal fetal anomalies. Among these recommendations is that women carrying a fetus with severe congenital anomalies should have the right to discuss termination of pregnancy, and that this decision should always rest with the woman. Regardless of the legal availability of termination of pregnancy, it is further recommended that there be a responsibility to inform and counsel women about the risks and benefits of fetal diagnostic testing. As part of counselling, a discussion of the benefits and harms of that knowledge should be done when options for termination are limited.

FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health, “Ethical Aspects Concerning Termination of Pregnancy Following Prenatal Diagnosis,” in *Ethical Issues in Obstetrics and Gynecology* (London: FIGO, 2015). [pp. 116-119](#).

Approved in 2007, this FIGO official guideline provides several recommendations concerning the termination of pregnancy following prenatal diagnosis of fetal abnormalities. It is recommended that whenever it is an accepted medical practice, termination of pregnancy must be offered to the parents where a severe untreatable fetal disease is found by prenatal diagnosis.

Further, FIGO states that termination of pregnancy following prenatal diagnosis must be presented as an abortion, but as a pharmacologically-induced premature delivery.

World Health Organization (WHO)

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

These guidelines suggest that prenatal tests and other medical diagnostic services cannot legally be refused because the woman may decide to terminate her pregnancy. A woman is entitled to know the status of her pregnancy and to act on this information (p.93).

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 "F" (abortion permitted in cases of fetal impairment) To view all countries with 1 provision, click: Country Icon > F. 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. Fetal impairment as a grounds for abortion changed from 41 to 52% of countries, and 65 to 72% 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. 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

Al-Matary, Abdulrahman and Jaffar Ali, “Controversies and considerations regarding the termination of pregnancy for Foetal Anomalies in Islam” (2014) *BMC Medical Ethics* 15:10, online: <<https://bmcmedethics.biomedcentral.com/articles/10.1186/1472-6939-15-10#Sec12>>.

The authors urge Muslim law makers to consider abortion post-ensoulment if it is certain that the malformed foetus will decrease soon after birth or will be severely malformed and physically and mentally incapacitated after birth to avoid substantial hardship that may continue for years for mothers and family members. The authors recommend that an institutional committee governed and monitored by a national committee make decisions pertaining to abortion to ensure that ethics are preserved and mistakes are prevented. Anomalous foetuses must be detected at the earliest possible time to enable an appropriate medical intervention prior to the 120th day.

Arawi, Thali and Anwar Nassar, “Prenatally diagnosed foetal malformations and termination of pregnancy: the case of Lebanon” (2011) 11:1 *Developing World Bioethics* 40, online: University of Toronto Library <<http://simplelink.library.utoronto.ca/url.cfm/496812>>

Abortion law in Lebanon prohibits any form of termination of pregnancy unless it is the only means to save the mother's life. The authors of this article argue that even if the foetus is a person, if it were medically revealed that there is a substantial risk that the newborn will suffer severe physical abnormalities that will cause it to be seriously handicapped, it is morally acceptable to terminate the pregnancy. This position is justified in the interest of the foetus and the child. The authors ultimately suggest reforms to the Lebanese policy on abortion in order to reflect these principles.

Ballantyne A, Newson A, Luna F, Ashcroft R, “Prenatal diagnosis and abortion for congenital abnormalities: is it ethical to provide one without the other?” (2009) 9:8 *Am J Bioeth* 48, online: University of Toronto Library <http://resolver.scholarsportal.info.myaccess.library.utoronto.ca/resolve/15265161/v09i0008/48_pdaafctpowto.xml>

This article considers the ethical implications of providing prenatal diagnosis (PND) and antenatal screening services to detect fetal abnormalities in jurisdictions that prohibit abortion for these conditions. The authors point to three potential harms that derive from the provision of PND in the absence of legal and safe abortion for these conditions: psychological distress, unjust distribution of

burdens between socio-economic classes, and financial burdens for families and society. Iran is presented a comparative case study where recognition of these ethical issues has led to the liberalization of abortion laws for fetuses with thalassemia. It is ultimately argued that physicians, geneticists and policymakers have an ethical and professional duty of care to advocate for change in order to ameliorate these harms.

Bosnia, Jacqueline M., Gerrit van der Wal, and Sylvia L. Hosman-Benjaminse. "Late termination of pregnancy in North Holland." *BJOG: An International Journal of Obstetrics & Gynaecology* 104.4 (1997): 478-487, online: <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1111/j.1471-0528.1997.tb11501.x>.

This paper presents a retrospective study by the Inspectorate of Health Care for North Holland in order to estimate the extent to which late termination of pregnancy (gestational period > 24 weeks) is practiced, to find out what fetal diseases and abnormalities lead to termination and to obtain insight into the clinical judgement and decision-making process by gynecologists with regard to termination. The authors conclude that late termination of pregnancy is practiced on a substantial scale in North Holland. The reasons for termination were severe structural abnormalities which, in most cases, were not compatible with survival. The gynecologists in North Holland dealt prudently and responsibly with late termination of pregnancy, although they did not always adhere to the guidelines set out in the 1994 report of the Netherlands Association for Obstetrics and Gynecology.

Braake, Trees A.M. Te, "Late termination of pregnancy because of several foetal abnormalities: Legal acceptability, notification and review in the Netherlands" 7:4(2000) *European Journal of Health Law* 387. [Online behind paywall](#).

Dutch abortion law does not allow termination of pregnancy if the fetus has become viable – i.e. after a duration of 24 weeks under normal circumstances; however, late termination is often necessary due to fetal abnormalities. The Netherlands Association for Obstetrics and Gynaecology (NVOG) published its official views on "late termination of pregnancy" in 1994, containing a proposal for good medical practice in this field (NB: this is only available in Dutch). A later study conducted by the Regional Health Inspectorate of North Holland concluded that these guidelines were not being followed (see above). Subsequently, the Minister Ministers of Health and of Justice established a discussion group tasked with making proposals for good medical practice when late termination of pregnancy is considered and for its review when such a termination has been performed (NB: a Dutch-only report was released in 1998). The purpose of this article is to summarize, analyze, and critique the aforementioned discussions, as well as provide new recommendations.

Chima S C, Mamdoo F., “Ethical and legal dilemmas around termination of pregnancy for severe fetal anomalies: A review of two African neonates presenting with ventriculomegaly and holoprosencephaly,” *Niger J Clin Pract* [serial online] 2015 [cited 2018 Jul 2];18, Suppl S1:31-9. Available from: <http://www.njcponline.com/text.asp?2015/18/7/31/170820>

Diagnostic modalities such as fetal ultrasound, magnetic resonance imaging, and genetic screening have improved prenatal diagnosis, yet they remain scarce in many African countries making diagnosis and counseling regarding termination of pregnancy difficult. In countries with restrictive abortion laws the fetus maybe imbued with the right of personhood at conception, making TOP illegal and exposing doctors and patients to potential criminal prosecution. This paper describes ethical challenges in clinical management of two neonates born in Africa following declined and failed feticide for severe central nervous system anomalies with a critical appraisal of the relevant literature.

De Crespigny, Lachlan J., and Julian Savulescu. "Pregnant women with fetal abnormalities: the forgotten people in the abortion debate." *Medical Journal of Australia* 188.2 (2008): 100, online: <<https://www.mja.com.au/journal/2008/188/2/pregnant-women-fetal-abnormalities-forgotten-people-abortion-debate>.>

The authors contend that women wanting to have a family who have a fetal abnormality detected later in pregnancy are neglected in the abortion debate and harmed by the consequences of the legal uncertainty at the time in Australia. Unclear abortion laws compromise the quality of prenatal testing; management when an abnormality is found; and patient care, through obstetricians' fears of legal repercussions. The article describes how women carrying a fetus with an abnormality are being denied abortion, even when the abnormality is so severe that non-treatment would be an option if the baby were born. Many women are likely to refuse to consider motherhood if they are denied appropriate prenatal testing and access to abortion if serious abnormalities are detected. Current abortion laws result in discriminatory and inconsistent practices, where access to prenatal testing and termination of pregnancy depends on location, the values of the treating doctor or hospital ethics committee, and a woman's personal resources. It is ultimately argued that legal certainty is needed to reduce the suffering of couples wanting to have a family.

De Londras F. “Fatal Foetal Abnormality, Irish Constitutional Law, and *Mellet v. Ireland*” (2016) 24 (4) *Medical Law Review* 591, 598-604. [Online behind paywall](#).

This article provides commentary on the case of *Mellet v Ireland* (see above for description of the case). The author argues that the UNHRC's ruling is not restricted to cases of fatal fetal abnormality. Rather, it is argued that the Committee's decision illustrates the suffering that all women in Ireland who travel

to access abortion experience, arguably constituting a violation of their right to be free from cruel, inhuman, and degrading treatment. Ultimately, this piece advocates for the need to implement a comprehensive rethink of Irish abortion law.

Donley, Greer “Does the Constitution Protect Abortions Based on Fetal Anomaly?: Examining the Potential for Disability-Selective Abortion Bans in the Age of Prenatal Whole Genome Sequencing” (2013) 20 *Mich. J. Gender & L.* 29, online: University of Michigan <<http://repository.law.umich.edu/mjgl/vol20/iss2/3>>

This piece from the U.S. examines whether the state or federal government has the power to enact a law that prevents women from obtaining abortions based on their fetus’s genetic abnormality. It is argued that these laws present a novel state intrusion on a woman’s right to obtain a pre-viability abortion. Further, the author argues that the incorporation of prenatal whole genome sequencing into clinical care will both invigorate anti-choice legislatures to pursue such legislation and cause the laws’ impact on women to be greater than initially anticipated. Using the undue burden standard announced in *Planned Parenthood v. Casey*, the author concludes that federal and state disability-selective abortion bans are unconstitutional based on the Due Process Clause. Policy reasons for why such an abortion ban will degrade the right to a pre-viability abortion are also presented.

Donoghue, Stephen & Claire-Michelle Smyth, “Abortion for Foetal Abnormalities in Ireland: The Limited Scope of the Irish Government’s Response to the A, B and C Judgment” (2013) 20 *European Journal of Health Law* 117, online: University of Toronto Library <<http://simplelink.library.utoronto.ca/url.cfm/496815>>

This article criticizes the restricted approach by the Irish government to update the abortion law in the wake of the ECtHR’s ruling in the *A, B, and C* case, where Ireland was found to have failed to provide clear guidelines concerning access to abortion in life-threatening cases. The government calls for legalization of abortion only where the life of the mother is at risk, yet the vast majority of member states to the European Convention on Human Rights allow for legal abortion on the basis of fetal abnormality. The author further argues that the advancement and availability of non-invasive genetic tests that can determine fetal abnormalities exacerbates the need to address the issue of abortion in cases of fetal malformations. The article also includes an extensive discussion of the ECtHR’s ruling in *R. R. v. Poland* (see above).

Gevers, Sjef, “Third Trimester Abortion for Fetal Abnormality” (1999) 13 *Bioethics* 306, online: SSRN <<http://ssrn.com/abstract=526340>>

This article discusses the legal and ethical dimensions of late-term abortions (after 24 weeks) in cases of fatal fetal abnormalities against the backdrop of the existing

law and practice in the Netherlands. The paper makes reference to a 1998 report released by the Dutch government on the topic of late termination of pregnancy due to fetal abnormalities (note: this report is not available in English).

Karpin, Isabel, and Kristin Savell. "Terminations." *Perfecting Pregnancy: Law, Disability, and the Future of Reproduction*, Cambridge University Press, Cambridge, 2012, pp. 106–156. Cambridge Disability Law and Policy Series. online: University of Toronto Library
<http://dx.doi.org.myaccess.library.utoronto.ca/10.1017/CBO9781139045476>

This chapter first examines whether the law should recognize fetal abnormality, as distinct from the woman's life, health, or preference, as a basis for abortion. Second, the question of whether the law should provide some guidance concerning the scope and meaning of legal phrases like "serious/severe" "handicap/disability/impairment" is discussed. Finally, this chapter discusses whether the law should permit abortion for fetal abnormality without time restrictions, even when restrictions apply for other reasons. Of particular importance is the discussion surrounding the meaning of seriousness as a qualifier for disability and an attempt to better understand the legislative intent behind the language of "serious handicap."

Koch, Valerie Gutmann, "Legal Issues in Prenatal and Preimplantation Genetic Diagnosis" in Joann Paley Galst & Marion S. eds., *Prenatal and Preimplantation Diagnosis: The Burden of Choice* (New York: Springer International, 2015), pp. 155-177, online: University of Toronto < [https://link-springer-com.myaccess.library.utoronto.ca/book/10.1007%2F978-3-319-18911-6](https://link.springer-com.myaccess.library.utoronto.ca/book/10.1007%2F978-3-319-18911-6)>

This chapter focuses on four primary legal issues or areas associated with prenatal and preimplantation genetic diagnosis. The section entitled "Pregnancy Termination for Fetal Anomalies" addresses pregnancy termination for fetal anomalies discovered through prenatal genetic testing, both at the federal and state levels. The section entitled "Constitutional Law and Preimplantation Genetic Diagnosis" focuses on a constitutional analysis of access to preimplantation genetic diagnosis and the state's role in regulating the procedure. The next section, "Current Oversight of Preimplantation and Prenatal Genetic Diagnosis" discusses existing oversight of preimplantation and prenatal genetic diagnosis. Finally, the last section, "Tort Law/Liability Considerations for Preimplantation and Prenatal Genetic Diagnosis", explores issues of tort liability in the use of preimplantation and prenatal genetic diagnosis. Importantly, this chapter addresses whether information gleaned through prenatal or preimplantation genetic diagnosis is actionable under current legal standards, rather than the ethical question of whether it should be actionable.

Lúcia de Lourdes Ferreira da Costa, Ellen Hardy, Maria José Duarte Osis & Anibal Faúndes “Termination of Pregnancy for Fetal Abnormality Incompatible with Life: Women's Experiences in Brazil,” (2005) *Reproductive Health Matters*, 13:26, 139-146, online: <<https://www.tandfonline.com/doi/full/10.1016/S0968-8080%2805%2926198-0>>.

This paper reports a qualitative study of the experience of ten women who had a pregnancy termination in a university hospital in Brazil for fetal abnormality incompatible with life. The women were interviewed approximately 40 days after the procedure. The experience was marked by strong emotions for the women, who learned of the diagnosis between 13 and 25 weeks into their pregnancies. They cried, and experienced fear, despair, anguish, as well as a sense of uselessness and refusal to accept the situation. When they took the decision to terminate their pregnancies, the women experienced sadness, despair and guilt, and all these feelings caused them intense suffering. The killing of the fetus was the most difficult part of the termination for them. Nevertheless, afterwards they were satisfied with the decision taken and believed that it was the correct one, despite the anguish it caused. The authors suggest that the inclusion of fetal abnormality incompatible with life in the Brazilian law on pregnancy termination would help to reduce women's suffering and contribute to the provision of supportive care by the health services.

Ngwena, Charles. “Reproductive Autonomy of Women and Girls under the Convention on the Rights of Persons with Disabilities,” *International Journal of Gynecology and Obstetrics* 2018 Jan; 140(1):128-133. [PDF at Wiley online](#). [Submitted text online at SSRN](#)

Part 5 of this article discusses the implications of the Convention on the Rights of the Persons with Disabilities on access to safe abortion. Of importance, there is a brief reference to the case of *KL v Peru*, which surrounded the denial of an abortion to a teenager carrying an anencephalic fetus.

Petersen, Carole J., “Reproductive Justice, Public Policy, and Abortion on the Basis of Fetal Impairment: Lessons from International Human Rights Law and the Potential Impact of the Convention on the Rights of Persons with Disabilities” (2015) 28 *J.L. & Health* 121, online: <<http://engagedscholarship.csuohio.edu/jlh/vol28/iss1/7>>.

This article argues that we should consider not only American constitutional law but also comparative law and emerging international human rights norms, in order to navigate the difficult issue of abortion on the basis of fetal impairment. There is specific reference to recent legislation from North Dakota that prohibits abortion based upon a “genetic abnormality”. Further, there is a discussion regarding the relationship between the history of eugenics and the modern law of abortion, pointing out the sensitivity of the issue for people living with disabilities. The

survey of international human rights norms includes references to Spain and Hungary as case studies to investigate the approach that the United Nations Committee on the Rights of Persons with Disabilities has taken to the issue of abortion on the basis of fetal impairment. Finally, the author suggests public policy responses that would continue to respect reproductive freedom while also addressing the history of eugenics and discrimination against persons with disabilities.

Scheweppe, Jennifer and Eimear A. Spain, "When is a Foetus Not an Unborn? Fatal Foetal Abnormalities and Article 40.3.3" (2013) *Irish Journal of Legal Studies* 92, online: SSRN <<http://ssrn.com/abstract=2304252>>

This article discusses Article 40.3.3 of Ireland's constitution (recognizing the equal right to life of the pregnant woman and unborn child) and its application to abortions in the context of fetal abnormalities. This article proposes three interpretations of Article 40.3.3 which would permit terminations in these circumstances. The first argument is that the definition of the unborn does not include a fetus which does not have the capacity to survive outside the womb where such incapacity is not due exclusively to extreme immaturity. Secondly, it is argued that the life in question cannot be considered equal to the right to life of the mother. Finally it is argued that it is not practicable for the State to defend and vindicate this life. Ultimately, it is argued that the termination of fetuses suffering from fatal abnormalities, such that they are incompatible with life outside the womb, is constitutionally permissible, and that a referendum to allow such terminations is not necessary. [Note: a referendum was passed on May 25th, 2018, to delete the constitutional ban on abortion].

Sheldon, Sally and Stephen Wilkinson, "Termination of Pregnancy for Reason of Foetal Disability: Are there grounds for a special exception in law?" (2001) 9:2 *Medical Law Review* 85, online: University of Toronto Library <<http://simplelink.library.utoronto.ca/url.cfm/496814>>

This paper scrutinizes the main arguments in favour of the exception for termination of pregnancy in cases of presumed fetal disability provided by s. 1(1)(d) of the U.K.'s Abortion Act 1967. Three major arguments are discussed: the interests of the child-to-be; a comparison with an alternative possible non-disabled child; and, the interests of the pregnant woman. Through this scrutiny, it is suggested that there is no convincing argument in favour of the distinction, and that there should be a presumption of equal treatment of women seeking abortion rather than legislated exceptions. .

Zampas, Christina, “Legal and Political Discourses on Women’s Right to Abortion” in *A Fragmented Landscape-Abortion Governance and Protest Logics in Europe*, eds Silvia de Zordo, Joanna Mishtal and Lorena Anton, New York: Berghahn, 2017, pp 23-45.

This collection analyzes the abortion debate in the European context through the lens of various protest movements. In Chapter 1, Zampas discusses the case of *K.L. v Peru*, concerning a young woman pregnant with an anencephalic fetus (see above for summary) [p.29-30]. There is also a discussion of *R.R. v Poland* (see above for summary), another fetal impairment case decided by the European Court of Human Rights [p.40].

Zureick, Alyson, “Engendering Suffering: Denial of Abortion as a form of cruel, inhuman or degrading treatment” (2015) 38 *Fordham International Law Journal* 99, online: <http://fordhamilj.org/files/2015/02/FILJ_Zureick_EngenderingSuffering.pdf>

This article focuses on the recent willingness of human rights bodies to find that denying a woman’s access to abortion can amount to cruel, inhuman or degrading treatment. There is an extensive discussion of the cases *R.R. v Poland* and *K.L. v Peru* – both involving fetal anomalies - where such a finding was made.

[Specific Conditions](#)

Rubella/Measles

Reagan, Leslie J. *Dangerous Pregnancies: Mothers, Disabilities and Abortion in Modern America* (Berkeley: University of California Press, 2012).

This book tells the story of the German measles epidemic of the early 1960s in the U.S. and how the resulting anxiety over dying and disabled babies transformed abortion politics and helped spark the reproductive rights and the disability rights movements. At most a minor rash and fever for women, German measles (also known as rubella), if contracted during pregnancy, could result in miscarriages, infant deaths, and serious birth defects in the newborn.

Reagan, Leslie J., “Rashes, Rights and Wrongs in the Hospital and in the Courtroom: German Measles, Abortion and Malpractices before Roe and Doe” (2009) 27 *Law and History Review* 241, online: JSTOR <<http://www.jstor.org/myaccess.library.utoronto.ca/stable/40646015>>

This historical essay takes an in-depth look at the trial records of *Gleitman v. Cosgrove* and *Stewart v. Long Island* – two early, precedent setting U.S. medical malpractice cases that illuminate the experiences and expectations of ordinary families caught in the dilemmas of German measles at a time when abortion was illegal and the prospects for children born with intellectual and physical impairments were thought to be dim. Through these close case analyses, Reagan

seeks to provide a rare view of the intricacies and power dynamics of medicine, as well as a window into understanding the era of 1960s medicine.

Thalidomide

Klausen, Susanne M. and Julie Parle, “‘Are We Going to Stand By and Let These Children Come Into the World?’: The Impact of the ‘Thalidomide Disaster’ in South Africa, 1960–1977” (2015) 41:4 *Journal of Southern African Studies* 735, online: <<http://www.tandfonline.com/doi/pdf/10.1080/03057070.2015.1047181>>.

In the 1950s, thalidomide was given to pregnant women suffering from morning sickness, without adequate testing for either toxicity or effectiveness, and was advertised as being ‘completely non-poisonous, completely safe’. Instead, in what became known as the ‘thalidomide scandal’, it caused malformations resulting in at least 10,000 children being born with severe disabilities. The authors focus specifically on how the ‘thalidomide scandal’ impacted South Africa, and describe how the country narrowly missed an ‘epidemic of deformity’ in the late 1950s and early 1960s. They argue that it played an important role in the debate over abortion law reform in the early 1970s, in particular regarding the desirability of a eugenic clause in South Africa’s first statutory law on abortion, the Abortion and Sterilisation Act (1975).

Parker, Clare, “From Immorality to Public Health: Thalidomide and the Debate for Legal Abortion in Australia” (2012) 25:4 *Social History of Medicine* 863, online: Oxford Journals <<https://shm.oxfordjournals.org/content/25/4/863.full.pdf+html>>.

In the early 1960s, a sudden increase in the number of babies born with serious physical deformities was traced to the popular sedative drug thalidomide. The ethical considerations surrounding abortion and infanticide were enduring themes in contemporary debates about thalidomide. This paper examines those arguments, and the extent to which they affected the legalization of abortion that occurred in South Australia in the late 1960s, following the lead of Britain. The author argues that while thalidomide did not directly initiate the push for abortion law reform, the reformers’ cause was greatly assisted by the prominence given to the issue. It is argued that abortion could no longer be considered merely a desperate measure for poor or ‘loose’ women; rather, it was now firmly on the agenda as something that any woman, of any class, might find herself requiring under certain circumstances.

Fatal Fetal Anomaly

Barroso, Luís Roberto. “Bringing Abortion into the Brazilian Public Debate: Legal Strategies for Anencephalic Pregnancy” in eds. Rebecca J. Cook, Joanna N. Erdman, and Bernard M. Dickens, *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press, 2014) 258.

Luís Roberto Barroso explains the legal strategies and shifts in social perception that converged in the Brazilian Supreme Court case ADPF 54, initiated in 2004 and decided in 2012. In that case, Barroso successfully argued that the termination of an anencephalic pregnancy, a fetal condition of brain tissue deficiency incompatible with survival outside the womb, does not constitute abortion. This chapter outlines the legal strategies set forth in Brazil to assert women's right to terminate pregnancies of anencephalic fetuses as a departure point to break through the longstanding taboos around abortion and advance the more difficult debate over the decriminalization of abortion. He explains how the extreme case of the anencephalic fetus provided a chance to bypass the most crucial moral claim against abortion—the fetus's potentiality for life. He also compares and contrasts the decision of this Brazilian court with those of human rights treaty bodies, and those of other Latin American countries where the opposition to abortion is also powerful. The chapter concludes with a set of arguments, successful in the Brazilian Supreme Court, that are broadly applicable to other countries.

Cook, R J, J N Erdman, M Hevia and B M Dickens, "Prenatal Management of Anencephaly" (2008) 102 *International Journal of Gynecology and Obstetrics* 304-308, online: SSRN <<http://ssrn.com/abstract=1263905>>.

About a third of anencephalic fetuses are born alive, but they are not conscious or viable, and soon die. This neural tube defect can be limited by dietary consumption of foliates, and detected prenatally by ultrasound and other means. Many laws permit abortion, on this indication or on the effects of pregnancy and prospects of delivery on a woman's physical or mental health. However, abortion is limited under some legal systems, particularly in South America. To avoid criminal liability, physicians will not terminate pregnancies, by induced birth or abortion, without prior judicial approval. Argentinian courts have developed means to resolve these cases, but responses of Brazilian courts are less clear. Ethical concerns relate to late-term abortion, meaning after the point of fetal viability, but since anencephalic fetuses are nonviable, many ethical concerns are overcome. Professional guidance is provided by several professional and institutional codes on management of anencephalic pregnancies.

Ní Ghráinne, Bríd and McMahon, Aisling, Access to Abortion in Cases of Fatal Fetal Abnormality: A New Direction for the European Court of Human Rights? (March 12, 2018). Available at SSRN: <https://ssrn.com/abstract=3138612>.

In contrast to the UN Human Rights Committee (HRCComm), the European Court of Human Rights (ECtHR) has not yet found that a prohibition of abortion in cases of fatal fetal abnormality (FFA) violates the prohibition of torture or inhuman and degrading treatment (Art 3 ECHR). The authors argue that the ECtHR is on the verge of aligning itself with the HRCComm because (i) recent ECtHR jurisprudence

on abortion rights is broadening; (ii) the ECtHR frequently uses international law as an interpretative tool; and (iii) moving in the direction of the HRCComm would not be as controversial as it may have been in the past.

Screening, Detection and Counseling

Gammeltoft, Tine, Trần Minh Hằng, Nguyễn Thị Hiệp, Nguyễn Thị Thúy Hạnh, “Late-Term Abortion for Fetal Anomaly: Vietnamese Women’s Experiences” (2008) 16:31 *Reproductive Health Matters* 46, online: <[http://www.rhm-elsevier.com/article/S0968-8080\(08\)31373-1/pdf](http://www.rhm-elsevier.com/article/S0968-8080(08)31373-1/pdf)>.

This article derives from anthropological research in a hospital in Hanoi, Viet Nam, from 2003–2006 that investigated 30 women’s experiences after a fetal anomaly was detected. The authors followed the women from the ultrasound scan through the process of deciding whether to continue their pregnancy or have an abortion. This article focuses on the 17 women who had an abortion and the support they received from health care providers. Their loss of a wanted pregnancy led to feelings of guilt, pain and sadness and fear and uncertainty about being able to have a healthy child in the future. Two years after the abortion, most of the women had come to terms with the loss, especially those who had had a healthy child since. The authors recommend that the Vietnamese health care system seeks to ensure that women receive counselling and support that answers their questions about what happened and why. To do this, health care staff need additional training in fetal medicine and counselling skills and sensitization to the social and emotional challenges that detection of fetal anomalies and second trimester abortion bring to antenatal care.

Speedie, Joanna, et al. “Fetal Anomaly,” in *Abortion Care*, ed. Sam Rowlands (Cambridge UP: Cambridge, 2014) pp. 153–162.

This book is intended to provide clinicians with a multidisciplinary focus on abortion services, discussing clinical topics in their sociological, legal and ethical context. Chapter 17 discusses the landscape of abortion for fetal anomalies in the U.K. An overview of the options regarding method of termination is provided, as well as the legal gestational limits.

Portuguese Publications on Brazil

Barroso, L. R., “Gestação de fetos anencefálicos e pesquisas com células-tronco: dois temas acerca da vida e da dignidade da pessoa humana (2005) 241 *Revista de Direito Administrativo Rio de Janeiro* 93 (Pregnancy of anencephalic fetuses and stem-cells: two themes about life and human dignity), online: <<http://bibliotecadigital.fgv.br/ojs/index.php/rda/article/download/43329/44670>>

Barroso, L.R., “Gestação de fetos anencefálicos e pesquisas com células-tronco: dois temas acerca da vida e da dignidade na Constituição” in Marcelo Novelino, org, *Leituras complementares de direito constitucional: direitos humanos e direitos fundamentais* (Salvador: Editora Jus Podivm, 2008) 175 (Pregnancy of anencephalic fetuses and stem-cells: two themes about life and dignity in the Constitution), online: <<http://www.panoptica.org/seer/index.php/op/article/download/174/184>>

Barroso, L. R.; Sarlet, Ingo Wolfgang; Martel, Leticia C. Velho; Sarmiento, Daniel Antonio de Moraes, “Pesquisa com Células-Tronco Embrionárias e Interrupção da Gestação de Fetos Anencefálicos: Vida, Dignidade e Direito de Escolha” in Daniel Sarmiento and Ingo Wolfgang Sarlet, org, *Direitos Fundamentais no Supremo Tribunal Federal: Balanço e Crítica* (Rio de Janeiro: Lumen Juris Editora, 2011), v 1, 255. (Survey of Embryonic Stem Cells and Termination of pregnancy of anencephalic fetuses: Life, Dignity and Right to Choose).

Diniz, Debora and Ana Cristina Gonzalez Vélez, “Aborto na Suprema Corte: o caso da anencefalia no Brasil. Abortion at the Supreme Court: the anencephaly case in Brazil” (2008) 16:2 *Revista Estudos Feminista* 647, online: Scielo <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2008000200019>

Diniz, Debora, “A arquitetura de uma ação em três atos: anencefalia no STF” (2015) 1 *Revista de Direito da Universidade de Brasília* 161, (The architecture of a constitutional case in three acts – anencephaly at the Brazilian Supreme Court), online: <<http://revistadireito.unb.br/index.php/revistadireito/article/download/77/71>>

Diniz, Debora, “Quem autoriza o aborto seletivo no Brasil? Médicos, promotores e juízes em cena” (2003) 13:2 *Physis: Revista de Saúde Coletiva* 251 (Who authorizes selective abortion in Brazil? Physicians, public prosecutors and judges to the fore), online: Scielo <http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-73312003000200003>

Frigério, Marcos. “Aspectos bioéticos, médicos e jurídicos do abortamento por anomalia fetal grave no Brasil” (2003) 11:41 *Revista Brasileira de Ciências Criminais* 268 [No link].

Frigério, Marcos; Salzo, Ivan; Pimentel, Silvia; Gollop, Thomaz, “Aspectos bioéticos e jurídicos do abortamento seletivo no Brasil” (2001) 7 *Revista da Sociedade Brasileira de Medicina Fetal* 1 [No link].

Sanematsu, Marisa, *Interrupção da gravidez em casos de anencefalia fetal: a cobertura da imprensa sobre a liminar do STF e suas repercussões* (São Paulo: Biblioteca Digital AADS), online: <http://aads.org.br/arquivos/10anos/Marisa_LiminarSTF2004.doc>.

Sarlet, Ingo Wolfgang, “O Supremo Tribunal Federal e o Direito à Vida - Comentários à Decisão na ADPF nº 54 sobre a Interrupção da Gravidez nos Casos de Anencefalia Fetal” (2015) 1 *Revista de Direito da Universidade de Brasília* 184 (The Brazilian Supreme Court and the Right to Life – Commentaries on the Court’s Decision on ADPF 54 Regarding Pregnancy Interruption in Cases of Fetal Anencephaly), online: <<http://revistadireito.unb.br/index.php/revistadireito/article/download/78/72>>

Anencefalia nos Tribunais, (Ribeirão Preto: Migalhas, 2009), online (table of contents) <<http://www.stf.jus.br/arquivo/biblioteca/NovasAquisicoes/2013-09/860705/sumario.pdf>>.

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, the possibility of physical or mental abnormalities in the foetus were not specifically mentioned in the Abortion Law as indications for therapeutic abortion (p.253). However, most therapeutic abortion committees would justify abortion in these cases under the presumption that the mental health of the mother would be affected. Nonetheless, a survey of hospitals with committees indicated that 87.6% considered the possibility of deformity or congenital malformation of the fetus as valid reasons for the approval of a therapeutic abortion (p.265). Further, in a general population survey, only 58.9% percent of Canadian women and 56.6% of men felt that induced abortions should be permitted on indication of physical deformity of the fetus (p.257).

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 if the unborn child has a fetal abnormality that is likely to result in death before or shortly after birth, that should be lawful grounds for abortion (p. 4). In cases where there is a significant fetal abnormality but when death is not a likely result, 80% of members believed termination of pregnancy should be legal.

The Department of Justice and The Department of Health, *Report of the Working Group on Fatal Fetal Abnormality: Healthcare and the Law on Termination of Pregnancy for Fatal Fetal Abnormality; Proposals to the Minister of Health and the Minister of Justice*, (2018). [58-page report](#).

This working group's report was commissioned by Ireland's Health and Justice ministers in 2016 in order to consider healthcare and the law in cases of fatal fetal abnormality (FFA). Among their conclusions were that "there is a substantial body of evidence to underwrite the need for legislative change in relation to termination of pregnancy for fatal fetal abnormality" and that "there are women who face risks to their physical health, mental health including acute trauma and distress and possible financial hardship, because they cannot access the health service they require in this jurisdiction" (p.6). The report recommends a change to the abortion law to permit termination of pregnancy where the fetal abnormality is likely to cause death.

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). {funded by Ipas} {Report is in our dropbox under "abortion law reports."}

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; Part II, s.3(1)(c)). As part of the proposals, the Commission recommended the adoption of a provision legalizing severe foetal malformation or abnormality as a grounds for termination of pregnancy (p.41).

The commission further states that the conditions necessitating the termination of pregnancy under this ground can occur at any time during the pregnancy, and thus there is no suggested gestational age limit (p.48).

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 fetal deformation incompatible with life at any time during the pregnancy (p.13). The results of a public opinion poll showed that only 20% of respondents were aware that abortion was available in cases where pregnancy affects the health of the fetus (p.16). Of the 62% of women who used abortion services in the surveyed maternity hospital that were aware of legalization, only 12% knew that abortions were permitted in cases where pregnancy affects the health of the fetus (p.38).

[Non-Governmental Organizations](#)

Royal College of Obstetricians and Gynaecologists. *Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales: Report of a Working Party*. London: Royal College of Obstetricians and Gynaecologists, 2010. [45-page report](#).

This report is intended to assist doctors and other health professionals to support women and their families when a fetal abnormality is diagnosed and to help women to decide, within the constraints of the law, whether or not to have the pregnancy terminated. In the UK, termination of pregnancy for fetal abnormality may only be considered if there is a substantial risk that the child, if born, would suffer physical or mental abnormalities that would result in serious handicap. The report makes 13 recommendations, including that “all women should be provided with information about the purpose and potential outcomes of antenatal screening tests to detect fetal abnormalities and should have an opportunity to discuss their options, before the test is performed” (section 6).

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.

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