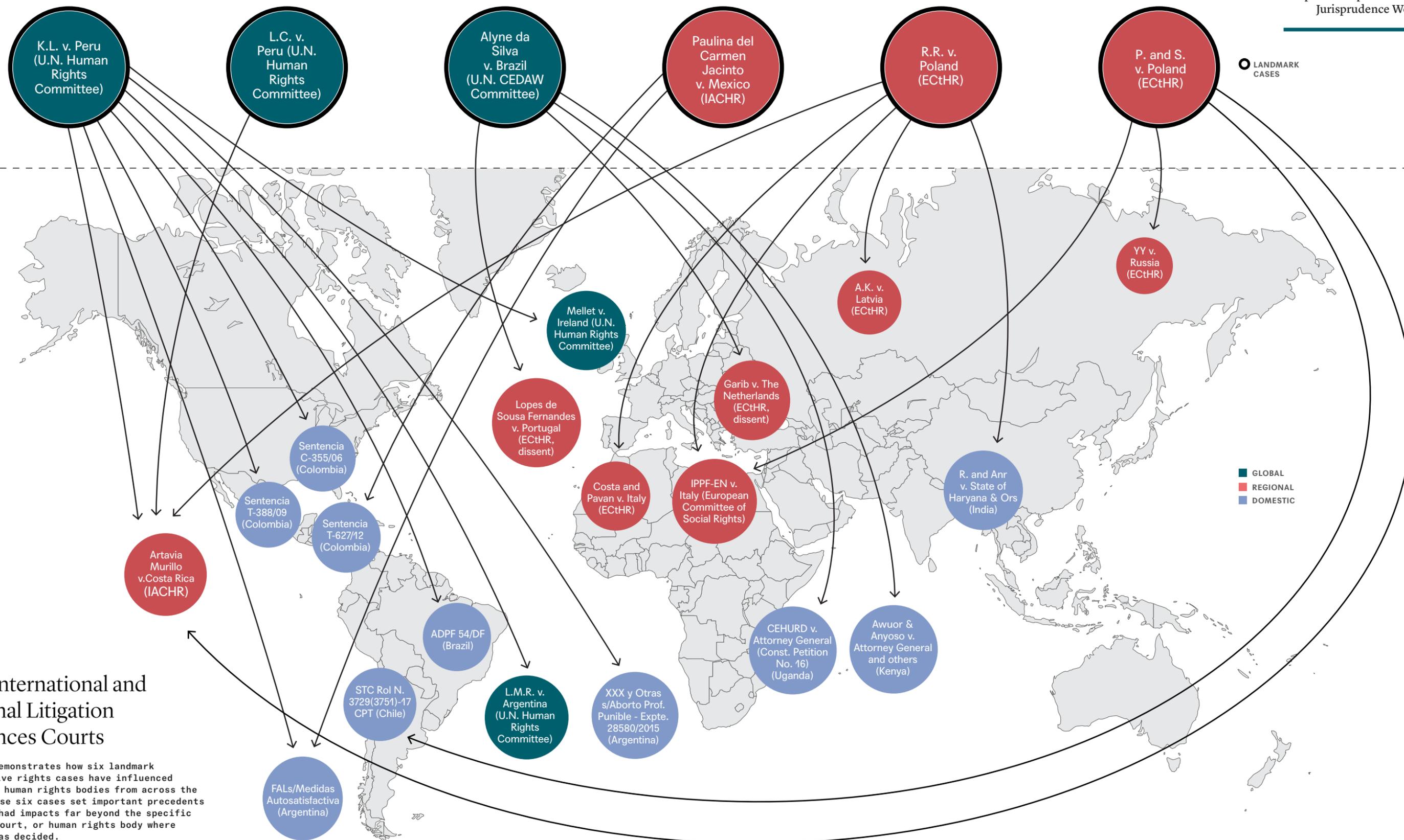


Across Borders:  
How International  
and Regional  
Reproductive Rights Cases  
Influence Jurisprudence  
Worldwide



CENTER *for*  
REPRODUCTIVE  
RIGHTS



## How International and Regional Litigation Influences Courts

This map demonstrates how six landmark reproductive rights cases have influenced courts and human rights bodies from across the globe. These six cases set important precedents that have had impacts far beyond the specific country, court, or human rights body where the case was decided.

graphics by MSJONESNYC

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## Introduction

For over the past two decades, the Center for Reproductive Rights (the Center), together with local civil society partners, has pioneered the use of litigation before international and regional human rights bodies and courts to hold states accountable for their human rights obligations to respect, protect and fulfill sexual and reproductive health and rights (SRHR). These cases have ensured access to justice for individuals harmed by reproductive rights violations and, in many contexts, resulted in concrete legal and policy reforms. Notably, these cases have also established groundbreaking international standards on a range of reproductive rights issues, which in turn have been invoked by human rights bodies and courts across the globe to interpret legal obligations on reproductive health and rights. For the first time, the Center has mapped the trajectory of a number of these cases in courts across the globe, charting how individual cases before international and regional human rights bodies and courts have reverberated across borders.

This report presents the findings of that mapping, which reviewed a select number of cases that the Center filed jointly with its local partners or formally assisted local lawyers in filing and analyzed how international and regional human rights bodies or domestic courts have relied on these cases in interpreting legal guarantees on sexual and reproductive health and rights. This study demonstrates how these landmark decisions have been repeatedly used by international, regional and domestic courts and bodies to advance protections for reproductive health and rights across a range of issues, including abortion, maternal health care, and assisted reproduction. The six cases reviewed in this report—*K.L. v. Peru*, *L.C. v. Peru*, *Alyne da Silva Pimentel v. Brazil*, *Paulina del Carmen Jacinto v. Mexico*, *R.R. v. Poland*, and *P. and S. v. Poland*—were brought before global and regional human rights bodies, including the United Nations (U.N.) Human Rights Committee, the U.N. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), the Inter-American Commission on Human Rights, and the European Court of Human Rights. This report includes examples of how courts in Argentina, Brazil, Chile, Colombia, India, Kenya, and Nepal that have developed jurisprudence on reproductive health and rights explicitly citing norms established by these cases. Additionally, U.N. and regional human rights bodies and courts have cited precedent set by these cases in subsequent decisions. As detailed in this report, these normative standards have proven instrumental in not only holding states to account for human rights violations, but also in the development of landmark domestic jurisprudence recognizing the centrality of reproductive rights as human rights.

## Methodology

To track the influence of these cases on jurisprudence worldwide, decisions from U.N. human rights bodies, regional human rights mechanisms, and a select number of national-level courts were reviewed. Decisions that directly referenced or cited any of these six cases, which the Center filed jointly with its partners or formally assisted local lawyers in filing, were analyzed to understand the influence this precedent had on subsequent jurisprudence. There are limitations to this approach: The search itself was not exhaustive and, undoubtedly, there are other decisions that rely on and have incorporated standards established by these cases.

There were also language-based limitations on the domestic court cases that were reviewed, as researchers focused predominately on cases in English and Spanish. By only including decisions where domestic courts and U.N. or regional human rights mechanisms explicitly referenced the selected cases, this report does not capture other impacts these cases have had, such as how the norms established by these cases have permeated legal discourses, influenced human rights bodies' general comments and concluding observations, and how they have been cross-fertilized into other regional and international legal and political bodies. Notably, this report does not detail the myriad ways these cases have influenced and resulted in national-level law and policy reform and other measures of non-repetition or individual remedies for petitioners. Finally, these six cases only represent a fraction of the Center's contributions to normative and legal developments globally, as a number of cases the Center has filed directly or supported partners in filing were not included in this research, nor were decisions where the Center has submitted amicus briefs or third-party interventions.

This study demonstrates how these landmark decisions have been repeatedly used by international, regional and domestic courts and bodies to advance protections for reproductive health and rights across a range of issues, including abortion, maternal health care, and assisted reproduction.



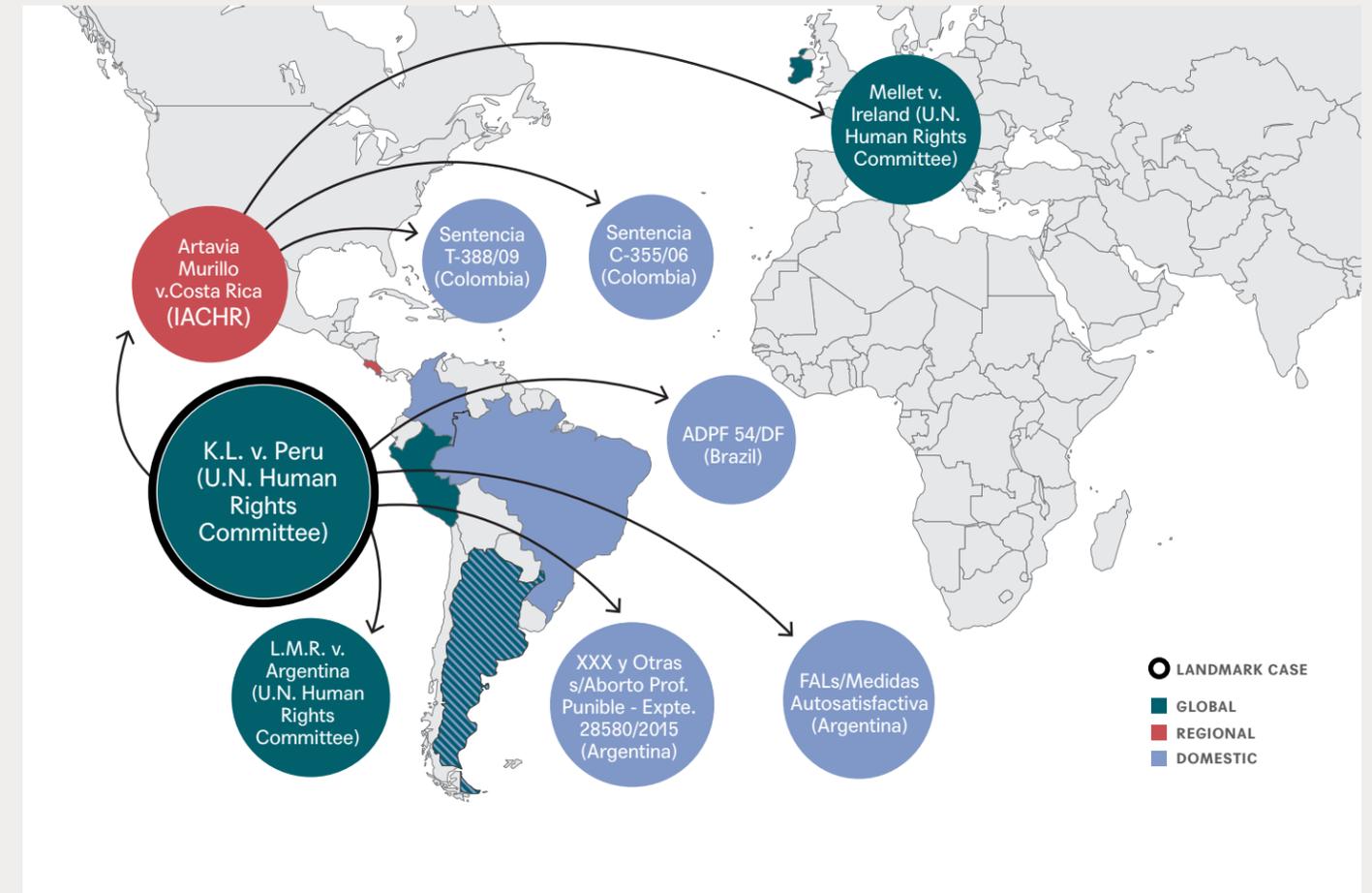
## Influence of Normative Standards Established by U.N. Human Rights Bodies

### K.L. V. PERU<sup>1</sup>

In 2005, the Human Rights Committee issued a decision in *K.L. v. Peru*, the first-ever decision on access to legal abortion services to be issued by an international human rights body.<sup>2</sup> When K.L. was 17, she learned she was carrying a pregnancy with a fatal fetal impairment. Although K.L. was legally entitled to an abortion in Peru, as the pregnancy posed a risk to her life and her physical and mental health, she was denied access to abortion services. K.L. was ultimately forced to carry the pregnancy to term and the baby died several days after birth.

In a groundbreaking decision, the Human Rights Committee recognized the denial of legal abortion services can violate a range of human rights, including the rights to be free from cruel, inhuman and degrading treatment (Article 7), the right to privacy (Article 17), and the right to special measure of protection for minors (Article 24), among others. In addition to recognizing that where abortion is legal, it must also be accessible, the Human Rights Committee established that states are obligated to take specific measures of protection regarding minors' access to legal abortion services.

*K.L. v. Peru* was a groundbreaking decision that has directly influenced decisions affirming the importance of access to safe and legal abortion in global, regional, and national-level cases.



•In 2011, another case before the Human Rights Committee, **L.M.R. v. Argentina** reaffirmed the findings in *K.L.* that denying access to lawful abortion can amount to cruel, inhuman and degrading treatment,<sup>3</sup> highlighting that this encompasses both physical pain and mental suffering. The Committee further affirmed the findings in *K.L.* that denial of legal abortion services can violate the right to privacy.<sup>4</sup>

•In **Mellet v. Ireland**, wherein the Human Rights Committee recognized that the prohibition and criminalization of abortion violates the International Covenant on Civil and Political Rights, the Committee looked to *K.L. v. Peru* in recognizing that the decision to request termination of pregnancy falls within the scope of the right to privacy.<sup>5</sup>

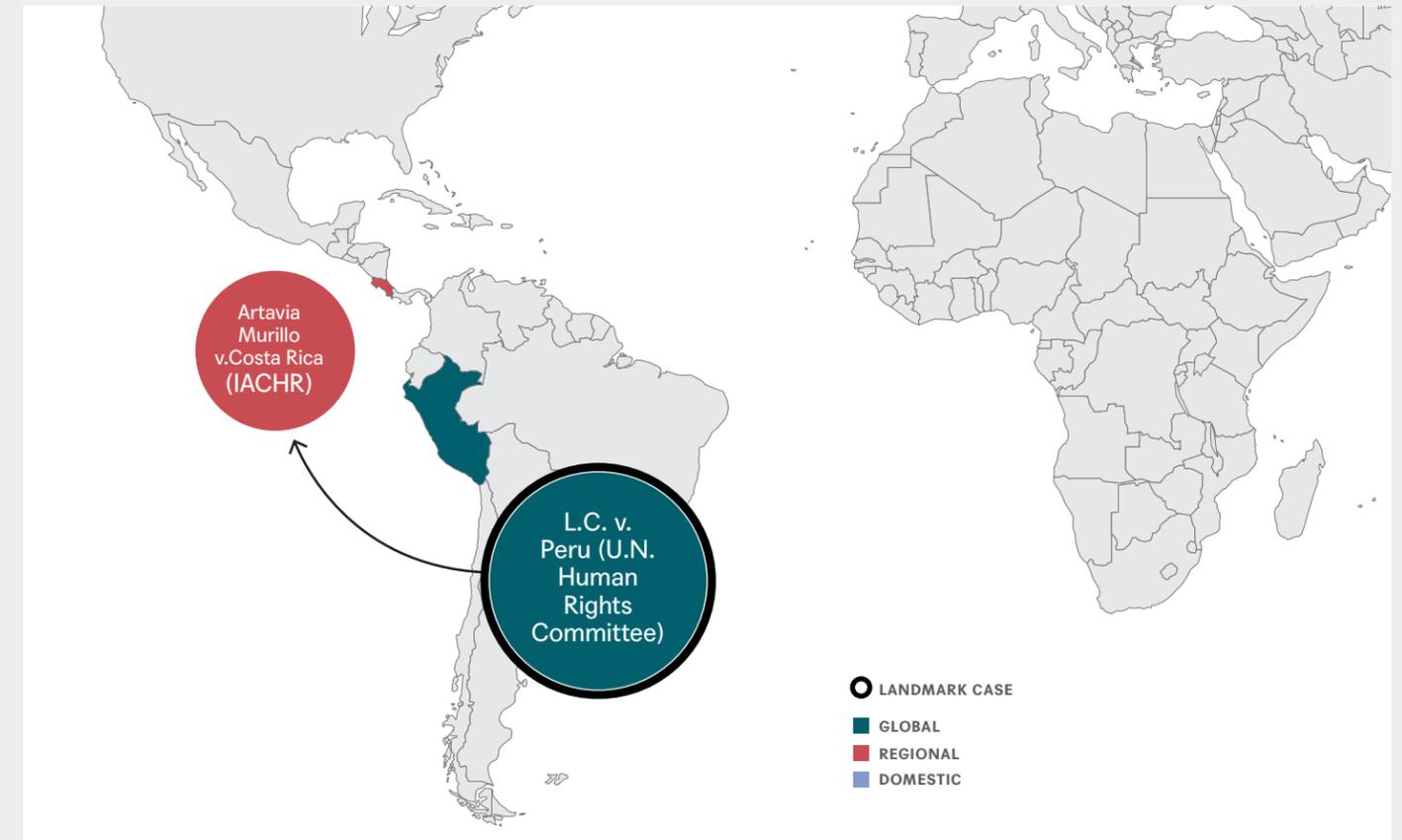
•In **Artavia Murillo et al. v. Costa Rica**, the Inter-American Court of Human Rights examined whether Costa Rica's ban on in vitro fertilization violated the American Convention on Human Rights, including the Convention's provision protecting the life from the moment of conception. Although this case centered on assisted reproduction, the decision has profound implications for a reproductive health care more broadly, including abortion and certain forms of contraception. The Inter-American Court utilized the decision in *K.L.* in its determination that protections of life prior to birth are not absolute and instead, must be gradual and incremental. In this regard, the Court references the Human Rights Committee's determination that compelling a woman to carry to term a pregnancy that puts her life, physical health and mental health in grave danger violates the right to be free from cruel, inhuman and degrading treatment.<sup>6</sup>



Domestic courts in Latin America have also repeatedly cited *K.L. v. Peru* in decisions on safe and legal abortion, including in a series of landmark constitutional jurisprudence expanding the grounds under which abortion is legal in Argentina, Colombia, and Brazil.

- In 2012, in a decision recognizing that all women who became pregnant as a result of rape could legally access abortion care, Argentina’s Supreme Court of Justice looked to the decision in *K.L.* as reinforcing states’ obligations to remove all obstacles to legal abortion services. In this regard, the Court explicitly referenced the Human Rights Committee’s decision in *K.L.* and the findings that denial of access to abortion can amount to cruel, inhuman and degrading treatment.<sup>7</sup> Further, the court looked to *K.L.* to reinforce that denying abortion to a minor violates the prohibition against ill-treatment and that there is a special duty of care for minors.<sup>8</sup>
- In 2012, Brazil’s Supreme Court issued a decision (**ADPF 54/DF**) authorizing abortion in cases of anencephaly, which explicitly referenced the Human Rights Committee’s decision in *K.L. v. Peru*.<sup>9</sup>
- In the case **C-355-06**, the Colombian Constitutional Court overturned the country’s absolute ban on abortion, determining that abortion services must be permitted when the woman’s life or health is at risk, in cases of fatal fetal impairment, or when pregnancy results from rape, incest, or artificial insemination or transfer of a fertilized egg without consent. The Court relied on *K.L. v. Peru* in recognizing that denial of abortion services in certain circumstances can amount to cruel, inhuman and degrading treatment.<sup>10</sup>

*K.L.* was also influential in two lower court decisions on abortion in Argentina and Colombia. In **XXX y Otras s/ Aborto Profesional Punible - Expte. 28580/2015** in Argentina, a woman who became pregnant from rape terminated her pregnancy, and both she and the medical provider were reported to the police. The Court concluded that neither the woman nor the provider was liable for a criminal offence. The Court referred to the Human Rights Committee’s recognition of States’ obligation to ensure safe access to legal abortion and remove institutional and judicial barriers impeding access to legal abortion services.<sup>11</sup> In **Case T-388/09** in Colombia, a woman whose pregnancy had fatal impairments was referred for abortion care and the judge rejected her petition for an abortion. The decision was appealed, and the second judge granted her permission to get an abortion. In its decision, the court relied on the recognition that denying an abortion in instances of fetal impairments incompatible with life can amount to cruel, inhuman or degrading treatment.<sup>12</sup>



### L.C. V. PERU<sup>13</sup>

In 2011, in *L.C. v. Peru*, the U.N. Committee on the Elimination of Discrimination Against Women (CEDAW Committee) issued its first decision recognizing that the denial of legal abortion services can constitute a human rights violation.<sup>14</sup> Notably, the CEDAW Committee recognized for the first time that denial of abortion services can constitute sex stereotyping and be a form of gender-based discrimination. The CEDAW Committee further recognized abortion should be legal in cases of rape or sexual assault.

The case was filed on behalf of L.C., who was 13 when she was repeatedly raped and consequently became pregnant. After attempting to commit suicide by jumping off the roof of a building near her home, L.C. was brought to the hospital for spinal surgery. The doctors refused to operate on her because she was pregnant and although L.C. requested to end the pregnancy, the doctors refused to provide an abortion. Four months later, L.C. suffered a miscarriage because of her injuries and was finally able to undergo the spinal procedure. However, by then the surgery was ineffective and L.C. was left permanently paralyzed.

The CEDAW Committee determined that Peru, through the actions of medical staff at a public hospital, had violated Articles 2 (c) (right to access justice), 2 (f) (duty to modify or abolish discriminatory laws), 3 (guarantee of basic human rights and fundamental freedoms), 5 (modify sex role stereotyping and prejudice) and 12 (right to access health services) of the Convention on the Elimination of Discrimination Against Women, read in conjunction with Article 1 (discrimination). Importantly, the CEDAW Committee called on Peru to decriminalize abortion in cases of rape and sexual assault, the first time a human rights body took such a step in response to an individual complaint. The CEDAW Committee further made clear that Peru must establish a mechanism to ensure access to therapeutic abortion services.

*Alyne v. Brazil* was the first-ever international human rights decision holding a state accountable for a preventable maternal death.

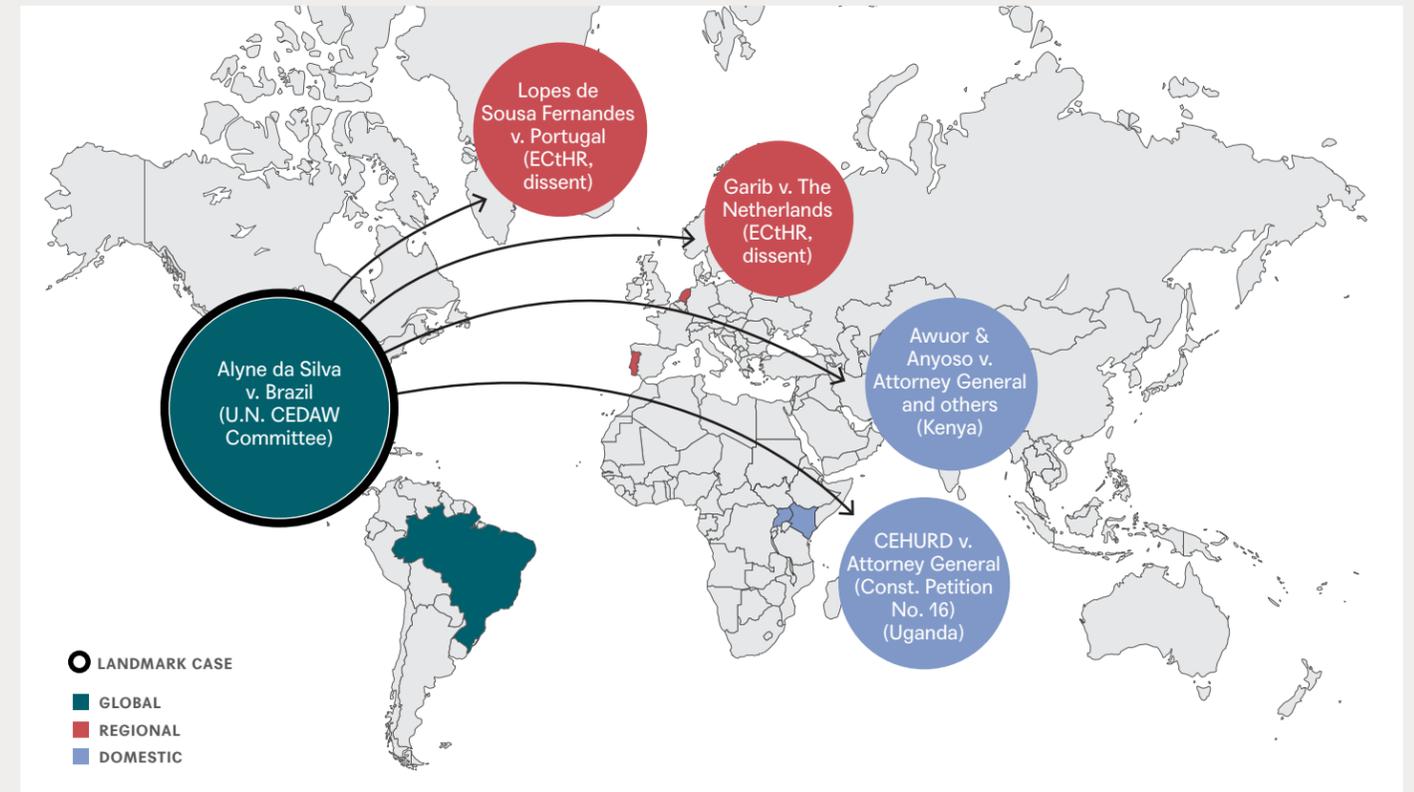
L.C. has been influential before the Inter-American Court of Human Rights. In **Artavia Murillo v. Costa Rica**, where the Inter-American Court addressed a ban on in vitro fertilization, the Court examined how other international tribunals have approached prenatal protections of life for its interpretation of the American Convention on Human Rights provision on the right to life (art. 4). In this regard, the Court looked in part to the CEDAW Committee’s decision in *L.C. v. Peru* and its determination that the denial of a therapeutic abortion in these circumstances constituted gender-based discrimination and violated her rights to health and non-discrimination.<sup>15</sup> The Court also looked to L.C., and the CEDAW Committee’s recognition that discrimination and sex-role stereotyping underpinned the decision to deny L.C. an urgent surgery she needed in determining that the ban on IVF was influenced by stereotypes, as “absolute prevalence” was given “to the protection of the fertilized eggs without considering the situation of disability of some of the women.”<sup>16</sup>



**ALYNE DA SILVA PIMENTEL V. BRAZIL**<sup>17</sup>

In *Alyne v. Brazil*,<sup>18</sup> the first-ever international human rights decision holding a state accountable for a preventable maternal death, a woman of Afro-Brazilian descent went to a private health clinic seeking care for complications with her pregnancy. The hospital initially sent her home and when she returned the doctors were unable to detect a fetal heartbeat. Her labor was induced, and she gave birth to a stillborn fetus. However, the medical staff failed to extract her placenta until fourteen hours after the birth. When Alyne was eventually transported to a more intensive care facility, she was left untreated in a hallway where she died.

The CEDAW Committee determined that Brazil had violated Articles 2(c) (right to access justice), 2(e) (due diligence obligation to regulate activities of private actors) and 12 (right to health) of CEDAW, read in conjunction with Article 1 (discrimination). The CEDAW Committee found that the lack of appropriate maternal health services failed to meet the specific, distinctive health needs and interests of women. It further recognized that Alyne was discriminated against on multiple grounds, including on the basis of her sex, her status as a woman of African descent, and her socioeconomic background. The CEDAW Committee affirmed states’ obligation to ensure the provision of timely, quality maternal health care to all women, regardless of race or income, and that it is insufficient for states to take measures to improve maternal health which neglect marginalized sectors of the population. Further, the CEDAW Committee recognized that when a state outsources the provision of medical services to private institutions, as occurred in this case, the state is directly responsible for the private institutions’ actions and must regulate and monitor these institutions.



•In **Millicent Awuor Maimuna & Margaret Anyoso Oliele v. Attorney General and others**, two women were detained by a hospital at various times due to their inability to pay their medical bills relating to labor and delivery. While being detained at the hospital, the women were subject to degrading conditions, including having to sleep on a floor next to a flooding toilet and being denied adequate food and post-natal care. The High Court of Kenya noted the similarities between the petitioners and Alyne’s case, as they all came from disadvantaged backgrounds. The Court also relied upon the decision in *Alyne v. Brazil* in finding that inadequate maternal health services that fail to meet the health needs of women are a form of discrimination. The Court further cited *Alyne v. Brazil* when referring to a lack of maternal health care having a differential impact on a woman’s right to life and in recognizing that policies created to eliminate discrimination against women need to have clear actions and be adequately funded.<sup>19</sup>

•In its 2020 decision in **Centre for Health, Human Rights and Development v. Attorney General (Constitutional Petition Number 16)**, the Constitutional Court of Uganda looked to Alyne in recognizing that the rights to life and health are interconnected and that lack of appropriate maternal health care affects the right to life.<sup>20</sup> This decision ultimately held the Ugandan government accountable for failing to provide adequate maternal health services, including emergency obstetric care, recognizing these as violations of the rights to life and health, among other rights.

•In **Garib v. the Netherlands**, a case concerning a minimum income requirement that prevented a poor, single mother from moving to the residence of her choosing, two European Court of Human Rights judges relied on Alyne in their dissent to emphasize the importance of viewing this case through the lens of intersectional discrimination.<sup>21</sup>

•In **Lopes de Sousa Fernandes v. Portugal**, a European Court of Human Rights case concerning state accountability for a death occurring from medical negligence, one of the judges invoked Alyne in a partial dissent urging the Court to recognize the “universal standard” of a states’ responsibility for contracts out to private facilities.<sup>22</sup>



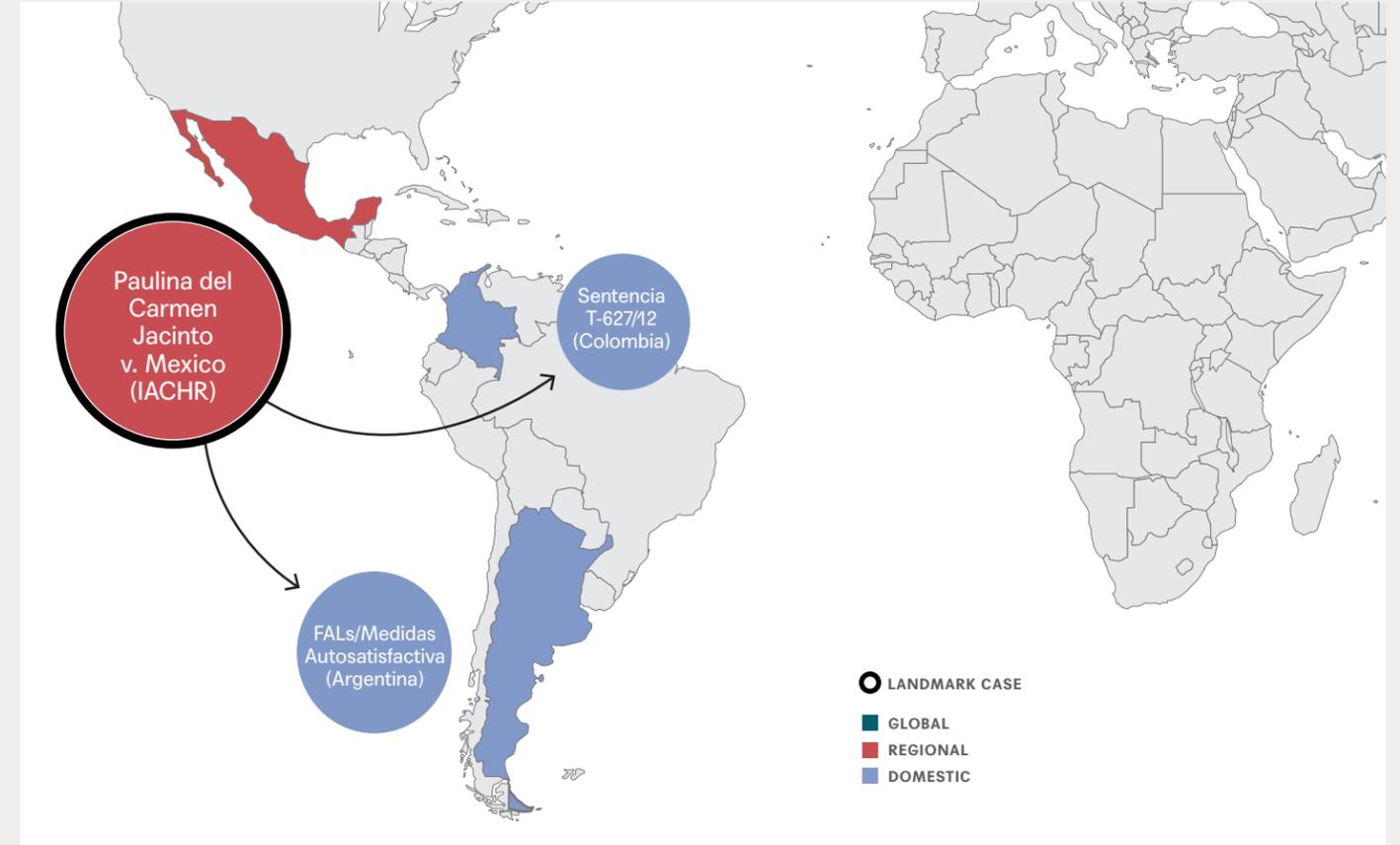
Across Borders:  
Impact of Reproductive Rights  
Jurisprudence Worldwide

## Influence of Normative Standards Established by Regional Human Rights Bodies

### PAULINA RAMÍREZ V. MEXICO<sup>23</sup>

The case of Paulina v. Mexico was filed before the Inter-American Commission on Human Rights and stemmed from the denial of abortion services to an adolescent whose pregnancy resulted from rape. The petitioner requested an abortion, however the hospital authorities lied to her and created obstacles which prevented her accessing the procedure. A friendly settlement agreement was reached between the parties in which Mexico acknowledged that it had violated the Paulina’s human rights by preventing her from accessing an abortion, which was legal in the case of rape. The State agreed to pay her reparations, provide compensation to her and her son for their health care and education, make a public acknowledgement of responsibility and issue a decree providing guidelines for accessing abortion in the case of rape. In addition to approving the friendly settlement agreement, the Commission recognized that women cannot fully enjoy their human rights if they do not have timely access to health care information and services.

• In **Sentencia T-627/12**, a domestic case in Colombia, the petitioners were a group of Colombian women who alleged that the Inspector General’s Office breached their rights by making false assertions regarding the WHO and the Constitutional Court’s previous statements on reproductive health, including informing health clinics that they no longer needed to remove obstacles for women seeking abortions. The Court cited Paulina v. Mexico in noting that medical professionals in that case had provided the Applicant and her mother with inaccurate information about an abortion and its consequences. The Court



Abortion rights protesters in Mexico demand the liberalization of abortion laws.

ultimately found that public servants were under an obligation to provide accurate, timely and reliable information to women regarding their sexual and reproductive health.<sup>24</sup>

• In **FALs/Medidas autosatisfactiva**, a domestic case in Argentina recognizing abortion as legal for pregnancies resulting from rape, the court in references Paulina in recognizing that States must not to interfere with women exercising their human rights, and that in circumstances where abortion is legal States should ensure that women can access such services.<sup>25</sup>



### R.R. V. POLAND<sup>26</sup>

R.R. was 18 weeks pregnant when an ultrasound revealed a potential fetal impairment. Although further tests were needed to determine whether this indicated a severe fetal impairment, medical professionals repeatedly refused to perform these diagnostic tests, including for reasons of conscience or religion. While eventually the tests were performed in her 23rd week of pregnancy, R.R. did not receive the results confirming a severe fetal impairment until the 25th week of pregnancy. When she then requested an abortion, she was informed that the time frame for a legal abortion had passed. In 2004, R.R. filed a complaint with the European Court of Human Rights.

In 2011, the European Court issued its landmark judgment, establishing that Poland had violated the right to be free from inhuman and degrading treatment (Article 3) and the right to respect for private life (Article 8) under the European Convention on Human Rights. The Court held that Poland must put in place an effective legal and procedural framework that guarantees that relevant, full, and reliable information is available to women to make informed decisions about their pregnancy. The Court also reiterated that “the State is under a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion.”<sup>27</sup> In addition, the Court outlined that if state parties to the Convention choose to allow medical professionals to refuse reproductive health care on grounds of conscience or religion, they must organize their health services in such a way as to ensure that such refusals do not prevent patients from obtaining access to health services to which they are entitled under domestic law.<sup>28</sup>

The judgment in R.R. v. Poland has been invoked in a number of decisions by regional human rights mechanisms and domestic courts.

•In **Artavia Murillo v. Costa Rica**, concerning a ban on in vitro fertilization, the Court looked to *R.R. v. Poland*, in determining that “[t]he effective exercise of the right to private life is decisive for the possibility of exercising personal autonomy on the future course of relevant events for a person’s quality of life,”<sup>29</sup> ultimately concluding that the right to private life under the American Convention on Human Rights includes the right to determine whether or not to become a parent.

In 2011, the European Court issued its landmark judgment, establishing that Poland had violated the right to be free from inhuman and degrading treatment (Article 3) and the right to respect for private life (Article 8) under the European Convention on Human Rights.



•In **International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy**, the European Committee of Social Rights found that Italy had violated women’s right to health because Italian authorities failed to establish effective measures to ensure refusals of abortion care by medical professionals did not jeopardize access to legal abortion. It highlighted the authorities’ failures to implement and enforce existing regulatory safeguards regarding medical professionals’ refusals of care and underlined that the state had failed to address a series of shortcomings in the effective and timely provision of legal abortion care.<sup>30</sup> The Committee additionally held that the state’s failure to ensure effective access to lawful abortion care resulted in intersectional discrimination, in violation of the principle of non-discrimination (Article E) in conjunction with the right to protection of health. The Committee referred to a number of critical principles from *R.R. v. Poland*, noting the states’ obligation to organize their health system in such a way as to ensure that medical professionals’ refusals of care, when permitted in domestic law, do not prevent patients from obtaining abortion services to which they are legally entitled under the applicable legislation.<sup>31</sup>

•In **Costa and Pavan v. Italy**, the applicants challenged limitations on access to assisted reproductive technologies and a ban on preimplantation genetic diagnosis under Italian law. In finding that the circumstances of the case fell within the scope of the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights, the Court referenced *R.R. v. Poland* when reiterating that Article 8 encompasses the right to respect for the decision whether to become a parent.<sup>32</sup>

•In **A.K. v. Latvia**, which concerned access to appropriate information and medical care during pregnancy, the European Court of Human Rights referenced *R.R. v. Poland* in recognizing that “private life” encompasses the right to personal autonomy and personal development, and “the decision of a pregnant woman to continue her pregnancy or not belongs to the sphere of private life and autonomy and that, as a consequence, legislation regulating the interruption of pregnancy touches upon the sphere of private life.”<sup>33</sup>

In 2013, in *P. and S. v. Poland*, the European Court of Human Rights found that the state violated the rights to freedom from inhuman and degrading treatment, to respect for private life and to liberty, stemming from the denial of legal abortion services.

•In *R And Anr v. State Of Haryana & Ors*, a domestic court decision in India, the court considered a request of a minor to terminate a pregnancy beyond the gestational limit enshrined in India’s law. Although the court ultimately left the decision to a medical panel, the Court referred to *R.R. v. Poland* in examining the jurisprudence of foreign courts, noting that R.R was in a situation of great vulnerability and experienced acute anguish, distress and humiliation as a result of the prolonged denial of prenatal diagnostic services and the failures of doctors and medical staff to adequately acknowledge or address her concerns.<sup>34</sup>



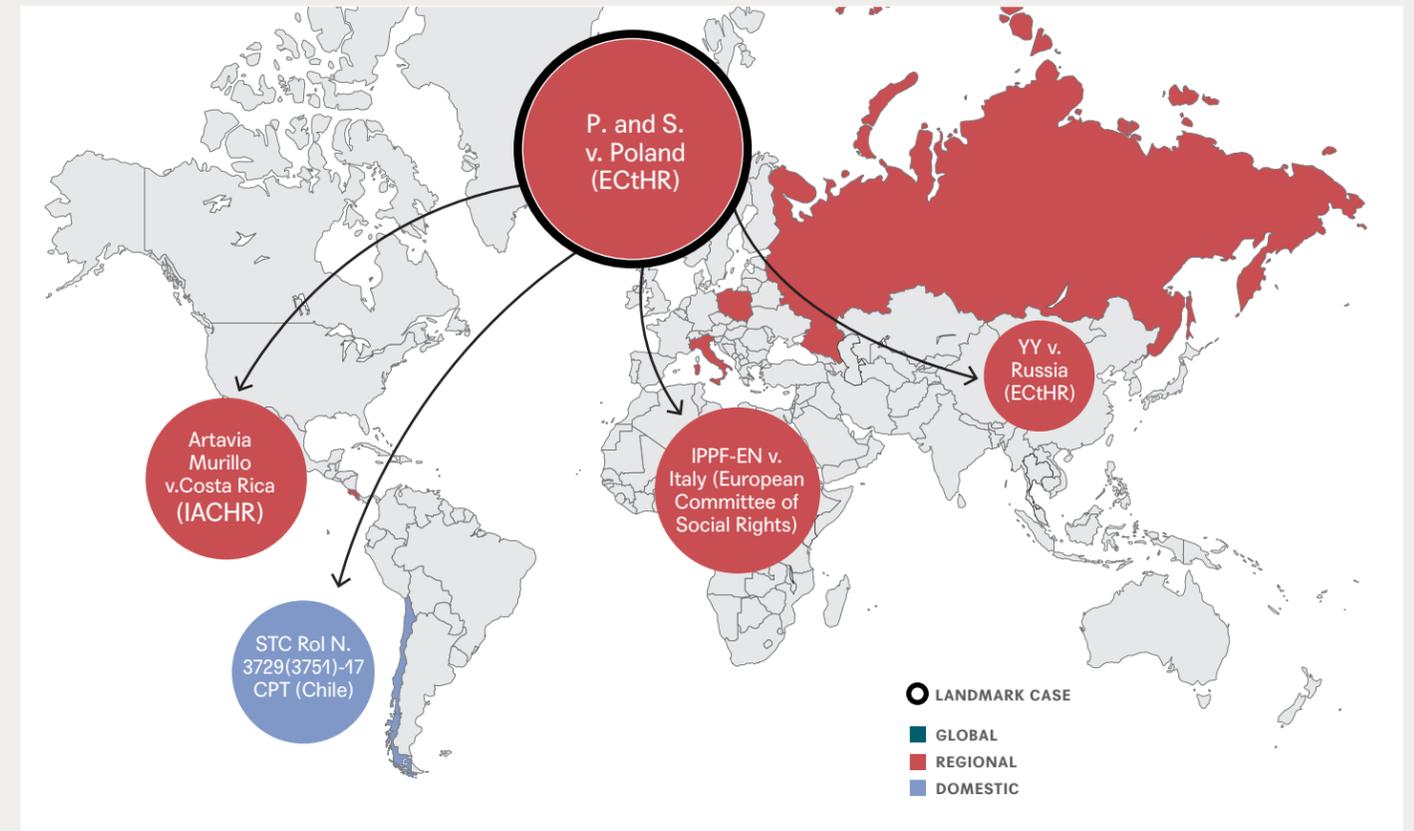
**P. AND S. V. POLAND<sup>35</sup>**

In *P. and S. v. Poland*, P., then 14 years old, became pregnant after being sexually assaulted by a classmate. Supported by her mother, S., she attempted to obtain a legal abortion in Poland, but encountered multiple obstacles, including doctors’ refusal to perform a legal abortion and failure to provide a referral to a provider who would provide the care. Hospital staff repeatedly provided P. and her mother with deliberately distorted information about the legal requirements to access abortion care. After medical personnel disclosed P.’s personal and medical data to the press, she and her mother were harassed by doctors, anti-abortion groups, and representatives of the Catholic Church. At one point P. was removed from her mother’s custody and detained in a juvenile center. Eventually, the Ministry of Health intervened and P. obtained abortion services. In 2008, P. and S. filed a complaint with the European Court of Human Rights.

In 2013, the European Court of Human Rights found violations of the rights to freedom from inhuman and degrading treatment (Article 3), to respect for private life (Article 8), and to liberty (Article 5(1)) under the Convention. The Court made a number of important findings with respect to Poland’s obligations to guarantee effective access to lawful abortion care, to respect adolescents’ personal autonomy in the sphere of reproductive health, and to ensure the effective protection of information that is personal and confidential.

The judgment in *P. and S. v. Poland* has been invoked in a number of decisions by regional human rights mechanisms and domestic courts.

•In *Artavia Murillo et al. v. Costa Rica*, in overturning the country’s ban on in vitro fertilization, the Inter-American Court of Human Rights referred to *P. and S. v. Poland* in recognizing that the decision of whether or not to become a parent is part of the right to



private life.<sup>36</sup> The Inter-American Court also quotes this case when referring to the European Court of Human Rights’ interpretation of the right to private life as including a person’s physical and mental integrity, and recognizing States’ positive obligation to ensure this right to their citizens.<sup>37</sup>

•In *YY. v. Russia*, the European Court of Human Rights addressed the disclosure of medical data without the patient’s consent. The Court referred to *P. and S. v. Poland* in affirming that the protection of medical data is a fundamental aspect of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, as the Court held that “[i]t is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.”<sup>38</sup>

•In *International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy*, the European Committee of Social Rights referenced *P. and S. v. Poland* in recognizing the states’ obligation to organize their health system in such a way as to ensure that medical professionals’ refusals of care, when permitted under domestic law, do not prevent patients from obtaining abortion services to which they are legally entitled under the applicable legislation.<sup>39</sup>

•In *STC Rol N° 3729(3751)-17 CPT*, the Chilean Constitutional Court affirmed the constitutionality of a proposed law that would liberalize abortion on specific grounds and allow individual healthcare personnel – but not institutions – to refuse to provide abortion services on the grounds of conscience or religion. The Court referred to *P. and S. v. Poland* in affirming the ban on institutional refusals of care, recognizing that allowing such refusals would prevent the State from being able to properly fulfill its role in coordinating and guaranteeing access to health care, would prevent patients from being able to choose where to access health services, and would undermine access to justice where services are not accessible.<sup>40</sup>

## Conclusion

As this report demonstrates, these cases have established a robust body of jurisprudence on sexual and reproductive health and rights. In addition to securing remedies for individual human rights violations and resulting in legal and policy reform, the precedents set in these cases have significantly influenced how human rights bodies and courts across the globe have interpreted the justiciability of these rights and states' obligations to respect, protect and fulfill sexual and reproductive health and rights as fundamental human rights.

Notably, it is too early to track the influence that several groundbreaking decisions issued more recently by the U.N. and regional human rights mechanisms in cases filed by the Center and its partners will have on jurisprudence. In *Mellet v. Ireland*<sup>41</sup> and *Whelan v. Ireland*,<sup>42</sup> the Human Rights Committee established that the prohibition and criminalization of abortion violates the International Covenant on Civil and Political Rights. Additionally, in *Paola Guzmán Albarracín v. Ecuador*, the Inter-American Court of Human Rights recognized that significant power differentials, such as where an adult is in a position of authority and trust and has a duty of care towards a minor, can undermine an individuals' ability to make autonomous decisions about sexual relationships.<sup>43</sup> The Inter-American Court further recognized states' obligations guarantee access to sexual and reproductive education adapted to the needs of girls and adolescents, so that they understand their sexual and reproductive rights.<sup>44</sup> These cases significantly strengthened human rights norms on states obligations to respect, protect, and fulfill sexual and reproductive health and rights. As decisions stemming from international and regional human rights bodies, these cases have the potential to transform courts' understanding of states' legally binding treaty obligations. Over time, it will be important to continue tracking the trajectory of these and other cases to further understand the impact that litigation before international and regional human rights bodies and courts has on jurisprudential developments.

## Footnotes

<sup>1</sup> This case was filed by the Estudio para la Defensa de los Derechos de la Mujer (DEMUS), Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer (CLADEM) and the Center for Reproductive Rights (formerly the Center for Reproductive Law and Policy).

<sup>2</sup> K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

<sup>3</sup> L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, para. 9.2, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).

<sup>4</sup> *Id.*, para. 9.3.

<sup>5</sup> Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, para. 7.7, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

<sup>6</sup> Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257. para. 226, footnote 355 (2012), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf).

<sup>7</sup> F. A. L. s/ Medida autosatisfactiva. SENTENCIA 13 de Marzo de 2012. Nro. Interno: 259.XLVI. CORTE SUPREMA DE JUSTICIA DE LA NACION. CAPITAL FEDERAL, CIUDAD AUTÓNOMA DE BUENOS AIRES. Magistrados: RICARDO LUIS LORENZETTI - ELENA I. HIGHTON de NOLASCO - CARLOS S. FAYT - ENRIQUE SANTIAGO PETRACCHI (según su voto)- JUAN CARLOS MAQUEDA - E. RAÚL ZAFFARONI - CARMEN M. ARGIBAY (según su voto). Id SAIJ: FA12000021, pages 123, 131, 132, 138.

<sup>8</sup> *Id.*, Page 138.

<sup>9</sup> Supreme Court of Brazil, Judgement ADPF 54/DF, April 12, 2012, page 65. Relator: Marco Aurelio, available at <http://redir.stf.jus.br/paginador-pub/paginador.jsp?docTP=TP&docID=3707334>.

<sup>10</sup> Constitutional Court of Colombia, Judgment No. C-355-06, May 10, 2006. M.P.: Jaime Araujo Rentería and Clara Ines Vargas Hernandez, Footnote 98, available at <https://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm>.

<sup>11</sup> Juzgado Nacional en lo Criminal de Instrucción, Judgment of 2016, page 12, available at <https://www.womenslinkworldwide.org/files/2943/sentencia-aborto-vbg.pdf>.

<sup>12</sup> Constitutional Court of Colombia, Judgement No. T-388-09, May 28, 2009. M.P.: Humberto Antonio Sierra Porto, footnote 15, available at <https://www.corteconstitucional.gov.co/relatoria/2009/t-388-09.htm>.

<sup>13</sup> This case was filed by the Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMOSEX) and the Center for Reproductive Rights.

<sup>14</sup> L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

<sup>15</sup> Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2012. Series C No. 257. paras. 227, 228 (2012).

<sup>16</sup> *Id.*, para. 297, footnote 466.

<sup>17</sup> This case was filed by Advocacia Cidadã pelos Direitos Humanos and the Center for Reproductive Rights.

<sup>18</sup> Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc'n No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

<sup>19</sup> Millicent Awuor Maimuna & Margaret Anyoso Oliele v. Attorney General and others, Constitutional Petition No. 562 of 2012, High Court of Kenya, paras. 159, 186 (2013).

<sup>20</sup> Centre for Health, Human Rights and Development vs. Attorney General, Constitutional Petition No. 16 of 2011, Constitutional Court of Uganda and Kampala, August 19, 2020, page 37, available at <https://www.cehurd.org/publications/download-info/judgement-to-the-constitutional-petition-no-16-of-2011-maternal-health-case-decided-in-the-affirmative/>.

<sup>21</sup> Garib v. the Netherlands, No. 43494/09, Eur. Ct. H.R., para. 37 (2017) (dissenting opinion of Pinto de Albuquerque, joined by Vehabovic).

<sup>22</sup> Lopes de Sousa Fernandes v. Portugal, No. 56080/13 Eur. Ct. H.R. (2017) (partly dissenting opinion of Pinto De Albuquerque, J.).

<sup>23</sup> This petition was filed by Grupo de Información en Reproducción Elegida and the Center for Reproductive Rights.

<sup>24</sup> Constitutional Court of Colombia, Judgment No. T-627/12, August 10, 2012. M.P.: Humberto Antonio Sierra Porto, paras. 45, 47, available at <https://www.corteconstitucional.gov.co/relatoria/2012/t-627-12.htm>.

<sup>25</sup> F. A. L. s/ Medida autosatisfactiva. SENTENCIA 13 de Marzo de 2012, Nro. Interno: 259.XLVI. CORTE SUPREMA DE JUSTICIA DE LA NACION. CAPITAL FEDERAL, CIUDAD AUTÓNOMA DE BUENOS AIRES. Magistrados: RICARDO LUIS LORENZETTI - ELENA I. HIGHTON de NOLASCO - CARLOS S. FAYT - ENRIQUE SANTIAGO PETRACCHI (según su voto)- JUAN CARLOS MAQUEDA - E. RAÚL ZAFFARONI - CARMEN M. ARGIBAY (según su voto). Id SAIJ: FA12000021, pages 120, 121, available at <http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires--medida-autosatisfactiva-fa12000021-2012-03-13/123456789-120-002-1ots-eupmocsollaf>.

<sup>26</sup> R.R. was represented by Ms Monika Gąsiorowska and Ms Irmina Kotiuk, lawyers practicing in Warsaw, members of the Legal Team of the Federation for Women and Family Planning that supported the applicant. They were assisted by the Center for Reproductive Rights.

<sup>27</sup> R.R. v. Poland, Appl. No. 27617/04, Eur. Ct. H.R., para. 200.

<sup>28</sup> *Id.*, para. 206.

<sup>29</sup> Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits,

Reparations and Costs. Judgment of November 28, 2012. Series C No. 257. para. 143 (2012), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf).

<sup>30</sup> International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., para. 161 et seq.; see also *id.* at paras. 78, 107, 111 et seq.

<sup>31</sup> International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 54, 69 (2014).

<sup>32</sup> Costa and Pavan v. Italy, Appl. No. 54270/10, Eur. Ct. H.R., para. 55 (2012).

<sup>33</sup> A.K. v. Latvia, Appl. No. 33011/08, Eur. Ct. H.R., para. 63 (2014).

<sup>34</sup> R And Anr v. State Of Haryana & Ors, CWP-6733-2016, para. 24 (India) ILR (Punjab-Haryana), available at <https://indiankanoon.org/doc/173069994/>.

<sup>35</sup> P. and S. were represented by Ms Monika Gąsiorowska and Ms Irmina Kotiuk, lawyers practicing in Warsaw, members of the Legal Team of the Federation for Women and Family Planning that supported the applicant. They were assisted by the Center for Reproductive Rights.

<sup>36</sup> Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257. para. 143, footnote 231 (2012), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf).

<sup>37</sup> *Id.*, para. 147, footnote 241.

<sup>38</sup> Y.Y. v. Russia, Appl. No. 40378/06, Eur. Ct. H.R., para. 38 (2016).

<sup>39</sup> International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 53, 69.

<sup>40</sup> Supreme Court of Chile. Judgement No. 3729(3751)-17 CPT, August 28, 2017, page 232, available at <https://www.camara.cl/verDoc.aspx?prmTipo=SIAL&prmlD=36761&formato=pdf>.

<sup>41</sup> Mellet v. Ireland, Human Rights Committee, Commc'n No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016).

<sup>42</sup> Whelan v. Ireland, Human Rights Committee, Commc'n No. 2425/2014, U.N. Doc. CCPR/C/119/D/2425/2014 (2017).

<sup>43</sup> Paola Guzmán Albarracín v. Ecuador, Inter-Am. Ct. H.R. (ser. A), Merit Report No. 110/18, Case 12.678, paras. 129-166 (2020).

<sup>44</sup> *Id.*, para. 139.

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