

Decriminalization of Abortion: A Human Rights and Public Health Imperative

Introduction

There is an emerging consensus from both public health institutions and human rights bodies that full decriminalization of abortion is essential for the full realization of sexual and reproductive rights.¹ Despite this recognition, nearly every country across the globe still has provisions on the books that criminalize abortion in at least some circumstances. For example, in countries with restrictive abortion laws, people having or administering abortions outside the narrow grounds under which abortion is legal are generally criminalized. Yet, even in countries with liberal abortion laws, there are often criminal penalties for abortion, such as where it is not performed by a qualified healthcare provider or when it is performed after a specified gestational limit. Additionally, laws may criminalize the dissemination of evidence-based information on abortion or distribution of medication abortion pills. As of October 2023, Canada is the only country that has fully decriminalized abortion in accordance with international human rights norms and public health guidance.²



Kenya: Jackson Tali, a registered nurse in Kenya, with Center for Reproductive Rights attorney Martin Onyango. In 2017, the Court of Appeal of Kenya acquitted Tali, who had been previously sentenced to for allegedly providing an illegal abortion after a young woman with pregnancy complications died in his care.

Defining Decriminalization of Abortion

The World Health Organization (WHO) defines the decriminalization of abortion as “[r]emoving abortion from all penal/criminal laws, not applying other criminal offenses (e.g. murder, manslaughter) to abortion, and ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors.”³ Instead, abortion should be regulated as any other medical procedure, rather than as a crime under a country’s penal code. The full decriminalization of abortion is a critical step towards recognition that abortion is a fundamental human right and guaranteeing access for all people who need abortion care. Importantly, decriminalizing abortion preserves legal protections for harms against pregnant people, such as forced abortions or other types of physical harm.

The Harms of Continued Criminalization of Abortion

The WHO recognizes that the negative effects of criminalization of abortion are manifold:

- **Exacerbates abortion stigma and undermines access to legal abortion care:** Criminal abortion provisions are often broad and unclear, creating confusion around the legality of abortion in certain circumstances. This can compel healthcare providers to delay necessary and lifesaving care out of fear of violating criminal provisions.⁴ This also increases stigma around abortion by reinforcing that abortion is inherently wrong.⁵
- **Undermines access to other sexual and reproductive health (SRH) services, including post-abortion care and miscarriage management:** Criminalization of abortion can also lead to misinformation about the legality of other SRH services. Fearing arrest and prosecution, people may delay or avoid seeking post-abortion care and miscarriage management.⁶
- **Undermines quality of care and leads to confidentiality breaches:**⁷ Criminalization can result in there being few trained abortion providers and in the loss of relevant skills among healthcare workers, with attendant effects on the quality of abortion care. Where criminal abortion provisions include mandatory reporting requirements, healthcare providers may be obligated to report anyone who seeks an abortion, thereby encouraging confidentiality breaches and undermining individuals' confidence in the healthcare sector.

Furthermore, the effects of criminalization of abortion are not borne equally across society. People from marginalized communities, including people of color, people from low-income households, and those with less education, are both more likely to face systemic barriers to accessing health services and are more likely to be targeted by enforcement of criminal penalties.⁸

The WHO recognizes that decriminalizing abortion is just one step in ensuring access to safe abortion services.⁹ Access to abortion services includes the creation of an enabling legal and policy environment where abortion is available, accessible, acceptable and of good quality.¹⁰ To achieve this, states must allocate resources to sexual and reproductive health services to ensure that sufficient facilities, scientifically sound information, equipment, trained personnel, and medication are available, and that these goods and services are accessible to all in a non-discriminatory manner.¹¹

Self-Managed Abortion

Self-managed abortion (SMA) refers to abortions performed without clinical supervision. This can be done through medication abortion, medicinal herbs, or other methods.¹² The WHO recognizes that individuals can safely self-manage abortion using medication abortion during the first 12 weeks of pregnancy.¹³ SMA can address some of the barriers to abortion access including geographic limitations. However, even in states where abortion is broadly legal, abortion often remains criminalized where it is not performed by a registered or qualified healthcare provider or in a health clinic,¹⁴ meaning that people having abortions and those supporting them may face prosecution for safely terminating a pregnancy without clinical supervision.



^ El Salvador: Protesters in El Salvador seek justice for Manuela, who died in prison while serving a 30-year prison sentence related to an obstetric emergency.

Application of other Criminal Offenses to Abortion

The WHO's definition of decriminalization of abortion recognizes that states must refrain from applying other criminal offenses, such as murder or manslaughter, to abortion. The penalties associated with these crimes can be far greater than under provisions criminalizing abortion. There are a number of countries where such provisions have been used to prosecute alleged illegal abortions, which have included situations that were in fact miscarriages. For example, in El Salvador, prosecutors have charged pregnant people under homicide and murder provisions for suspected illegal abortions, resulting in prison sentences of up to 30 years.¹⁵

Through litigation filed by the Center for Reproductive Rights and its partners, in *Manuela and Family v. El Salvador*, the Inter-American Court of Human Rights analyzed the case under the context of the total criminalization of abortion in El Salvador and the effect of this in cases of obstetric emergencies. The Court determined that El Salvador was responsible for the death of Manuela, a Salvadoran woman who died from lack of access to essential medical care while serving a 30-year prison sentence after she was unjustly convicted of aggravated homicide following an obstetric emergency that resulted in her pregnancy loss.¹⁶ The Court found El Salvador violated Manuela's rights to life, personal integrity, health, and freedom from discrimination, among other rights.¹⁷ The Court called on El Salvador to ensure women experiencing obstetric emergencies were not criminalized¹⁸ and recognized how criminalization disproportionately impacts poor women.¹⁹ As the Court's mandate includes the vast majority of countries in Latin America, the Court's decision establishes the standard that all member countries must guarantee doctor-patient confidentiality, including in cases where patients are alleged to have had an abortion and ensure that people experiencing obstetric emergencies receive adequate healthcare free from gender violence.²⁰

International Human Rights Law Recognizes Decriminalization of Abortion as a Human Rights Imperative

United Nations Treaty Monitoring Bodies (TMBs), which oversee states' compliance with international human rights treaties, have recognized the criminalization of abortion as a violation to the rights to life, health, privacy, information, freedom from ill-treatment, and non-discrimination and equality.²¹ Other international human rights mechanisms and experts have affirmed that decriminalization is a necessary step that states must take to comply with international human rights law.²²

The Human Rights Committee, which oversees compliance with the International Covenant on Civil and Political Rights, has repeatedly recognized that criminalizing abortion violates people's fundamental human rights.²³ In the cases of *Mellet v. Ireland* and *Whelan v. Ireland*, the Human Rights Committee recognized that prohibiting and criminalizing abortion can amount to cruel, inhumane, and degrading treatment and can result in discrimination against women and inequality before the law. In *General Comment No. 36 on the Right to Life*, the Human Rights Committee explicitly called on states not to "apply criminal sanctions against women and girls undergoing abortions, or against medical service providers assisting them in doing so."²⁴

The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) recognizes that criminalizing abortion is a form of gender-based violence.²⁵ The CEDAW Committee has further urged states to repeal criminal provisions to address the disproportionate impact criminalization of abortion has on certain groups, including rural women²⁶ and people with disabilities.²⁷ The Committee on Economic, Social and Cultural Rights (CESCR) has instructed states to liberalize any laws that impede access to sexual and reproductive rights, including laws that criminalize abortion.²⁸ The Committee on the Rights of the Child (CRC) has further emphasized that the criminalization of sexual and reproductive health services harms adolescent girls in particular and urged states to "decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services."²⁹ Recently, the Committee on the Elimination of Racial Discrimination (CERD) reminded the United States of its human rights obligations and urged the U.S. to ensure that pregnant people and healthcare providers are not subjected to criminal penalties for seeking or providing abortions.³⁰

Several Special Rapporteurs have further reinforced that the criminalization of abortion does not align with international human rights law.³¹ The Special Rapporteur on the right to health specifically emphasized that "decriminalization, coupled with appropriate regulation and the provision of accessible, safe abortion services, is the most expeditious method of fully protecting the right to health against third-party violations."³² Similarly, the UN Working Group on Discrimination Against Women recommended states "decriminalize abortion, expand access to safe abortion services...and remove legal barriers to abortion in situations of crisis."³³ Finally, the Special Rapporteur on the Rights of Women in Africa collaborated with the African Commission on Human and People's Rights, jointly launching a campaign to decriminalize abortion in Africa to emphasize the link between the high maternal mortality rate in Africa and laws criminalizing abortion.

Full Decriminalization of Abortion in Canada

Canada is the only country in the world that has fully decriminalized abortion. Canada decriminalized abortion in 1988, when the Supreme Court of Canada issued a decision recognizing that the criminalization of abortion violated a woman's right to life, liberty, and security of the person, under Section 7 of the Charter of Rights and Freedom.³⁴ The Court determined that abortion services would be regulated like any other medical procedure, rather than regulated under the Criminal Code.³⁵ Today, abortion is regulated as a medical procedure at the provincial level.³⁶

Case Studies: Effects of Continued Criminalization of Abortion

In the past 25 years, there has been an overwhelming global trend towards the liberalization of abortion laws, including the removal of some criminal provisions on abortion. However, criminal abortion provisions remain pervasive and exacerbate existing barriers to accessing safe and legal abortion services while also leading to arrest, prosecutions, and imprisonment of individuals for accessing essential health services, as well as abortion providers and those helping others access abortion care. While expanding the grounds under which abortion is legal is a positive step, the



full decriminalization of abortion is essential in creating an enabling legal and policy environment to access safe abortion services. The following examples illustrate how criminal abortion penalties undermine access to safe abortion services regardless of the overall legal status of abortion in countries across the globe.

NEPAL

Following Nepal's liberalization of its abortion law in 2002,³⁷ to allow abortion on request up to twelve weeks gestation, Nepal has had a number of positive developments related to abortion. In 2009, the Supreme Court issued a landmark decision recognizing reproductive rights include the right to safe and affordable abortion services.³⁸ The 2015 Constitution of Nepal ensures women's fundamental rights to safe motherhood and reproductive health.³⁹ In 2018, the Government enacted the SMRHR and Public Health Service (PHS) Acts, which unequivocally recognize women's and girls' right to abortion and require that abortion services be offered by all government health facilities free of cost.⁴⁰ Despite the legal guarantees to the right to abortion,



Poland: Mass protests have been staged throughout Poland in response to the government's increasing restrictions on abortion.

abortion continues to be penalized in certain cases⁴¹ and prosecutions for abortion-related offenses still occur. From 2011 – 2016, Nepali courts heard 53 abortion-related criminal cases,⁴² including the cases of a woman who was criminally charged for having an abortion after suffering a miscarriage,⁴³ and a 15-year-old girl who was convicted for taking medication abortion to end a pregnancy that resulted from rape.⁴⁴ There is currently a petition before the Nepal Supreme Court to remove all abortion provisions from the Penal Code to align with national level jurisprudence and the Constitution, both of which recognize abortion as a fundamental right.

KENYA

Although Kenya's 2010 Constitution recognizes the right to abortion in certain circumstances,⁴⁵ criminal penalties remain where abortion occurs outside the parameters of the law. These criminal provisions carry punishments of up to 14 years imprisonment⁴⁶ and have been enforced, resulting in harassment, wrongful arrest, and prosecution. This also exacerbates the stigma around SRH services and can deter healthcare providers from administering essential care. For example, a nurse was convicted of murder and sentenced to death after administering post-abortion care to a young woman suffering life-threatening complications from an unsafe abortion.⁴⁷ While attorneys from the Center for Reproductive Rights were eventually able to have the conviction overturned, this case underscores the importance of ensuring that the state never places healthcare providers in a position where they fear providing SRH services. In 2019, a 16-year-old girl who had lost a pregnancy was charged with procuring an illegal abortion and the healthcare provider was charged with providing an illegal abortion.⁴⁸ Through the Center's work, the High Court of Kenya removed the charges, recognizing that the arbitrary arrest and prosecution of healthcare providers and patients seeking abortion care was illegal and reiterating that abortion care is a fundamental right under the Constitution.⁴⁹ The Court also directed the Kenyan Parliament to enact an abortion law and public policy framework that aligns with the Constitution.

POLAND

In Poland, abortion is allowed only in cases where the health or life of the woman is at risk, or when the pregnancy resulted from rape or incest.⁵⁰ In practice, abortion is almost impossible to access even in these exceptional situations. Poland's near-total ban on abortion has caused grave harm to women's health and lives and has created chilling effects on the provision of care. Although Poland does not criminalize pregnant people for accessing abortion, healthcare providers and third parties who help people procure abortions in circumstances outside the limited exceptions established in law are criminalized. For example, Justyna Wydrzyńska, a human rights defender working with the organization Abortion Dream Team, was recently convicted for helping a woman access medication abortion.⁵¹

Conclusion

The full decriminalization of abortion is a key step towards ensuring the full realization of sexual and reproductive rights and creating enabling legal and policy environments to guarantee full access to abortion services for all. In accordance with human rights norms and public health evidence, states should act swiftly to fully decriminalize abortion. This is an essential step towards ensuring individuals can exercise reproductive autonomy and addressing inequalities and discrimination.

Endnotes

- 1 See, e.g., Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, (39th Sess., 2017), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 18, U.N. Doc. CEDAW/C/GC/35 (2017) [hereinafter CEDAW Committee, *Gen. Rec. No. 35*] (urging states to repeal “provisions that allow, tolerate or condone forms of gender-based violence against women...and provisions that criminalize abortion.”); Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 22 on the right to sexual and reproductive health (article 12 on the International Covenant on Economic, Social and Cultural Rights)*, (26th sess., 2016), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, paras. 40-41, 57, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter CESCR, *Gen. Comment No. 22*]. See also World Health Organization (WHO), *Abortion Care Guideline*, 24 (2022), <https://www.who.int/publications-detail-redirect/9789240039483>; International Federation of Gynecology and Obstetrics (FIGO), *FIGO Calls for the Total Decriminalisation of Safe Abortion* (Feb. 28, 2022), <https://www.igo.org/resources/figo-statements/figo-calls-total-decriminalisation-safe-abortion>.
- 2 See generally *R v. Morgentaler*, [1993] 3 S.C.R. 463 (Can.).
- 3 WHO, *Abortion Care Guideline*, *supra* note 1, at 24.
- 4 *Id.*
- 5 *Id.*
- 6 *Id.* at 25. See also WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 95 (2nd ed. 2012), <https://iris.who.int/handle/10665/70914> (including detailed evidence explaining the negative consequences of criminalization of abortion).
- 7 WHO, *Abortion Care Guideline*, *supra* note 1, at 22.
- 8 Abortion Care Network et al., *Systemic Racism and Reproductive Injustice in the United States: A Report for the UN Committee on the Elimination of Racial Discrimination*, 12, 17, 20 (2022), https://reproductiverights.org/wp-content/uploads/2022/08/2022-CERD-Report_Systemic-Racism-and-Reproductive-Injustice.pdf.
- 9 WHO, *Abortion Care Guideline*, *supra* note 1, at 24.
- 10 *Id.*
- 11 See *id.* at 25.
- 12 *Id.* at xvi, 98.
- 13 *Id.*
- 14 See, e.g., New Zealand Crimes Act 196, Sect. 183, *amended by* Abortion Legislation Bill, Sections 182A to 187A replaced (2020), Sect. 183 (N.Z.). See also Iceland Act on Counselling and Education regarding Sex and Childbirth on Abortion and Sterilization Procedures, Sects. 15, and 31 (2016) (Ice.); Ghana Penal Code, Sect. 58(2) Criminal Offences Act of 1960, sec. 58(2) (1960) (Ghana).
- 15 *Manuela v. El Salvador*, No. 13.069 Inter-Am. Ct. H.R. (Nov. 30, 2021). See also Center for Reproductive Rights, *Manuela v. El Salvador (Inter-American Court of Human Rights)* (Dec. 2, 2021), <https://reproductiverights.org/case/manuela-v-el-salvador-inter-american-court-of-human-rights/>.
- 16 *Manuela v. El Salvador*, No. 13.069 Inter-Am. Ct. H.R. (Nov. 30, 2021).
- 17 *Id.* at para. 260.
- 18 *Id.* at paras. 161, 283-300.
- 19 *Id.* at para. 253.
- 20 *Id.* at para. 300.

- 21 See, e.g., Human Rights Committee (HRC), *General Comment No. 36 on the Right to Life* (86th Sess., 2018), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. CCPR/C/GC/36 (2018) [hereinafter HRC, *Gen. Comment No. 36*]. See also CESCR, *Gen. Comment No. 22, supra* note 1; CEDAW, *Gen. Rec. No. 35, supra* note 1, para. 18; Committee on the Rights of the Child (CRC), *General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence* (46th Sess., 2016), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 60, U.N. Doc. CRC/C/GC/20 (2016) [hereinafter CRC, *Gen. Com. No. 20*].
- 22 See, e.g., Anand Grover (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/66/254 (Aug. 3, 2011); Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016).
- 23 See, e.g., *Mellet v. Ireland*, Human Rights Committee, Commc'n No. 2324/2013, para. 8, U.N. Doc. CCPR/C/116/D/2324/2013 (2016); see also *Whelan v. Ireland*, Human Rights Committee, Commc'n No. 2425/2014, para. 8, U.N. Doc. CCPR/C/119/D/2425/2014 (2017).
- 24 HRC, *Gen. Comment No. 36, supra* note 21, para. 8.
- 25 CEDAW, *Gen. Rec. No. 35, supra* note 1, para. 18 (suggesting states repeal “provisions that allow, tolerate or condone forms of gender-based violence against women...and provisions that criminalize abortion.”). See also CEDAW, *General Recommendation No. 33 on Women’s Access to Justice*, (37th Sess., 2015), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 51, U.N. Doc. CEDAW/C/GC/33 (2015) (recommending states abolish any discriminatory laws, including laws criminalizing abortion).
- 26 CEDAW, *General Recommendation No. 34 on the Rights of Rural Women*, (38th Sess., 2016), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 39(c), U.N. Doc. CEDAW/C/GC/34 (2016) (describing the criminalization of abortion is an obstacle to rural women’s access to abortion and recommending countries repeal “laws that criminalize or require waiting periods or third-party consent...”).
- 27 Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of Persons with Disabilities, *Joint Statement on Guaranteeing Sexual and Reproductive Health and Rights for All Women, in particular Women with Disabilities*, 2 (Aug. 29, 2018), <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>.
- 28 CESCR, *Gen. Com. No. 22, supra* note 1, paras. 40-41, 57.
- 29 CRC, *Gen. Com. No. 20, supra* note 21, para. 59.
- 30 Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, para. 36, U.N. Doc. CERD/C/USA/CO/10-12 (2022) (calling the State’s attention to the WHO *Abortion Care Guideline*).
- 31 See, e.g., Paul Hunt (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 30, U.N. Doc. E/CN.4/2004/49 (Feb. 16, 2004) (calling for the removal of “punitive provisions against women who undergo abortions”). See also Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, para. 72(b), U.N. Doc. A/HRC/31/57 (Jan. 5, 2016) (finding denying women and girls access to safe abortions could amount to torture or ill treatment and encouraging states to decriminalize abortion); Agnes Callamard (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on a Gender-Sensitive Approach to Arbitrary Killings*, paras. 92-93, 102-103, 105, U.N. Doc. A/HRC/35/23 (Jun. 6, 2017) (concluding laws that criminalize abortion do not decrease the number of abortions, they only increase unsafe abortions and, in turn, the number of deaths. The Special Rapporteur therefore recommended states “repeal laws criminalizing abortion...[and] adopt clear regulations and guidelines on safe and legal abortion for health professionals providing abortion and post-abortion services”).
- 32 Anand Grover (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health), *Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 28, U.N. Doc. A/66/254 (Aug. 3, 2011).
- 33 Working Group on Discrimination Against Women and Girls, *Report on Women’s and Girls’ Sexual and Reproductive Health Rights in Crisis*, para. 77(b), U.N. Doc. A/HRC/47/38 (Apr. 28, 2021).
- 34 *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (Can.).
- 35 *Id.*, pg. 36-39.
- 36 See, e.g., Access to Abortion Services Act, R.S.B.C. 1996 (B.C., Can.); Protecting Choice for Women Accessing Health Care Act, S.A. 2018 (Alb., Can.). Abortion Rights Coalition of Canada, *Canadian Regulation of Abortion* (Apr. 2023), <https://www.arcc-cdac.ca/media/position-papers/61-Canadian-abortion-regulation.pdf>. See also Dorothy Shaw & Wendy V. Norman, *When There Are No Abortion Laws: A Case Study of Canada*, 62 BEST PRACTICE & RESEARCH CLINICAL OBSTETRICS & GYNAECOLOGY 49, 52 (2020), <https://doi.org/10.1016/j.bpobgyn.2019.05.010>.
- 37 *Muluki Ain* 11th Am. Bill (1997), approved 2002, eff. 2004; see Shyam Thapa, *Abortion Law in Nepal: The Road to Reform*, 12 REPRODUCTIVE HEALTH MATTERS 85, 90-91 (2004), <https://www.jstor.org/stable/3776119>.

- 38 Lakshmi v. Government of Nepal (Sup. Ct. of Nepal) (2009) (Nepal), *translated in* Center for Reproductive Rights & Forum for Women, Law and Development (FWLD), *Landmark Decision of Supreme Court of Nepal on Abortion Rights* (2009), <https://reproductiverights.org/wp-content/uploads/2021/07/Laxmi-dhitta1-endnote.pdf>.
- 39 CONSTITUTION OF NEPAL 2015, art. 38(2), https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov_np-Date-72_11_16.pdf; Gov't of Nepal, Ministry of Women, Children and Senior Citizen, *Response of the Government of Nepal to List of Issues and Questions in Relation to the Sixth Periodic Report of Nepal*, para. 109 (Aug. 2018).
- 40 Safe Motherhood and Reproductive Health Rights Act, 2018, §§ 22-23 (Nepal), *translated in* Center for Reproductive Rights & Forum for Women, Law and Development (FWLD), *Safe Motherhood and Reproductive Health Rights Act, 2018*, <https://reproductiverights.org/sites/default/files/2020-01/Safe%20Motherhood%20and%20Reproductive%20Health%20Rights%20Act%20in%20English.pdf>; Public Health Service Act, 2075 (2018), § 3(4)(b) (Nepal), <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Public-Health-Service-Act-2075-2018.pdf>.
- 41 *See* National Penal (Code) Act, 2017, § 188 (Nepal), <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf> (A woman who undertakes an abortion may be imprisoned for a term not exceeding one year and a fine not exceeding ten thousand rupees (approximately U.S.\$100) in the case of pregnancy of up to 12 weeks. In the case of pregnancy of 13 to 25 weeks, a pregnant woman may be imprisoned for a term not exceeding three years and a fine not exceeding thirty thousand rupees (approximately U.S.\$300). For an abortion involving a pregnancy of more than 25 weeks, a pregnant woman may be sentenced to imprisonment for a term not exceeding five years and a fine not exceeding fifty thousand rupees (approximately U.S.\$500) depending on the stage of pregnancy).
- 42 Center for Reproductive Rights, *New Litigation Filed to Decriminalize Abortion in Nepal* (Feb. 23, 2022), <https://reproductiverights.org/nepal-litigation-decriminalize-abortion/>.
- 43 Center for Reproductive Rights & FWLD Nepal, *Factsheet: Decriminalization of Abortion in Nepal: Imperative to Uphold Women's Rights*, 4-5 (Jan. 6, 2021), https://reproductiverights.org/wp-content/uploads/2021/06/Decriminalization-of-Abortion-in-Nepal_02June21_Final-Version-1.pdf.
- 44 *Id.* at 5.
- 45 CONSTITUTION OF KENYA, 2010, arts. 26(2),(4), <https://faolex.fao.org/docs/pdf/ken127322.pdf>.
- 46 *See* Penal Code (2012), arts. 158-159 (Kenya), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>.
- 47 *See generally* Center for Reproductive Rights, *Factsheet: Abortion Stigma and Its Effect on Access to Justice: Jackson Namunya Tali v. The Republic of Kenya* (2018), https://reproductiverights.org/wp-content/uploads/2020/12/GLP_Africa_Tali_FS_Web_1.pdf
- 48 Pak and Salim Mohammed v. Attorney General and Three Others (2022), 262 KLR 2 (H.C.K.) (Kenya).
- 49 *Id.* at 3, 63.
- 50 The Family Planning, Human Embryo Protection and Conditions of Permissibility Abortion Act of January 7, 1993, art. 4a, 1-3 (Pol.), *English translation at* <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Polish%20abortion%20act-English%20translation.pdf>. *See also* Judgment of the Constitutional Tribunal, ref. no. K 1/20 (2020) (Pol.) (ruling that permitting abortion in cases of fetal diagnosis was unconstitutional, further restricting abortion access in Poland).
- 51 *See* Center for Reproductive Rights, *Conviction of Polish Human Rights Defender Sets Dangerous Precedent* (Mar. 14, 2023), <https://reproductiverights.org/poland-abortion-human-rights-defender-justyna-wydrzynska/>.