Abortion in the criminal law:

exposing the role of health professionals, the police, the courts and imprisonment internationally
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**Abortion should not be restricted, prohibited or criminalised.** No woman who has sought an abortion, and no health care provider who has provided a safe abortion at a woman’s request, and no abortion rights defender should be stigmatised, harassed, discriminated against, or prosecuted. Governments should take action to remove laws that restrict, prohibit or criminalise abortion and remove procedural barriers that restrict access to safe abortion services.
(International Campaign for Women’s Right to Safe Abortion, Guiding principles)
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Background
With few exceptions, most countries' criminal laws contain restrictions on the grounds on which an abortion is legal, up to what stage of pregnancy, who can determine whether an abortion is legal, who is permitted to provide abortion services, and the punishments for violating these restrictions.

Feminists and civil society groups and organizations have been campaigning against legal restrictions on abortion at least since Alexandra Kollantai convinced Lenin to decriminalise abortion in the Soviet Union in 1920. Since the 1960s, a long list of countries have been reforming their abortion laws to a greater or lesser extent, yet few have gone so far as to permit abortion without restriction as to reason or on broad socioeconomic grounds – and almost all remain grounded in criminal law.

In the late 1970s, an international group of abortion rights activists started the International Campaign for Abortion Rights, following from a workshop at a major international feminist conference in Paris. It included abortion rights groups from Britain, Ireland, Belgium, Netherlands, Spain, Peru, Philippines, Colombia, Mexico and others. At the 4th International Women’s Health Conference in Amsterdam in 1984, however, because so many women’s rights activists, especially from Africa, felt unable to join a campaign with “abortion” in its title, this campaign became the Women’s Global Network for Reproductive Rights in 1985. The International Day of Action for Decriminalization of Abortion on 28 September was launched in Latin America and the Caribbean in 1988 by a regional network of activist groups who have organised activities in that region around 28 September ever since.

Meanwhile, improvements in abortion methods were taking place. Electric vacuum aspiration followed by manual vacuum aspiration represented a huge improvement over D&C, though they are yet to replace D&C in many countries where legal abortions remain rare. Work also began to develop mifepristone (RU486) in France by a small pharmaceutical company. Then, in the search for an effective prostaglandin to use with mifepristone, it was also discovered that misoprostol, a gastric ulcer drug, could cause a miscarriage. The co-sponsored Special Programme of Research, Development and Research Training in Human Reproduction, based at the World Health Organization, did much of the research on regimens and dosage of medical abortion, leading to the detailed regimens and dosages in the revised and updated *WHO Safe Abortion: Clinical and Policy Guidance for Health Systems*, 2012.
During these years, research, introductory studies, abortion service delivery, law and policy development and reform, and abortion rights advocacy work were being carried out by the Population Council, Gynuity Health Projects, Guttmacher Institute, Ipas, Center for Reproductive Rights, Marie Stopes International, Pathfinder International, International Consortium for Medical Abortion, and national and regional networks working for safe abortions, in Latin America, Eastern Europe, Asia and Africa, as well as the FIGO Prevention of Unsafe Abortion Initiative, Global Doctors for Choice, and regional and national groups and networks of abortion providers in Western and Eastern Europe, North America, Latin America, Australia and NZ.

Meanwhile, women themselves, first across Latin America and increasingly in Asia and sub-Saharan Africa, have taken misoprostol use into their own hands through self-administration in countries where political and advocacy efforts have as yet failed to allow safe abortions to be provided through national health systems. Women on Web is openly selling misoprostol over the internet to women in countries where abortion is legally restricted and supporting the formation of abortion hotlines in a growing number of countries, who are spreading the word to women on the best way to take the pills and to seek help afterwards, if needed.

In 2011, the Women’s Global Network for Reproductive Rights decided to globalise the 28 September International Day of Action for Decriminalization of Abortion, but changed its name and called it the Global Day of Action for Safe and Legal Abortion. The following year, the International Campaign for Women’s Right to Safe Abortion was initiated by almost all of the groups mentioned above and launched on 28 May 2012. In its first year, the Campaign has been endorsed by almost 400 organizations and 460 individuals in 106 countries in all continents. The Campaign’s first major activity in 2012 was to promote greatly expanded involvement in organising for 28 September, alongside the Latin American & Caribbean Campaña 28 Septiembre and the WGNRR 28 September campaign, leading to activities being organised in a record 51 countries. We hope to break this record again in 2013.

The report: executive summary

In July 2013, the Campaign advisory group agreed to campaign on 28 September 2013 for decriminalisation of abortion and to expose the role that criminal law, police, courts, prisons and health care providers have on both women’s ability to access safe abortion services and health professionals’ ability to provide such services globally. We are calling on abortion rights supporters at country level to document whether and how the police, the government and the health, justice and prison systems, including individual health professionals and their professional associations, are involved in enforcing the criminal law on abortion — in countries all over the world. A good deal of research has already been done to uncover existing cases by the Campaign members who contributed information for this report, many of whom are also actively involved in working for the release of women and abortion providers from prison and for abortion law reform.

The evidence summarised here shows that: (1) women have been subjected to degrading and humiliating treatment and have had their civil, political and legal rights grossly violated in multiple ways, and (2) many abortion providers are risking their professional careers and their lives to help women, while others are deeply implicated in reporting women to the justice system for punishment. The following are the main findings across countries and continents:

- health professionals who treat complications from unsafe abortion are reporting women to the police, and/or making women ‘confess’ to the police as a condition of treatment;
- the police are actively detaining, investigating and pressing charges against women, abortion providers and clinics, and the anti-abortion movement, including people in official positions, are often involved in motivating/supporting this;
• media ‘investigations’ seeking to entrap women and abortion providers have led to providers being suspended; prosecutions of providers; and raids on, fines against and closure of clinics even prior to prosecution or ascertainment of guilt;
• women who have had not only illegal abortions, but also spontaneous miscarriages and stillbirths are being treated as criminals, detained, fined and imprisoned, not only for abortion but for homicide, with sentences of up to 30 years;
• women who have a right to legal abortions are being denied them systematically, in part as a result of providers’ refusal of care on moral or religious grounds and in part due to providers’ fears of being prosecuted for providing abortion services;
• women are being subjected to degrading and humiliating treatment such as being handcuffed to a hospital bed while recovering after treatment for complications from unsafe abortion, often held in detention while waiting for their cases to be heard, and having to wait for up to six years to face criminal charges pertaining to illegal abortion;
• threats of investigation of abortion providers are being made so as to frighten them into no longer providing abortions;
• customs officers are seizing packages of abortion medications sent by post to women with no access to safe clinical services yet no prosecutions have taken place; and finally,
• there is widespread corruption surrounding enforcement of criminal penalties for illegal abortion, e.g. police and others demanding paybacks to drop charges and to allow provision of illegal abortion services to continue.

This is a preliminary report (not an exhaustive review), which excerpts and summarises existing research, including what has emerged in the media (sometimes uncorroborated) from many countries to date. It is intended to serve as an inspiration to others to do similar research and take action against the many punitive ways women who have had abortions and bona fide abortion providers are being treated. A survey in Brazil, to be published in Reproductive Health Matters in November 2013, and another in Ecuador, Peru and Bolivia by Ipas, reported in a video, found that although the majority of people surveyed believed abortion was wrong or said they were against it, most knew women who had had illegal abortions and did not support punishing them. This apparent contradiction in public thinking in countries with highly restrictive laws and active anti-abortion movements provides a basis to call for the removal of abortion from the criminal law.

The report is divided by region and country. Published and unpublished sources are credited in the text and references to original reports are given where available. Coverage is primarily of events and information from 2009 to September 2013 but also includes a few earlier reports from countries where it is unknown whether prosecutions still occur. The report has been posted on the Campaign’s website and listserve, and Campaign supporters are encouraged to post a link to it on their websites and listerves, along with any new evidence that is received.

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Please send further information, news and evidence to add to this report to:
Marge Berer: mberer@rhmjournal.org.uk + cc. to ICMA: safeabortionwomensright@icma.md
For the International Day of Action for Decriminalization of Abortion, 28 September 2013

WE CALL FOR:

• research on the extent of reporting, investigation, harassment and prosecution of women and safe abortion providers in all countries around the world,

• legal action to obtain the release of those in prison,

• national health policy based on the principle of ‘do no harm’ and confidentiality, that health professionals must not report women who have had abortions or safe abortion providers to the police,

• cessation of investigation, harassment and prosecution of health professionals and closure of clinics helping to women obtain safe abortions and/or providing treatment for complications of unsafe abortion,

• cessation of investigation, prosecution and imprisonment of women who have had miscarriages, stillbirths and induced abortions,

• Constitutional courts and other legal bodies to hear evidence and legal arguments on why it is not in the public interest to prosecute safe abortion providers or women who have had abortions,

• recognition that illegal and unsafe abortion is a serious public health problem (ICPD 1994),

• recognition that safe, legal abortion is essential to ensure pregnant women’s right to life and health,

• the decriminalization of abortion, and

• universal access to safe, legal abortion.
LATIN AMERICA

1. Abortion is not a crime
   Watch these videos made in Peru, Bolivia and Ecuador:

2. Argentina
   In Argentina, 417 cases of women or providers arrested for illegal abortions were identified in the period from 1990-2008. In 2011, one case involved a young physician with two children who was arrested and spent more than a year under threat of criminal prosecution because she had prescribed misoprostol. The physician knew that prescribing the drug was illegal in Argentina, but the pregnant 12-year-old girl she was working with had made it clear that she intended to end the pregnancy at any cost. The charges against the doctor were eventually dismissed, but she had to suffer the stigma and uncertainty for more than a year. Abortion providers have more often been the targets of enforcement of the law than women having abortions. According to data from 2002-2008, 80% of convictions were against health care professionals, mostly midwives and nurses, and there were far more arrests than convictions. From 1996-2008, there were 234 convictions for the crime of abortion nationally.


   Doctors are under investigation in Argentina for refusing to perform a legal abortion in 2011 at the hospital San Martín, even though it had been authorised by an inter-disciplinary medical panel to terminate a life-threatening pregnancy. The woman was transferred to a Buenos Aires hospital where she delivered the baby by caesarean. A week later, she suffered a cerebral haemorrhage from which she lost all movement on her left arm and leg, the ability to swallow and speech. After a year of rehabilitation, she can again walk, talk and swallow. But the use of her left arm has not returned. A complaint was tabled by representatives of the National Consortium of Sexual and Reproductive Rights, on the grounds that the hospital’s refusal to do the abortion violated Article 86 of the Criminal Code, which allows the practice of abortion in special cases. The doctors at the hospital argued that they did not feel experienced enough to do an abortion given the condition of the patient, so they decided to refer her to be evaluated by people with experience with these types of patients. A decision is pending.

   Investigarán a médicos por negarse a realizar un aborto. 22 February 2013.
   http://www.unoentrerios.com.ar/laprovincia/Investigar%C3%A1n-a-m%C3%A9dicos-por-negarse-a-realizar-un-aborto--20130222-0003.html

3. Bolivia
   In Bolivia, police investigations were initiated in 775 cases from 2008-2012, although relatively few led to convictions. Under Bolivian law, women who are pregnant as the result of rape must begin criminal proceedings against the perpetrator before they can request judicial authorization for an abortion. But judges rarely authorize abortions, generally claiming conscientious objection. It was almost always poor women who were reported to the police. Reports were generally filed by a health care provider, a relative, a partner or the public prosecutor’s office. In some cases, the Ombudsman for Children and Adolescents filed a police report on behalf of the fetus. Abortion cases languished for months, leaving women in a legal limbo. In one troubling case, a 28-year-old Guarani woman (‘Helena’) in the city of Santa Cruz become
pregnant as the result of rape. She attempted to self-induce an abortion at 24 weeks and ended up in hospital with serious complications. She was reported to the police by her doctor, handcuffed to her bed during the 10-day hospital stay, under police custody, and then transferred to prison, where she held in preventive detention. An appeal against the detention order was denied. Hearings were scheduled and cancelled; the public defender or the judge would fail to show up. Helena then pleaded guilty to the crime of abortion and was sentenced to two years in prison. A judicial pardon was requested and granted. After eight months, Helena was freed from prison.

Of an estimated 67,000 abortions performed in Bolivia in 2011, almost half the women end up needing emergency care post-abortion. Of the thousands of women seeking care in the same hospital as her, Helena was the only one to go to prison. According to judicial records in the cities of La Paz and Santa Cruz, from 2006 to the present, only one legal abortion was approved by a judge. A police investigation determined that one of Helena’s co-workers had purchased the pills. The police raided several pharmacies for selling misoprostol without a prescription. No one was arrested. In records from Santa Cruz public prosecutor’s office dating from 2008, 80 cases of illegal abortions were recorded. They were all dropped, either because the accuser – generally the public prosecutor or a health care provider – didn’t follow up or because the police or the judicial system did not take action.

Bolivia’s top court was scheduled to meet in June 2013 to review a constitutional challenge to the country’s abortion laws. The new constitution prohibits discrimination based on gender identity and sexual orientation, and guarantees sexual and reproductive rights. A recently elected indigenous deputy presented a legal challenge, questioning the constitutionality of several articles related to women’s issues, including Article 263, which criminalizes abortion.


4. Brazil

In Brazil, between 2007-2011 in Rio de Janeiro state, there were 334 police reports involving women who had had illegal abortions. Court records from 2007-2010 show that 128 women were prosecuted. In one case a woman was arrested in the hospital after seeking post-abortion care. She was unable to afford bail and remained handcuffed to her hospital bed for three months. In one Rio de Janeiro hospital, the head of obstetrics called the police after a woman who had induced an abortion with the help of a friend arrived at the hospital. The woman who had the abortion was imprisoned, and the physician was a witness for the prosecution. One woman with six children was unemployed and poor. As a condition for suspending her case, the public prosecutor prohibited her from going to bars or staying out after 10 pm, she had to enrol in a family planning programme and was prohibited from travelling outside Rio de Janeiro state without authorization. The entire judicial process took six years from the time the investigations started until the judge closed the case.

Records from the criminal justice system at the state Tribunal of Rio de Janeiro from 2007-2010 found 128 cases of women prosecuted for illegal abortions. Of these cases, only 3 cases had sentences based on evidence rather than on technical or procedural grounds. Only one of the 3 was acquitted. The second was convicted and the third was sent to trial by jury. Thirty-eight cases were dismissed and the remaining 87 are still pending as of 2013.
Human rights violations occurred when police, in search of abortion law violations, raided a private clinic in Mato Grosso do Sul in 2007, confiscating the medical records of more than 9,600 female patients, violating their right to privacy and confidentiality. The clinic owner and some of her staff were indicted for illegal abortion, based on TV interviews and seized clinic documents and medical equipment. In December 2009, the clinic owner was found dead in her car; the police investigation concluded it was suicide. Four staff members at the clinic were prosecuted in 2010 and received prison sentences ranging from 4-7 years, accused of participating in 25 abortions. The women who had abortions described their fear and shame and the negative reactions of their families, work colleagues, and close friends. Some have told no one. The clinic raid was widely publicized in the media, but women’s voices have been noticeably absent. The Mato Grosso case was followed by other similar cases. Police raids on clandestine abortion clinics in different states have led to the arrest and prosecution of women and doctors. In August 2009, for example, the police raided four clinics in the city of Rio de Janeiro. These events are little known in Brazil outside the states where they took place.


Police have identified the 26-year-old pregnant woman who took misoprostol to induce an abortion and then buried the fetus in the Cemetery of the Soldier. The police chief leading the investigation said the woman was a university student and upper middle class. They found her through anonymous tips and information gathering in the city’s hospitals. In her statement to the police, she said that in November 2010 she had an unwanted pregnancy and in May 2011, she bought a medicine for abortion through the Internet, taking it at a little over five months of pregnancy. After aborting, she became ill and was admitted to a city hospital, where she told the doctor what she had done. The provider did not report the incident to the police. In testimony she said she buried the fetus in the Cemetery to provide him a proper burial and to visit him on Memorial Day. She was to be indicted for the crime of abortion, under Article 124 of the Penal Code and could get 1-10 years in prison.


Police raided an abortion clinic late Saturday in the Rio de Janeiro neighbourhood of Bonsucesso following tips that the clinic was also selling drugs. While abortions are tolerated in Brazil by law enforcement, they are illegal except when a woman’s life is in danger, under-aged, or the pregnancy was due to rape. The raid occurred while three abortions were taking place at the clinic, according to Globo Portuguese language news site G1. The three women having an abortion were released on bail and were not charged. Arraigned were 11 clinic workers, the doctor providing abortions and a member of the Military Police who had been hired as their night watchman. Acting on a search warrant, Rio police seized medical equipment as well and informed that the 11 be fined for conspiracy to distribute controlled substances, drug trafficking and performing illegal abortions. Up to three years in prison is possible for the doctor. The name of the clinic was not released to the public.


http://www.forbes.com/sites/kenrapoza/2013/01/06/police-raid-rio-de-janeiro-abortion-clinic/
In January 2013 a Brazilian court decided to release the teenage daughter of Portuguese singer Adelaide Ferreira, who had an abortion in Brazil and was sent to stay in a state-run shelter for girls while the case was pending, according to the Internal Affairs Division of the Justice Mato Grosso. The judge believed that the house of the girl’s boyfriend’s mother, where she had been staying, was not a suitable environment, since both the boyfriend and his mother were suspected of helping her to abort. The day before, the girl’s mother came before the judge, who is responsible for the 1st Court on Childhood and Youth of Cuiabá, Mato Grosso. She was accused by the Civil Police of Cuiabá of trying to cover up her daughter’s abortion. The girl was released and ordered to return to Portugal.


5. El Salvador

El Salvador’s ban on abortion has led to the wrongful imprisonment of hundreds of women falsely convicted of inducing an abortion, when in fact they had suffered spontaneous miscarriages or obstetric complications during pregnancy or birth, the Center for Reproductive Rights (CRR) and other rights groups say. Women who have obstetric complications are immediately suspected of having had an abortion and treated as criminals. Under El Salvador’s laws, women who have a self-induced abortion and the people who assist them can be sent to jail for up to 8 years. In practice, some women end up being prosecuted for aggravated homicide, which carries a prison sentence of up to 30 years.

CRR know of 129 women up to 2011, who were sent to jail, initially accused of abortion but then prosecuted for murder and given long sentences, 70+% were under the age of 25, 60% were first reported by health professionals in the emergency room, and 23% were first accused by family members or neighbours. There have been many more cases in which women were accused and arrested, but there was no proof they had done anything wrong, and again, many had not even had induced abortions.

Since abortion was made illegal in El Salvador in 1998, 628 women have been jailed for having abortions, according to the local rights group Citizens for the Decriminalisation of Abortion. In 2010, the case of Manuela showed how women end up paying with their lives because of the country’s absolute abortion ban. Manuela, who suffered from advanced Hodgkin’s lymphoma, was sentenced to 30 years in prison after suffering severe complications giving birth. According to the Center for Reproductive Rights, who campaigned on her behalf, doctors treated her as if she had attempted an abortion and immediately called the police. She was shackled to her hospital bed and accused of murder. Manuela did not receive appropriate medical treatment for lymphoma and died less than a year after being sent to prison, leaving behind two young children. Her case was put before the Inter-American Commission on Human Rights in 2012.

El Salvador’s decision to deny an ill woman carrying a moribund, severely malformed fetus an abortion highlights the region’s draconian abortion laws that are putting women’s lives at risk and landing them in jail. The country’s Supreme Court ruled last week that a 22-year-old woman known as Beatriz, who has lupus and was pregnant with an anencephalic fetus, could not have an abortion. In response, the Inter-American Court of Human Rights ordered El Salvador to provide an abortion to Beatriz. It was still delayed. Finally, in her 27th week of pregnancy, the baby was removed surgically to save her life and “avoid breaking the law”. Doctors in the country define an abortion as only up to 20 weeks of pregnancy, and after that a premature delivery, to avoid calling it an abortion.

According to the Center for Reproductive Rights, at least 120 women in El Salvador were tried between 2000 and 2011, charged with the crimes of abortion or aggravated homicide in connection with the death of a fetus. Thirty-eight were convicted.
In August 2012 “Mery”, a 27-year-old woman with a mental disability, was sentenced to two years in prison for inducing an abortion and was sent to Ilopango Women’s Prison the same day. She attempted suicide a few days later by slitting her wrists with a rusty nail she found on the ground. Since then, Mery was held in the psychiatric ward of Hospital Policlínico Arce under 24-hour supervision by armed policemen, which thwarted her ability to receive allowed visits from her lawyer and her family, and had a negative impact on her recovery. The Center for Reproductive Rights, along with local Salvadoran organization Agrupación Ciudadana por la Despenalización del Aborto Ético, Terapéutico y Eugenésico, filed a precautionary measure on Mery’s behalf in October 2012, before the Inter-American Commission on Human Rights, asking for humane treatment and calling attention to the consequences of an absolute abortion ban on Salvadoran women’s lives. The Commission asked the state to demonstrate what measures they were taking to protect her. The judge assigned by the state to look into the matter determined that Mery was at risk of committing suicide again in prison and granted her pardon on March 14.

http://www.trust.org/item/20130604043507-l4670/?source=dpagehead

http://www.corteidh.or.cr/docs/medidas/B_se_01.pdf

http://www.nytimes.com/2013/06/05/world/americas/woman-who-sought-abortion-in-el-salvador-delivers-baby.html?_r=0


6. Mexico

In 2009, 18-year-old Hilda, a young woman of scarce resources, was accused of an illegal abortion by health personnel after seeking care at a government hospital for haemorrhage brought on by carrying heavy buckets of water. The accusation was based on the confession she was forced to
make in exchange for life-saving medical treatment in the government hospital, without the presence of a lawyer. Several hours after she received treatment to stop the bleeding, she was arrested. The prosecutor failed to prove that an abortion had been induced and freed Hilda, but in 2013 a judge ordered her arrest and in April 2013, she was found guilty of illegal abortion despite the lack of evidence against her. This is a pattern that GiRE (Grupo de Información en Reproducción Elegida) has documented.

In 27 federal states, abortion is a crime but not classified as serious, so women can remain at liberty while their case proceeds to trial. To do so, however, the women must pay bail. The amount of bail in the cases GiRE has documented range from 1,000 to 197,000 pesos. Many of the women who are being prosecuted have few economic resources, and cannot meet such a payment. In the five federal states where abortion is considered a serious crime, women are detained throughout the period leading up to the trial.

Data on criminal trials on abortion from state judiciaries indicated that between 2007 and 2012, 171 women were held on remand, of whom 151 were put on trial and 127 sentenced. However, of the total 32 federal states, only 10 states had data on numbers on remand, 14 had data on numbers on trial, and 20 had data on numbers sentenced.

More women are being reported to the police in the last few years than previously, ever since many Mexican states made their abortion laws more restrictive. GiRE are registering and documenting cases, 30 so far. Usually they find out about them through the press, also via state-level allies. They are involved in litigation in 6 cases. Most of the women are very poor, were reported by health providers in public hospitals, were pressured to “confess” and treatment for complications was withheld unless they confessed, there was often physical and verbal abuse by police, and violations of due process in the justice system. In spring 2013, GiRE made a documentary showcasing 4 cases of women who had been charged but have not yet been sentenced. One woman was later sentenced to a year in prison, although she was declared innocent by a higher court on appeal. GiRE gathered over 34,000 signatures on a petition about her case.

Based on the case histories of 26 women put on trial between 2011 and 2013, GiRE found that:
- the majority had little money or education,
- the majority were reported to the Public Ministry by hospital personnel (nurses, doctors, social workers) in violation of doctor-patient confidentiality,
- The women said they were put under pressure to confess by the doctors and the police, in some cases as a condition for receiving medical treatment, in other cases while still under the effects of anaesthesia,
- The women were maltreated physically and verbally by health personnel and by prosecutors,
- Due process was violated in the majority of cases: the women were not informed of the charges against them, nor were they told they had a right to remain silent and have legal representation.


Civil society organizations say that among the prisoners are many women who suffered spontaneous abortions due to illness, malnutrition or field work in unsanitary conditions, but still were arrested and given sentences of up to 35 years in prison.

The decision to choose between punishing women for the crime or not depends on prosecutors’ views on abortion. Centro Las Libres has documented many cases in indigenous regions of Guerrero, Veracruz and San Luis Potosi and Guanajuato, in marginalized municipalities, where “women never have the opportunity to prove their innocence”.
Centro Las Libres in Mexico has been working for seven years on investigating, documenting, and legally defending cases of women facing criminal charges for abortion and related crimes, such as “homicide of a blood relation or kin, which is the product of gestation”.

In the state of Guanajuato, Las Libres documented 168 cases of women criminalized for abortion from 2000-2008; during that same time period, 11 women were incarcerated for the crime of abortion, with sentences ranging from 9 months to 2 years and 9 months. They had to pay bail of on average 10,000 pesos, in order to serve their sentences outside of prison.

Las Libres investigated and documented the situation of nine women imprisoned for the crime of “homicide of a blood relation or kin, which is the product of gestation” from 2000-2010. The organization also provided legal defence for these women who, in reality, had experienced spontaneous abortions. All of the women lived in extreme poverty in the most marginalized zones of the state, working as agricultural day labourers. They had no access to education or health services. These women were sentenced, on average, to 27 years and served, on average, six years in prison. In September 2010, the defence efforts of Las Libres resulted in the women’s freedom although their criminal records were not expunged.

From 2010 to-date in 2013, there are another 35 women under criminal investigation for abortion in the state of Guanajuato. Of the 35 women, Las Libres’ legal defence kept five women from going to prison. They were also declared innocent of any crime. During this same time period, Las Libres has defended women accused of abortion and homicide of a blood relative, as well as the male partner of one woman in the state of San Luis Potosí who was imprisoned for the crime of abortion. In 2012 he was declared innocent and his partner was freed after serving nine months in prison. Las Libres has provided legal defence and garnered the freedom of one woman incarcerated for abortion in the state of Veracruz, as well as one very poor indigenous woman in the state of Guerrero, imprisoned for homicide of a blood relative. Another indigenous woman in the state of Guerrero remains in prison with a 25 year sentence for homicide of a blood relative. Las Libres is providing her with legal defence and her case is now being carried to the Supreme Court of the Nation.

The general characteristics of all of the women who have been defined as criminals are that they are poor and from rural areas. Many of them also are indigenous women. It is not coincidental that these women receive the strongest sentences and are without access to adequate legal defence and due process. All of the women have been denounced and reported by health care providers working in public hospitals, including doctors, nurses and social workers whose role should be to protect and save women’s lives.

Las Libres has worked tirelessly toward the decriminalization of abortion in Mexico. Its vision is that no woman is defined as criminal for having an abortion or for any reason related to the abortion, be it induced or spontaneous. Las Libres takes the clear stance that abortion is not a crime and should exist as such. It is working to show the high social and economic costs that are incurred when abortion is defined as a crime.

Puebla is the Mexican state with the third highest number of people incarcerated for abortion between 2009 and 2012 nationally – 8 women and 3 men – according to the Instituto Nacional de Estadística, Geografía e Informática. Baja California and Jalisco had 15 and 13 cases respectively. In the rest of the states, Hidalgo had 10 people imprisoned, Michoacán had 9, México state 7, Chiapas and Sonora 5 each, and Quintana Roo and the Federal District 4 cases each.
Two cases were documented: Sofía, aged 20 years, who was accused by a social worker of having caused an abortion with misoprostol. “Sofía had to pay bail to obtain provisional release. The local Public Ministry decided not to take penal action for lack of proof and closed the case. And Laura, aged 22 years, who arrived at the emergency room of the local hospital and was similarly accused of using misoprostol to abort. She was detained in police custody for the five days she was in hospital, charged and taken to court, where her case was dismissed by the judge for lack of proof.

In 2009, the local Congress amended the state Constitution to include the protection of life “from conception to natural death”. The Social Defence Code of Puebla (artículo 343), however, says that abortion is not punishable when pregnancy was caused by the imprudence of the pregnant woman, when the pregnancy resulted from rape, or for reasons of fetal anomaly.

http://www.diariocambio.com.mx/2013/secciones/especial/item/21734-puebla-el-tercer-estado-conm%C3%A1s-encarcelados-por-aborto

7. Nicaragua
Karina, who had three children, was arrested after she was found haemorrhaging as a result of an unsafe abortion. She had become pregnant after having had a tubal ligation. Her mother had told her she would not be allowed home if she became pregnant again, and she was so ashamed that she told no one. Police determined that she’d induced an abortion, and she was prosecuted and sentenced to 30 years in prison without ever being allowed to speak to a lawyer, or testify on her own behalf. Ipas, Center for Reproductive Rights and a number of other NGOs worked with Karina to a review of her case. With legal representation and the fact finding that she had been denied 8 years earlier, they won her freedom. But other women continue to face scrutiny and harassment over their pregnancy complications: Approximately 600 women in Nicaragua were under investigation or being prosecuted for suspected abortion in 2012.


8. Peru
Confidentiality is recognized in Peru and protected by the Constitution, but the General Health Law, Article 30, forces physicians to report evidence or suspicion of illegal abortion. This makes doctors act as police, converting hospitals into places of crime detection.

An estimated 35,000 pregnancies occur every year in Peru as a result of rape. Women and girls have only two options: seek an illegal abortion and risk going to jail or carry the pregnancy to term and suffer the trauma of giving birth to the rapist’s child. Women who can prove that a pregnancy is the result of rape receive a “reduced” sentence of three months in jail (the standard prison sentence for illegal abortions is 2 years). Perversely, this reduced sentence does not apply to married women who are raped by their husbands, even though marital rape is a crime in Peru. Doctors who perform abortions in cases of rape face up to six years in prison. A coalition of women’s rights groups led by PROMSEX, Demus, Catholics for the Right to Decide-Peru, Manuela Ramos, CLADEM-Peru, and Flora Tristan, in partnership with IWHC, has launched Dejala Decidir (“Let her decide”), a Campaign for the Decriminalisation of Abortion in Cases of Rape (currently, abortion is only permitted when the woman’s life or health is at risk). They need 60,000 valid signatures to petition Congress to consider the bill.

CARIBBEAN

1. Jamaica

Police charge doctor in alleged abortion
Police in Jamaica have arrested and charged a doctor for allegedly performing an abortion on a pregnant 12-year-old. Abortion is illegal in Jamaica, as it is in many other countries in the Caribbean and Latin America. A Thursday police statement identifies the doctor as Lloyd Goldson, an established physician honoured in 2009 for his work by the American College of Obstetricians and Gynecologists. The girl’s mother has also been charged. Her daughter was four months pregnant. Some health officials have argued that Jamaica should legalize abortion up to 22 weeks of pregnancy.

Associated Press. 12 July 2012. Original URL, no longer available:

2. Dominican Republic

In 2013, Women’s Link Worldwide and the Colectiva Mujer y Salud filed a case in the Dominican Republic on behalf of Rosa Hernández, who seeks justice through the legal system for her daughter Esperancita’s death and wants steps taken to prevent similar cases from occurring again. Esperancita died amid a national debate about the right to an abortion in August 2012, after she was denied appropriate treatment for acute leukaemia. She was diagnosed when she was seven weeks pregnant and because abortion is completely banned in the Dominican Republic, she was not able to have a therapeutic abortion nor the treatment she needed, which may have harmed the fetus. The circumstances surrounding her death were marked by lack of information, degrading treatment, and the hospital’s repeated refusals to treat the intensely painful symptoms she suffered before her death, on the basis that any treatment would affect fetal development. The fetus died with her, however.

http://us5.campaign-archive2.com/?u=8416da9df57d4044c795f3fcb&id=7aeaee58f78&e=f507b03666

Photo taken at the press conference, from left to right: representative of the Colectiva Mujer y Salud, Esperancita’s mother and Women’s Link senior attorney
AFRICA

1. Rwanda
In June 2012, a new abortion law came into effect in Rwanda as part of a larger review of Rwanda's penal code. This was a significant step in a country where it was previously taboo even to discuss abortion. The Rwandan Youth Action Movement decided to work on unsafe abortion as part of a Rutgers WPF project and gathered data on the extent of unsafe abortion and testimonies of young Rwandan women in prison for abortions. They organized debates, values clarification exercises, interviews and a survey in four universities; launched a petition for law reform; produced awareness-raising materials; worked with the media; and met with representatives from government ministries, the national women's and youth councils, and parliamentarians - all of which played a significant role in the advocacy process for amendment of the law, which was revised when the penal code came up for review in June 2012. However, the women they interviewed are still in prison and they are discussing a campaign to have them released, and the law remains restrictive.

Among the girls interviewed, who had already been in prison for several years, all of them were adolescents when they became pregnant, and several were orphans. One was made pregnant by a teacher, reported to police by her brother, and imprisoned for 9 years. One was impregnated by a local leader. One was impregnated by a family member; her uncle, who was a doctor, helped her to end the pregnancy. The girl, her uncle and her parents were sent to prison. One was impregnated by the husband in the household where she was a housekeeper. Most were reported by the hospitals that treated them.

The amended Penal Code allows a woman to abort if she is a victim of incest, rape, forced marriage, or if the pregnancy is a threat to her health. However, this is only on condition that she submits a certificate issued by a court to her doctor. But since the amendments, the Penal Code is fast gathering dust, over a year later no known case has been registered with the courts. Tom Mulisa, a city lawyer who has dealt with abortion cases says that many people are not aware of the legal procedures regarding the abortion clause. He says no one has actually approached the courts of law for an abortion court order because to go to court you must enlist the services of a lawyer, which might be expensive for most ordinary people. Experts say that the figures on abortion-related deaths are up, indicating a likely problem with the law. "This court order authorisation... seems to be a barrier to the good intention of the law because unsafe abortion has continued but illegally. For example, last month the court sentenced a woman to five years in prison after pleading guilty to abortion. During the court session, she confessed to not knowing about the legal requirements for one to carry out abortion."


2. Kenya
The Reproductive Health Alliance in Kenya first got together because of the prosecution of Dr John Nyamu, a highly respected doctor in Kenya, who was accused of illegal abortions and arrested. There was a big national campaign around this. According an interview with him by Ipas: 'Before constitutional law reform in 2011] most health care workers were afraid of talking about it openly. Abortion was never performed in government hospitals unless the life of the woman was in real danger.'
Even then it was very bureaucratic as one doctor could only do the procedure with permission in writing from two other doctors; one doctor had to be a psychiatrist and the other doctor had to be a senior doctor in the hospital. Abortions were performed by D&C or induction. In reality, these legal abortions were provided almost exclusively at Kenyatta National Hospital, provincial hospitals and very rarely in district hospitals.

There were wards in hospitals where women who had unsafe abortions were treated for uterine and bowel damage due to perforations and developed sepsis, brain damage and many women died. There was tremendous secrecy about abortion, women were aborting late. The penalty for a doctor who performed an [illegal] abortion was 14 years [in prison]; pharmacists could be imprisoned for 3 years for giving abortifacient medicines and women themselves could be imprisoned for 7 years for having an abortion.

Some private clinics were providing safe abortion. They were harassed regularly by local police, usually by extortion. They were used virtually as the personal bank machines of the police. A policeman would say, “I’m short of cash, give me your cash or I’ll arrest you.” The entire staff, including nurses, doctors and women seeking abortion could be arrested. Due to the fear, the providers kept servicing them to buy their freedom.

Q: Your case was profiled by the Center for Reproductive Rights’ paper in 2010, “In Harm’s Way: the Impact of Kenya’s Restrictive Abortion Law.” Can you briefly describe what happened?

In 2004, [data] showed worrying trends and consequences of unsafe abortion in Kenya. This was followed by a major crackdown on clinics, hunts for women who had abortions; some clinics were closed and I was targeted. There were 15 fetuses found along a major road with some documents from a hospital I had worked at previously but had since closed. My clinic was raided and two nurses and I were arrested. This appeared to have been very well organized with all the media including print, radio and TV present to report on the matter. When we were asked to pay bribes, we refused because we knew the fetuses were not from our clinic and the documents were planted on the road, and we were locked up. [Editor’s note: subsequent pathology examinations found that the fetuses were stillborn, not aborted.]

The three of us were ultimately charged with two counts of murder, rather than an abortion-specific offence. Since murder is a non-bailable offense in Kenya, we had to stay in remand prison pending our trial. We all spent a year in prison. One of the nurses was six months pregnant and delivered while she was in prison. One of the nurses still works for me and the other got her green card and has since immigrated to the US.

A senior doctor, a gynaecologist, was instructed by the Director of Medical Services of the Ministry of Health to accompany the police and inspect the two clinics operated by Reproductive Health Services. The purpose of the inspection was to verify if there was any abortifacient equipment. He gave witness in court that the two facilities had legal equipment normally found in a gynaecologist’s clinic and he would be surprised if he did not find it as he uses the same equipment for his work. The police forensic department was asked to look for DNA on the equipment from the clinic. DNA was taken from any instruments or equipment with blood on them—even the couches and lab coats were confiscated. The results from the government chemist found that there was no DNA linkage between the fetuses found on the road and any blood specimens from the clinic. The doctor also found that the clinic was duly registered and all staff had proper and up-to-date licenses. The case was eventually ruled as improper. With that ruling, the attorney general decided not to pursue prosecution due to lack of evidence.
I was held at the Kamiti Maximum Prison, which is where hard-core criminals are remanded. I was confined in a small cell for a whole year. I really felt persecuted, but as I said, it was worth the sacrifice. My arrest and imprisonment was in the media virtually every day. The publicity was an opening for people to realize the magnitude and consequences of unsafe abortion in Kenya; women were dying in great numbers. Before that, abortion was never spoken of in public. There are only about 250 OB/GYNs in Kenya; some districts have none. The media sensation from this case galvanized the Kenya Obstetrical and Gynaecological Society (KOGS), the National Nurses Association of Kenya, the Federation of Women Lawyers, human rights advocates, women’s rights organizations and many others to form an alliance of reproductive health rights advocates, still working today, called the Reproductive Health and Rights Alliance.

I have since sued the government for malicious prosecution and subsequent confinement for one year in remand prison. The case has been in court for the last six years without yet being assigned a hearing.’


3. Malawi
In November 2012 Malawi Police Service in Mzuzu took a 28-year-old woman into custody and were holding her for allegedly aborting a four-month pregnancy. A Mzuzu police spokesperson reported to the newspaper that the woman had a husband who had been living in South Africa where he went in 2009 in search of employment. She told police that 2 years before, she believed her husband had married another woman in South Africa. She had a relationship with another man and got pregnant. Upon hearing about the return of her husband, she decided to break off the relationship with the other man and aborted the pregnancy. The police apparently received a ‘tip’ about the abortion and arrested her after a medical examination indicated ‘forced miscarriage’. At the time of this report, she was still undergoing medical attention and was to appear in court to answer abortion charges under section 157 of the Penal Code.


Ipas Malawi did a study to find out how many women were actually in prison and whether there were human rights violations with specific individuals. One woman who was arrested in 2011 and appeared in court was sent to prison to await trial, but she was forgotten in prison for two years without trial, and an order to release her was ignored. Ipas followed up and got her released. Also there was a case of a woman who was arrested because she had a heavy menstrual period and they said she had committed an abortion. Ipas Malawi have documented about 30 cases where women were targeted by their community and others who reported them to the police in order to blame and stigmatize them for having an abortion.
4. Nigeria

A 15-year old girl died as a result of complications from unsafe abortion allegedly procured by her boyfriend and parents in Lagos State. Her parents and the boyfriend were arrested. The girl had been taken to a quack doctor who gave her some concoctions to drink and thereafter inserted an object into her womb to terminate the pregnancy. She started bleeding profusely and died. Neighbours reported the matter to the police. The three persons were arrested and transferred to the local Homicide Department. They are facing conspiracy and murder charges before the presiding Magistrate. When they were charged to court, their plea was not taken. The presiding Magistrate ordered that the boyfriend be remanded in custody. The parents of the girl were granted bail in the sum of N200,000 with two sureties in like sum, pending the advice of the Department of Public Prosecutions.


In 2004, Amnesty International published a report about capital punishment in Nigeria, part of which is about women who were charged with homicide for having illegal abortions. The investigation found that poor, illiterate, rural women who did not conform to social norms and had had a pregnancy outside marriage appeared to be at particular risk of being charged with capital offences in all of the penal systems of Nigeria. The report included cases of women who were either charged with or convicted of abortion-related offences which carried the death penalty.

In March 2003 Amnesty had interviewed several women detained at the Katsina prison, Katsina State, and one woman in the Sokoto prison, Sokoto State. Of the women still awaiting trial, three had been charged with the capital offence of culpable homicide, 2 under the Penal Code and 1 under the Sharia Penal code of Katsina. Nearly all the women spoken to said they were illiterate and many had been married at a very early age. Of all the cases of women charged with or convicted of offences relating to abortion, only two of the men alleged to be the father were held responsible for either the pregnancy or the alleged abortion and charged or convicted on the same basis as the woman.

RM, age 23, married at 10 years of age and is illiterate. According to her statement she was charged with having killed her baby, but she told the delegation that she delivered the baby after having had stomach aches, and was subsequently taken into hospital because she developed complications after the delivery. During that time, the baby was cared for by her mother. While she was still in hospital she was told that her baby had died. Her husband allegedly complained to the police, who subsequently arrested her, and she had been in detention for over a year at interview.

IJ, 35, conceived a baby out of wedlock after she had divorced her husband. According to her testimony to Amnesty, the stillborn baby was delivered during the 8th month of pregnancy. A villager reported the delivery to the traditional leader, who in turn reported it to police. IJ said she was alone at delivery. It was not clear if she had put her thumbprint on a statement or not, or whether she was properly informed of the charges. She neither had legal representation at the police station nor during the trial. The police allegedly withheld medical evidence from the court that corroborated her account. She was convicted of culpable homicide under the Penal Code in 1993 and sentenced to death by hanging two years later. At the time of publication of this report, she had been in detention and in Katsina prison for 10 years in total. Her right of access to a lawyer had then been secured and she was awaiting her appeal, which was lodged six months previous to interview. Her family had abandoned her and warders in the detention centre had subjected her to prejudicial attitudes due to the offence she was convicted of.

HI, 25, was charged with culpable homicide and concealment of a birth under the Penal Code. She had had a baby after being divorced from her husband. According to her testimony to Amnesty, she
asked a woman for help to find a solution to her situation and was advised to have an abortion. She said she had had an abortion and after that visited a doctor who gave her medication, which she did not take. She then began bleeding. The woman advised her to go to hospital and went with her but subsequently reported her to the police. The police appeared to suspect that she had had a full-term baby. HI was illiterate and was reportedly forced to put her thumbprint on a document she could not read. Her confession was allegedly fabricated by the police. She had been in detention since arrest and as of March 2003 she was in Katsina prison awaiting trial.

Another group of five women, as known to Amnesty International, were also reportedly charged with culpable homicide in relation to alleged acts of infanticide under Section 221 of the Penal Code and were at the time of writing awaiting trial in Sokoto State, northern Nigeria. They were all from rural, low-income backgrounds, and most had conceived outside a functioning marriage as they were either unmarried, separated or divorced at the time of arrest. They had generally been reported to the police by third parties, including village heads and neighbours.

Two of the interviewees from Katsina State told Amnesty that they had had stillbirths in the last three months of pregnancy, but had been reported for inducing abortions. None had had legal representation at the police station at the time of arrest or during the investigation or interrogation, or appeared to have been informed of the reasons for their arrest. Furthermore, several appeared to have signed or thumb-printed confessions they had not written, as most of them could not read or write. Upon being charged, the women were not kept informed by the authorities of their rights. Furthermore, medical evidence which could have been used to exonerate some of them was either never obtained by the police or, in the case of the one who was convicted, may have been deliberately excluded by the police in order to secure a conviction. It is also not clear whether these women were charged with the correct offences, and there appeared to be a tendency to charge women with the capital offence of culpable homicide as opposed to abortion-related offences, which carry prison rather than capital sentences.


4. Senegal
A hospital matron with 32 years of service was being held following the death of RD, aged 16 years, after a clandestine abortion that took her life. “She told me she was ready to die rather than keep this pregnancy. That’s why I agreed to help her,” the matron said. According to the newspaper L’Observateur, the girl was impregnated by a person at her college who was ‘in authority over her’. In court, the matron said she had introduced a probe that should have terminated the two-month pregnancy within 2 days. With her sister and an intermediary, the girl had arrived at the matron’s home and a sum of 80,000 FCFA to ‘deliver the girl of this “shame”’ was agreed. The girl’s sister later returned to the matron’s home to say that her sister was in a critical condition, but it was too late. Although she was taken to hospital, where she received treatment, she died. The prosecution was asking for 5 years on a prison farm for the matron for abortion and involuntary homicide, and 2 years for the others for complicity. The case was due to be heard in September 2013.

MIDDLE EAST & MEDITERRANEAN

1. Algeria
A 6th year medical student, aged 28, was taken into custody in February 2013 while carrying out a clandestine abortion in an apartment in a new city in Constantine, with the help of a young woman with no training who acted as his nurse. His services were advertised on a website and drew women from all over the country as well as abroad, Saudi Arabia and Jordan in particular. The girlfriend of the accused was also believed to be an “accomplice” and was called in by the prosecutor’s office.

Il pratiquait des avortements dans un appartement. Liberté, 2 February 2013.

2. Morocco
Abortion is forbidden in Morocco yet it is tolerated and most gynaecologists practise it. In five months, however, five doctors and their staff have been sentenced to heavy prison sentences for doing abortions. In a recent case, a doctor was sentenced to 10 years in prison, fined a million dirhams and banned from practising medicine. The anaesthetist, the secretary and the nurse were sentenced to three years.

Abortion: between tolerance and condemnation, 24 July 2013

Demonstration against legal restrictions to abortion rights, Istanbul, Turkey, 3 June 2012
Photo: Anatolian News on Al Jazeera
1. Nepal
Before the abortion law was reformed in Nepal, most of the women in prison were there for abortions or found guilty of abortion or infanticide for miscarriages or stillbirths. It took some years after the law was changed to get all these women out of prison. As far as has been discovered by CREHPA in Nepal, according to the records of the Department of Prison Management, Ministry of Home Affairs at 9 September 2013, three women were in prison for abortion in two hill districts, Udayapur and Parbat, but the Department did not have their records and did not know why they were in prison. A local NGO has now investigated this and told CREHPA that the woman in Parbat was sentenced to 2 years (her terms ends in November 2013) for seeking abortion from an unauthorized provider, and the two women in Udayapur were falsely charged for abortion. Their cases are still pending in court. CREHPA plan to “examine the socioeconomic background of these 3 women to understand their vulnerability, i.e. why these 3 women, when a thousand times this number seek abortions from unauthorized providers every day in Nepal”.

Abortion in Nepal is still under the Homicide chapter of the Civil Code, amended in 2002. The law still criminalizes women who have abortions outside the legal time limit or are unregistered abortion providers, and they can still be penalised and/or sentenced to prison. In the former case, somebody (e.g. her in-laws) would have had to file a complaint against the woman. The punishment is 3-6 months imprisonment with a maximum of 1 year. If they are unregistered abortion providers or registered providers who attempted/provided an illegal abortion, they would be arrested if their actions led to the death of a woman or the woman/her family had filed a complaint against them. For example, this case was in the news in December 2012:

According to a newspaper report, a 21-year-old woman died in late 2012 due to excessive bleeding after an abortion in Itahari. Allegedly, an inexperienced health technician who owned a pharmacy had operated on her at her home. Her family alleged that he did not have legal permission to carry out abortions. She was immediately taken to a hospital but she could not be admitted there as emergency treatment was not available so she was rushed to another hospital, but died on the way. She was said to be four and a half months pregnant. The pharmacist had taken Rs 2,000 in advance, saying he would conduct a safe abortion. He had since fled his home. The District Public Health Office said medical abortions can be done till 8 weeks of pregnancy, while from 8-12 weeks abortion can be done only by a medical officer and from 12-18 weeks of pregnancy a medical board must agree. He said both the pharmacist and the husband could be prosecuted for murder. A manhunt was launched to track down the pharmacist.


CREHPA report that they are in the process of submitting a new Abortion Bill which would protect women and punish illegal/unsafe providers only.

CREHPA, E-mail communication, 16 September 2013
CENTRAL AND EASTERN EUROPE

1. Poland
P was 14 years old in 2008 when she was raped. She became pregnant because of the assault, and under Polish law was entitled to an abortion – but only after proving it to authorities. That was not made easy, but a prosecutor ultimately certified the rape. Health officials stated their opposition to abortion and did everything they could to prevent it, and many physicians became "afraid" to provide it, according to P’s mother S. At one hospital, a doctor told P and her mother that she needed a priest, not an abortion, and without their permission, arranged a meeting with a Catholic priest. Anti-abortion activists harassed P and S, forcing them to seek protection from the police. Another hospital breached doctor–patient confidentiality by issuing a press release, publicly identifying them, to declare they would never perform an abortion. Officials and doctors gave them misleading and confusing information about the criteria for and process of a lawful abortion. A doctor and priest convinced a judge that S was coercing P to have an abortion, and that P didn’t want to terminate her pregnancy. They urged the judge to remove P from S’s custody to "protect her". The judge failed to ask P or S a single question during the process, relying solely on the word of the doctor and priest. The judge violated all procedural safeguards by remanding P to state custody, and placing her in a juvenile centre. The police executed the order in the middle of the night, a harrowing experience for both P and S. Weeks after the rape occurred, the Ministry of Health intervened and P was able to get an abortion in a hospital 500 km away from her home. Although the abortion was legal, the hospital refused to register P as a patient; she was given anaesthesia without warning, and was not given information about the procedure or any post-abortion care. She was also told to leave the hospital immediately after the procedure. Represented by the Polish Federation for Women and Family Planning in Warsaw and the Center for Reproductive Rights, P and S took their case to the European Court of Human Rights in 2009. In 2012, the court delivered a landmark decision that affirms how crucial it is for adolescents to be able to exercise personal autonomy in the field of reproductive health, and for governments to facilitate that exercise, not hinder it.


2. Moldova
In May 2006, Z, an unmarried, pregnant and poor young woman from rural Moldova, induced an abortion at a late stage of her pregnancy at her home. When she was taken to the hospital for haemorrhagic shock, doctors reported her to the police. She was then charged with intentional murder, even though medical records show that she had an abortion and there is no criminal penalty for women who illegally terminate their pregnancy. In December 2006, Z was found guilty of murder and sentenced to 20 years in prison. On January 31, 2012, the Moldovan Pardoning Commission granted pardon to Z, after she had spent over five years in prison. Even though she has now been released, Z has not been exonerated and her case continues to illustrate the need for comprehensive reform in the areas of sexual and reproductive rights in Moldova, as well as an urgent need to combat discrimination of women and degrading treatment on gender grounds in police detention and legal proceedings. While Z continued having vaginal bleeding and stomach aches for one month during her pre-trial detention, she received no post-abortion medical care. Her poor health condition was exacerbated by the absence of basic sanitary facilities in custody, such as a shower, toilet, water, sanitary pads, bedding, and clothing to withstand the cold in her cell.

Submission to the Committee against Torture...48th Session. Center for Reproductive Rights, Moldovan Institute for Human Rights. 12 March 2012.
WESTERN EUROPE

1. England

The Crown Prosecution Service decided in September 2013 that it would not be in the public interest to prosecute two doctors in relation to alleged attempts to commit abortions on the grounds of fetal sex. This decision resulted from an investigation carried out by several police forces, coordinated by the Metropolitan Police Service, following an undercover sting operation by a newspaper. In a statement explaining the position the CPS said: ‘We have previously advised police that there is insufficient evidence to prosecute four medical professionals in relation to this matter... We have been asked to review two separate allegations against two medical professionals in Birmingham and Manchester concerning requests for an abortion made by a pregnant woman acting on behalf of an investigative journalist. Both suspects were doctors and providers of pregnancy terminations at the time of the alleged offences. The undercover operation involved the pregnant woman presenting herself as seeking an abortion on the grounds that she did not want to give birth to a girl. We are satisfied there was no intention to proceed. ‘The Abortion Act 1967 allows for an abortion in a limited range of circumstances but not purely on the basis of not wanting a child of a specific gender.’ According to the CPS, while the abortions did not take place, attempting to commit a criminal offence that is, doing something that goes further than just preparing to commit it – may also be treated as a crime under the Criminal Attempts Act 1981. Having carefully considered the evidence, however, they concluded that although the case was not straightforward, on balance there was enough evidence to justify bringing proceedings for an attempt and therefore considered whether a prosecution was required ‘in the public interest’. One factor they took into account was that the General Medical Council was already involved and had the power to remove doctors from the medical register. ‘Taking into account the need for professional judgement which deals firmly with wrongdoing, while not deterring other doctors from carrying out legitimate and medically justified abortions,’ they concluded that the cases would be better dealt with by the GMC rather than by prosecution. In coming to this conclusion, we have also taken into account that in these cases no abortion took place or would have taken place,’ they said.

CPS statement on abortion related case, 4 September 2013.

CPS statement on abortion related case, 5 September 2013.

In 2009, a woman self-induced an abortion at 29-30 weeks of pregnancy, having been denied a late abortion by an abortion provider in the independent sector and then a National Health Service hospital in the north of England. She had clearly wanted to end the pregnancy for over three months and finally resorted, in desperation, to using drugs purchased from the internet to do so. She disposed of the body but refused to say where. She sought hospital care and was reported to the police, investigated and later arrested. In 2012 she pleaded guilty and was sentenced to 8 years by a judge whose comments appeared to be heavily biased against abortion. The length of the sentence was reduced to 2-3 years on appeal in June 2013. The appeal court judge was right in stating that this case was ‘mercifully highly unusual’. However, the sense of desperation Catt must have felt at that point may not be. In the same period, the Guardian newspaper reported on a mother who had dropped her baby down a rubbish chute, and a year ago a woman died after swallowing industrial strength vinegar to end her 6th pregnancy. What these cases tell us is that a woman who feels unable to carry a pregnancy to term or care for a child may become desperate if she is unable to access the help she needs, and may end up committing a criminal act.

Mother who aborted baby at term has jail sentence reduced. Guardian, 13 June 2013.
http://www.bbc.co.uk/news/uk-england-york-north-yorkshire-22875092
2. Northern Ireland

More than 100 women in Northern Ireland risk imprisonment after publicly admitting they have taken abortion-inducing pills, which would be illegal in the province under new abortion guidance currently being considered. The women signed a letter openly confirming that they took abortion pills bought on the internet from pro-choice charities, further fuelling the debate prompted by the opening of the first private clinic to offer legal abortions to women in the province.

The 1861 Offences Against the Persons Act makes abortion illegal in most cases and carries a penalty of life imprisonment. Several men who have helped women obtain the pills have also signed the letter, even though the 19th-century act also makes it a serious offence to help someone procure an abortion. In their letter the women state that they “have either taken the abortion pill or helped women to procure the abortion pill in order to cause an abortion here in Northern Ireland. We represent just a small fraction of those who have used, or helped others to use, this method because it is almost impossible to get an NHS abortion here, even when there is likely to be a legal entitlement to one.” One of those who put her name to the letter, Belfast-born student Suzanne Lee, 23, told the Observer she was prepared to be arrested and taken to court over her decision last August to take abortion pills, bought on the internet from pro-choice group Women On Web, when seven weeks’ pregnant. “If the pro-life people want to report me to the public prosecution service and try to send me to jail - go for it! I am willing to face the consequences because I knew doing this was illegal. I am speaking out because I’m happy to stand up in court and try to highlight how absurd this situation is,” she said.


3. Spain

The Court of Barcelona closed on 31 January 2013 with the acquittal of all defendants, Dr Carlos Morin, his wife and staff, in a case brought by anti-abortion groups, begun in 2006 following a “hidden camera” interview by journalists from a Danish TV station. Dr Morin and his wife were arrested a year later, the Barcelona clinic was raided by police and more than 2,000 patients' confidential files were confiscated. Dr Morin was detained for 2 months, and the police closed all of his clinics, which remain closed to this day. The “investigation” lasted for over four years. By the time the case was lodged, it was alleged that there were a range of irregularities in relation to almost 100 abortions. He was one of very few doctors prepared to perform late second and – exceptionally – 3rd trimester abortions for psychological indications. The anti-abortion organisations claimed these were illegal abortions under Spanish law. The Prosecution had asked for 273 years in prison for Dr Morin. Ten other defendants also faced heavy prison charges of illegal abortion, forgery of records and signatures, conspiracy and professional intrusion. But the statement released dismantled these accusations and cleared all defendants of all charges. The judges of the Sixth Court stated that they believed all the abortions under consideration were carried out within the law, with the consent and the express request of the pregnant women. In the cases of minors, the clinic had the consent of their parents or guardians. The abortions were all carried out in approved clinics and the women were attended by qualified personnel.

However, anti-abortion activists, having motivated the case through false allegations in the first place have now tried to challenge the court’s ruling and tried to re-open the case. In the meantime, Dr Morin lost everything he had in order to fight the case. He rarely had the support of others among abortion providers for reasons best known to themselves.

NORTH AMERICA

1. USA
In 2010 Bei Bei Shuai attempted suicide while pregnant. Although she survived, the baby she gave birth to following the attempt did not. Instead of receiving support, Shuai was arrested on charges of murder of a viable fetus and attempted feticide. In August 2013 after two and a half years, Bei Bei Shuai was finally free from a looming murder trial, free from the electronic GPS shackle that has tracked her every move since her release on bail, and free from an unjust and legally unauthorized prosecution.

The US federal government and 38 states have feticide and murder laws that treat the death of a fetus as homicide. While many states started out passing "feticide" laws, they are now more likely to expand their existing homicide laws, redefining "persons" to include fertilized eggs, embryos and fetuses as entirely separate subjects of the crime of murder. Virtually all such laws were adopted in the wake of an assault on a pregnant woman. Some followed incidents involving negligent or drunk drivers who killed a pregnant woman. Many more followed violent attacks on pregnant women that featured brutality. According to their proponents, these laws do not conflict with pregnant women’s rights, particularly their right to choose abortion, and instead they offer protection from violence to pregnant women and their unborn children. Once passed, these laws not only define fertilized eggs, embryos and fetuses as legal entities entirely separate from the pregnant woman, they also equate pregnancy termination with the most heinous and unforgivable of crimes: murder.

Almost all of these laws prohibit punishment for abortions, but only lawful abortions. A growing number of state laws, however, define a wide range of abortions as unlawful. In a recent Idaho case, which challenged laws that could be used to arrest a woman who ended her own pregnancy, the state Attorney General argued that all "self-abortions" are unlawful and the state may arrest pregnant women for having them. Only some states' fetal murder statutes, like Ohio's, specify that the law may not be used to punish women in relationship to their own pregnancies.

Research by National Advocates for Pregnant Women found that when pregnancy termination is equated with murder, homicide and feticide laws, including those with explicit exceptions for the pregnant woman, will be used to justify the arrests and detentions of pregnant women themselves. They identified more than 600 cases since 1973 in which a woman’s pregnancy was a factor leading to her arrest, detention or being subject to a forced medical intervention. In a separate analysis, they also found that prosecutors in at least 18 states had used their existing murder and feticide laws as a basis for arresting and prosecuting pregnant women who had had abortions, or who suffered miscarriages, stillbirths or neonatal losses.

Even when states do not charge women directly under feticide or murder laws that treat eggs, embryos and fetuses as completely separate persons, prosecutors typically cite these laws as authority for subjecting pregnant women to forced medical interventions and for interpreting generally-worded child endangerment laws, drug delivery laws and other criminal statutes as ones that may be used to arrest pregnant women themselves. In South Carolina, an 18-year-old pregnant woman with a history of mental health issues attempted suicide by jumping out of a building. She survived, despite major injuries, but lost the pregnancy. She was arrested and incarcerated on the charge of "homicide by child abuse". Rather than face a murder, she pleaded guilty to manslaughter.


On 11 September 2012, in the first decision of its kind, the U.S. Court of Appeals for the Ninth Circuit issued an opinion that addressed whether states may use their existing criminal abortion laws to
arrest and prosecute women who have abortions. In this case, the charges against JM, who had been arrested for having an ‘illegal’ abortion in Idaho, were dropped for lack of evidence, but the state threatened to reinstate them if more evidence became available, and argued that it had the right to punish any woman who self-induced an abortion. JM filed suit in federal district court to enjoin the state from using Idaho Code § 18-608A (“it is unlawful for any person other than a physician to cause or perform an abortion”), § 18-606(2) (Idaho’s pre-Roe law stating “every woman who knowingly submits to an abortion or solicits of another, for herself, the production of an abortion, or who purposely terminates her own pregnancy otherwise than by a live birth, shall be deemed guilty of a felony.”) and §18-5-505-507 (a ban on all non-therapeutic abortions after 20 weeks) to prosecute JM and other women in the future under these laws. The district court granted a preliminary injunction as to the “physician only” and the “woman herself” provisions, and the State appealed. Using strong language, the Court of Appeals upheld a preliminary injunction that prevents the state from prosecuting JM, finding that she was likely to succeed on her constitutional challenge to Idaho’s criminal abortion law as a mechanism for locking up women who have had abortions. The Court’s opinion specifically relied on arguments from the National Advocates for Pregnant Women’s brief that acknowledged 1) that earlier decisions that allowed states to restrict the provision of abortion services to doctors did not address the question of whether women themselves could be locked up, 2) that third parties who perform abortions on women are not the same as the women themselves, and 3) that an overriding historical purpose for regulating abortion has been to protect – not arrest – women. The court took pains to acknowledge the barriers that women, especially low-income women, face in obtaining abortion services, including lack of providers, financial obstacles, and harassment at clinics. The opinion also acknowledged the medical, moral, and ethical decision-making women engage in when making decisions about the pregnancies.

US Federal court rejects Idaho’s claim that it may punish women who end their pregnancies. National Advocates for Pregnant Women, 14 September 2012. [http://advocatesforpregnantwomen.org/blog/2012/09/]

Prosecutors have dropped “illegal abortion” charges against two Virginia women, according to the Virginian-Pilot. According to reports, JC was 25 weeks pregnant when she arrived in labour at Bon Secours DePaul Medical Center. Her infant was delivered but subsequently died. Afterward, Norfolk Child Protective Services received an anonymous call from someone claiming to be a friend of the pregnant woman and another woman. The caller said that the two women had discussed inducing a miscarriage to end the pregnancy, and that they had purchased items from a pharmacy to ingest and cause the pregnancy to terminate. When she found out the baby had died, she brought it to the attention of detectives. Prosecutors dismissed the charges on the grounds that they had “insufficient evidence to proceed” because it is often medically impossible to determine whether labour was brought on by anything the woman did, or whether it came on spontaneously. Though most of these charges never result in convictions, since 2005 the number of preliminary charges against women who miscarry has been increasing, according to National Advocates for Pregnant Women.


2. Canada
In August 2013, a judge threw out a defamation suit against Joyce Arthur, a long-time pro-choice activist, who had published a 2009 exposé entitled Exposing Crisis Centres in British Columbia on “crisis pregnancy centres”. In recent years, these centres have begun to draw attention, due to reports of troubling tactics used to discourage abortion and preach the Christian gospel that have
surfaced repeatedly in the media. In 2012, a British Columbia pro-life organization finally responded with two separate defamation lawsuits in the B.C. Supreme Court, one against Joyce Arthur.

Taking a lead from Joyce’s report, the first big media story about the internal workings of crisis pregnancy centres surfaced in August 2010 from a Toronto Star reporter posing as a pregnant woman. Smith was told that "pieces of babies" are sold for medical research following an abortion, collected in a "big truck" that could be seen out front. After a "terrifying description of the procedure", complete with graphic images, she was warned that having an abortion would increase her risk of breast cancer and that it would affect her ability to get pregnant later in life. She came to the conclusion that these centres "use varying degrees of deception and misinformation to discourage abortions". Then, in April 2012, CTV ran an exposé of a centre that came to similar conclusions. Their undercover reporter was told that she could be left infertile with a scarred uterus if she chose to terminate her pregnancy. The Christian Advocacy Society and the Crisis Pregnancy Centre of Vancouver Society launched a lawsuit against CTV, which was settled out of court with CTV agreeing to make changes to the online version of the article. Earlier in 2013, a journalist published graphic images from pro-life pamphlets she was given by a Toronto Aid to Women counsellor. Like the undercover reporters from CTV and the Toronto Star, this journalist was given medically inaccurate information about the effects of abortion on breast cancer and fertility.

For her part, Joyce Arthur felt “thoroughly vindicated” by the verdict which she thinks places a “big chill” on pro-lifers. "[They'll] have to think twice before risking their financial resources in a lawsuit."


AUSTRALIA/NZ/PACIFIC

1. Australia

There was a case in Queensland, Australia in 2010 of a woman and her partner, who obtained mifepristone and misoprostol to self-induce an abortion, which was thrown out of court on the basis that the substances used to cause the miscarriage were not noxious to the woman. The judge thought the substances had to be noxious to the woman (not just the fetus) to break Queensland’s abortion law. Hence, this judgement was quite different from them being arrested for obtaining and using mifepristone and misoprostol to induce an abortion.
