

— WHEN ABORTION IS — — A CRIME: — — RWANDA —



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WHEN ABORTION IS A CRIME: RWANDA

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In Rwanda,
there is only one
doctor for every
17,000 people
in the entire
country.⁰²

Executive Summary

In 2012, Rwanda reformed its abortion law to permit abortion in cases of rape, incest or forced marriage, and in cases of risk to the health of a woman or the fetus. Legal barriers and cultural and religious stigma, however, make it nearly impossible for women to get a safe, legal abortion. The reality is that women with unplanned or unwanted pregnancies in Rwanda resort to unsafe and illegal abortions—and that Rwandan police unjustly harass, arrest, prosecute and imprison hundreds of women and girls on abortion or infanticide-related charges each year.

Between July 2013 and April 2014, Ipas and the Great Lakes Initiative for Human Rights and Development (GLIHD) interviewed 20 women from among the more than 300 women and girls incarcerated for abortion in five Rwandan prisons. These 20 women shared very similar profiles: all had suffered injuries from unsafe abortions that required emergency medical care; when they sought help from within their communities, their neighbors or health care-providers reported them to the police. Many would likely have qualified for a legal abortion under the reformed penal code, but could not meet the burdensome requirements for approval. Very few had legal representation. They were disproportionately young, poor and could not count on support from family or friends.

The 2012 law requires that women seeking abortion get approval from a judge.⁰¹ In addition to judicial authorization, women seeking abortion for health reasons must get written approval from *two doctors*. Gaining access to one doctor, much less two, is a remote possibility for most women in Rwanda; there is only one doctor for every 17,000 people in the entire country.⁰² The majority of Rwandans live in rural areas with limited access to courts or hospitals.⁰³

Studies show that when abortion is illegal, women and girls will risk arrest and harm to their health in order to terminate an unplanned or unwanted pregnancy. According to both international and regional authorities, criminalizing abortion and restricting access not only violates human rights, infringing on dig-

01 None of the judges interviewed by Ipas had received a single request for an abortion as permitted under the new law. Three judges were interviewed, two from the primary court and the third from the intermediate court of judges.

02 Ministry of Health, *Human Resources for Health Policy*, Kigali, Rwanda: Ministry of Health, 2012. See also: Basinga, P. et al., *Unintended Pregnancy and Induced Abortion in Rwanda: Causes and Consequences* (New York: Guttmacher Institute, 2012). Available at <https://www.guttmacher.org/pubs/unintended-pregnancy-Rwanda.pdf>.

03 National Institute of Statistics of Rwanda (NISR) [Rwanda], Ministry of Health (MOH) [Rwanda], and ICF International, *Rwanda Demographic and Health Survey 2010* (Calverton, Maryland, USA: NISR, MOH, and ICF International, 2012). Available at <http://dhsprogram.com/pubs/pdf/fr259/fr259.pdf>.

nity and autonomy, but also leaves vulnerable women and girls susceptible to injury, death or imprisonment.⁰⁴ On its face, and in its application in Rwanda, the abortion law violates fundamental human rights to health, to freedom from discrimination, and, in its enforcement, often violates rights to privacy and to a fair trial. Such laws are a threat to public health and undermine initiatives to promote gender equity, eradicate poverty and generate sustainable development.

The 2012 penal code reform shows that the Rwandan government is willing to address maternal mortality and morbidity from unsafe abortion. Unfortunately, this political will has not translated into safe and accessible abortion services. It has kept women—especially poor women, young women and adolescents—at risk of serving extended prison sentences.

The UN Human Rights Committee has urged states to revise laws to help women prevent unwanted pregnancies and to prevent women from resorting to unsafe abortions, which put their lives at risk. To address this ongoing human rights violation, the Rwandan government should:

- (a) Release all women, girls and health-care professionals who are unjustly incarcerated as a result of punitive abortion laws;
- (b) Disseminate information about the 2012 law and its requirements to women, girls, health-care providers, police and judges;
- (c) Establish clear and streamlined procedures to facilitate obtaining judicial authorization for a legal abortion;
- (d) Invest in effective preventive measures, including comprehensive sexuality education, elimination of gender discrimination and sexual violence, and full access to all modern contraceptive methods; and
- (e) Broaden the law to permit nurses and midwives to perform abortion; doing so is an evidence-based approach to expanding safe access to care.

04 In 2009 the CEDAW Committee expressed concern about the high rate of maternal mortality from unsafe abortion. (CEDAW Concluding Observations, Rwanda, ¶ 35-36 U.N. Doc. CEDAW/C/RWA/CO/6 CEDAW/C/RWA/CO/6 (2009) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/RWA/CO/6&Lang=En) In 2013 the Committee on Economic, Social and Cultural Rights expressed concern about criminalization of abortion and the severe punishment applied to women who seek abortion. The Committee urged Rwanda to revise its law to reduce the severity of punishment for abortion. (CESCR Concluding Observations, Rwanda, U.N. Doc. E/C.12/RWA/CO/2-4 (2013) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/RWA/CO/2-4&Lang=En).

Introduction

Africa is one of the most religious and culturally diverse regions in the world. But shared histories of European occupation across the continent have left an almost uniform legacy of harmful colonial-era penal code provisions on abortion and other matters of sexual and reproductive health. Even in revised forms, laws criminalizing and restricting access to safe, legal abortion continue to violate women's human rights.

Access to safe abortion is an essential part of sexual and reproductive health and rights. Whenever governments make safe abortion services inaccessible to the people who need them, women's human rights to health and to freedom from discrimination are violated.⁰⁵ With inconsistent enforcement and failure to provide legal counsel or timely trials, governments further discriminate and violate rights to due process. Through unjust incarceration, states deprive women of their rights to education and to work. Restrictive abortion laws and arbitrary enforcement are a threat to public health. They undermine initiatives to promote gender equity, eradicate poverty and generate sustainable development.

According to the World Health Organization (WHO), legal restrictions on abortion result in a significant risk of death or disability.⁰⁶ Restrictive, punitive laws on abortion drive a dangerous system of underground providers, who may not be skilled or practice sanitary methods. Restrictive legal frameworks also contribute to ongoing fear and stigma that can result in police harassment, surveillance and extortion. Where abortion is illegal, women and girls will risk arrest and harm to their health in order to not carry a pregnancy to term. WHO estimates that globally, 22 million unsafe abortions take place each year, an overwhelming 98 percent of which take place in developing countries with punitive legal restrictions.⁰⁷ Women prosecuted for abortion face criminal punishment ranging from fines or community service to long prison sentences.

05 For a good overview of abortion as an international human right, see Christina Zampas and Jaime M. Gher, "Abortion as a Human Right: International and Regional Standards," *Human Rights Law Review* 8 (2) (2008): 249–294, doi: 10.1093/hrlr/ngn008.

06 Grimes, David A et al., "Unsafe abortion: the preventable pandemic," *The Lancet* Volume 368, Issue 9550 (2006): 1908–1919, [http://dx.doi.org/10.1016/S0140-6736\(06\)69481-6](http://dx.doi.org/10.1016/S0140-6736(06)69481-6).

07 World Health Organization, *Safe abortion: technical and policy guidance for health systems* (Geneva, Switzerland: World Health Organization, 2012), 17.

From 2011 to 2014, Ipas investigated the enforcement of criminal abortion laws in countries in Africa and Latin America in order to document the impact on women's lives and analyze the related rights violations. This report, a collaboration between Ipas and the Great Lakes Initiative for Human Rights and Development (GLIHD), shares findings from Rwanda and our recommendations to the Rwandan government.

The Rwandan Abortion Law

The 1977 Rwandan penal code highly restricted abortion, permitting it only to preserve the physical or mental health of a woman. Generally, abortion was presumed to be illegal.

In June 2012, Rwanda approved a new penal code. Article 162 on criminal abortion expanded the exceptions for permissible abortion to include:

1. rape
2. incest
3. forced marriage
4. risk to the health of the woman or the fetus.

To obtain a legal abortion under exceptions 1–3, a woman seeking abortion needs certification from a “competent Court” that the pregnancy resulted from rape, incest or forced marriage. To obtain a legal abortion because of risk to health, a petitioner must get permission from two doctors, and one must make “a written report in three copies.”

To be legal, an abortion must then be performed by a doctor. Self-induced abortion is considered illegal.

According to the law, a woman prosecuted for an illegal abortion can face a prison sentence of one to three years and a fine the equivalent of US\$300⁰⁸ (63 percent of Rwandans earn under \$1.25 a day.)⁰⁹

This study found that abortions sometimes are prosecuted under the law on infanticide. Infanticide carries a sentence of life imprisonment.¹⁰

The Rwandan Reality of Abortion

Three years after Rwanda modified its abortion law and included burdensome barriers to access, little has changed on the ground; legal abortions remain inaccessible for most women and girls.

Still, abortions continue to take place. As the Guttmacher Institute has noted, restrictive abortion laws do not stop women from ending unwanted pregnancies; they instead force women to seek them out through clandestine means.¹¹ In Rwanda in 2009¹², there were approximately 60,000 induced abortions—an annual rate of 25 abortions per 1,000 women.¹³ Most women are unable to fulfill the required steps for obtaining a legal abortion under the delineated exceptions. The reason is twofold: they are unaware of the law or, if they have knowledge of the requirements, they do not have the money or resources to find either a provider, lawyer or a judge. Often judges and health-care professionals are themselves unaware of the law.¹⁴

08 *Organic Law instituting the penal code, N° 01/2012/OL of 02/05/2012, Official Gazette n° Special of 14 June 2012, Chapter III, Section 5, Articles 162–68 available at http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Rwanda_Abortion_Law.pdf.*

09 As of 2011. World Development Indicators data available via the World DataBank at <http://databank.worldbank.org/data/views/reports/tableview.aspx>.

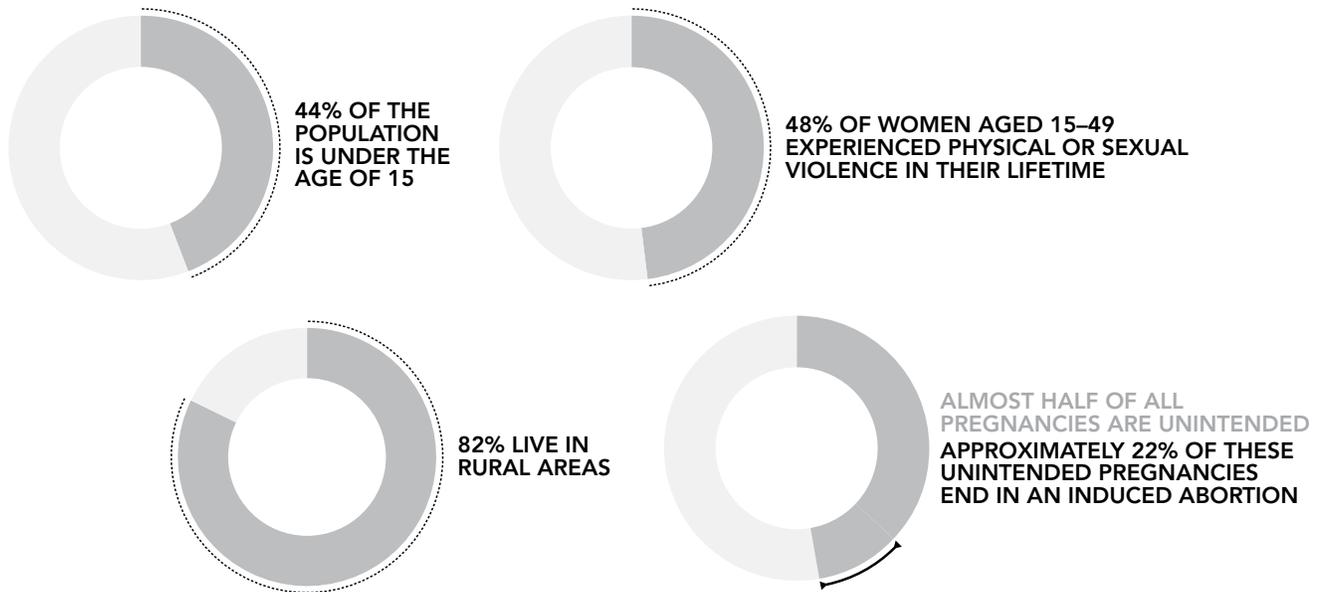
10 *Organic Law instituting the penal code, N° 01/2012/OL of 02/05/2012, Official Gazette n° Special of 14 June 2012, Chapter III, Section 5, Articles 143.*

11 Susan Cohen, “Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide,” *Guttmacher Policy Review* Volume 12 Number 4 (2009). Available at <https://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>. “Restrictive laws have much less impact on stopping women from ending an unwanted pregnancy than on forcing those who are determined to do so to seek out clandestine means.”

12 The 1977 law, nearly a complete ban on abortions, was still in effect.

13 Basinga P et al., *Unintended Pregnancy and Induced Abortion in Rwanda: Causes and Consequences*.

14 Providers’ negative attitudes can be a barrier to care and fulfilment of the 2012 penal code: “Doctors—being part of the Rwandan society—are still in the same confusion as the rest of Rwandan society due to culture for some and religion for others...[Some doctors] are not supportive [of] the new provisions and [some] don’t have [the] skills to perform an abortion” from a presentation by Dr. John Muganda titled “Postabortion Care in Rwanda: Program Highlights and Issues Around Stigma” presented at PAC Consortium Meeting: Addressing Stigma and Quality of Care Issues in PAC Services, Washington, DC, 19 November 2014.



The Rwandan population is primarily rural and young—44 percent of the population is under the age of 15; and only 18 percent live in urban areas.¹⁵ Sexual violence is endemic: a 2008 UNIFEM study showed that *nearly half* (44 percent) of female respondents had suffered a forced sexual intercourse.¹⁶ A 2010 Rwanda Health and Demographic Survey found that 48 percent of women aged 15–49 experienced physical or sexual violence in their lifetime.¹⁷ While there has been dramatically improved access and uptake of modern family planning, there remains a significant unmet need.¹⁸ Total fertility rate is high¹⁹ and almost half of all pregnancies are unintended.²⁰ Approximately 22 percent of these unintended pregnancies end in an induced abortion.²¹

Nearly all abortions occur outside of the formal health system in high-risk settings by untrained individuals where safety cannot be assured. Complication rates are extremely high, especially among poor and young women: each year, 24,000 women and girls suffer complications requiring emergency medical treatment.²² Rates are highest for self-induced abortions (67 percent) or those performed by traditional healers (61 percent)—the kinds of procedures that poor, rural women are more likely to have.²³

15 Population Institute. "Population and Failing States: Rwanda." <http://www.populationinstitute.org/external/files/Rwanda.pdf>.

16 UN Development Fund for Women (UNIFEM), *Baseline Survey on Sexual and Gender Based Violence in Rwanda*, June 2008, available at: <http://www.refworld.org/docid/4bcc18ad2.html> DHS- 2010, 56% of women ages 15–49 years had experienced physical or sexual violence at least once in their lifetime, with adolescent girls being at particular risk.

17 Rwanda Demographic and Health Survey 2010.

18 According to *Rwanda Demographic and Health Survey 2010*, the contraceptive prevalence rate is 45%; the unmet need for family planning is 19% for women ages 15–49. See also Basinga et al., "Abortion Incidence and Postabortion Care in Rwanda," *Studies in Family Planning*, 43 (2012):11–20, DOI: 10.1111/j.1728-4465.2012.00298.x.

19 Guttmacher Institute, "Factsheet: Abortion in Rwanda," (April 2013). Available at <http://www.guttmacher.org/pubs/FB-Abortion-in-Rwanda.html>. Information taken from Basinga P et al., *Unintended Pregnancy and Induced Abortion in Rwanda: Causes and Consequences* (New York: Guttmacher Institute, 2012).

20–23 Guttmacher Institute, "Factsheet: Abortion in Rwanda."

Women and girls are suffering needlessly, and the government is losing money. According to a May 2014 Guttmacher Institute report, in 2012 the Rwandan government paid an estimated \$1.7 million to treat approximately 18,000 women for complications from unsafe abortion; this is equal to approximately 11 percent of the country's total public spending on reproductive health.²⁴

Women who are injured or suffer complications from an unsafe abortion in Rwanda have few options for support. Thirty percent of all women who develop complications do not receive the medical attention they need. This proportion is especially high among poor women—between 38–43 percent do not get care in facilities, compared with 15–16 percent of non-poor women.²⁵ When women and girls turn to their neighbors for assistance, they face the risk of arrest and prison.

Methodology

This project both documented the experiences of women undergoing criminal proceedings for illegal abortions and recorded the number of women and girls in prison for illegal abortion in Rwanda. The research took place from July 2013 to August 2014. The study received ethical review and approval from the National Ethics Committee of the Ministry of Health in Kigali and the Allendale Institutional Review Board (AIRB) in the United States. In addition, implementation approval was obtained from the Rwanda Correctional Services (RCS) and the director of each selected prison.

The investigation was divided into two parts: quantitative and qualitative. The quantitative phase focused on review of national records from RCS and records from five selected prisons. The qualitative portion of the study was comprised of in-depth interviews with 20 incarcerated women.

Originally, we intended to review court records to triangulate our findings. However, attempts to review court records were discontinued after multiple consultations with court, police staff and interviews with the national prosecutor's office found that gaining access to individual cases, particularly court

24 Michael Vlassoff, et al., "The health system cost of post-abortion care in Rwanda," *Health Policy Plan* (2014). Available at <http://heapol.oxfordjournals.org/content/early/2014/02/17/heapol.czu006.full>.

25 Guttmacher Institute, "Factsheet: Abortion in Rwanda."

cases, was highly unlikely primarily because court record-keeping of individual cases in Rwanda has not been well established. Therefore, the project focused solely on prison records, which were accessible and included case summaries of each prisoner.

Excluding Mpanga prison, which holds detainees from international jurisdictions—including those convicted under the international Criminal Tribunal for Rwanda and those of the special court for Sierra Leone—there are 13 prisons in Rwanda.²⁶ Among the 13 prisons, 11 include both men and women. Out of these, five were purposively selected based on a 2009 study of women incarcerated for abortion,²⁷ which found that Karubanda, Kigali Central, Nsinda, Ruhengeri and Nyamagabe prisons had the highest number of detainees for abortion-related crimes.

The primary outcome of interest in this study was the number of women incarcerated for illegal abortion in the five selected prisons. Our numbers are based on data collected from the official registries at the prisons. It should be noted that researchers were not allowed to make copies of individual files and instead transcribed data by hand. Data were entered and analyzed in Excel.

It is likely the estimated national data outcome provided by the RCS is an underestimate because (1) the ongoing process of digitizing prison statistics by the RCS resulted in some records being incomplete, missing, or unavailable; and (2) official registries likely under-report incarceration for illegal abortion due to the sensitive nature of the issue.

In collaboration with prison authorities, 20 participants in prison were identified for the qualitative portion of the research study. All women provided informed consent before being interviewed. Participants were selected to represent a range of experiences based on age, educational status, reasons for having an abortion, date of detention, and whether they were either currently serving their sentence or their cases were pending. Interviews were conducted in several locations, including in prison, at places of employment, homes or another location chosen by the participant. Interview topics included events surrounding the arrest of the imprisoned subject, circumstances leading the

26 Rwanda Correctional Service Strategic Plan: 2013-2018, June 2013.

27 Umhoza, Chantal, et al. Advocating for safe abortion in Rwanda: how young people and the personal stories of young women in prison brought about change. *Reproductive Health Matters*; 2013;21(41):49-56.

woman to seek an abortion, the subject's employment, health, family and home life and social contacts, and how this has changed following imprisonment. All interviews were recorded via interviewer notes. Data from the in-depth interviews form the basis of the four case studies highlighted in the report.

Study Results

Ipas and GLIHD conducted research from July 2013 to April 2014 and found 313 women and girls incarcerated for illegal abortions in five prisons. This number comprises nearly a quarter of the female prison population in these five prisons. Based on data obtained from the Rwanda Correctional Services (RCS), from 2008–2013 there were 7,807 women in Rwandan prisons.²⁸ Of these, 227 were in prison for abortion and 367 for infanticide.²⁹ This study includes numbers on infanticide because many women convicted for infanticide reported that they had had abortions and the state had wrongfully prosecuted. Infanticide carries a higher penalty than abortion.

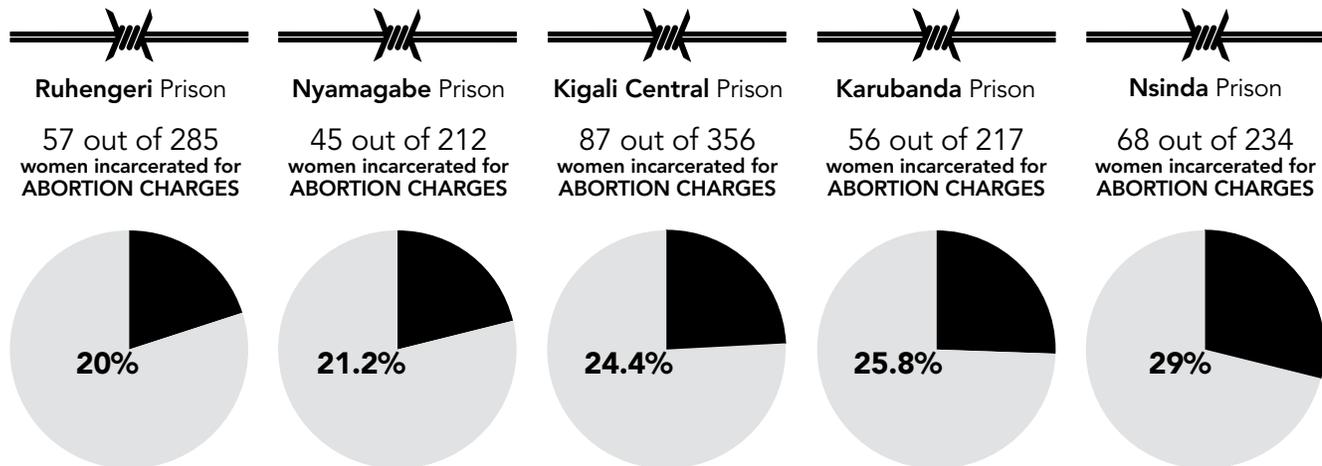
It should be noted that data collected directly from the five prisons did not match the national data made available by Rwandan Correctional Services. Because individual prisons have more accurate record keeping than at the national level, it is likely that cases of abortion and infanticide were underreported or inaccurately reported by the RCS.

DISAGGREGATED BY PRISON:

- Karubanda Prison: 56 out of 217 women incarcerated for abortion charges: **25.8 percent**
- Nsinda Prison: 68 out of 234 women incarcerated for abortion charges: **29 percent**
- Kigali Central Prison: 87 out of 356 women incarcerated for abortion charges: **24.4 percent**
- Nyamagabe Prison: 45 out of 212 women incarcerated for abortion charges: **21.2 percent**
- Ruhengeri Prison: 57 out of 285 women incarcerated for abortion charges: **20 percent**

²⁸ Rwanda Correctional Services. Data as of 30 April 2014.

²⁹ Rwanda Correctional Services. Data as of 30 April 2014.



OF THE 20 WOMEN IPAS AND GLIHD INTERVIEWED:

- Several were pregnant by men who were paying for their school, clothing and food (i.e., providing for their most basic needs).
- Most declined to provide information about their close relatives, friends and those who knew their stories because of the stigma associated with abortion and the fear that they too might be arrested.
- More than 90 percent of the women interviewed said they lost parents during the 1994 Genocide and were unable to count on family for support.

1

The Penal Code on Abortion Violates the Right to Health

Legal barriers to safe abortion violate women's right to the highest attainable standard of physical and mental health (the right to health) by creating an environment that limits or even eliminates access to safe abortion services and post-abortion care. Women and girls risk avoidable injury, anguish or death by either being compelled to carry an unwanted pregnancy to term, or by seeking a termination illegally. Abortion in these stigmatized contexts poses disproportionate risk to the physical and mental health of women who undergo the procedure. Those who are detained or imprisoned incur exponential risks to their health, both mental and physical, including from inadequate medical care.

According to both international and regional authorities, restrictive and punitive abortion laws infringe on women's dignity and autonomy and can violate the rights to health and life. The UN Human Rights Committee has discussed illegal and unsafe abortion as a violation of Article 6 of the International

Convention on Civil and Political Rights (ICCPR), the right to life³⁰ as well as health,³¹ and has made the link between illegal and unsafe abortions and high rates of maternal mortality.³² The Committee on the Elimination of Discrimination against Women (CEDAW Committee) states in General Comment 24 that “legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion.”³³

In Rwanda, health professionals often do not know their rights or duties or the rights of their patients in this context. In an interview with Ipas and GLIHD, a midwife in Huye district, who has treated many women for unsafe abortions, said she does not know whether she or the doctors have to report cases of abortion to the police. However, she has heard of cases of medical practitioners being arrested for aiding in abortion cases. She explained that police or community members usually bring injured women and girls to the health center where she provides postabortion care (PAC). The police guard the woman until she is discharged, whereupon she is taken to the police station for interrogation and subsequent prosecution. The midwife said that most of her patients are poor and uneducated, and many use sticks to rupture the membranes around the pregnancy. She believes most health centers include PAC to assist those who turn up with postabortion complications.

The Ministry of Health acknowledges that “complications from unsafe abortion and miscarriage pose a significant public health challenge in Rwanda.”³⁴ Although the Rwandan government liberalized abortion in the 2012 penal code, it established excessively burdensome administrative requirements to

30 See, e.g., **Chile**, ¶ 15, U.N. Doc. CCPR/C/79/Add.104 (1999); **El Salvador**, ¶ 14, U.N. Doc. CCPR/CO/78/SLV (2004); **Guatemala**, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (2001); **Kenya**, ¶ 14, U.N. Doc. CCPR/CO/83/KEN (2005); **Mauritius**, ¶ 9, U.N. Doc. CCPR/CO/83/MUS (2005); **Paraguay**, ¶ 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); **Peru**, ¶ 15, U.N. Doc. CCPR/C/79/Add.72 (1996); **Peru**, ¶ 20, U.N. Doc. CCPR/CO/70/PER (2000); **United Republic of Tanzania**, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (1998); **Trinidad and Tobago**, ¶ 18, U.N. Doc. CCPR/CO/70/TTO (2000); **Venezuela**, ¶ 19, U.N. Doc. CCPR/CO/71/VEN (2001); **Vietnam**, ¶ 15, U.N. Doc. CCPR/CO/75/VNM (2002). Center for Reproductive Rights, Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services (2008).

31 See **Mali**, ¶ 14, U.N. Doc. CCPR/CO/77/MLI (2003). Center for Reproductive Rights, Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services (2008).

32 See, e.g., **Bolivia**, ¶ 22, U.N. Doc. CCPR/C/79/Add.74 (1997); **Colombia**, ¶ 24, U.N. Doc. CCPR/C/79/Add.76 (1997); **Costa Rica**, ¶ 11, U.N. Doc. CCPR/C/79/Add.107 (1999); **Equatorial Guinea**, ¶ 9, U.N. Doc. CCPR/CO/79/GNQ (2004); **Gambia**, ¶ 17, U.N. Doc. CCPR/CO/75/GMB (2004); **Guatemala**, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (2001); **Kenya**, ¶ 14, U.N. Doc. CCPR/CO/83/KEN (2005); **Mali**, ¶ 14, U.N. Doc. CCPR/CO/77/MLI (2003); **Mongolia**, ¶ 8(b), U.N. Doc. CCPR/C/79/Add.120 (2000); **Paraguay**, ¶ 10, U.N. Doc. CCPR/C/79/Add.48; A/50/40 (1995); **Paraguay**, ¶ 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); **Peru**, ¶ 15, U.N. Doc. CCPR/C/79/Add.72 (1996); **Peru**, ¶ 20, U.N. Doc. CCPR/CO/70/PER (2000); **Poland**, ¶ 11, U.N. Doc. CCPR/C/79/Add.110 (1999); **Senegal**, ¶ 12, U.N. Doc. CCPR/C/79/Add.82 (1997); **Sudan**, ¶ 10, U.N. Doc. CCPR/C/79/Add.85 (1997); **United Republic of Tanzania**, ¶ 15, U.N. Doc. CCPR/C/79/Add.97 (1998); **Zambia**, ¶ 9, U.N. Doc. CCPR/C/79/Add.62 (1996). Center for Reproductive Rights, Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services (2008).

33 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at: <http://www.refworld.org/docid/453882a73.html> [accessed 27 April 2015].

34 The Republic of Rwanda Ministry of Health, *Annual Report 2011-2012*, <http://www.moh.gov.rw/fileadmin/templates/MOH-Reports/MoH-Annual-Report-July-2011-June-2012.pdf>.

obtain official approval for legal abortion. For example, requesting an abortion based on the health exception requires written approval from *two doctors*. However, there is only one doctor for every 17,000 people in the entire country,³⁵ and the majority of people live in rural areas with limited access to courts or hospitals. The United Nations Human Rights Committee has expressed concern to at least one state party over a measure that requires a woman to obtain the consent of multiple physicians before she can undergo an abortion, and urged the state party to amend its laws to prevent women from putting their lives at risk by resorting to unsafe abortion.³⁶

Although few can procure the required approvals, many women seeking an abortion would qualify for legal services under good faith interpretations of the exceptions, in particular the rape exception. According to the Solidarity for African Women's Rights Coalition (SOAWR), a Pan-African coalition of 40 organizations in 20 countries, cases involving rape and incest are rarely reported because of societal stigma and these cases rarely reach the courts. SOAWR explains that this "effectively makes it impossible or very difficult for women, in particular poor and rural women, to obtain medical abortions even under the permissible conditions."³⁷ In Rwanda, however, women and girls suspected of abortion are often reported to local authorities by neighbors, lovers, family members, schoolmates and health-care providers.

35 This is less than 10% of the World Health Organization recommendation. There are varying reports on the doctor patient ratio in Rwanda ranging from 0.6:10,000 [<http://kff.org/global-indicator/physicians/>] 1:16,000 [<http://www.newtimes.co.rw/news/index.php?i=15121&a=58535>] 1:20,000 to 5:100,000 [<http://www.africapedia.com/DOCTOR-TO-PATIENT-RATIO-IN-AFRICA>].

36 See **Zambia**, ¶ 18, U.N. Doc. CCPR/C/ZMB/CO/3 (2007). Center for Reproductive Rights, "Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services" (2008) available at http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB_abortion_hr_revised_3.09_WEB.PDF.
Ipas. (2014). *International Human Rights Bodies on Unwanted Pregnancy and Abortion Part Four: Treaty Monitoring Committee Concluding Observations, Universal Periodic Review Working Group recommendations, recommendations by Special Rapporteurs, Commissions, Courts-Countries M-Z*. Chapel Hill, NC: Ipas.

37 SOAWR Appeal on Rwanda Safe Abortion Law Reform (2012), http://www.soawr.org/resources/rwandaappeal_en.pdf.

Therese's Story

Police arrested Therese³⁸ for abortion after she was brought hemorrhaging to a hospital. She had taken pills to terminate a four-month pregnancy. She was 18 years old and in junior high school. Therese was arrested in June 2013, and the following month the Nyamirambo Primary Court in Kigali city sentenced her to six months in prison. She appealed and lost her case.

Therese had decided to get an abortion because she was told that it was legal under the new law. Because of the stigma around abortion, she chose to get services in another district to ensure that her friends and community would not find out. An acquaintance directed her to a private clinic in Muhanga district where a doctor provided tablets; she does not remember the name of the pills. When she returned to Kigali from Muhanga district, she began hemorrhaging and sought assistance from her neighbors. When they discovered

that an abortion was the cause of her emergency, they immediately informed the police. The police took her to hospital, and, when she recovered, she was taken to prison.

The man who made Therese pregnant abandoned her when she told him; she has not seen him since:

I told him I am pregnant. He told me he is married to another woman. I asked him how he thinks I can survive when I even don't have parents. I asked him how he would help me, how will I survive, yet this is your child? He told me, 'Find out where to take that pregnancy; whether you give birth or not, I won't help you with anything.' I sought advice from some people. Life had changed. I said, 'I don't have a mum to look after my child.' Some people told me to abort, that there is a law in favor of abortion, nothing will happen to me.

Rwandan women who are sexually active are also vulnerable to HIV infection, and some of the women imprisoned for seeking abortions are HIV positive. In 2014, HIV prevalence was higher among women than men (3.7 percent compared to 2.2 percent), with the highest HIV prevalence among women ages 35–39 (7.9 percent), and particularly among sex workers, who have a prevalence rate of 51 percent nationally in Rwanda.³⁹ Kigali, the capital of Rwanda, has the highest prevalence overall at 7.3 percent, alongside the highest incidence of abortion in the country. Because confirming a pregnancy may be a woman's first experience with health-care services, it may also be her first HIV test. HIV-positive women who seek abortions may face compounded stigma of HIV and abortion. In prison, HIV-positive women face inadequate or no medications and care, and are more vulnerable to opportunistic infections.⁴⁰

38 Not her real name

39 Republic of Rwanda Ministry of Health, Available at http://www.unaids.org/sites/default/files/country/documents/RWA_narrative_report_2014.pdf.

40 United Nations Office on Drugs and Crime, "Women and HIV in prison settings" (2008). http://www.unodc.org/documents/hiv-aids/Women_in_prisons.pdf.

Josephine's Story

Josephine⁴¹ learned she was HIV positive at the same time she confirmed at a local clinic that she was pregnant; she was 22 years old. The man who got her pregnant denied responsibility but gave her money to go to the clinic. She did not share her story with any family members. Josephine said she could not manage the pregnancy without a job and was still struggling to come to terms with how to live as an HIV-positive woman:

At first, I had decided that I give birth and feed the baby on milk only, but later, due to the conditions of poverty, I realized I could not manage the two, the baby and HIV/AIDS.

Josephine decided to terminate the pregnancy and approached a local medical clinic in the Nyamirambo suburb of Kigali City. Staff gave her tablets, which caused prolonged bleeding. The neighbors she called for assis-

tance turned her into the police. She was first taken to hospital before being put into police custody, and later prison.

Josephine was arrested in December 2011. She said she was two months pregnant at the time. She never underwent medical tests and the prosecution submitted no medical report as evidence in her case to prove the stage of the pregnancy, yet she was tried for a nine-month pregnancy. She was sentenced to four years in prison.

By July 15, 2013, she had spent one year and eight months in prison. She had no access to anti-retroviral medications to manage her HIV. Josephine appealed her case to the high court and lost. As of May 2015 her case was before the Supreme Court. She has not had legal representation throughout all her proceedings because she cannot afford to hire a lawyer.

2

Punitive Abortion Laws and Enforcement Are Discriminatory

Everyone has a right to equal access to the highest attainable standard of health care⁴² and to equality before the law, courts and tribunals. This report highlights the multiple ways criminal abortion laws, both on paper and in their application, discriminate on the basis of gender as well as age and economic status. The CEDAW Committee has deemed discriminatory the criminalization of health-care services that only women need, i.e. abortion.⁴³

41 Not her real name

42 Article 12, ICESCR

43 Committee on the Elimination of Discrimination Against Women, General Recommendation 24: Women and Health (20th Session 1999), para. 31(c); The UN Special Rapporteur on the independence of judges and lawyers named the criminalization of abortion as an example of criminal legal provisions that are discriminatory against women, further stating that: "Judges must be in a position to challenge gender stereotyping and discrimination when they encounter it in the form of wrongful charging of suspects, charges being brought without any supporting evidence of wrongdoing and merely on the basis of hearsay, or mischarging of a particular form of conduct (like charging abortion as infanticide)." (United Nations General Assembly, 10 August 2011. Interim report of the Special Rapporteur on the independence of judges and lawyers. A/66/289).

Rwanda's abortion law not only discriminates on the basis of gender but also, as enforced, on the basis of age. According to a 2011 study, **90 percent of the women in prison for abortion in Rwanda are age 25 or younger.**⁴⁴ Young women facing unintended pregnancy are particularly vulnerable to violations of their rights. Several UN treaty monitoring bodies have expressed concern about high rates of unsafe abortion among young women.

The UN Human Rights Committee has also acknowledged the discriminatory impact of restrictive abortion laws on poor, rural women.⁴⁵ Poor people are disproportionately affected by criminalization of abortion. People with resources are more able to seek safer services even when the services are illegal, while those without resources are far more likely to suffer the injuries of a botched abortion, which then can be used as evidence against them. **Biased enforcement further leads to discrimination: the women and girls least able to protect themselves from unwanted pregnancies are also most likely to be accused of criminal abortion.** Furthermore, because Rwanda relies heavily on community reporting, women already "suspect" for their real or imagined sexual conduct are at greatest risk of being turned in by their neighbors (see *due process* section below).

Innocent⁴⁶ is an officer at a police station where many women have been arrested on illegal abortion charges. He himself has investigated several abortion-related cases. Innocent reports that because most women use "unprofessional means" to abort, they end up with complications. While abortion is widespread, most police are only made aware after a woman suffers complications. Neighbors report these health-care emergencies to the police rather than to hospitals because they are scared to answer charges of a failure to assist someone in danger. Individuals may be charged with complicity to commit a crime if it is proven they had prior knowledge of the commission of the crime.

When neighbors report women from their community, the police respond by taking the victim to the hospital first. Women are formally charged once they leave the hospital. Police Officer Innocent was sympathetic to the needs of women, commenting that "the legal provisions on abortion are too excessively strict," making women reluctant to ask for help, even in situations where it is legal. He also noted that abortion stigma remains a main challenge.

44 ARBEF, Research on Abortion incidence in 2009.

45 See **Argentina**, ¶ 14, U.N. Doc. CCPR/CO/70/ARG (2000). Center for Reproductive Rights, "Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services" (2008).

46 Not his real name

Kelly's Story

Kelly was 18 years old when she was arrested and imprisoned in June 2013. She was 17 years old when she became pregnant. Under Rwandan law, anyone under 18 is considered a minor and presumed unable to consent to sex. She explains what happened:

I was a student. A guy requested me to pay him a visit, and then he made me pregnant. I went back to school but he told me that he would look for someone to assist me to have an abortion. After two months, he brought me a tablet. After giving it to me, he disappeared. I swallowed the tablet and got a miscarriage.

Kelly took the pills in the school bathroom. When she began suffering from complications, the school administration intervened and reported her to the police. Kelly had no legal representation during her trial and pleaded guilty in order to get a reduced sentence. Given that Kelly was 17 at the time she got pregnant, and this is considered rape under Rwandan law, she was legally exempted from prosecution. However, because she did not report the rape, she could not use this as defense for her actions. Kelly was sentenced to one year in prison.

3

Unjust Incarceration Violates Due Process and Undermines Other Fundamental Rights

The Rwandan government is responsible for the unjust incarceration of hundreds of women and girls under the abortion and infanticide laws. Locked up as a result of state failure to deliver on their sexual and reproductive rights (failures to provide sexuality education and information, access to modern contraceptives or to safe abortion services), these women and girls are often charged and convicted based on evidence obtained by violating their right to privacy. The right to a fair trial is one of the universally applicable guarantees recognized in the Universal Declaration of Human Rights (UDHR) and reaffirmed in the International Convention on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights. These women and girls are often incarcerated without knowledge of their rights, including the right to obtain legal representation or other elements of a fair trial, wrongfully depriving them of liberty and other fundamental rights, including their access to health care, education and work.⁴⁷ Sometimes they are already parents and imprisonment removes them from their children.

⁴⁷ According to Amnesty International: "In order to exercise one's rights, one must know that they exist. International standards require that anyone arrested or detained is informed of their rights and is provided with an explanation of how they may avail themselves of such rights. These standards variously require notification of rights including: the right to notify a third person, the right to legal counsel, the right to medical assistance, the right to challenge the lawfulness of detention, the right not to incriminate oneself, including the right to remain silent, and the right to complain and recourse for complaints about ill-treatment or conditions." Amnesty International Fair Trial Manual, second edition (2014) available at <http://www.amnesty.org/fairtrials>.

Among the 20 incarcerated women interviewed for this report:

- None who may have been eligible for a legal abortion was aware of this option, nor aware of the guidelines to request the procedure by obtaining a court order and/or approval of two doctors.
- None was able to access a lawyer, either because of lack of resources or lack of knowledge that the law entitled them to one. Only a quarter of these women said that they were aware that the law entitled them to a lawyer.⁴⁸

Criminalization of a reproductive health service creates a climate of fear and stigma. This often leads to harassment, extortion and, sometimes, even violence against women or girls who get abortions. When these laws are enforced, human rights violations are likely to take place. In Rwanda, this often begins when local community members report girls and women who they suspect of having abortions to the police.

Most arrests for abortion take place after a neighbor reports a woman to the police when the woman suffers a complication from an unsafe abortion. Under Rwandan law, if someone is in physical danger and the person with them does not report the incident to the police, that person is liable to be charged with “concealing an offence or failing to assist a person in danger.”⁴⁹ This law was designed not only to ensure that people assist those who are in danger but also to help facilitate community-policing activities for crime prevention. In the case of a stigmatized health-care procedure, however, it leads to violations of rights to privacy and confidentiality.⁵⁰

Community Policing Committees (CPCs) are a key component of the Rwandan National Police’s (RNP) strategy to address local problems, in particular

48 As of July 2013 when the interviews were carried out.

49 Article 570 of the Penal Code of Rwanda, Official Gazette no special of 14 June 2012. http://www.police.gov.rw/uploads/tx_download/Official_Gazette_no_Special_of_14.06.2012-4.pdf; “Any person who has knowledge of a felony about to be committed or that has been committed and fails to inform security organs, judicial or administrative authorities while this information could help prevent or limit its consequence, shall be liable to a term of imprisonment of two (2) years to five (5) years... Any person who neglects to assist a person in great danger when there is no risk for him/her or others while in a position to do so or to seek assistance shall be liable.”

50 Human Rights Committee. General comment no. 28: equality of rights between men and women (article 3). United Nations 2000; Committee on the Elimination of Discrimination against Women. General recommendation no. 24: Women and health (article 12). United Nations, 1999; Committee on Economic Social and Cultural Rights. General comment no. 14: The right to the highest attainable standard of health (article 12) United Nations, 2000.

gender-based violence (GBV).⁵¹ The CPCs were formed to counter a police force many considered to be corrupt and unreliable, based on family ties or other forms of nepotism.⁵² Judge Gasana J. Damascene of the Primary Court of Kacyura says the old system is still effectively in place in many communities, even after the formation of CPCs. And the CPCs themselves seem to promote community policing of women's sexuality as a whole and not merely criminal activity. Judge Gasana notes that abortion stigma combined with stigma against particular women means that "neighbors turn in women when they have questions about her conduct. This is why the majority of abortion cases that I see are sex workers."

While the RNP claims to have trained 80,000 CPC⁵³ members, this study shows that when the community reported women to the police for unsafe abortions, they and the police often violated the women's right to confidentiality, autonomy and health. In Rwanda, when women are arrested for abortion, personal information about their reproductive health is often reported in newspapers, this in clear violation of their right to confidentiality.

Martin⁵⁴ is a judge in a court that has heard many criminal abortion cases. He says most of the women charged with abortion are not aware of the law. Since the majority of medical reports do not include the cause of the abortion and almost all the women are without defense lawyers, it is very difficult for them to prove that it was not self-induced. By the time women appear before the court, the majority have already confessed and they are usually found guilty of the crime of abortion. This judge reports he has *never received a single application for a legal abortion*, not even on the grounds of incest or rape.

Some women are being charged with murder or infanticide rather than abortion; both crimes carry higher sentences and penalties. Some women are arrested on the grounds of abortion when in fact they *miscarried*, unintentionally or spontaneously ending a pregnancy. Ipas and GLIHD found two cases of women who were reported to the police after miscarrying then subsequently detained and even imprisoned on abortion charges.

51 CPCs extended to refugee camps in Rwanda in 2013, see Rwanda National Police establishes Community Policing Committees in refugee camps," Republic of Rwanda Ministry of Internal Security (April 2013) at [http://www.mininter.gov.rw/index.php?id=17&tx_ttnews\[tt_news\]=291&cHash=85f7edcbfeb2d13d733fa313a38c57a8](http://www.mininter.gov.rw/index.php?id=17&tx_ttnews[tt_news]=291&cHash=85f7edcbfeb2d13d733fa313a38c57a8).

52 Kagera, Thomas, "Twenty years of policing a people: Making Rwandans feel safe, involved and reassured." *The New Times*. June 11, 2014, pg. 13. Retrieved from http://newtimes.co.rw/PDF_ads/RNP-%20Community%20Polising%20Anniversary.pdf.

53 Ibid.

54 Not his real name

Despite punishments spelled out in the law, sentencing is uneven—the defendant in one abortion case, which was prosecuted as infanticide, received two years, while in another abortion case, a woman was sentenced to 15 years.⁵⁵

Rachel's Story

Rachel⁵⁶ was a 20-year-old secondary school student when a motorbike-taxi driver raped her as she was leaving school one evening. She was late to visit her brother and had decided to take a motorbike-taxi, which is a popular form of transport in Rwanda. In the middle of the ride, the driver demanded she have sex with him; when she refused, he raped her. She was afraid to report the rape to the police because she feared she would be expelled if her school found out. She did not tell anyone, including her parents, about the rape. “I only wanted to die,” she said. After finding out that she was pregnant, she took pills, but did not know what they were. When she started hemorrhaging, neighbors came to help, but also called the police. The police first took her to a hospital for treatment then to jail. (February 2013).⁵⁷

When Rachel was interviewed, she was on pre-trial detention for 30 days in Rwamagana Cor-

rectional Services Prison.⁵⁸ Her case was before the Karama primary court. She had no lawyer or a hearing date. She was very concerned that her school not be informed about her case and her imprisonment because she felt it would jeopardize her plans to return to school after prison. Her incarceration meant she could not take the national exam to go to senior high school.

A police officer interviewed by Ipas described how he thinks rape cases should be handled:

The first thing a woman should do, if she is raped, is report it to the police. If she didn't report it and then has an abortion, it is hard to prove because anyone can say they were raped. But if she reports the rape, there is even a chance that she can get a legal abortion. The judge will decide and maybe this time it can be done officially but it would be up to her to report the rape the very day that it happened.

Recommendations

The 2012 penal code reform shows that the Rwandan government is willing to take steps to uphold women's human rights and address maternal mortality and morbidity from unsafe abortion. Unfortunately, this political will has not translated into safe and accessible abortion services, and women, especially young women and adolescents, are suffering prison terms on top of injury from dangerous abortion attempts.

55 Of the 20 women interviewed, sentences ranged from 4 months to 10 years.

56 Not her real name

57 Rachel was in school as part of a new government program to assist those that had not attended school at early age. This accounts for why she was only in secondary school 3 at the age of 20.

58 Formerly Ntsinda Prison.

The UN Human Rights Committee has urged states to revise laws to help women prevent unwanted pregnancies and to prevent women from resorting to unsafe abortions, which put their lives at risk.⁵⁹ Rwanda is a state party to major global human rights treaties requiring meaningful realization of reproductive rights, including access to safe abortion: the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

To meet its international obligations and promises to realize the wellbeing of all people in the country, it is strongly recommended that the government of Rwanda:

1. Release all unjustly imprisoned women, girls and health-care professionals who are incarcerated as a result of punitive abortion laws.
2. Disseminate information about the 2012 law and its requirements to women, girls, health-care providers, police and judges.
3. Take steps to eliminate barriers to abortion in the law.
4. Establish clear and streamlined procedures to facilitate obtaining judicial authorization for a legal abortion.
5. Invest in effective preventive measures, including comprehensive sexuality education, elimination of gender discrimination and sexual violence, and full access to all modern contraceptive methods.
6. Broaden the law to permit nurses and midwives to perform abortion; doing so is an evidence-based approach to expanding safe access to care.

⁵⁹ See *Chile*, ¶ 8, U.N. Doc. CCPR/C/CHL/CO/5 (2007); *Madagascar*, ¶ 14, U.N. Doc. CCPR/C/MDG/CO/3 (2007). Center for Reproductive Rights, "Abortion and Human Rights: Government Duties to Ease Restrictions and Ensure Access to Safe Services" (2008).

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