

GLOBAL ADVOCACY STRATEGIES FOR THE DECRIMINALIZATION OF ABORTION, SEX WORK, AND SEXUAL ORIENTATION AND GENDER IDENTITY

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This handbook provides an in-depth analysis of global advocacy strategies for the decriminalization of abortion, sex work, and sexual orientation and gender identity. It was researched, written, and edited by students, faculty, and staff in the Walter Leitner International Human Rights Clinic. The abortion rights section was researched and written by Josselin Aldana, Jacqueline Bartha, Magdalen Sullivan, and Rika Tanaka. The sex workers' rights section was researched and written by Kassie Coley, Tyler Daniels, and Akosua Opong-Wiredu. The queer and trans rights section was researched and written by Sasha Kiosse, Justyna Maksimiuk, and Mina Shi. All sections were edited by Esra Alamiri, Professor Chi Adanna Mgbako, and Carolina van der Mensbrugghe.

The Walter Leitner International Human Rights Clinic in the Leitner Center for International Law and Justice in New York City provides education and practical human rights training to law students while furthering the Center's core objectives of promoting the rights of marginalized populations. The Clinic engages in human rights advocacy projects in conjunction with grassroots organizations around the world.

Table of Contents

Lebanese Legal System	6
I. Abortion Legislation.....	6
II. Sex Work Legislation.....	6
III. Queer and Trans Legislation.....	8
 Access to Safe Abortion	9
<i>Part I – Background on International Reproductive Rights</i>	9
I. Human Rights Abuses that Result from Criminalizing Abortion.....	9
A. Criminalization Creates Serious Health Risks for Women	10
1. Forces Pregnant Persons to Seek Abortions Under Unsafe Conditions	10
2. Erodes the Provision of Comprehensive Reproductive Healthcare	10
3. The Stigma Which Criminalization Perpetuates Exacerbates Health Risks	12
B. Criminalization Leads to Discrimination Against Vulnerable Groups.....	12
1. Gender Discrimination.....	12
2. Socioeconomic Discrimination.....	13
3. Racial Discrimination	13
4. Discrimination Against Immigrants.....	13
5. Discrimination Against People with Disabilities.....	13
6. Discrimination Against LGBTQIA+ persons	14
C. Criminalization Deprives Pregnant Persons of Their Privacy & Bodily Autonomy	14
II. Decriminalizing, Legalizing and Regulating Abortions	15
A. Decriminalizing Abortion.....	15
1. Full Decriminalization	15
2. Partial Decriminalization	16
B. Legalization of Abortion.....	19
C. Regulating Medical and Surgical Abortions.....	20
D. Abortion on Request.....	22
1. Policy Barriers to Access	22
a. Gestation Limits.....	23
b. Third Party Authorizations	24
c. Conscientious Objections	24

d. Practical Barriers	25
i. Number of Clinics.....	25
ii. Travel Between Clinics.....	25
iii. Expensive Abortion Costs	26
III. Multiple Advocacy Strategies to Achieve Reproductive Freedom.....	27
A. Reproductive Health	27
B. Reproductive Rights	28
C. Reproductive Justice	29
 <i>Part 2 – Case Studies: Global Advocacy Strategies</i>	 31
I. United States	31
II. Mexico.....	40
III. Honduras	45
IV. Colombia.....	48
V. Argentina.....	55
VI. Kenya.....	58
VII. Malawi.....	64
VIII. Namibia	67
IX. South Africa.....	69
X. Democratic Republic of the Congo (DRC).....	73
XI. Senegal.....	75
XII. Sierra Leone.....	76
XIII. Poland.....	77
XIV. Ireland	81
XV. South Korea.....	85
XVI. Philippines.....	92
XVII. India	94
XVIII. Australia	97
 Decriminalization of Sex Work.....	 99
<i>Part I: Background on Sex Workers’ Rights.....</i>	<i>99</i>
I. Human Rights Abuses that Result from the Criminalization of Sex Work.....	99
A. Right to Live Free from Discrimination and Violence.....	99

B. Right to Health.....	100
C. Right to Work	101
D. Right to Bodily Autonomy	101
E. Intersectionality.....	102
II. Decriminalization of Sex Work.....	102
A. Legalization and Regulation of Sex Work: Grounds for Rejection.....	102
B. Partial Criminalization of Sex Work (Nordic Model): Grounds for Rejection	103
C. Decriminalization of Sex Work: Grounds for Widespread Implementation	105
III. Feminist Debates Around Sex Work	106
A. Economic Opportunity, Survival Strategies, “Choice,” and Agency	106
B. Critiques of the Use of Anti-Human Trafficking Campaigns to Target Sex Work.....	107
 <i>Part 2: Case Studies: Global Advocacy Strategies.....</i>	 108
I. South Africa.....	108
II. India.....	110
III. New South Wales, Australia	114
IV. Northern Territory, Australia.....	117
V. New Zealand	119
VI. Belgium.....	123
VII. Canada	125
VIII. Mexico	128
IX. The United States.....	131
 Decriminalization of Sexual Orientation and Gender Identity	 136
<i>Part 1 – Background on SOGI Rights.....</i>	<i>136</i>
I. Human Rights Abuses Generated by the Criminalization of SOGI	136
A. Civil and Political Rights.....	136
1. The Right to Privacy and Personal Autonomy	136
2. The Rights to Liberty and Security of Person and Due Process	136
3. The Right to Freedom of Expression	137
4. The Rights to Freedom of Association and Assembly.....	138
B. Social and Economic Rights	138
1. Employment	139

2. Education	139
3. Health	140
4. Housing	141
II. Criminalization and Decriminalization of SOGI around the World	141
A. Legal Systems Criminalizing Sexual Orientation	141
B. Legal Systems Criminalizing Gender Identity.....	143
C. Legal Systems Decriminalizing Sexual Orientation	144
D. Legal Systems Decriminalizing Gender Identity.....	145
 <i>Part 2: Case Studies: Global Advocacy Strategies.....</i>	<i>148</i>
I. Lebanon	148
II. Turkey	149
III. India	152
IV. Nepal.....	154
V. Kenya	156
VI. Botswana.....	160
VII. Uganda.....	162
VIII. Ireland	165
IX. Belize	166
X. Chile	168
XI. United States	170

Lebanese Legal System

Lebanese laws on abortion, sex work, and sexual orientation and gender identity are either relics of French colonialism or were adopted soon after the country gained independence in 1943.¹ These laws restrict the freedom and rights of vulnerable groups. This part will provide a brief history of these laws in Lebanon.

I. Abortion Legislation

Lack of access to contraception, sexual education, and information on family planning has led to a high rate of unwanted pregnancies in Lebanon.² Abortion is criminalized in the Lebanese Penal Code under articles 539 – 546.³ Any woman who attempts or obtains an abortion⁴ or any person who aids a pregnant woman in such procedures can be punished with up to three years' imprisonment.⁵ The only exception to this ban was passed in 1969 by Presidential Decree No. 13187, which allows therapeutic abortions.⁶ These abortions are described as medically necessary if the pregnancy threatens the mother's life.⁷ To receive a therapeutic abortion in Lebanon, the patient must be evaluated by two doctors, in addition to the doctor providing the abortion, and all three doctors must agree that the procedure is medically necessary to save the mother's life.⁸ Article 545 of the Penal Code states that an abortion that is performed to "save a woman's honor" is subject to a reduced penalty.⁹ While the law does not describe what constitutes a necessity to save a woman's honor, it is commonly accepted that abortions performed on an unmarried woman or a victim of rape would qualify.¹⁰

II. Sex Work Legislation

In 1924, while the French colonial government was still in power in Lebanon, Decree 2346, *Réglementation de la prostitution*, was passed under the pretext of protecting public health while

¹ See HUM. DIGNITY TRUST, *Lebanon: Types of criminalisation* <https://www.humandignitytrust.org/country-profile/lebanon/>. "Lebanon was under the control of France until independence in 1943. Lebanon adopted a new penal code that same year, which criminalized same sex sexual activity, and continues to maintain this statute today."

² Ramadan, Tala, *Women in Lebanon Struggle with Reproductive Rights as Birth Control Pills Become Unaffordable and Abortion Remains Illegal*, L'ORIENT TODAY (16 Dec. 2021), today.lorientlejour.com/article/1284967/women-in-lebanon-struggle-with-reproductive-rights-as-birth-control-pills-become-unaffordable-and-abortion-remains-illegal.html.

³ UNITED NATIONS DEVELOPMENT PROGRAMME, *Lebanon Gender Justice & the Law* 24, (2018).

⁴ Afamia Kadour et al., *Abortion in Lebanon: Practice and Legality?*, THE A PROJECT (Mar. 23, 2021), theaproject.org/blog/abortion-lebanon-practice-and-legality.

⁵ Sarah Awji, *Lebanon's Criminalization of Abortion: Primitive, Ineffective and Deadly*, BEIRUT TODAY (Jan. 3, 2022), beirut-today.com/2021/10/11/lebanons-criminalization-of-abortion-primitive-ineffective-and-deadly.

⁶ Zeina Fathallah, *Moral Work and the Construction of Abortion Networks: Women's Access to Safe Abortion in Lebanon*, 2 HEALTH AND HUM. RTS. J. 21 (2019).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

monitoring sex workers.¹¹ The Decree was last amended in 1931.¹² The Decree permits prostitution if sex workers are registered, work in licensed brothels, live within a certain area, and submit to regular medical monitoring.¹³ It also provides prostitutes with the freedom to stop working at any time and it specifies that only women can open or direct prostitution “houses.”¹⁴ According to Decree 2346, registered prostitutes are known as *filles en carte* (girls on the card).¹⁵ This implies that pre-1943 regulations on prostitution applied only to female sex workers. Nevertheless, the authorities have not issued a new license to a brothel since the 1970s, which means that the vast majority of such establishments operating today are unlicensed and thus, illegal.¹⁶

In the 1960s, the Lebanese General Directorate of General Security issued a regulation pertaining to the female “Artiste” visa.¹⁷ Women who are granted this type of visa are permitted to enter and work in Lebanon legally as “artists.”¹⁸ This is widely viewed as allowing women to enter the country and work in “super night clubs,” which facilitate sex work.¹⁹ Women holding such visas are subject to numerous regulations, such as mandatory medical tests and strict rules on where they can live and between what hours they can leave their home.²⁰ Artist visas for men are not subject to the same restrictions.²¹

Contrary to Decree 2346, which in principle is still valid, the Lebanese Penal Code that was enacted after independence imposes penalties on unlicensed prostitution and brothels, facilitating prostitution, purchasing sex, living on earnings related to prostitution, and employing sex workers under the age of 21.²²

In 2011, the Penal Code was amended to criminalize human trafficking.²³ Under Lebanese law, only sex workers who can prove that they are victims of human trafficking are exempt from prosecution, while unlicensed sex workers who are not victims of trafficking are still subject to prosecution.²⁴

¹¹ Pascale N. Graham, *Sex work, containment and the new discourse in public health in French colonial Levant*, 4 MED. HIST. 330, 340, 342 n. 76 (2021).

¹² *Id.*

¹³ *Id.* at 339.

¹⁴ *Id.* at 344.

¹⁵ Pascale N. Graham, *Sex Work in French Mandate Lebanon and Syria: A History of Representations and Interventions (1920 – 1946)* 1, 127 footnote 359 (August 2019) (unpublished PhD thesis, McGill University), <https://escholarship.mcgill.ca/downloads/qj72pc62j?locale=en>.

¹⁶ May Abi Samra, *The Chez Maurice Case: Media and NGO’s Legal Debates on Prostitution and Sex Trafficking in Lebanon*, 5 SOAS L. J. 11, 20 (2018).

¹⁷ *Id.* at 21.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 22.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Ghida Frangieh, *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, THE LEGAL AGENDA (Sept. 18, 2018), <https://english.legal-agenda.com/human-trafficking-crimes-before-the-courts-in-the-shadow-of-prosecution>.

III. Queer and Trans Legislation

Article 534 of the Lebanese Penal Code states that “any carnal conjunction running against the order of nature will be punished by prison up to one year.”²⁵ This statute has been primarily used to target and criminalize same-sex relationships.²⁶ Queer persons are occasionally arrested for violating this law.²⁷ It also facilitates the abuse of trans persons by the police and empowers law enforcement to perform informal investigations in public places targeting persons who are suspected to be trans because of their physical appearance.²⁸ Arrestees are sometimes subjected to insults and threats, beatings, harassment, and anal exams, which are banned in police stations in Beirut, but still occur outside of the capital.²⁹ Article 534 has been also largely used in conjunction with the law criminalizing abortion to prosecute trans women.³⁰

Article 521 of the Lebanese Penal Code makes it a crime for a cisman to dress as a woman and to attempt entry into a space strictly reserved for ciswomen.³¹ This law has been utilized to arrest and prosecute trans women.³² Additionally, trans persons can only obtain official documents reflecting updated names and gender markers through a court ruling following a diagnosis of “gender dysphoria” and surgery.³³ Due to high costs, lack of legal assistance, or simply not wanting surgery, many trans persons cannot obtain these documents and are thus subject to harassment, discrimination, and assault.³⁴

²⁵ *Id.*

²⁶ HUM. DIGNITY TRUST, *Lebanon: Types of criminalization*.

²⁷ *Id.*

²⁸ HELEM, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon: A Shadow Report submitted to the Human Rights Committee* (Apr. 2017) https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBN/INT_CCPR_ICO_LBN_27152_E.pdf.

²⁹ *Id.* at 4.

³⁰ HUM. DIGNITY TRUST, *Lebanon: Types of Criminalization*.

³¹ *Id.*

³² *Id.*

³³ *He Wanted to Beat the Woman Out of Me*, HUM. RTS. WATCH (October 7, 2019, 2:53 PM), www.hrw.org/news/2019/10/07/he-wanted-beat-woman-out-me.

³⁴ *Lebanon: End Systemic Violence Against Transgender Women*, HUM. RTS. WATCH (Sept. 3, 2019, 4:00 AM), www.hrw.org/news/2019/09/03/lebanon-end-systemic-violence-against-transgender-women.

Access to Safe Abortion

Part 1 – Background on International Reproductive Rights

This section will discuss access to safe abortion and global advocacy strategies to achieve decriminalization. Part I provides a background on reproductive rights internationally, including the human rights abuses that result from criminalization. Part II outlines how governments restrict abortion through legal frameworks. Part III will discuss the major frameworks employed in pursuit of reproductive freedom.

I. Human Rights Abuses that Result from Criminalizing Abortion

The Universal Declaration of Human Rights, in its third article, guarantees everyone the “right to life, liberty, and security of person.”³⁵ Abortion services are essential healthcare, recognized by the human rights corpus as a “critical aspect of women and girls’ fundamental human rights.”³⁶

Laws that criminalize abortion attach penal consequences to those who obtain, aid, and provide the procedure.³⁷ Punitive measures often include probation, community service, or even jail time. Yet, criminalizing abortion does not lead to fewer abortions—it leads to more unsafe abortions.³⁸ Each year, 22 million unsafe abortions occur globally.³⁹ In Africa and Latin America, 75% of the abortions performed between 2010 and 2014 were unsafe.⁴⁰ The World Health Organization (“WHO”) estimates that unsafe abortions result in the deaths of 47,000 women every year, with millions more left disabled.⁴¹ While most pregnant people are women, these issues can also impact non-binary individuals and trans men.⁴²

This section details how criminalization of abortion violates women’s human rights and directly threatens their lives. Part A of this section discusses the ways that restrictive abortion laws impact women’s health, including compelling women to have abortions under unsafe conditions, eroding advancements in reproductive healthcare, and perpetuating a stigma that leads to

³⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³⁶ CTR. FOR REPROD. RTS., *Abortion*, <https://reproductiverights.org/our-issues/abortion/> (last visited June 22, 2022).

³⁷ Sometimes those who help connect the abortion seeker with the abortion provider are also penalized.

³⁸ AMNESTY INT’L, *Key Facts on Abortion*, <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/> (last visited June 22, 2022) (“And regardless of whether abortion is legal or not, people still require and regularly access abortion services. According to the Guttmacher Institute, a US-based reproductive health non-profit, the abortion rate is 37 per 1,000 people in countries that prohibit abortion altogether or allow it only in instances to save a woman’s life, and 34 per 1,000 people in countries that broadly allow for abortion, a difference that is not statistically significant.”).

³⁹ AMNESTY INT’L, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction* 179 (Mar. 2018), <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL4077632018ENGLISH.pdf>

⁴⁰ HUM. RTS. WATCH, *A Case for Legal Abortion: The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina* 5 (Aug. 2020).

⁴¹ AMNESTY INT’L, *Body Politics* 179.

⁴² Authors use “women” throughout this report to reflect the demographic that makes up the overwhelming majority of those impacted by abortion laws, but also hope that the impact of this research touches and improves the plight of all pregnant persons.

marginalization and misinformation. Part B discusses the different ways that criminalization discriminates against vulnerable groups, including low-income individuals, people of color, immigrants, people with disabilities, and LGBTQIA+ persons. Lastly, Part C discusses how criminalization deprives women of their rights to privacy and bodily autonomy.

A. Criminalization Creates Serious Health Risks for Women

1. Forces Pregnant Persons to Seek Abortions Under Unsafe Conditions

Unsafe abortion is defined by the WHO as a “procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.”⁴³ The consequences of unsafe abortion include sepsis, hemorrhage, incomplete abortion, genital trauma, and death.⁴⁴

When governments limit or ban abortion access, women must resort to clandestine measures to terminate their pregnancies, especially those who cannot afford to travel or seek private care.⁴⁵ Women living under these regimes often pursue abortions in an underground network of abortion providers who often do not have access to adequate equipment, personnel, or a safe medical environment. Alternatively, women sometimes attempt dangerous at-home measures without proper medication or accurate information.⁴⁶ This can leave them in need of emergency medical attention, permanently disabled, or deceased. Human Rights Watch reports that, even when women can obtain the proper drugs to self-induce an abortion, criminalization makes it difficult for women to access the information required to use this method safely and effectively.⁴⁷

Even in cases where an individual meets the limited exceptions allowing abortion in restrictive regimes, such as rape or incest, they may not know that they are legally permitted to seek an abortion. They therefore may still seek out unsafe abortion services out of fear of prosecution. They also may wait until life-threatening complications develop to seek medical care.⁴⁸

2. Erodes the Provision of Comprehensive Reproductive Healthcare

Criminalization stifles the provision of comprehensive reproductive healthcare, leading to poor outcomes and high maternal mortality rates, especially for women of color. It can also intimidate or confuse medical professionals, which creates a chilling effect and inhibits patients’ access to quality care.

⁴³ WORLD HEALTH ORG, *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008* 2 (June 2011), <https://www.who.int/publications/i/item/9789241501118>

⁴⁴ *See id.* at 14.

⁴⁵ AMNESTY INT’L, *Key Facts on Abortion*.

⁴⁶ WORLD HEALTH ORG, *Abortion* (Nov. 25, 2021), <https://www.who.int/news-room/fact-sheets/detail/abortion>

⁴⁷ HUM. RTS. WATCH, “*Why Do They Want to Make Me Suffer Again?*”: *The Impact of Abortion Prosecutions in Ecuador* 78 (July 2021), <https://www.hrw.org/report/2021/07/14/why-do-they-want-make-me-suffer-again/impact-abortion-prosecutions-ecuador>

⁴⁸ *Id.*

Countries that are hostile to abortion often have poor track records investing in comprehensive reproductive and maternal healthcare.⁴⁹ The WHO's 2022 Abortion Care Guidelines recognize that restrictive abortion laws do the most harm to vulnerable populations that already face barriers to access.⁵⁰ For example, in U.S. states where there is an excessive focus on restricting abortion, there also tends to be a lack of legislation supporting and enhancing access to maternal healthcare.⁵¹

Laws that restrict abortion can contribute to the risk of maternal death in multiple ways. As noted above, abortion restrictions lead to more unsafe abortions, which can contribute to maternal mortality rates.⁵² Additionally, maternal deaths often result from health complications that naturally develop or are exacerbated during pregnancy.⁵³ Thus, women who cannot access abortion after complications develop face life-threatening pregnancies or deliveries.⁵⁴ Restricted access to abortion for those with unwanted pregnancies also results in high levels of stress, high blood pressure, mental health crises, and pressure to stay in unsafe situations, such as an unhealthy relationship.⁵⁵ The combined result of these issues is increased health risks for all pregnant persons.

Additionally, criminalization puts pressure on healthcare workers and medical personnel, affecting their ability to effectively triage when complications arise during pregnancy. Even in countries with exceptions to abortion bans, guidelines for when those exceptions apply are often not clear, not accessible, or non-existent for medical providers.⁵⁶ Unclear exceptions deter doctors from providing necessary abortion services out of fear that they may be breaking the law, putting women at an even greater risk.⁵⁷

Furthermore, criminalization of abortion creates health risks for women who suffer from miscarriages or obstetric emergencies.⁵⁸ Miscarriage symptoms can be mistaken for an attempted self-managed abortion, putting the pregnant person at risk of prosecution, or making them fearful of seeking medical help. This risk of prosecution is also a product of how abortion is defined statutorily—as it is often defined broadly to unintentionally include miscarriage.⁵⁹ The WHO

⁴⁹ See AMNESTY INT'L, *Body Politics* 179, 180.

⁵⁰ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 2 (2022), <https://www.who.int/publications/i/item/9789240039483>

⁵¹ Rayna Reid, *How Restricted Reproductive Care Impacts All of the Black Community*, ESSENCE (Apr. 17, 2022) <https://www.essence.com/news/center-reproductive-rights-bmhw/>

⁵² Dolva Vilda et al., *State Abortion Policies and Maternal Death in the US: 2015-2018*, 111 AM. J. PUB. HEALTH 1696-1704 (2021), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.306396>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Rayna Reid, *How Restricted Reproductive Care Impacts All of the Black Community*.

⁵⁶ See AMNESTY INT'L, *Amnesty International Joins the Campaign to Decriminalize Abortion in Latin America and the Caribbean* (Sept. 28, 2010), <https://www.amnesty.org/en/wp-content/uploads/2021/07/amr010022010en.pdf>

⁵⁷ See AMNESTY INT'L, *Body Politics* 181.

⁵⁸ HUM. RTS. WATCH, "Why Do They Want to Make Me Suffer Again?" 39.

⁵⁹ See e.g., CTR. FOR REPROD. RTS., *Decriminalization of Abortion in Nepal: Imperative to Uphold Women's Rights* 2 (2021), <https://reproductiverights.org/decriminalization-of-abortion-in-nepal-imperative-to-uphold-womens-rights/> (defining abortion as "spontaneous termination").

Abortion Care Guidelines stress that comprehensive decriminalization of abortion includes protection from prosecution for women who experience pregnancy loss.⁶⁰

3. The Stigma Which Criminalization Perpetuates Exacerbates Health Risks

In criminalized regimes where abortion is allowed under narrow exceptions, stigma around the procedure persists.

The stigmatization of abortion in criminalized regimes is reinforced through harmful “discourse, discrimination, and stereotyping at multiple levels of society.”⁶¹ Beyond the physical risks involved with pregnancy and unregulated abortion, there is a steep mental and emotional burden as well.⁶² Many women who are forced to carry an unwanted pregnancy to term suffer from suicidal thoughts and may even attempt suicide.⁶³

Moreover, this stigma also affects women in their personal and familial relationships, as it narrows who a pregnant person seeking an abortion can turn to out of fear of social ostracization or criminal prosecution. Some countries only permit women to obtain abortions after they obtain family or spousal approval. This may lead women to opt for unsafe procedures or to carry unwanted pregnancies. When women have nowhere to turn for information, financial assistance, or emotional support, they can resort to unsafe means of terminating the pregnancy on their own. Due to the negative association surrounding abortion and the potential legal consequences, pregnant women may often lack a support system regarding their decision. Criminalization thus serves to further isolate pregnant women by inducing feelings of guilt and shame.⁶⁴

B. Criminalization Leads to Discrimination Against Vulnerable Groups

Due to intersecting forms of oppression, criminalization disproportionately impacts women and others from marginalized communities—including low-income people, racial and ethnic minorities, people with disabilities, immigrants, and LGBTQIA+ persons—and thus leads to more severe social and economic gaps. Communities with little political control, money, or social capital are not only disproportionately impacted by criminalization, but they also have fewer means to protest the law or lobby for change.⁶⁵

1. Gender Discrimination

Strict abortion laws overwhelmingly impact women by exercising physical and political control over their bodies. By compelling people to carry out an unwanted pregnancy, the legal

⁶⁰ WORLD HEALTH ORG., ABORTION CARE GUIDELIENS 24.

⁶¹ Brittany Moore et al., *The Economics of Abortion and its Links with Stigma: A Secondary Analysis from a Scoping Review on the Economics of Abortion*, 16 PLOS ONE 1, 3 (2021).

⁶² HUM. RTS. WATCH “*Why Do They Want to Make Me Suffer Again?*” 79.

⁶³ See AMNESTY INT’L, *Amnesty International Joins the Campaign to Decriminalize Abortion in Latin America*.

⁶⁴ M. Antonia Biggs, *Perceived Abortion Stigma and Psychological Well-being Over Five Years After Receiving or Being Denied an Abortion*, 15 PLOS ONE 1, 3 (2020).

⁶⁵ Moore, *The Economics of Abortion and its Links with Stigma* 1, 12 (“At the same time, those most affected by the restrictive regulations around abortion are unlikely to have the potential and economic capital on their own to protest the law and enact change, trapping them in a discriminatory cycle.”).

regime often forces women and girls to drop out of school or leave jobs, effectively crippling their educational or economic prospects.⁶⁶

2. Socioeconomic Discrimination

Obtaining abortions in criminalized regimes is often an expensive process—either to find the service in the underground market, or to travel to a country in which the procedure is legal.⁶⁷ Those who can only afford state-sponsored medical care therefore must disproportionately carry a pregnancy to term or take more dangerous measures to terminate the pregnancy.⁶⁸ This disproportionately impacts people from other vulnerable communities—racial minorities, immigrants, LGBTQIA+ persons, and people with disabilities—as they exist in the an intersection of the inequities brought on by their marginalized identity and poverty.

3. Racial Discrimination

Racial and ethnic minorities are disproportionately impacted by restrictive abortion laws because they exacerbate the access issues that these communities face, even in liberalized abortion regimes. These issues include racist healthcare policies and historically exploitative state methods of control and coercion over the bodies of people of color.⁶⁹

4. Discrimination Against Immigrants

Immigrants living under criminalized abortion laws face unique inequities. Seeking information on abortion options or services in a country that has criminalized the procedure requires a network of trusted and discreet allies.⁷⁰ Those without this social network, or who lack the language skills or cultural understandings to build this social network, are inherently disadvantaged. Additionally, women whose citizenship status is not finalized often must decide between carrying an unwanted pregnancy to term or risking deportation.

5. Discrimination Against People with Disabilities

Women and girls with disabilities often face multiple overlapping barriers in seeking reproductive medical care in countries that have criminalized abortion. Those who require personal assistance in seeking any kind of medical treatment are disadvantaged where the procedure is stigmatized, either because they lack information on their reproductive options or because those

⁶⁶ Human Rights Council, Report of the Working Group on the Issue of Discrimination Against Women in Law and Practice 8-9 (July 2018), A/HRC/38/46.

⁶⁷ Manuella Libardi, *Anti-Abortion Laws: A War Against Poor Women*, EQUAL TIMES (Oct. 22, 2021), https://www.equaltimes.org/anti-abortion-laws-a-war-against#.YnAGc_PMKfU

⁶⁸ *Id.*

⁶⁹ CTR. FOR REPROD. RTS., *The Disproportionate Harm of Abortion Bans: Spotlight on Dobbs v. Jackson Women's Health* (Nov. 29, 2021), <https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-disproportionate-harm/>.

⁷⁰ Zeina Fathallah, *Moral Work and the Construction of Abortion Networks: Women's Access to Safe Abortion in Lebanon*, 21 HEALTH & HUM. RTS. J. 21 (2019).

around them are unwilling to assist.⁷¹ Also, because people with disabilities often require assistance in understanding and exercising their bodily autonomy, they are vulnerable to manipulation. This vulnerability often results in abusive medical treatment, such as “forced sterilization, forced abortion and forced contraception.”⁷²

6. Discrimination Against LGBTQIA+ persons

All LGBTQIA+ persons who can become pregnant are impacted by abortion criminalization—it is not an issue exclusive to cis straight women. LGBTQIA+ persons are “less likely to use birth control or make regular gynecological visits.”⁷³ Moreover, LGBTQIA+ persons who do not have access to reproductive healthcare information or adequate sex education are more susceptible to unintended pregnancies in environments hostile toward LGBTQIA+ communities. This is because they often must hide their sexual/gender identities to avoid being targeted due to the aggression others have toward their sexual/gender identities.⁷⁴ Countries that restrict and stigmatize sexual and reproductive rights perpetuate this gender-based discrimination that makes LGBTQIA+ persons even more susceptible to marginalization and violence.⁷⁵

C. Criminalization Deprives Pregnant Persons of Their Privacy & Bodily Autonomy

Criminalization of abortion deprives women of their rights to privacy and self-determination.⁷⁶ By forcing women to carry unwanted or unintended pregnancies, criminalization takes away a pregnant person’s bodily autonomy and encroaches on their family-planning decisions.⁷⁷ The decision to have a child, how many to have, and the spacing between children, are deeply personal, and do not become easier or lead to better outcomes when there are criminal sanctions attached. Where restrictive and invasive laws govern women’s reproductive decisions, this simultaneously denies women a role in their own economic, social, and cultural affairs.⁷⁸ If the government doesn’t trust women to manage how many children they want, it is effectively saying that women are unable to manage their own health, economic prospects, or inter-social relationships, as the decision to give birth affects each of these facets of life.

⁷¹ AMNESTY INT’L, *Amnesty International’s Policy on Abortion: Explanatory Note* 41 (Sept. 28, 2020), <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3028472020ENGLISH.pdf>

⁷² *Id.*

⁷³ Brief for LGBTQ Organizations and Advocates as Amici Curiae Supporting Respondents at 24, *Dobbs v. Jackson Women’s Health* (U.S. 2021) (No. 19-1392); see also Alyssa Julian, *Redefining LGBTQ and Abortion Rights in Latin America: A Transnational Toolkit*, 53 VANDERBILT J. TRANSNAT’L L. 275 (2020).

⁷⁴ Lauren Paulk, *Abortion Access is an LGBTQ Issue*, NAT. CTR. FOR LESBIAN RTS. (Oct. 1, 2013), <https://www.nclrights.org/abortion-access-is-an-lgbt-issue/>

⁷⁵ AMNESTY INT’L, *Body Politics* 179.

⁷⁶ CTR. FOR REPROD. RTS., *Fact Sheet: U.S. Abortion Law in Global Context* 2 (2019), <https://reproductiverights.org/sites/default/files/documents/2019-US-AbortionLawGlobalContext%20%28002%29.pdf>.

⁷⁷ Christina Zampas & Jaime Gher, *Abortion as a Human Right: International and Regional Standards*, 8 HUM. RTS. L. REV. 249, 251 (2008).

⁷⁸ CTR. FOR REPROD. RTS., *Safe and Legal Abortion is a Woman’s Human Rights* 3 (Oct. 2011), <https://reproductiverights.org/wp-content/uploads/2018/08/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf>.

II. Decriminalizing, Legalizing and Regulating Abortions

Legislatures and courts have restricted abortion using different legal frameworks—each of which attaches different types of consequences to violations. Criminalization, for example, attaches penal consequences, whereas regulation could attach civil penalties. Each of these frameworks could also carve out exceptions to abortion bans, with various restrictions still intact. Section A first explores how countries have decriminalized abortion and how decriminalization has played out in practice. Section B provides examples of other forms of legalization. Section C outlines how surgical and medical abortions are regulated, including the effects of regulation. Finally, Section D reviews abortion on request: what it is and the barriers that limit a pregnant person’s self-determination.

A. Decriminalizing Abortion

The decriminalization of abortion refers to the removal of sanctions and prohibitions that make seeking or providing an abortion a crime.⁷⁹ The aim of decriminalization is to remove the carceral system from the regulation of abortion, and to treat abortion like any other health care procedure.⁸⁰ This would ensure that no one is punished for obtaining or performing an abortion and that neither law enforcement nor the judicial system are involved.⁸¹ Decriminalization can be either (1) full, where there are no prohibitions at all, or (2) partial, where abortions are permitted up to a certain number of gestational weeks⁸² and/or on certain grounds, such as when the pregnant person’s life is at risk, in cases of rape or sexual abuse, fetal impairment, physical and mental health risk, social-economic reasons, or on the pregnant person’s request.⁸³ Decriminalization is not devoid of regulation, but it only imposes *criminal* sanctions for instances of non-consensual abortions or negligent practices that would be considered criminal in any other medical context.⁸⁴

1. Full Decriminalization

Some countries like Canada now regulate abortions through health codes.⁸⁵ Through its 1988 Supreme Court decision in *R. v. Morgentaler*, Canada became and remains the only country that has fully decriminalized abortion.⁸⁶ Pre-1988, abortion was criminalized, except when

⁷⁹ See DECRIMINALISING ABORTION IN THE UK: WHAT WOULD IT MEAN? 3 (Sally Sheldon & Kaye Wellings eds., 2020). Criminal sanctions may be imposed on pregnant persons who intentionally end their pregnancies and on third parties who assist the pregnant person in terminating the pregnancy. *Id.*

⁸⁰ Marge Berer, *Abortion Law and Policy Around the World: In Search of Decriminalization*, 19 HEALTH & HUM. RTS. J. 13, 14 (Jun. 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473035/pdf/hhr-19-013.pdf>

⁸¹ *Id.*

⁸² DECRIMINALISING ABORTION IN THE UK 3; Marge Berer & Lesley Hoggart, Editorial, *Progress Toward Decriminalization of Abortion and Universal Access to Safe Abortions*, 21 HEALTH & HUM. RTS. J. 79, 80 (2019), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2019/12/Editorial_Berer.pdf.

⁸³ Berer, *Abortion Law and Policy Around the World* 13, 15 (listing the “six main grounds” for which many countries allow abortions).

⁸⁴ DECRIMINALISING ABORTION IN THE UK 3.

⁸⁵ See *Law and Policy Guide: Criminality*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-criminality/>.

⁸⁶ See DECRIMINALISING ABORTION IN THE UK 104–05; see also Linda Long, *Abortion in Canada*, CANADIAN ENCYCLOPEDIA (Jan. 15, 2021), <https://www.thecanadianencyclopedia.ca/en/article/abortion>

necessary for the woman's life and health, under Section 251 of the Criminal Code of Canada.⁸⁷ However, in their 1988 decision, the Court stated that the Criminal Code was unconstitutional as it violated women's right to "security of the person" by forcing her to carry a pregnancy to term if she does not fall within an exception to the law, regardless of her own aspirations.⁸⁸ Since then, abortion has been treated and regulated like other health services,⁸⁹ becoming "a publicly-funded medical service" with no gestational limit.⁹⁰

Despite full decriminalization, access to abortion has not been equal, especially in rural areas.⁹¹ Because of disparities between rural and urban communities, the number of hospitals that offer surgical abortion services are concentrated in large urban areas.⁹² Furthermore, there have been difficulties for some clinics in obtaining public funding.⁹³ As public medical services are administered by the provinces, some provincial governments have refused to fund private abortion clinics from public funds.⁹⁴ Thus, despite Canada's universal health care system, abortion coverage isn't accessible to some populations, which disproportionately affects vulnerable communities like undocumented immigrants or refugees who may not be able to personally afford abortion services.⁹⁵

Lack of information is also a barrier. In Canada, many people are not equipped with the necessary knowledge about abortion care mostly because they are not advertised to the public.⁹⁶ Stigma and fear of exposure prevent women from seeking abortion procedures. This is further affected by medical providers asserting conscientious objections and delaying or refusing referrals despite the General Council of the Canadian Medical Association's guidance that healthcare providers must not discriminate based on patient diagnosis.⁹⁷

2. Partial Decriminalization

According to the Center for Reproductive Rights' World Abortion Map, only 24 countries prohibit abortion altogether, whereas 42 countries permit an abortion to preserve the woman's life, 51 countries protect the pregnant person's health, 13 countries consider socioeconomic grounds, and 73 allow abortion on request.⁹⁸ Although partial decriminalization ensures some pregnant

⁸⁷ See CTR. FOR REPROD. RTS, *Law and Policy Guide: Criminality*, <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-criminality/> (last visited June 22, 2022).

⁸⁸ Long, *Abortion in Canada*.

⁸⁹ DECRIMINALISING ABORTION IN THE UK 107.

⁹⁰ Long, *Abortion in Canada*.

⁹¹ *Id.*

⁹² Dorothy Shaw & Wendy V. Norman, *When There Are No Abortion Laws: A Case Study of Canada*, 62 BEST PRAC. & RSCH.: CLINICAL OBSTETRICS & GYNECOLOGY 11–12 (2020), <https://researchonline.lshtm.ac.uk/id/eprint/4654994/20/When-there-are-no-abortion-laws.pdf>.

⁹³ Long, *Abortion in Canada*.

⁹⁴ *Id.* New Brunswick is an example of where private clinics have been unsuccessful in obtaining public funding. *Id.* Still, women from Prince Edward Island travel to New Brunswick for abortion services as none are available in PEI since 2016. *Id.*

⁹⁵ See Shaw et al., *When There Are No Abortion Laws* 10. While a medical abortion can cost approximately \$300, the cost to travel within the country is also a major issue due to Canada's "vast rural areas." *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 10–11.

⁹⁸ CTR. FOR REPROD. RTS, *The World's Abortion Laws*, https://reproductiverights.org/wp-content/uploads/2021/12/WALM_2021update_V1.pdf, (last visited June 23 2022).

persons can access abortion, it also harms those that fall outside of the carve-outs. When exceptions only allow abortion in cases of rape, incest, or physical health problems, it means that, in practice, pregnant persons must suffer abuse or possibly life-threatening health issues to access necessary healthcare.⁹⁹ Gestational limits are also restrictive as it forces pregnant persons to make rushed decisions, or excludes them entirely from the procedure if past the time limit.¹⁰⁰ These carve-outs result in some women seeking unsafe or costly private sector abortions.¹⁰¹

Furthermore, partial decriminalization still presents the risk of prosecution if abortions are done outside of the limits imposed by the law.¹⁰² In 2021, South Australia partially decriminalized abortions, becoming the last Australian jurisdiction to do so.¹⁰³ Abortion is now regulated by health law.¹⁰⁴ Only the Australian Capital Territory has fully decriminalized abortions while other jurisdictions criminally prosecute abortions by non-medical practitioners.¹⁰⁵

In South Korea and Thailand, Constitutional Courts have been key in striking down articles in Criminal Codes that criminalize abortions.¹⁰⁶ In South Korea, the Court stated that criminalizing abortion violates women's rights to make fundamental decisions on pregnancy.¹⁰⁷ The Court suggested there be no restrictions imposed on abortions in the first trimester¹⁰⁸ but stated that the time to decide on a pregnancy does not extend beyond twenty-two weeks of pregnancy.¹⁰⁹

⁹⁹ Often, laws carving out exceptions are narrowly read to allow for an abortion only where the pregnant person's life or health is in immediate or serious risk of harm. Berer et al., *Progress Toward Decriminalization of Abortion* 21. Also common is women being denied an abortion despite being legally entitled to one. *Id.* For example, in India, marital rape survivors seeking abortions prior to the 20-week limit are being denied safe abortions, forced to go to the courts to uphold their rights with no guarantee of victory and causing unnecessary delays. *Id.*

¹⁰⁰ See e.g., Erica Millar & Barbara Baird, *Abortion Is No Longer a Crime in Australia. But Legal Hurdles to Access Remain*, CONVERSATION (Mar. 3, 2021), <https://theconversation.com/abortion-is-no-longer-a-crime-in-australia-but-legal-hurdles-to-access-remain-156215>.

¹⁰¹ Marge Berer & Lesley Hoggart, Editorial, *Progress Toward Decriminalization of Abortion and Universal Access to Safe Abortions*, 21 HEALTH & HUM. RTS. J. 79, 82 (2019), https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2019/12/Editorial_Berer.pdf.

¹⁰² Lucia Berro Pizarossa & Patty Skuster, *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion: A Review of the Last Decade of Legal Reform*, 23 HEALTH & HUM. RTS. J. 199, 207 (2021), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2021/06/Pizarossa.pdf>.

¹⁰³ Millar et al., *Abortion Is No Longer a Crime in Australia*.

¹⁰⁴ *Id.*

¹⁰⁵ Barbara Baird, *Decriminalization and Women's Access to Abortions in Australia*, 19 HEALTH & HUM. RTS. J. 197, 204 (June 2017). For example, in Tasmania, abortion was removed from criminal law and instead regulated under the Health Act. *Id.* at 203. However, it is only legal up to 16 weeks and criminalizes non-doctors who "perform an abortion." *Id.* By prosecuting abortions by non-medical practitioners, including imposing punishments that range from 5-10 years, Australian jurisdictions are overregulating. Millar et al., *Abortion Is No Longer a Crime in Australia*. Isolating abortion as in need of regulation prevents its "full integration into health law (which already ensures only qualified people perform medical procedures)." *Id.* This is contrary to the WHO's advice that permits "properly trained health-care providers" to provide abortion services. *Id.*

¹⁰⁶ See CTR. FOR REPROD. RTS, *Law and Policy Guide: Criminality*; Pizarossa et al., *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion* 199, 206.

¹⁰⁷ See CTR. FOR REPROD. RTS, *Law and Policy Guide: Criminality*.

¹⁰⁸ *Id.* Specifically the court stated abortion should be permitted up to fourteen weeks of pregnancy. *Id.*

¹⁰⁹ *South Korea: Abortion Decriminalized since January 1, 2021*, LIBR. OF CONG. (Mar. 18, 2021), <https://www.loc.gov/item/global-legal-monitor/2021-03-18/south-korea-abortion-decriminalized-since-january-1-2021/>

Continued debates have made it difficult for an abortion bill to pass and the articles struck down by the Court have since become void.¹¹⁰

Similarly, in Thailand where abortion is regulated under the Thai Criminal Code, the Constitutional Court ruled in 2020 that this violated Thailand's constitutional guarantee of equal rights and liberty.¹¹¹ In February 2021, a new law was adopted that decriminalizes abortions up to the 12th week but beyond this limit or outside of specified grounds, women can be fined and imprisoned up to 6 months.¹¹²

In Uruguay, the Voluntary Interruption of Pregnancy Bill of 2012 maintains abortion under the penal code but waives criminal penalties up to 12 weeks of pregnancy, 14 weeks in cases of rape, and at any point if the health of the pregnant person is in danger.¹¹³ However for this waiver process to work, pregnant persons must go through a series of steps.¹¹⁴ Abortion remains a crime if these steps are not followed.¹¹⁵

Recently, the WHO recognized the harms caused by limiting abortion based on certain conditions or gestational periods.¹¹⁶ Their abortion care guidelines states that such laws create unnecessary access barriers that interfere with a safe and effective procedure that can be self-managed and done “with little or no contact with the formal health system.”¹¹⁷ A grounds-based approach can be narrowly defined and conservatively applied, resulting in delays because of factors such as interpretational inconsistencies/disagreements. Moreover, such an approach presents health risks, like medical professionals waiting for the pregnant person's health to

¹¹⁰ *Id.*

¹¹¹ Pizzarossa et al., *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion* 199, 206.

¹¹² *Id.* Past the twelve-week limit, abortions are permitted only if the physical or emotional health of the mother is at risk, if there are fetal abnormalities, or in cases of sexual assault if a qualified professional provides the abortion. *Id.*

¹¹³ *Id.* at 203.

¹¹⁴ *Id.* at 203-04. These steps are: (1) the pregnant person must inform a doctor how she conceived and why she wishes to terminate the pregnancy; (2) the doctor consults with a team of three professionals, including a gynecologist, a mental health professional, and a social worker; (3) the pregnant person must meet with this interdisciplinary team to discuss the process, risks, and alternative options; (4) a five-day waiting period for the pregnant person to reflect before “she can reassert her decision to continue with the abortion.” HUM. RTS. WATCH, *Uruguay: New Abortion Law Breaks Ground for Women's Rights But Burdensome Procedures Could Undermine Access* (Oct. 26, 2012), <https://www.hrw.org/news/2012/10/26/uruguay-new-abortion-law-breaks-ground-womens-rights>. A post-abortion consultation is also required. Pizzarossa et al., *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion* 199, 204. Note that for survivors of rape or incest, they need not go through the above-mentioned steps but are required to file a criminal complaint. HUM. RTS. WATCH, *Uruguay: New Abortion Law Breaks Ground*.

¹¹⁵ Pizzarossa et al., *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion* 199, 203-204.

¹¹⁶ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 21-22. The WHO recommends that abortion be fully decriminalized because of the significant harm partial decriminalization causes, especially to marginalized populations, such as uneducated and poor individuals who are more likely to be prosecuted and the way partial decriminalization limits the availability of trained providers. CTR. FOR REPROD. RTS., *WHO's New Abortion Guideline: Highlights of Its Law and Policy Recommendations* 7 (2022), <https://reproductiverights.org/wp-content/uploads/2022/03/CRR-Fact-sheet-on-WHO-Guidelines.pdf>.

¹¹⁷ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 21-22.

deteriorate enough to ensure the risk to life exception is satisfied before proceeding with the procedure.¹¹⁸

B. Legalization of Abortion

Successful efforts towards the decriminalization of abortion are generally accompanied by legalization.¹¹⁹ Legalization refers to the regulation of when abortions are allowed through use of the law.¹²⁰ While most countries legalize abortion, its legalization tends to be subject to certain grounds.¹²¹ As abortion access is often embedded in statute law, sometimes in penal codes, the legalization of abortion mostly involves creating exceptions to the law.¹²² Legislatures often go back-and-forth between loosening and tightening restrictions based on religious, health, and legal reasons.¹²³

Depending on political shifts within the government in power, access to abortion can oscillate between two extremes: a complete ban with no exception on one end and abortions based on the women's request at the other.¹²⁴ For example, in Chile, abortions were allowed to save the woman's life or protect her health between 1931-1989 until its complete ban in 1989 by Augusto Pinochet's dictatorship.¹²⁵ The dictatorship annulled the statutory exception and implemented Chilean Health Code Act No. 18.826 banning any act that induced an abortion.¹²⁶ Then, in 2016, Michelle Bachelet's government legalized abortion once more but only in cases of three more restrictive grounds: (1) the abortion is necessary to preserve the mother's life, (2) the abortion is a result of rape or sexual abuse, and (3) where there are fatal fetal defects.¹²⁷

Statutes are not the only way abortions are regulated. State constitutions, supreme court decisions, customary law, and regulatory standards/ethics codes in the medical profession have all been used as regulatory methods that either restrict or liberalize abortion access with legal standing.¹²⁸ In the United States, Canada, Colombia, Brazil, and India, supreme or higher court decisions have extended abortion access beyond the 20-week limit.¹²⁹

¹¹⁸ *Id.* at 26.

¹¹⁹ See CTR. FOR REPROD. RTS, *The World's Abortion Laws*.

¹²⁰ Berer, *Abortion Law and Policy Around the World: In Search of Decriminalization*, 13, 16.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Agnès Guillaume et al., *Abortion Around the World: An Overview of Legislation, Measures, Trends, and Consequences*, 73 *POPULATION* 217, 225 (2018).

¹²⁴ *Id.*

¹²⁵ Berer, *Abortion Law and Policy Around the World* 13, 20. This was known as abortion on therapeutic grounds and only permitted if the fetus was not viable. *Id.*

¹²⁶ Jadwiga E. Pieper Mooney, *The Long Road to Reproductive Rights in Chile*, NACLA (Sept. 19, 2017), <https://nacla.org/news/2017/09/27/long-road-reproductive-rights-chile>. This complete ban may have been a result of the ideals of Jaime Guzmán who was a "lawyer and prominent ideologue of the regime". *Id.* In 1980, Guzmán had amended the Chilean constitution to add a right-to-life clause and in 1989 pushed through the ban. *Id.* He believed that "the mother must give birth to her child," regardless of the circumstances and even if it would result in the mother's death. *Id.*

¹²⁷ Berer, *Abortion Law and Policy Around the World* 13, 20. Russia also has "permissive and restrictive [abortion laws] with every change of political head of state." *Id.*

¹²⁸ *Id.* at 17.

¹²⁹ *Id.*

C. Regulating Medical and Surgical Abortions

Safe abortions can be performed either medically or surgically, but both methods are often regulated. Surgical abortions include vacuum aspiration, dilation and curettage (D&C), or dilation and evacuation (D&E).¹³⁰ However, per the WHO, D&C is obsolete.¹³¹ The method used depends on the gestational period and the healthcare system.¹³² Vacuum aspiration or medication abortion is generally recommended by the WHO during the first trimester and D&E thereafter.¹³³ In the United States, some states regulate surgical abortions by imposing medically unnecessary requirements, such as ambulatory surgical centers, specific room and corridor sizes, and mandates that facilities be near a local hospital.¹³⁴ Such restrictions overregulate, imposing burdensome requirements that are often difficult for providers to meet and not necessary for the patient's safety.¹³⁵ This results in many clinics shutting down, forcing pregnant persons to travel long distances, sometimes to other states, to obtain the procedure.¹³⁶

Conversely, medical abortion uses drugs to stop the pregnancy's growth by causing the uterine lining to shed.¹³⁷ Mifepristone and misoprostol are typically used for medical abortion.¹³⁸ The WHO recommends medical abortion "as a safe and effective method," and both mifepristone and misoprostol are included in the WHO Model List of Essential Medicines.¹³⁹ This means both

¹³⁰ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 62-76.

¹³¹ *Id.* 63. The WHO does not recommend D&C because of the pain it causes, considering the procedure as "incompatible with numerous human rights including the right to health." *Id.* 23-27.

¹³² Agnès Guillaume et al., *Abortion Around the World: An Overview of Legislation, Measures, Trends, and Consequences*, 73 POPULATION 217, 221 (2018). In Malaysia and Sudan, D&C remains the most widely used but vacuum aspiration has replaced it in Nigeria and Ethiopia. *Id.* In Ethiopia, nurses and midwives can administer first-trimester abortions through vacuum aspiration with training. Akinrinola Bankole et al., *From Unsafe to Safe Abortion in Sub-Saharan Africa: Slow but Steady Progress*, GUTTMACHER INST. (Dec. 2020), <https://www.guttmacher.org/report/from-unsafe-to-safe-abortion-in-subsaharan-africa>

¹³³ WORLD HEALTH ORG., ABORTION CARE GUIDELINES xxix. Abortions after twenty-one weeks (also known as abortions later in pregnancy) are highly stigmatized but rare. *See* KFF, ABORTIONS LATER IN PREGNANCY (Dec. 5, 2019), <https://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/>. In the United States, abortions later in pregnancy represent only about 1 percent of all cases. *Id.* These abortions are highly stigmatized, costly, and difficult to receive but reasons why a pregnant person may seek an abortion past twenty-one weeks include the following: 1) non-medical reasons that include women not knowing they are pregnant until after 20 weeks or difficulty accessing abortion services made even more difficult due to lack of information, insurance coverage, and costly services; 2) fetal impairments that cannot be detected until later in pregnancy (for example, fetal anatomy scans are conducted around twenty weeks as part of a pregnant person's routine care); and 3) the pregnant person develops life threatening health risks such as preeclampsia or cancer. *Id.*

¹³⁴ *Targeted Regulation of Abortion Providers*, GUTTMACHER INST. (Jan. 2022), <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers>

¹³⁵ *Id.*

¹³⁶ *See e.g.*, Ashoka Mukpo, *TRAP Laws are the Threat to Abortion Rights You Don't Know About*, ACLU (Mar. 3, 2020), <https://www.aclu.org/news/reproductive-freedom/trap-laws-are-the-threat-to-abortion-rights-you-dont-know-about> (noting that in Kentucky and Missouri, targeted restriction on abortion providers (TRAP) laws have shut down many clinics, leaving only one in each state).

¹³⁷ *Medical Abortion*, UCFS HEALTH, <https://www.ucsfhealth.org/treatments/medical-abortion> (last visited June 23, 2022).

¹³⁸ *Id.*

¹³⁹ WHO, WORLD HEALTH ORGANIZATION MODEL LIST OF ESSENTIAL MEDICINES, 22ND LIST 50 (2021), <https://www.who.int/publications/i/item/WHO-MHP-HPS-EML-2021.02>. Note that while the List of Essential Medicines includes both drugs, it is with the following caveat: "Where permitted under national law and where culturally acceptable." *Id.*

should always be available at affordable prices.¹⁴⁰ The WHO also recommends that pregnant individuals be allowed to obtain a medical abortion without clinical supervision up to 12 weeks.¹⁴¹

Despite its safety and effectiveness, medical abortions are “highly medicalized.”¹⁴² Overly stringent regulations regarding medical abortion can make it difficult for pregnant persons to access the necessary drugs.¹⁴³ Restrictions on who can administer the medical abortion, where the drugs can be dispensed, and mandatory tests such as ultrasounds are common ways that the procedure is made unnecessarily difficult to obtain.¹⁴⁴ For example, medical abortions are highly regulated in Australia, with only doctors permitted to prescribe the requisite medication under regulations by the Therapeutic Goods Administration,¹⁴⁵ compared to many countries worldwide where nurses and midwives are permitted to carry out medical abortions.¹⁴⁶ As of 2019, out of 35,000 general practitioners, only 1,345 GPs were certified to prescribe medical abortions in Australia and many women are not aware that medical abortions are only permitted up to nine weeks gestation.¹⁴⁷ The limited amount of GPs available forces many women to travel to city clinics, causing financial difficulties, especially for Aboriginal and Torres Strait Islander women who often arrived at clinics beyond the gestational limit.¹⁴⁸ In France, the abortion pill can only be purchased by medical staff and women are not permitted to take the abortion pill in the privacy of their homes as they must swallow the pill in front of the doctor or permitted staff.¹⁴⁹ Some states in the United States also impose regulations that may require that medical abortions be administered in specific sites.¹⁵⁰ In Canada, doctors were not allowed to prescribe medication for abortions until 2015 and only if they take an online course and directly dispense the abortion pill to patients.¹⁵¹

Increasing access to mifepristone and misoprostol will greatly reduce hurdles to abortion. This is especially true for women in areas underserved by the healthcare system, as the drugs can be administered by lower-level healthcare workers rather than requiring a doctor and a clinic or hospital visit.¹⁵² Where there are restrictive abortion laws, misoprostol is often only permitted

¹⁴⁰ CTR. FOR REPROD. RTS., *Medical Abortion and Self-Managed Abortion: Frequently Asked Questions on Health and Human Rights*, 1 (Nov. 2020), <https://reproductiverights.org/wp-content/uploads/2020/12/SMA-IPAS-CRR-FINAL-for-Distributionrev-1.pdf>

¹⁴¹ CTR. FOR REPROD. RTS., *Medical Abortion and Self-Managed Abortion* 98-100. In their 2022 abortion care guideline, the WHO recommended a self-managed medical abortion in the following: (1) eligibility, (2) self-administration without direct supervision and outside of a health-care facility, and (3) success assessment. *Id.*

¹⁴² *Medical Abortion*, GYNUITY HEALTH PROJECTS, <https://gynuity.org/programs/medical-abortion> (last visited June 23, 2022).

¹⁴³ See, CTR. FOR REPROD. RTS., *Law and Policy Guide: Medical Abortion*, <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-medical-abortion/>

¹⁴⁴ *Id.*

¹⁴⁵ Millar et al., *Abortion is no longer a crime in Australia*.

¹⁴⁶ Danielle Mazza et al., *Medical Abortion*, 49 AUSTRALIAN J. GEN. PRACTICE (2020), <https://www1.racgp.org.au/ajgp/2020/june/medical-abortion>

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Hazal Atay, *Countries' Covid-19 Responses Could Debunk Some Myths Around the 'Abortion Pill'*, CONVERSATION (Apr. 16, 2020), <https://theconversation.com/countries-covid-19-responses-could-debunk-some-myths-around-the-abortion-pill-136088>.

¹⁵⁰ GUTTMACHER INST., *Targeted Regulation of Abortion Providers*.

¹⁵¹ Long, *Abortion in Canada*.

¹⁵² See CTR. FOR REPROD. RTS., *Medical Abortion and Self-Managed Abortion*.

through prescription but there has still been wide use of it in Latin America and Asian countries.¹⁵³ In Latin America where highly restrictive abortion laws have made it difficult to terminate a pregnancy, many women self-induce abortions through misoprostol obtained either from pharmacies, online, or the black market.¹⁵⁴ Medical abortion has become the primary abortion method in countries where abortion is legal as it allows women to do so in their homes.¹⁵⁵

D. Abortion on Request

Abortion on request allows women to decide whether to terminate their pregnancy up to a certain gestational limit.¹⁵⁶ States that permit abortion on request do not require that medical professionals certify a reason for the abortion.¹⁵⁷ Human Rights bodies have demanded for abortion on request because countries that allow it generally “ensure abortion is accessible in practice” by ensuring uniformity in abortion laws, that sexual and reproductive services are affordable, and that access to abortion is not hindered through conscientious objections.¹⁵⁸ Many countries with abortion on request have low abortion rates. It is considered to be the only ground that “recognizes the conditions for a woman’s free choice.”¹⁵⁹

The benefits of abortions on request are fruitless without the removal of legal, policy, and practical barriers that undermine women’s self-determination, hinder their ability to access timely abortion care, spread biased information, enhance stigma,¹⁶⁰ and force women to make rushed decisions to meet gestational limits.¹⁶¹ These harsh regulations are framed in terms of promoting women’s health and safety but in reality, they do little other than hinder women’s abilities to access abortion. Thus, abortion on request with barriers limits the pregnant person’s right to self-determination by imposing barriers that take away the pregnant person’s ability to effectively choose to terminate their pregnancies with respect and dignity.¹⁶²

1. Policy Barriers to Access

Policy barriers to access include gestational limits, distress requirements, mandatory waiting periods, mandatory counseling, conscientious objections from medical professionals, and

¹⁵³ Agnès Guillaume et al., *Abortion Around the World: An Overview of Legislation, Measures, Trends, and Consequences*, 73 POPULATION 217, 222 (2018).

¹⁵⁴ Berer, *Abortion Law and Policy Around the World* 13, 20.

¹⁵⁵ Guillaume et al., *Abortion Around the World* 217, 222–23.

¹⁵⁶ CTR. FOR REPROD. RTS, *Law and Policy Guide: On Request*, <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-on-request/> (last visited June 23, 2022) (noting that following this limit, abortions may still be permitted when the pregnancy is a result of rape, there is a fetal defect, or the life and/or health of the woman is at risk).

¹⁵⁷ CTR. FOR REPROD. RTS, *European Abortion Laws: A Comparative Overview* (2020), <https://reproductiverights.org/sites/default/files/documents/European%20abortion%20law%20a%20comparative%20review.pdf>.

¹⁵⁸ CTR. FOR REPROD. RTS, *Law and Policy Guide: On Request*.

¹⁵⁹ *Id.*

¹⁶⁰ See CTR. FOR REPROD. RTS, *European Abortion Laws*.

¹⁶¹ Millar et al., *Abortion Is No Longer a Crime in Australia*.

¹⁶² See CTR. FOR REPROD. RTS, *Law and Policy Guide: On Request*.

third-party authorizations.¹⁶³ Below is further information as to how gestation limits, third party authorizations, and conscientious objections limit access to abortion.

a. Gestation Limits

Strict gestational time limits can harm pregnant people from marginalized communities who may not have the means to obtain abortion services within the legal timeframe, resulting in unsafe and illegal abortions.¹⁶⁴ In the United States, a 1973 Supreme Court decision affirmed women's right to abortion but also permitted states to impose bans after fetal viability, which can take place between 24-28 weeks after the pregnant person's last menstrual period (LMP).¹⁶⁵ Time limits vary throughout states but a third of states imposed an abortion ban at 20 weeks because of the "unfounded assertion that a fetus can feel pain" after this time.¹⁶⁶ Some states have attempted to impose shorter gestational limits as a step towards full criminalization.¹⁶⁷ These limits vary from a complete ban to 6-18 weeks with various justifications such as concerns that abortions later in pregnancy can cause mental health problems.¹⁶⁸ However, studies of women who were denied an abortion revealed mental health consequences and economic insecurity.¹⁶⁹

Gestational limits can also be abused to prevent women from obtaining an abortion. By imposing a limit, it gives medical providers the power to decide on a pregnant person's gestational age.¹⁷⁰ Indeed, many women reported significant delays that ranged from days to weeks, resulting in many of them going to private facilities because they feared they would advance too far in their pregnancies for an abortion in a public hospital.¹⁷¹

In a review of studies conducted by the WHO between 2010-2020, evidence revealed a link between gestational limits and increased maternal mortality and morbidity.¹⁷² The studies also showed the disproportionate impact gestational limits have on women with low socio-economic opportunities, cognitive impairments, and lower education levels.¹⁷³ Thus, gestational limits violate states' obligations under international human rights law to reduce maternal mortality, prevent unsafe abortion, and ensure equality.¹⁷⁴

¹⁶³ See CTR. FOR REPROD. RTS, *European Abortion Laws* 5-6.

¹⁶⁴ *Id.*

¹⁶⁵ GUTTMACHER INST., *State Bans on Abortion Throughout Pregnancy*, (Apr. 14, 2022), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>

¹⁶⁶ *Id.*

¹⁶⁷ Megan K. Donovan, *Gestational Age Bans: Harmful at Any Stage of Pregnancy*, GUTTMACHER INST. (Jan. 9, 2020), <https://www.guttmacher.org/gpr/2020/01/gestational-age-bans-harmful-any-stage-pregnancy>

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* A study from the University of California, San Francisco (UCSF) revealed that women denied abortions experienced anxiety and continued intimate partner violence. *Id.* They were also 3x more likely to be unemployed and 4x more likely to have incomes below the federal poverty line. *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* One woman reported that she was referred between providers for five days, increasingly burdening her as she had to repeatedly leave her child home alone. *Id.* Another woman stated that 8 times she returned to the same hospital only for her to decide to go to a private clinic due to delays. *Id.*

¹⁷² WORLD HEALTH ORG., ABORTION CARE GUIDELINES 28-29.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

b. Third Party Authorizations

To access a legal abortion, third party authorization requirements force pregnant persons to obtain the consent of a party who is not the pregnant person's primary healthcare provider.¹⁷⁵ This list can include parents, spouses, or a medical committee.¹⁷⁶ Third party authorization requirements are unduly burdensome as they can result in the denial of abortion services for pregnant persons for arbitrary reasons and cause unnecessary delays.¹⁷⁷ It also violates "women's autonomous decision-making" and increases the likelihood of clandestine abortions, especially for adolescents who may forego necessary services in order to avoid requesting permission from their parents.¹⁷⁸ Women and adolescents have bypassed third-party authorization requirements from parents and spouses for reasons such as potential violence or "reproductive coercion."¹⁷⁹

Thus, by designating third parties to act as "gatekeepers" that determine when a pregnant person can access a legal abortion, third party authorizations cause delays as these people may not be informed on the law or may apply the law in ways that limit abortion access based on personal beliefs or fear of criminal liability.¹⁸⁰ This results in a mosaic of experiences that vary not only because of the law, but because of the "gatekeeper" whose wishes may run contrary to that of the pregnant person.¹⁸¹

c. Conscientious Objections

In some countries, health care providers can refuse to provide abortion services based on religious or conscientious beliefs.¹⁸² When this happens, abortion access is decreased, especially when there are limitations on who can perform an abortion or when there is no system to refer pregnant persons to willing providers.¹⁸³ This can cause unnecessary delays, which can be problematic when there are gestational limits in place, leading to many pregnant persons turning to risky procedures later in their pregnancy.¹⁸⁴ Conscientious objectors increase barriers, particularly in rural communities, and can create uncertainty over abortion access when review is on a case-by-case basis.¹⁸⁵

¹⁷⁵ CTR. FOR REPROD. RTS., *Law and Policy Guide: Third Party Authorization*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-third-party-authorization/> (last visited June 23, 2022).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 42-43.

¹⁸⁰ *Id.* 43.

¹⁸¹ *See id.* 22.

¹⁸² CTR. FOR REPROD. RTS., *Law and Policy Guide: Conscientious Objection*, <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-conscientious-objection/> (last visited June 23, 2022).

¹⁸³ Susheela Singh et al., *Abortion Worldwide 2017: Uneven Progress and Unequal Access*, GUTTMACHER INST. 1, 23, 25 (Mar. 2018), https://www.guttmacher.org/sites/default/files/report_pdf/abortion-worldwide-2017.pdf

¹⁸⁴ *See id.* at 23.

¹⁸⁵ WORLD HEALTH ORG., ABORTION CARE GUIDELINES 60-61. Furthermore, some health providers assert conscientious objections in the public sector but do provide such services in private practice. *Id.*

In Uruguay, despite changes to the law that expanded abortion access, requiring an interdisciplinary committee to discuss the pregnancy termination in the waiver process¹⁸⁶ burdens many communities. The law, which already limits abortion by requiring the involvement of a gynecologist, is made more restrictive by broad conscientious objection interpretations. More than 80% of gynecologists in some provinces object to providing abortion services.¹⁸⁷ This means that in some areas of Uruguay, abortion services are not accessible, forcing pregnant persons to either travel long distances to a clinic that would provide the procedure or resort to an unsafe abortion. Conscientious objections can further enhance stigma because it signals reproductive healthcare as separate from other health services where freedom of conscience cannot be used to limit patient rights.¹⁸⁸

d. Practical Barriers

Even where policy barriers may not be restrictive, practical barriers can continue to limit a pregnant person's ability to access abortion services. Three main practical barriers include the limited availability of abortion clinics, the long travel times between clinics, and expensive abortion costs.

i. Number of Clinics

Limited clinic options often cause delays in necessary care due to limited available appointments and long wait times.¹⁸⁹ In the United States, in 2014, five states had only one abortion clinic and about 90% of U.S. counties did not have any.¹⁹⁰ In areas where restrictive abortion policies were enacted, the number of clinics decreased between 2011-2014.¹⁹¹

ii. Travel Between Clinics

Access to abortion services can lack uniformity, forcing many patients to travel long distances—sometimes even across state or country lines—to access the procedure.¹⁹² In 2017,

¹⁸⁶ See Pizzarossa et al., *Toward Human Rights and Evidence-Based Legal Frameworks for (Self-Managed) Abortion* 199, 204.

¹⁸⁷ Susan Wood et al., *Reform of Abortion Law in Uruguay: Context, Process and Lessons Learned*, 24 REPROD. HEALTH MATTERS 102, 107 (2016),

<https://www.tandfonline.com/doi/pdf/10.1016/j.rhm.2016.11.006?needAccess=true>

¹⁸⁸ See Lucia Berro, *Conscientious Objection or Conscious Oppression?: The Uphill Battle to Access Abortion Services in Uruguay*, OHRH (Sept. 11, 2015), <https://www.redaas.org.ar/archivos-recursos/Berro.%20Conscientious%20objection.%20Uruguay..pdf>

¹⁸⁹ See e.g., *Barriers to Abortion Care and Their Consequences For Patients Travelling for Services: Qualitative Findings from Two States*, GUTTMACHER INST. (June 2017),

<https://www.guttmacher.org/journals/psrh/2017/04/barriers-abortion-care-and-their-consequences-patients-traveling-services#3>

¹⁹⁰ *Id.*

¹⁹¹ Jones RK & Jerman J, *Abortion Incidence and Service Availability in the United States, 2014*, PERSPECTIVES ON SEXUAL & REPROD. HEALTH (Jan. 17, 2017), <https://onlinelibrary.wiley.com/doi/full/10.1363/psrh.12015> (“Six of the 10 states that experienced the greatest proportionate declines in the number of clinics enacted three or four new abortion restrictions between 2012 and 2014”).

¹⁹² See e.g., GUTTMACHER INST., *Barriers to Abortion Care and Their Consequences For Patients Travelling for Services: Qualitative Findings from Two States*, (June 2017),

about 8% of U.S. patients had to travel to a different state for an abortion.¹⁹³ When the number of restrictive laws increased, the number of patients that left to another state also increased to 12%.¹⁹⁴ Because many patients in need of an abortion are low-income, traveling created significant barriers related to expenses that are discussed below.¹⁹⁵ As pregnancy advances, finding a provider who performs later in pregnancy abortions becomes difficult, with 85% of women studied reporting travel costs as a reason why they did not obtain an abortion in another state.¹⁹⁶ Additionally, forcing women to travel to find a clinic causes unnecessary stress and adds stigma.¹⁹⁷

Lack of “equitable distribution” of abortion services throughout the country disproportionately affects women from rural communities.¹⁹⁸ For example, in Nepal, safe abortion services are offered only at the district hospital, forcing women from rural communities to walk for days.¹⁹⁹ By not having clinics readily accessible, pregnant persons may be delayed in obtaining necessary services and may thus arrive at clinics when they are further advanced in their pregnancy.²⁰⁰ This is problematic as second-trimester abortion services are harder to obtain.²⁰¹

iii. Expensive Abortion Costs

One of the biggest barriers is expensive abortion costs. Where abortion is legal, costs are often considered health services covered by national health insurances as opposed to countries where the lack of insurance coverage and high costs have led to women seeking cheaper abortions that can be unsafe.²⁰² This is especially true for poor and rural women who are disproportionately impacted by inequity regarding abortion access. High costs of abortion account for high rates of risky procedures more likely to result in complications.²⁰³ In some countries, women may seek private providers despite the cost because of the belief private services will lead to better quality care, privacy, and confidentiality.²⁰⁴ Postabortion care costs are highest in countries where abortion is very restricted with estimates dropping from \$232 million to \$20 million just by providing safe abortions in developing countries.²⁰⁵ Various barriers like poor availability of services also increase costs as women travel long distances to facilities and pay for transportation and childcare while taking time off work.²⁰⁶

<https://www.guttmacher.org/journals/psrh/2017/04/barriers-abortion-care-and-their-consequences-patients-traveling-services#3>

¹⁹³ See e.g., Mikaela H. Smith et al., *Abortion Travel Within the United States: An Observational Study of Cross-State Movement to Abortion Care in 2017*, LANCET REGIONAL HEALTH (Mar. 3, 2022),

[https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(22\)00031-X/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(22)00031-X/fulltext)

¹⁹⁴ *Id.*

¹⁹⁵ GUTTMACHER INST., *Barriers to Abortion Care and Their Consequences For Patients Travelling for Services*.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Wan-Ju Wu, *Abortion Care in Nepal, 15 Years after Legalization*, 19 HEALTH & HUM. RTS. J. 221, 225 (June 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473051/pdf/hhr-19-221.pdf>

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Singh et al., *Abortion Worldwide 2017* 1, 23, 26.

²⁰³ *Id.* at 23.

²⁰⁴ *Id.* at 26.

²⁰⁵ *Id.* at 33.

²⁰⁶ *Id.*

In the United States, the Hyde Amendment prevents the use of federal funds for abortion services, except when necessary to save the pregnant person's life or in cases of rape and incest.²⁰⁷ Some states also prohibit use of state funds and/or restrict insurance coverage to pay for medically necessary abortions.²⁰⁸ As abortion services can cost between \$500-1,500 USD, women from poor economic backgrounds are forced to either carry an unwanted pregnancies to term or resort to unsafe abortions.²⁰⁹ In Uganda, where the monthly per capita income in the country is about \$43, on average, between 2011-2012, women paid \$49 for an unsafe abortion and necessary follow-up care.²¹⁰ Unsafe abortion procedures can have rippling effects, including affecting household productivity and impacting the well-being of other children in the family.²¹¹

III. Multiple Advocacy Strategies to Achieve Reproductive Freedom

The three major frameworks deployed in pursuit of reproductive freedom are reproductive health (RH), reproductive rights (RR), and reproductive justice (RJ). These overlapping and interrelated frameworks working together are essential to achieve full reproductive freedom.²¹² Generally, RH and RR focus more on an individual's legal rights and ability to access reproductive services, whereas RJ operates on a more systemic and structural level.

At the same time, RJ encompasses RH and RR as part of a commitment to transform intersectional oppression.²¹³ While having legal rights to reproductive services is crucial, it does not ensure that these services are accessible to the people that need them, equally distributed geographically or across financial lines, or that they are distributed free of coercion or bias.²¹⁴ Therefore, all three frameworks are necessary.

A. Reproductive Health

The RH framework focuses on the direct servicing of individuals' reproductive needs.²¹⁵ This resource-intensive approach aims to improve accessibility to health care research, services, insurance, facilities, and individual care, especially to marginalized communities.²¹⁶ Specifically, strategies often include building clinics in rural areas, teaching sex education curriculums, training

²⁰⁷ NARAL Pro Choice America, *The Fight for Our Lives*, <https://www.prochoiceamerica.org/timeline/> (last visited June 23, 2022).

²⁰⁸ GUTTMACHER INST, *An Overview of Abortion* (Jan. 2022), <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>

²⁰⁹ HUM. RTS. WATCH, *Abortion: United States*, <https://www.hrw.org/legacy/women/abortion/us.html> (last visited June 23, 2022).

²¹⁰ Singh et al., *Abortion Worldwide 2017* 1, 23.

²¹¹ GUTTMACHER INST., *The Individual-and Household-Level Cost of Unsafe Abortion in Uganda*, (Feb. 2017), <https://www.guttmacher.org/fact-sheet/individual-and-household-level-cost-unsafe-abortion-uganda>

²¹² Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice Movement*, 36 OFF OUR BACKS 14 (2006).

²¹³ Sumi Madhok et al., *On Reproductive Justice: 'Domestic Violence', Rights and the Law in India*, 16 CULTURE, HEALTH & SEXUALITY 1231, 1231 (2014).

²¹⁴ NAT'L COUNCIL JEWISH WOMEN, *Understanding Reproductive Health, Rights, & Justice* (2017), <https://www.ncjw.org/wp-content/uploads/2017/12/RJ-RH-RR-Chart.pdf>

²¹⁵ *Id.*

²¹⁶ UNITARIAN UNIVERSALIST ASSOC, *Comparing Frameworks: What is Reproductive Health, Rights, and Justice?*, <https://www.uua.org/reproductive/action/199536.shtml>

doctors to be reproductive service providers, and training providers on cultural competence.²¹⁷ Notably, the movement is led by medical professionals and health organizations, such as Planned Parenthood, American College of Obstetricians and Gynecologists, IPAS, and World Health Organization.

The RH framework achieves reproductive freedom by promoting equitable and sustainable development. Firstly, it reduces poverty by encouraging fewer children, allowing families to invest in the education, food, and health of each child without exhausting resources.²¹⁸ Secondly, it promotes gender equality by ensuring that women have access to information on marriage and sexual relations, empowering them to make informed decisions about their sexual health and reproduction, and encouraging their participation in public and private spheres.²¹⁹ Finally, investing in reproductive health aids in the prevention of unsafe abortions, maternal death, and STIs.²²⁰

This framework is limited by individualization as it does not consider structural inequities that create different experiences for different groups of women.²²¹ In fact, research suggests that RH has been applied disproportionately, as it is concentrated on the wealthy, thus causing widening inequalities across and within different countries.²²²

B. Reproductive Rights

The RR framework is an advocacy-based model that aims to protect an individual's legal right to reproductive health care services with an emphasis on legalizing abortion and creating family planning services.²²³ It often entails lobbying, impact litigation, legislative advocacy, and other actions targeting lawmakers and elected officials. Other primary actors include lawyers, courts, and legal experts.²²⁴ Advocacy Organizations such as NARAL and the Center for Reproductive Rights focus on the RR framework. The RR model is indispensable as it highlights choice, privacy, autonomy, and the right to be free from governmental interference, while emphasizing that RR are human rights.

²¹⁷ NAT'L COUNCIL JEWISH WOMEN, *Understanding Reproductive Health, Rights, & Justice*.

²¹⁸ UNFPA, *Sexual and Reproductive Health for All: Reducing Poverty, Advancing Development and Protecting Human Rights* 8 (2010), https://www.unfpa.org/sites/default/files/pub-pdf/uarh_report_2010.pdf. Studies in Nicaragua and Nairobi show that the number of children affects poverty and social mobility. *Id.* at 18-19. Limited resources usually result in girls not receiving an education. *Id.*

²¹⁹ *Id.* Forty-eight percent of girls in South Asia and twenty-nine percent in Latin America and the Caribbean are married before reaching eighteen, causing "uneven power" dynamics, risk of poverty, and increasing pregnancy related complications *Id.* at 20-21.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* Wealthy women in Sub-Saharan Africa and Southern Asia are about 3x and 5x more likely to give birth with a skilled provider assisting compared to women from poorer households. *Id.*

²²³ See UNITARIAN UNIVERSALIST ASSOC, *Comparing Frameworks: What is Reproductive Health, Rights, and Justice?*. Advocacy Organizations such as NARAL and Center for Reproductive Rights have been focusing on the RR framework.

²²⁴ NAT'L COUNCIL JEWISH WOMEN, *Understanding Reproductive Health, Rights, & Justice*.

However, even if the right to abortion is codified as law, the legal right to reproductive services does not ensure that services are accessible, equally distributed, or non-coercive.²²⁵ Most importantly, “pro-choice” rhetoric can alienate marginalized populations, obscuring the root causes of social inequalities and limiting the beneficiaries of the RR movement to those who have the financial and political means to make “choices” to parent or not to parent.²²⁶

For example, in the United States, the RR movement was largely defined by the landmark case *Roe v. Wade*, with a strong emphasis on individual rights and privacy. It alienated people of color and poor women, especially when the movement did not rally to fight against the prohibition of using “federal funds for abortions” which disproportionately impacted these women, along with immigrants, people with disabilities, young people, and low income people.²²⁷ Historically, BIPOC women are more likely to be uninsured as compared to white women, affecting their ability to access services such as birth control and maternal health care.²²⁸ Additionally, white wealthy women are encouraged to participate in legislative and electoral processes, while marginalized populations disproportionately lack the knowledge, access, and resources to participate in the political system.²²⁹

C. Reproductive Justice

The RJ framework, which was co-founded by feminist academic and activist Loretta Ross, acknowledges the ways race, gender, social and economic status, disabilities, age, immigration status, and other factors overlap and interrelate when accessing healthcare services.²³⁰ The RJ framework draws inspiration from social justice movements in the U.S., the global human rights and women’s health movements, and voices from the global south.²³¹ One of RJ’s main strategies is to amplify the voices of excluded communities, particularly women of color that have been subject to racist policies and programs regarding their reproductive ability.²³² This historic marginalization is why an exclusive application of RR does not work for all communities and why effective advocacy requires all three frameworks working collaboratively.²³³

²²⁵ *Id.*

²²⁶ See Osub Ahmed & Christy M. Gamble, *Reproductive Justice: What It Means and Why It Matters (Now, More Than Ever)*, PUB. HEALTH POST, <https://www.publichealthpost.org/viewpoints/reproductive-justice/#>; Danielle M. Pacia, *Reproductive Rights vs. Reproductive Justice: Why the Difference Matters in Bioethics*, BILL OF HEALTH (Nov. 3, 2020), <https://blog.petrieflom.law.harvard.edu/2020/11/03/reproductive-rights-justice-bioethics/>.

²²⁷ Sarah London, *Reproductive Justice: Developing a Lawyering Model*, 13 BERK J. AFRICAN-AM. L. & POL. 71, 81-82 (2011).

²²⁸ Statistics show that Black, American Indian, and Alaskan Native women are two to three times more likely to experience pregnancy-related deaths than white women. *Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths*, CTR. DISEASE CONTROL, <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html> (last reviewed Sept. 6, 2019).

²²⁹ UNITARIAN UNIVERSALIST ASSOC, *Comparing Frameworks: What is Reproductive Health, Rights, and Justice?*

²³⁰ Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice* 14, 14 (“Reproductive Justice is the complete physical, mental, spiritual, political, social and economic well-being of women and girls, based on the full achievement and protection of women’s human rights.”).

²³¹ *Id.*

²³² Loretta Ross & Rickie Solinger, *Reproductive Justice: An Introduction* (2017).

²³³ *Id.*

The RJ model often focuses on supporting the leadership of the most impacted communities in terms of reproductive injustice, building political power at the local and state level, and funding organizations run by women of color. Primary actors in this framework include community leaders, organizers, and religious leaders.²³⁴

Unlike RH and RR, RJ takes a holistic approach in fighting for the ability “to have children, not to have children, and to parent children” in safe communities.²³⁵ Moreover, the RJ framework places an emphasis on the state’s positive obligation while RR is largely based on what an individual has the right to do without government control.²³⁶ RJ calls for affirmative state buy-in to secure these rights for all people, especially those who have historically been excluded from reproductive liberties.²³⁷ The RJ movement has had a substantial impact on RR advocacy, and RR advocates now often work closely with the RJ movement towards expanding coverage of litigation to include all aspects of reproductive freedom. For instance, RR organizations in partnership with RJ leaders and influenced by RJ thought are developing legal strategies to advocate for rights to family planning, abortion, maternal health care, sex education, and assisted reproductive technologies.²³⁸

There have been several successful stories using this holistic approach around the world. By shifting discussions to the government’s historic control of women’s bodies, perceptions on abortion have changed. Case studies of successful RJ advocacy campaigns will be covered in more detail in PART II (*see e.g., the South Korea case study*). RJ’s focus on power systemic relations requires shifting personal and political views, with lengthy campaigns that can take years to effect change.²³⁹

While each framework intersects, their approaches are very different and individually fail to combat reproductive oppression as “service, advocacy and organizing” are all key components for an effective movement.²⁴⁰ Only after the advocacy successfully detangles the constellation of social, economic, and political pressures that prioritize the reproductive “choices” of privileged women, can true reproductive freedom be realized.

²³⁴ *Understanding Reproductive Health, Rights, & Justice*, NAT’L COUNCIL JEWISH WOMEN, <https://www.ncjw.org/wp-content/uploads/2017/12/RJ-RH-RR-Chart.pdf>

²³⁵ *Reproductive Justice*, SISTERSONG, <https://www.sistersong.net/reproductive-justice>. Note that the reproductive justice framework is like the reproductive rights framework in that both use human rights provided to every human being in international agreements to further their cause.

²³⁶ Sumi Madhok et al., *On Reproductive Justice: ‘Domestic Violence’, Rights and the Law in India*, 16 CULTURE, HEALTH & SEXUALITY 1231, 1231 (2014).

²³⁷ Dipika Jain, *Reimagining Reproductive Rights Jurisprudence in India: Reflections on the Recent Decisions on Privacy and Gender Equality from the Supreme Court of India*, 39 COLUMBIA J. OF GENDER & L. 1, 6 (2020).

²³⁸ NAT’L COUNCIL JEWISH WOMEN, *Understanding Reproductive Health, Rights, & Justice*.

²³⁹ A New Vision for Advancing our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice, ASIAN COMMUNITIES FOR REPROD. JUST. 3-4 (2005), <https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf>.

²⁴⁰ Ross, *Understanding Reproductive Justice* 14, 14.

Part II – Case Studies: Global Advocacy Strategies

All over the world, advocates are working tirelessly to promote reproductive freedom. These human rights defenders deploy a variety of legal strategies and social activism techniques to decriminalize abortion in their own countries and regions. Part II catalogues many of these advocacy efforts throughout the Americas, Europe, Africa, Asia, and Oceania. It analyzes the effectiveness of these strategies and identifies lessons that will benefit advocates everywhere. For each case study, where applicable, Part II outlines (a) legal advocacy experiences, (b) permanence of decriminalization, (c) application in reality, (d) social advocacy strategies, and (e) application to Lebanon.

North America

I. United States

In the United States, most states did not criminalize abortion until the mid-nineteenth century when opposition movements emerged: physician organizations called for criminal abortion bans to regulate their competitors, a native-born white Americans group “condemned abortion as ‘race suicide’” because of their fear that immigrants would outnumber them, and others worried that women having access to abortion would remove their traditional role as mothers and wives.²⁴¹ Laws that criminalized abortion were enacted in every state, with most states exempting abortions necessary to protect the woman’s life.²⁴² However, the criminalization of abortion caused thousands of illegal procedures with many women maimed or killed.²⁴³ As a result, in the 1960s, doctors, reformers, women, and many more demanded the decriminalization of abortion. The American Civil Liberties Union (ACLU) and the Center for Reproductive Rights have played key roles in this fight.²⁴⁴

The fight for abortion rights in the United States illustrates how effective legal framing and ongoing impact litigation has developed strong jurisprudence that recognized and defined the contours of abortion as a constitutional right. This section will outline the path to abortion legalization, how this right has been limited over time, and how advocates continue this battle socially and in the legislature.

²⁴¹ ACLU, *The Right to Choose at 25: Looking Back and Ahead*, <https://www.aclu.org/other/right-choose-25-looking-back-and-ahead?redirect=reproductive-freedom/right-choose-25-looking-back-and-ahead> (last visited June 23, 2022) (noting that physicians accused midwives and folk healers of “performing too frequent and unsafe abortions”) . . .

²⁴² *Id.*

²⁴³ Criminalizing abortion moved the procedure underground in often unsanitary conditions. *Id.*

²⁴⁴ Note that in the United States, ACLU, the Center for Reproductive Rights, and Planned Parenthood divide reproductive rights and justice litigation cases across the country.

a. Legal Advocacy Experiences

i. Abortion Law Pre-1973

The path to legalization began with *Griswold v. Connecticut*,²⁴⁵ where the ACLU and Planned Parenthood jointly challenged Connecticut's prohibition of contraceptives.²⁴⁶ In their argument, ACLU and the Connecticut Civil Liberties Union framed the contraceptives ban as unconstitutional because it violated the guarantee of liberty and right to privacy from state interference.²⁴⁷ The Court ultimately struck down the ban, holding that there is a constitutional guarantee of a right to privacy²⁴⁸ when decisions are made in matters that are intimate and personal, like childbearing.²⁴⁹

The decision in *Griswold* encouraged activists campaigning to legalize abortion.²⁵⁰ First, activists demanded that state abortion laws be repealed.²⁵¹ Second, activists used the judiciary to further their movement, bringing various cases against criminal abortion laws in both state and federal courts, aiming to have at least one case make it to the Supreme Court.²⁵² In 1971, in *United States v. Vuitch*,²⁵³ the Supreme Court affirmed an expansive view of the term "health," stating it included psychological and physical well-being.²⁵⁴

Finally, in 1973, ACLU was involved with two of the most important cases that upheld women's constitutional right to an abortion:²⁵⁵ *Roe v. Wade*²⁵⁶ and *Doe v. Bolton*.²⁵⁷ In *Roe*, plaintiffs challenged Texas' criminal abortion statute that prohibited abortions, except if necessary to save the mother's life, as unconstitutional.²⁵⁸ They argued that the Texas abortion laws violated

²⁴⁵ 381 U.S. 479 (1965).

²⁴⁶ ACLU, *ACLU History: Laying the Foundation*, <https://www.aclu.org/other/aclu-history-laying-foundation> (last visited June 23, 2022).

²⁴⁷ Motion to Leave to File Brief for the American Civil Liberties Union and the Connecticut Civil Liberties Union as Amici Curiae at 6–11, *Griswold v. Connecticut*, 381 U.S. 479 (1965), 1965 WL 115616 (No. 496).

²⁴⁸ *Griswold*, 381 U.S. at 484.

²⁴⁹ ACLU, *ACLU History: Laying the Foundation*. *Griswold* was the first time that the Court ruled there is a right to privacy in intimate matters like childbearing. *Id.* The Supreme Court also upheld a person's right to contraceptives, whether married or unmarried, in 1972 through *Eisenstadt v. Baird*. ACLU, *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, ACLU, <https://www.aclu.org/other/timeline-important-reproductive-freedom-cases-decided-supreme-court> (last visited June 23, 2022).

²⁵⁰ ACLU, *The Right to Choose at 25: Looking Back and Ahead* <https://www.aclu.org/other/right-choose-25-looking-back-and-ahead?redirect=reproductive-freedom/right-choose-25-looking-back-and-ahead> (last visited June 23, 2022).

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ 402 U.S. 62 (1972) (*Vuitch II*). This case involved the arrest of Dr. Vuich who was indicted by the District Court for providing an abortion in violation of D.C.'s penal code. *Id.* at 63.

²⁵⁴ ACLU, *The Right to Choose at 25: Looking Back and Ahead*.

²⁵⁵ *Id.*

²⁵⁶ 410 U.S. 113 (1973) (*Roe II*). Norman Dorsen was part of the team of lawyers that represented plaintiffs in this case. ACLU, *The Right to Choose at 25: Looking Back and Ahead*.

²⁵⁷ 410 U.S. 179 (1973). Georgia's ACLU organized a group of three women to represent plaintiffs. ACLU, *The Right to Choose at 25*.

²⁵⁸ *Roe II*, 410 U.S. at 117–20.

married couples' and single women's constitutional right to decide whether to have children.²⁵⁹ In its historic decision, the Supreme Court concluded that the Texas statute violated the rights to liberty and privacy under the Due Process clause of the Fourteenth Amendment.²⁶⁰

In *Bolton*, plaintiffs challenged a Georgian law that prohibited abortions except when necessary for the mother's life or health and imposed various restrictions like requiring two additional doctors (aside from the mother's doctor) to approve the abortion.²⁶¹ The law was deemed unconstitutional because its restrictive conditions interfered with the pregnant person's ability to decide about her pregnancy with her physician.²⁶² These landmark rulings were in line with shifting opinions on abortion as a result of campaigning.²⁶³

ii. Post-1973 Abortion Laws

While *Roe* and *Bolton* created wider access to safe and legal abortions, they also led to a radical anti-abortion movement that continues to fight for measures that limit abortion rights.²⁶⁴ In 1974, the ACLU created the Reproductive Freedom Project to defend reproductive rights by challenging laws that limit women's right to an abortion.²⁶⁵

In the notable *Planned Parenthood of Southern Pennsylvania v. Casey*²⁶⁶ case, the Supreme Court reaffirmed *Roe*'s holding that abortion is a constitutional right. However, the Court adopted an undue burden standard, which holds a law as valid so long as it does not impose a substantial obstacle on a pregnant person seeking an abortion before the fetus's viability.²⁶⁷ This weaker standard emboldened anti-abortion lawmakers to pass about 400 measures from 1995-2004 that limited access to reproductive services.²⁶⁸

²⁵⁹ *Roe v. Wade*, 314 F. Supp. 1217, 1219 (N.D. Tex. 1970) (*Roe I*). Plaintiff Roe was a pregnant single woman. *Roe II*, 410 U.S. at 120. She centered her argument on the Texas law being unconstitutionally vague and a violation of her right to privacy. *Id.* Also joining *Roe* was John and Mary Doe, a married couple who, due to Mrs. Doe suffering from a neural medical disorder, discontinued use of birth control and wished to assert their right to terminate a future pregnancy through a competent physician. *Id.* at 121.

²⁶⁰ *Roe II* at 164–65. The court established the following: 1) up to the first trimester, a pregnant woman's physician is given the power to make abortion decisions, 2) after first trimester, states can regulate abortion if "reasonably related to maternal health", and 3) after viability, states may regulate abortion except if necessary to save the mother's life or health. *Id.* Thus, states can only assert a compelling state interest to protect the fetus' life once it is viable, but this cannot interfere with the preservation of the mother's life or health. ACLU, *The Right to Choose at 25: Looking Back and Ahead*.

²⁶¹ ACLU, *The Right to Choose at 25: Looking Back and Ahead*.

²⁶² *Id.*

²⁶³ *Id.* In 1972, sixty-four percent of Americans favored liberalizing abortion laws compared to fifteen percent in 1968. *Id.*

²⁶⁴ ACLU, *ACLU History: The Backlash Begins*, <https://www.aclu.org/other/aclu-history-backlash-begins>

²⁶⁵ *Id.*

²⁶⁶ 505 U.S. 833 (1992).

²⁶⁷ *Id.* at 837. The Court also affirmed that viability is the dividing line and confirmed that states can implement measures that allow women to make informed choices, even if the purpose of such measure is to persuade a pregnant person from carrying a pregnancy to term. *Id.* Thus, if the law provides no benefit or "impermissibly impede" the pregnant person's access to abortion, the law is unconstitutional. CTR. FOR REPROD. RTS., *The Undue Burden Standard after June Medical Services v. Russo* (2020), <https://reproductiverights.org/wp-content/uploads/2020/12/The-Undue-Burden-Standard-after-June-Medical-Services-v-Russo.pdf>.

²⁶⁸ ACLU, *ACLU History: The Backlash Begins*, <https://www.aclu.org/other/aclu-history-backlash-begins>

The Center for Reproductive Rights advocates to ensure that reproductive rights are protected as a fundamental human right that guarantees every person’s dignity and equality.²⁶⁹ The Center combines expertise in federal, national, and international law with “litigation, legal policy, and advocacy work” to advance reproductive rights around the world.²⁷⁰ In the United States, the Center for Reproductive Rights also employs various strategies other than the judiciary including pushing for proactive legislation and policies, working with state-level coalitions to prevent policies that restrict reproductive health care access, analyzing and tracking abortion legislation, providing technical assistance and guidance to legislators, abortion providers, advocacy groups, and researchers, and hosting the State Leadership Summit to strategize.²⁷¹

In 2014, the Center for Reproductive Rights filed a lawsuit, *Whole Woman’s Health v. Hellerstedt*,²⁷² challenging a state law that restricted abortion access, including requiring that abortion providers obtain admitting privileges in hospitals within 48 kilometers from an abortion clinic and building specifications for abortion care facilities.²⁷³ The Supreme Court applied *Casey*’s undue burden test and ultimately struck down the law, stating that benefits must outweigh burdens and reaffirming that women have a constitutional right to a legal abortion.²⁷⁴ Then, a mere four years later in 2020, the Court struck down a Louisiana law challenged by the Center for Reproductive Rights that imposed admitting privileges in hospitals²⁷⁵ in *June Medical Services v. Russo*.²⁷⁶ The Court held that the law is unconstitutional because it would result in an undue burden that would disproportionately affect poor people and had few benefits.²⁷⁷

In line with States’ repeated attempts to criminalize abortion, there was a major case before the Court that could overturn *Roe*. In response to a state law that imposes an abortion ban after 15 weeks of pregnancy contrary to *Roe*’s affirmation that women can have an abortion before viability, the Center for Reproductive Rights filed *Dobbs v. Jackson Women’s Health*

²⁶⁹ *About Us*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/about-us/> (last visited June 23, 2022).

²⁷⁰ *Id.*

²⁷¹ *U.S. State Advocacy*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/our-work/in-the-states-u-s/> (last visited June 23, 2022).

²⁷² 579 U.S. 582 (2016).

²⁷³ *Whole Woman’s Health v. Hellerstedt*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/whole-womans-health-v-hellerstedt/> (last visited June 23, 2022). The requirements singled out women’s health care providers and shut down many facilities. *Id.*

²⁷⁴ This decision marked “the most significant abortion-related ruling . . . in more than two decades.” *Id.*

²⁷⁵ *Victory at the U.S. Supreme Court!*, CTR. FOR REPROD. RTS., (June 29, 2020), https://reproductiverights.org/case/scotus-june-medical-services/supreme-court-abortion-june-medical/?_ga=2.52956392.1766795264.1613355150-110359631.1606846325. Like in *WWH*, the Center for Reproductive Rights argued that the law imposed an undue burden “on abortion access without providing any benefit to women’s health or safety.” *June Medical Services v. Russo: The Case in Depth*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/scotus-june-medical-services/the-case-in-depth/> (last visited June 23, 2022).

²⁷⁶ 140 S. Ct. 2103 (2020).

²⁷⁷ *The Undue Burden Standard after June Medical Services v. Russo*, CTR. FOR REPROD. RTS. 3 (2020), <https://reproductiverights.org/wp-content/uploads/2020/12/The-Undue-Burden-Standard-after-June-Medical-Services-v-Russo.pdf>. The court found the Louisiana law to be similar to the law reviewed in *WWH*. *Id.*

Organization.²⁷⁸ *Dobbs* was the first time since the *Roe* decision that the Court would consider an abortion ban pre-viability.²⁷⁹

Many groups support the right to abortion, grounding arguments against the law as necessary for women's reproductive health, for equal protection, and for respecting precedent.²⁸⁰ Others emphasize the disproportionate effects the law will have on marginalized groups, cite to scientific evidence of the impossibility for the fetus to feel pain before 24 weeks of pregnancy, and point to international trends to liberalize abortion access.²⁸¹ In December 2021, the Center for Reproductive Rights argued before the Court, stating that Mississippi's ban is unconstitutional and a fundamental deprivation of a pregnant person's liberty as the law forces women to carry a pregnancy to term.²⁸² They also pointed to decades of precedent to emphasize that *stare decisis* is a high bar and the impact the law would have on women's health and equality as it would "propel women backwards."²⁸³

On June 24, 2022, the Court overturned decades of legal precedent and overturned *Roe*.²⁸⁴

iii. The Federal and State Legislative Battle

Even if the Court fails to uphold *Roe*, the right to abortion can still be protected through federal and state laws. In 2013, the Women's Health Protection Act (WHPA) was introduced in Congress and since then has been "reintroduced in each subsequent Congress."²⁸⁵ Both the ACLU and the Center for Reproductive Rights support the WHA, which is a federal legislation that would legally protect a pregnant person's right to access abortion and allow health care professionals to provide abortion services without medically unnecessary restrictions like pre-viability bans and

²⁷⁸ *Dobbs v. Jackson Women's Health Organization: The Case in Depth*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/scotus-mississippi-abortion-ban/dobbs-jackson-womens-health/> (last visited June 23, 2022).

²⁷⁹ *Id.* Over 140 amicus briefs for and against the law have been submitted to the court from a wide range of groups. Ellena Erskine, *We Read All the Amicus Briefs in Dobbs So You Don't Have To*, SCOTUSBLOG (Nov. 30, 2021), <https://www.scotusblog.com/2021/11/we-read-all-the-amicus-briefs-in-dobbs-so-you-dont-have-to/>

²⁸⁰ *Id.* The ACLU was one such organization that submitted an amicus brief, presenting three arguments: (1) the right to abortion is rooted in precedent and in the Constitution's guarantee of personal liberty, which includes the right to bodily integrity and to decide when and how many children to have; (2) state interest does not designate abortion as different from other liberty rights that often exist counter to the state and which require the Court to weigh the right against the state interest as has been done in the abortion context for years; and (3) the court has a duty to protect individual rights regardless of continuing litigation. Brief of the American Civil Liberties Union and the American Civil Liberties Union of Mississippi as Amicus Curia at 2–4, *Dobbs v. Jackson Women's Health Org.*, 945 F.3d 365 (5th Cir. 2019), *cert. granted*, 141 S. Ct. 2619 (2021) (No. 19-1392), <https://reproductiverights.org/wp-content/uploads/2021/09/ACLU-Amicus-Brief.pdf>.

²⁸¹ *Id.*

²⁸² *Dobbs v. Jackson Women's Health Organization: The Case in Depth*, CTR. FOR REPROD. RTS. ("For a state to take control of a woman's body and demand that she go through pregnancy and childbirth, with all the physical risks and life-altering consequences that brings, is a fundamental deprivation of her liberty.").

²⁸³ *At Supreme Court, Center Attorney Defends Precedent, Roe, the Right to Liberty, and More*, CTR. FOR REPROD. RTS., (Dec. 2, 2021), <https://reproductiverights.org/supreme-court-case-mississippi-abortion-ban-arguments/>.

²⁸⁴ Adam Liptak, *In 6-to-3 Ruling, Supreme Court Ends Nearly 50 Years of Abortion Rights*, N.Y. TIMES (June 24, 2022), <https://www.nytimes.com/2022/06/24/us/roe-wade-overturned-supreme-court.html>

²⁸⁵ *What If Roe Fell?*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/what-if-ro-fell/?state=MA>.

waiting periods.²⁸⁶ By creating a federal “safeguard,” the bill would ensure that the right guaranteed in *Roe* is available to everyone, even if their state has restrictions.²⁸⁷ Although the bill did not receive the necessary votes in the Senate, the fight continues.²⁸⁸ Also repeatedly reintroduced in Congress is the Equal Access Abortion Coverage in Health Insurance (EACH Woman) Act, first introduced in 2015.²⁸⁹ The Act would remove “federal coverage restrictions on abortion services,” including preventing interference with insurance providers’ decision to cover abortion costs in their policies.²⁹⁰

Furthermore, state-level advocacy to expand abortion access has led to state protections. Although there are five states and two territories that currently do not have any state law protection for abortion rights,²⁹¹ followed by 24 states and three territories that may entirely prohibit abortions if *Roe* fell,²⁹² others have enacted laws to protect abortion.²⁹³

b. Permanence or Repeals of Decriminalization

The changing political landscape and composition of the Supreme Court has continuously challenged the permanence of decriminalization. In 2000, ACLU, doctors, and the National Abortion Federation challenged a state law that criminalized safe abortion procedures for abortions later in pregnancy.²⁹⁴ In a 5-4 vote with Justice Sandra O’Connor in the majority,²⁹⁵ the Court struck down the Nebraska state ban²⁹⁶ in *Stenberg v. Carhart*.²⁹⁷ This was followed by a similar

²⁸⁶ The Act marks the first time that the Senate voted on a “proactive legislation to enshrine the right to abortion in federal law.” *Women’s Health Protection Act (WHPA)*, CTR. FOR REPROD. RTS., (Feb. 28, 2022), <https://reproductiverights.org/the-womens-health-protection-act-federal-legislation-to-protect-the-right-to-access-abortion-care/>. The Center for Reproductive Rights not only testified before Congress in support of the bill but has also started a national campaign to pass the Act. *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *What If Roe Fell?*, CTR. FOR REPROD. RTS..

²⁹⁰ *Id.*

²⁹¹ These states include “Colorado, New Hampshire, New Mexico, Puerto Rico, U.S. Virgin Islands, Virginia, and Wyoming.” *Id.* It is unclear what these states will do if *Roe* is reversed or limited. *Id.*

²⁹² These states are “Alabama, American Samoa, Arizona, Arkansas, Georgia, Guam, Idaho, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, the Northern Mariana Islands, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin.” Almost all of them are in the central and southern part of the U.S. *Id.*

²⁹³ Approximately seven states enshrine the right to abortion through state statutes or state constitutions and expand abortion access through other laws and policies. These states are “California, Connecticut, Hawaii, New York, Oregon, Vermont, and Washington.” *Id.* Another fourteen states and the District of Columbia have state law that protect the right to abortion, but they have also imposed limitations on access. These states are “Alaska, Delaware, the District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, and Rhode Island.” *Id.*

²⁹⁴ Nadine Strossen, *Reproducing Women’s Rights: All Over Again*, 31 VTLR 1, 5 (2006). Also known as the Partial Birth Abortion Ban.

²⁹⁵ *Id.* at 6.

²⁹⁶ *Id.*; see also Julie Rovner, ‘Partial-Birth Abortion’: Separating Fact From Spin, NPR (Feb. 21, 2006), <https://www.npr.org/2006/02/21/5168163/partial-birth-abortion-separating-fact-from-spin>. The Court struck down the law because it was unconstitutionally vague and did not permit use of the procedure to save the pregnant person’s life or health. Strossen, *Reproducing Women’s Rights* 31.

²⁹⁷ 530 U.S. 914 (2000). The Nebraska law banned all “partial birth abortion” unless necessary to preserve the mother’s life, defining partial birth as a procedure that intentionally delivers an unborn living child or substantial

law passed in Congress and signed by President Bush in 2003.²⁹⁸ This law was upheld by the Court in 2007 with the replacement of Justice O'Connor²⁹⁹ with two conservative justices, Justice John Roberts and Justice Samuel Alito, who upheld the law in³⁰⁰ *Gonzalez v. Carhart*.³⁰¹ Thus, a candidate's stance on abortion became a "litmus test for Republican presidents."³⁰² With the Trump presidency, two new conservative justices were placed on the Court, resulting in several states emboldened to pass abortion bans.³⁰³ In December 2021, the Court declined to block Texas Law S.B. 8, which imposes an abortion ban after six weeks of pregnancy and incentivizes individuals to sue anyone who provides or assists someone in obtaining an abortion.³⁰⁴ Thus, in Texas, "most access to abortion has ended in the state" and other states have introduced or are preparing to introduce bills similar to Texas' law.³⁰⁵ Furthermore, the Court's current conservative majority granting review in *Dobbs* may indicate an intent to revisit the abortion framework.³⁰⁶ The court's official decision will be released in summer 2022, but a leaked draft majority opinion overturns the *Roe v. Wade* decision and has already mobilized advocates and sparked protests.³⁰⁷

c. Application in Reality

Roe and *Bolton* affirmed a person's constitutional right to have an abortion, but states have imposed various restrictions on access. A mere three years after *Roe*, Congress passed the Hyde Amendment, which prevents the use of federal funds to pay for abortion except when necessary to

portion of the child into the vagina for the purpose of killing the child. *Id.* at 922. The law imposed a prison term up to 20 years, a \$25,000 fine, and revocation of the doctor's license. *Id.*

²⁹⁸ The law prohibits "partial-birth abortion" defined as the intentional delivery of a living, unborn child where either the head or a part of the baby's body is outside the mother for the purpose of killing the "infant," calling it "a gruesome and inhuman procedure that is never medically necessary." Partial-Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, § 2(1), 18 USC 1531 note (2003).

²⁹⁹ Strossen, *Reproducing Women's Rights* 31; see also Janice Hopkins Tanne, *US Supreme Court approves ban on "partial birth abortion,"* 334 BMJ 865, 866 (Apr. 2007),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1857800/pdf/bmj-334-7599-news-00866.pdf>

³⁰⁰ Carrie N. Baker, *The History of Abortion Law in the United States*, OUR BODIES OURSELVES (Sept. 14, 2020), <https://www.ourbodiesourselves.org/book-excerpts/health-article/u-s-abortion-history/>. Justice Alito has a record that shows strong favoritism to abortion restrictions; see also Diane Geng, *Judging Samuel Alito on Abortion Rights*, NPR (Jan. 24, 2006), <https://www.npr.org/2006/01/24/5081976/judging-samuel-alito-on-abortion-rights>

³⁰¹ 550 U.S. 124 (2007). The Court distinguished *Steinberg*, stating that the Act did not impose an undue burden because it only prohibited intact D&E where a living fetus is delivered, and thus making a distinction that the Nebraska law "failed to draw." *Id.* at 127-28.

³⁰² Baker, *The History of Abortion Law in the United States*. Per Justice Ruth Bader Ginsburg, *Gonzalez* marked the first time since *Roe* that "the Court blesses a prohibition with no exception safeguarding a woman's health," blurring the line "drawn in *Casey*, between previability and postviability abortions." *Id.*

³⁰³ *Id.*; see also Jessica Arons, *The Battle for Abortion Access is in the States*, ACLU (Dec. 11, 2019), <https://www.aclu.org/news/reproductive-freedom/the-battle-for-abortion-access-is-in-the-states/>

³⁰⁴ The only part of the case allowed to move forward was regarding disciplinary action against medical professionals who provide abortion care. *Texas Supreme Court Ruling Effectively Ends Federal Court Challenge to State's Abortion Ban*, CTR. FOR REPROD. RTS. (Mar. 11, 2022), <https://reproductiverights.org/texas-abortion-ban-texas-supreme-court-ruling-whole-womans-health-jackson/>.

³⁰⁵ *Id.*

³⁰⁶ Joanna Grossman, *Dobbs v. Jackson Women's Health Organization: The Supreme Court is No Safe Haven for Abortion Rights*, VERDICT (Dec. 10, 2021), <https://verdict.justia.com/2021/12/10/dobbs-v-jackson-womens-health-organization-the-supreme-court-is-no-safe-haven-for-abortion-rights>.

³⁰⁷ Brigitte Amiri, *What to Know About the Leaked Supreme Court Abortion Draft Opinion, and What's Next*, ACLU (May 4, 2022), <https://www.aclu.org/news/reproductive-freedom/what-to-know-about-the-leaked-supreme-court-abortion-draft-opinion-and-whats-next>

save the pregnant person's life, and in cases of rape and incest.³⁰⁸ This restriction disproportionately affects minority women who, due to structural inequalities, are more likely to be enrolled in Medicaid compared to white women.³⁰⁹ Although the Hyde Amendment does not prevent states from funding abortion costs, only fifteen states extend coverage to low-income Medicaid participants, six extend the exceptions under which abortion is covered, but more than half of states abide by the Amendment and some even go further in their restrictions.³¹⁰

Over the years, many states have enacted further restrictions.³¹¹ States have imposed physical and hospital requirements such as requiring that a licensed physician perform the abortion, limited abortions at a certain gestational point, prohibited use of state funds to pay for medically necessary abortions, restricted insurance coverage, and mandated counseling and waiting periods.³¹² More than half of the states permit health care providers and institutions to refuse participating or performing an abortion, and require parental involvement for minors.³¹³ Some of these restrictions have become even more burdensome. In Arkansas, the medically unnecessary mandatory waiting period has increased from twenty-four to seventy-two hours, creating an “insurmountable” burden, especially to low-income pregnant persons who sometimes travel long distances to reach a clinic, take time off work and/or may need to arrange childcare.³¹⁴ Abortion services tend to be provided in special clinics that are often far away from where women live and laws vary by state, creating a mosaic of abortion laws.³¹⁵

With changes in government and the Court, States have also begun to test the passing of more drastic laws that could prevent pregnant persons from abortion services entirely.³¹⁶

d. Social Advocacy to Support Legal Reforms

While the ACLU has heavily employed judicial measures to protect abortion rights, it has also uplifted stories of women who had abortions,³¹⁷ provided statements on laws that attack

³⁰⁸ NARAL Pro Choice America, *The Fight for Our Lives*.

³⁰⁹ In contrast to fourteen percent of white women, about thirty percent of Black women and twenty-four percent of Hispanic women rely on Medicaid. PLANNED PARENTHOOD, *Hyde Amendment*, <https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion/hyde-amendment> (last visited June 23, 2022).

³¹⁰ For example, South Dakota does not allow for funds to be used in any case (even in rape cases). *Id.*

³¹¹ In 2011, ninety-two restrictions were enacted, followed by forty-three new restrictions in 2012, and twenty-six in 2014. PLANNED PARENTHOOD ACTION FUND, *Access to Abortion is Legal, Constitutionally Protected, and Supported by Most Americans*, <https://www.plannedparenthoodaction.org/issues/abortion> (last visited June 23, 2022).

³¹² GUTTMACHER INST., *An Overview of Abortion Laws*.

³¹³ In twenty-seven states, one or both parents must provide consent for the abortion. *Id.*

³¹⁴ ACLU, *Abortion Access is at Stake, But We Will Do Everything We Can to Keep our Clinic's Doors Open* (May 26, 2021), <https://www.aclu.org/news/reproductive-freedom/abortion-access-is-at-stake-but-we-will-do-everything-we-can-to-keep-our-clinics-doors-open/>

³¹⁵ Indeed, while abortion access in California is like access in the United Kingdom, Texas' abortion laws mark that state as “among the most restrictive in the world.” Claire Cain Miller & Margot Sanger-Katz, *On Abortion Law, the U.S. is Unusual. Without Roe, It Would Be, Too*, N.Y. TIMES (Jan. 23, 2022), <https://www.nytimes.com/2022/01/22/upshot/abortion-us-roe-global.html>

³¹⁶ See *supra* Section I.a and I.b.

³¹⁷ *News & Commentary*, ACLU, <https://www.aclu.org/news/reproductive-freedom/abortion-is-essential-stories-of-liberation/> (last visited June 23, 2022).

abortion access,³¹⁸ followed and commented on the progress of the Biden-Harris administration,³¹⁹ provided information on how one could protect reproductive freedom,³²⁰ and fought for bills that protect one's reproductive choice.³²¹ When the fight for abortion rights first started in 1958, members like Dorothy Kenyon fought for access to abortion as a woman's right and called abortion laws "'cruel and unconstitutional,'" publicizing abortion rights in television talk shows and printed materials.³²²

Similarly, the Center for Reproductive Rights has also focused on means to disseminate information. Aside from litigating cases, the Center for Reproductive Rights creates fact sheets, newsletters, press releases, and publications on abortion rights in the United States.³²³ The Center for Reproductive Rights has highlighted the progress of the Biden-Harris administration³²⁴ and provided commentary on their nomination of Judge Ketanji Brown to the Supreme Court.³²⁵ The Center for Reproductive Rights has also organized virtual panel discussions and workshops to discuss threats to abortion rights and in October 2021, helped organize a "Rally for Abortion Justice" across the country to demand the end of "attacks on abortion access."³²⁶ In 2012, the Center for Reproductive Rights brought together many celebrated leaders, movie stars, and writers to support reproductive rights and raised money for the Draw the Line Campaign,³²⁷ which highlights the real stories of women impacted by attacks on abortion rights, garnering attention by having celebrities voice their support and read out the experiences of the women who shared their stories.³²⁸ Repeatedly the Center for Reproductive Rights has grounded its support for the right to safe and legal abortion as a woman's fundamental human right, rooting their arguments in the rights enshrined in various human rights treaties.³²⁹

³¹⁸ *News – Abortion*, ACLU, <https://www.aclu.org/news/by-issue/abortion/> (last visited June 23, 2022).

³¹⁹ *One Year Later: How the Biden Administration is Doing on Civil Rights and Civil Liberties*, ACLU, (Jan. 24, 2022), <https://www.aclu.org/news/capital-punishment/one-year-later-how-the-biden-administration-is-doing-on-civil-rights-and-civil-liberties/>

³²⁰ NYCLU, *RPP: Keep on Marching: What You Can Do to Protect Reproductive Freedom*, <https://www.nyclu.org/en/rpp-keep-marching-what-you-can-do-protect-reproductive-freedom> (last visited June 23, 2022).

³²¹ Donna Lieberman & Jessica Arons, *Amid a Deteriorating Landscape for Abortion Rights, a Critical Victory in New York*, ACLU (Jan. 22, 2019), <https://www.aclu.org/blog/reproductive-freedom/abortion/amid-deteriorating-landscape-abortion-rights-critical-victory-new>

³²² *The Right to Choose at 25: Looking Back and Ahead*, ACLU, <https://www.aclu.org/other/right-choose-25-looking-back-and-ahead?redirect=reproductive-freedom/right-choose-25-looking-back-and-ahead>

³²³ See, e.g., *United States*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/our-regions/united-states/>.

³²⁴ See *Biden's First Year: Top 13 Ways the Administration Improved Reproductive Rights*, CTR. FOR REPROD. RTS., (Feb. 23, 2022), <https://reproductiverights.org/biden-first-year-13-actions-reproductive-rights/>.

³²⁵ *Biden Nominates Ketanji Brown Jackson to Supreme Court*, CTR. FOR REPROD. RTS. (Feb. 25, 2022), <https://reproductiverights.org/biden-nominates-ketanji-brown-jackson-to-supreme-court/>.

³²⁶ *Events*, CTR. FOR REPROD. RTS., (Mar. 23, 2022), <https://reproductiverights.org/events/>.

³²⁷ *A Night to Remember*, CTR. FOR REPROD. RTS., (Oct. 25, 2012), <https://reproductiverights.org/a-night-to-remember/>.

³²⁸ *Draw the Line Campaign – About Us*, CTR. FOR REPROD. RTS., <https://drawtheline.org/about-us/>.

³²⁹ *Safe and Legal Abortion is a Woman's Human Rights*, CTR. FOR REPROD. RTS., (Oct. 2011), <https://reproductiverights.org/wp-content/uploads/2018/08/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf>.

e. Application to Lebanon

Although the fight for abortion rights in the United States is different from the situation in Lebanon, the U.S. serves as a key example of a country whose progressive abortion policy is now under threat. The U.S. stands as a case study of lessons learned. It offers data on the prevention of backsliding on abortion rights and state protections as a solution.

II. Mexico

Prior to the 1871 Federal District Penal Code, which decriminalized abortion when the pregnant person's life is at risk, abortion in Mexico was illegal.³³⁰ After the Mexican revolution, most Mexican states modeled their penal code after the 1931 Penal Code for the Federal District and Territories, which added rape as a new exception to abortion criminalization.³³¹ Then, in 1974, the constitution was amended to recognize that citizens have the right to freely and in an informed manner decide when and how many children to have, and have the right to access family planning services.³³²

Under the federal system, each state can “restrict or liberalize abortion” so long as the law does not violate the constitution.³³³ All Mexican states allow abortions in the case of rape and a few added additional grounds, such as when the pregnant person's life or health is in danger or if there are fetal deformities.³³⁴ However, in 2021, Mexico's Supreme Court ruled that the criminalization of abortion is unconstitutional. In that case, a law in Coahuila that imposed a three-year prison sentence on women who have an abortion, even if the pregnancy was a result of rape, was struck down.³³⁵ Although the decision only applies to Coahuila and challenges would have to

³³⁰ “Abortion was illegal in Mexico since colonization” with penal codes imposing harsh punishment. Caroline Beer, *Making Abortion Laws in Mexico: Salience and Autonomy in the Policymaking Process*, 50 COMPARATIVE POLITICS 41, 49 (2017). For example, women who had abortions faced forced labor for life in the State of Veracruz. *Id.* Thus, the 1871 Federal District Penal Code was a “significant advance”. *Id.* Not only did it create an exception to the penal code, but it also allowed a reduced penalty of two years imprisonment if the abortion was for honorable causes and the woman did not have a bad reputation. *Id.* Women who terminated a pregnancy conceived in marriage were punished with five years' imprisonment. *Id.*

³³¹ The 1931 Code also reduced penalties for honorable causes from 2 years to a year or less. *Id.* The 1931 Penal Code emerged among church-state conflict as revolutionary leaders dismantled the Catholic Church, armed Catholics led an uprising, and feminist groups emerged “demanding equal rights for women. *Id.* at 49–50.

³³² Despite changes in the law, abortion remained highly stigmatized because of religious and pro-life groups. Sarah Faithful, *Mexico's Choice: Abortion Laws and their Effects Throughout Latin America*, COUNCIL ON HEMISPHERIC AFFAIRS (Mar. 14, 2022), <https://www.coha.org/mexicos-choice-abortion-laws-and-their-effects-throughout-latin-america/>. Furthermore, the discourse around these changes was not an acknowledgement of women's rights but due to national attention in the 1970s on population control. Beer, *Making Abortion Laws in Mexico* 41, 50. From 1976–1979, the Coalition of Feminist Women made several attempts to pass abortion bills legalizing the procedure and although none passed, half of state legislatures amended their criminal code to provide new exceptions such as when the mother's health is at risk or there is fetal abnormality. *Id.* at 50. From 1979–1989, there was “almost no feminist advocacy for abortion rights.” *Id.*

³³³ Faithful, *Mexico's Choice*.

³³⁴ Maria Luisa Sanchez Fuentes et al., *The Decriminalisation of Abortion in Mexico City: How did Abortion Rights Become a Political Priority?*, 16 GENDER & DEVELOPMENT 345, 348 (July 2008); see also GIRE, MOTHERHOOD OR PUNISHMENT. CRIMINALIZING ABORTION IN MEXICO 13 (2019), https://criminalizacionporaborto.gire.org.mx/assets/pdf/GIRE_Motherhood_or_Punishment.pdf. The only grounds for legal abortions in Mexico's federal penal code are “miscarriages, rape and risk of death.” *Id.* at 13.

³³⁵ Vanessa Romo, *Mexico's Supreme Court Has Voted to Decriminalize Abortion*, NPR (Sept. 7, 2021), <https://www.npr.org/2021/09/07/1034925270/mexico-abortion-decriminalized-supreme-court>

be raised in the other Mexican states, activists hope to have Coahuila join four other states, including Mexico City, that have partially decriminalized abortion.³³⁶ Such progress would not have been possible without the vital role that women's rights groups play in the liberalization of abortion.³³⁷ The Grupo de Información en Reproducción Elegida (GIRE) is one such group.

This section will outline how abortion was decriminalized for the first trimester in Mexico City through the work of GIRE whose strategic framing, information gathering, and diligence to the situation on the ground allowed it to take advantage of changing perceptions and power struggles.

a. Legal Advocacy Experiences

GIRE has worked since 1991 to make abortion safe and legal in Mexico.³³⁸ GIRE calls for the decriminalization of elective abortion during the first trimester at minimum and calls on various branches of government to ensure that women are guaranteed and have access to safe abortions.³³⁹ It focuses on raising awareness of abortion rights as a public health and social justice issue and use the country's separation of church and state to argue that beliefs from a particular group should "not trump individual conviction."³⁴⁰ In 2008, in response to challenges of Mexico City's law that legalized abortion in the first trimester, GIRE coordinated *amicus curae* briefs with allies, such as Ipas Mexico and the Center for Reproductive Rights, to present the Court with arguments in favor

³³⁶ Natalie Kitroeff & Oscar Lopez, *Abortion is No Longer a Crime in Mexico. But Most Women Still Can't Get One*, N.Y. TIMES (Sept. 8, 2021), <https://www.nytimes.com/2021/09/08/world/americas/mexico-abortion-access.html>

³³⁷ See Max Fisher, *As Abortion Rights Expand, the U.S. Joins a Handful of Telling Exceptions*, N.Y. TIMES (Sept. 23, 2021), <https://www.nytimes.com/2021/09/09/world/abortion-rights-us.html>

³³⁸ GIRE, MOTHERHOOD OR PUNISHMENT 11. GIRE has worked on various cases resulting from the criminalization of abortion. *Id.* One such case is that of an 18-year-old girl named Hilda who was accused of having had an illegal abortion in 2009 under the constitution of San Luis Potosi, a Mexican state that "protects life from conception." Jennifer Paine et al., *Using Litigation to Defend Women Prosecuted for Abortion in Mexico: Challenging State Laws and the Implications of Recent Court Judgments*, 22 REPRODUCTIVE HEALTH MATTERS 61, 62 (2014), <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2814%2944800-6>. Hilda was "seeking care for [a] haemorrhage." *Id.* To receive life-saving treatment, she was forced to confess that she induced an abortion. *Id.* She was smeared all over the media with her picture posted on newspapers and journalists marched through her village calling her a murderer. *Id.* In their appeal to the State's Supreme Court, GIRE grounded its arguments on various human rights violations including: (1) the hospital's treatment of her was cruel and degrading, (2) her right to patient confidentiality was violated, (3) she was subjected to gender discrimination, and (4) she was forced to confess which violates her "fundamental right not to incriminate herself." *Id.* at 62–63. Ultimately the Court rejected GIRE'S human rights arguments but still ruled in favor of Hilda because her right to due process was violated as it was not proven that she had induced an abortion. *Id.* at 63.

³³⁹ GIRE, MOTHERHOOD OR PUNISHMENT 109; see GIRE, THE MISSING PIECE: REPRODUCTIVE JUSTICE 176 (2018), https://justiciareproductiva.gire.org.mx/assets/pdf/TheMissingPiece_2019.pdf (suggesting various reforms for total/partial decriminalization at the state level, and in the national and federal penal code).

³⁴⁰ Maria Luisa Sanchez Fuentes et al., *The Decriminalisation of Abortion in Mexico City* 345, 346.

of the law.³⁴¹ GIRE was also vital to the 2007 decision to decriminalize abortion in Mexico City for the first trimester.³⁴²

GIRE and other NGOs supported the Party for a Democratic Revolution (PRD) to consolidate support in the Legislative Assembly.³⁴³ Various organizations, including GIRE, also carefully framed abortion rights and decriminalization. For example, rather than emphasize “choice,” NGOs highlighted the pregnant person’s ability “to decide,” as where abortion is illegal, women can’t “choose” an abortion, but rather “decide” to terminate, risking both their life and health.³⁴⁴ GIRE further supplemented this discourse by taking note of how the Catholic Church and conservatives held power in Mexico, and framed the issue as people are not in favor of abortions but that “we all want the need for abortion to end.”³⁴⁵ Although feminists in developed countries harshly criticized this argument as perpetuating abortion stigma, it allowed “the women’s movement and anti-choice forces to find a common ground” as framing the issue around preventing unwanted pregnancy, which allowed various parties to join the movement.³⁴⁶ GIRE also highlighted how unsafe abortions have public health and social justice consequences.³⁴⁷

GIRE and other NGOs provided tailored arguments for a 2007 debate on decriminalizing abortion, including that decriminalization would result in the freedom to choose, ensure pregnancies are terminated in safe conditions, and respect the right to life of women who are capable of deciding for themselves what is the right choice for their reproductive life.³⁴⁸ They emphasized that very few women are reported for having illegal abortions, indicating that abortion was “socially decriminalized.”³⁴⁹

A key factor that allowed for decriminalization of abortion in Mexico City came from advocates taking advantage of changing political and social contexts.³⁵⁰ First, a conservative candidate coming into the presidency amidst fraud claims from the PRD caused disagreements

³⁴¹ See *id.* at 357. The Center for Reproductive Rights and the International Commission of Jurists (ICJ) submitted an amicus brief to Mexico’s Supreme Court, arguing that other countries permit abortions based on certain conditions and the role courts have played in recognizing that a woman’s self-determination as to her reproductive rights is intrinsically related to women’s equality. *In Support of Law Decriminalizing Abortion in Mexico City/Amici (Supreme Court in Mexico)*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/in-support-of-law-decriminalizing-abortion-in-mexico-city-amici-supreme-court-of-mexico/>.

³⁴² A leader of this movement was Marta Lamas who was a co-founder of GIRE and for many years supported abortion rights in Mexico and the wider Latin America. Maria Luisa Sanchez Fuentes et al., *The Decriminalisation of Abortion in Mexico City: How did Abortion Rights Become a Political Priority?*, 16 GENDER & DEVELOPMENT 345, 346, 350 (July 2008).

³⁴³ *Id.*

³⁴⁴ *Id.* at 351.

³⁴⁵ *Id.*

³⁴⁶ *Id.* This kind of discourse created a common ground between the women’s movement, anti-choice forces and the center-right party. *Id.*

³⁴⁷ *Id.* Restricting access to abortion affects poor women who cannot afford safe but illegal abortions from private physicians, leading them to unsafe abortions, the “third leading cause of maternal mortality in Mexico City.” *Id.* at 352.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.* at 358.

between not only the political parties, but Mexican society.³⁵¹ Furthermore, the vocal and open support by Mexico City's Mayor and the Minister of Health was important for the law's "political viability."³⁵² Second, Mexican society began moving towards individualism and secularism following pedophilia scandals in the Catholic Church and threats made by some members of the church to legislators in favor of the law being seen as bullying.³⁵³ The anti-choice community also lost much of its public influence after public funds were misused by a pro-life organization.³⁵⁴ The media was influential in disseminating the Church's and ProLife president's extreme and "blanket condemnations" which further decreased their credibility. Finally, global attention on abortion rights proved influential.³⁵⁵

b. Permanence or Repeals of Decriminalization

There is a trend in Mexico toward decriminalization evident from the Court's 2021 decision striking down the law in Coahuila. But permanence or repeals of decriminalization remain unclear. What decriminalization in Mexico City shows is that to pass the law, it was necessary to work with favorable political conditions that allowed for discourse on abortion rights. Thus, like the U.S. and other countries, it is likely that permanence depends on who is in power.

c. Application in Reality

As abortion regulations vary by state, the right to terminate a pregnancy in Mexico often depends on the pregnant person's residence and their socioeconomic position.³⁵⁶ A study from 2010 revealed that compared to educated women with greater social-economic backgrounds, poor, uneducated and/or indigenous women were 9x more likely to experience an unsafe abortion and women in poorer states had greater risks of having an unsafe abortion.³⁵⁷ Actual access was also almost nonexistent as between 2007-2012, as governmental data obtained by GIRE revealed only 39 legal abortions in the country.³⁵⁸ Many factors contribute to this number, in particular unwillingness to comply with the law, conscientious objections, lack of enforcement, unclear laws, and stigma.³⁵⁹ However, since first trimester abortions were decriminalized in Mexico City, over 128,000 safe and free abortions were provided by the Ministry of Health (MOH) to women from the City and neighboring states, with 71% being medical abortions and about 80% of women accepting contraceptives post-abortion.³⁶⁰ The MOH has trended toward providing abortion

³⁵¹ *Id.* at 353. As the PRD maintained control of the legislature, the party took an aggressive stance and promoted various issues, including abortion rights, as essential for a progressive society. *Id.* Indeed the PRD realized it had much to gain "by demonstrating the differences between the left-and right-wing parties" in terms of reproductive rights, claiming the "three pillars of a progressive society as its own". *Id.* These three pillars are: gay rights, euthanasia, and abortion rights. *Id.*

³⁵² *Id.* at 354. This was further supported by lengthy public debates creating discussion on contraception, sexuality, and prevention while being broadcasted for months on television and radio shows. *Id.*

³⁵³ *Id.* at 354. For some time before the Mexico City bill but after the scandals, the Church's hierarchical image and its "public presence had lost credibility." *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.* at 355-56.

³⁵⁶ Jennifer Paine et al., *Using Litigation to Defend Women Prosecuted for Abortion in Mexico* 61, 63.

³⁵⁷ *Id.*

³⁵⁸ *Id.* at 63-64.

³⁵⁹ *Id.* at 64.

³⁶⁰ *Id.*

services in specialized health centers dedicated to abortion services and with staff who support this procedure.³⁶¹ While conscientious objections presented MOH hospitals with many obstacles, the MOH “clarified the guidelines on conscientious objection” and hired providers who did not object to performing the procedure.³⁶² Generally, evidence shows that MOH’s program is providing clients with high-quality services and many clients reported being treated with respect and their privacy protected.³⁶³ Many out-of-state women have accessed these services with organizations like the Maria Abortion Fund for Social Justice providing them with “food, lodging, or transportation.”³⁶⁴ Although there have been great benefits with decriminalization, unsafe abortions persists due to fear, stigma, and lack of knowledge as to these services.³⁶⁵

d. Social Advocacy to Support Legal Reforms

One of the earliest public actions taken by GIRE was to present poll results in 1992-1994 showing that approximately 78% of respondents answered that the choice to abort should be made by the woman or by the woman and her partner.³⁶⁶ They also helped build support for decriminalization within Mexican society by publishing spreads signed by intellectuals with prestige, including Octavio Paz, a Nobel Prize winner.³⁶⁷ GIRE has published various reports that emphasize the importance of reproductive justice, discuss the consequences of restrictive abortion laws, compile various experiences of women subjected to these laws, and recommend ways to preserve a woman’s right to self-determination.³⁶⁸ GIRE has also used social media to bring forth stories of women and support for reproductive rights, including “Niñas, No Madres,” which aimed to raise awareness as to the impact forced motherhood has on girls throughout Latin America, and “Enciendo mi voz” to share the experience of five women who had an abortion in Mexico.³⁶⁹ In 2013, GIRE released a documentary titled “Long Live Mexico!” to show the effects of criminalizing abortion on women.³⁷⁰

To support efforts to decriminalize abortion in Mexico City, GIRE also made use of campaigns to gain publicity. After litigating the case of a young girl who was raped and denied an abortion, GIRE created the “Abortion in Cases of Rape is Legal” campaign, opening space for

³⁶¹ Davida Becker & Claudia Diaz Olavarrieta, *Decriminalization of Abortion in Mexico City: The Effects on Women’s Reproductive Rights*, 103 AM. J. PUB. HEALTH 590, 591 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673241/pdf/AJPH.2012.301202.pdf>

³⁶² *Id.*

³⁶³ *Id.* Although many women have benefitted from Mexico City’s decriminalization of abortion, there are areas in need of improvement, such as monitoring the private sector and the need for better training. *Id.* at 592.

³⁶⁴ *Id.*

³⁶⁵ Furthermore, as abortion is only decriminalized up to 12 weeks, women who seek to terminate second trimester pregnancies may resort to unsafe procedures. *Id.*

³⁶⁶ *La despenalización del aborto en México*, NUEVA SOCIEDAD (Apr. 2009), <https://nuso.org/articulo/la-despenalizacion-del-aborto-en-mexico/>.

³⁶⁷ *Id.*

³⁶⁸ See Reports, GIRE, <https://gire.org.mx/en/tipo/informes-en/> (last visited June 23, 2022).

³⁶⁹ See “Niñas, No Madres” (*Girls, Not Mothers*) regional campaign, Latin America, INT’L CAMPAIGN FOR WOMEN’S RIGHT TO SAFE ABORTION (July 28, 2017), <https://www.safeabortionwomensright.org/news/ninas-no-madres-girls-not-mothers-regional-campaign-latin-america/>; Mexico – Get to know the stories of other women, INT’L CAMPAIGN FOR WOMEN’S RIGHT TO SAFE ABORTION (Aug. 28, 2020), <https://www.safeabortionwomensright.org/news/mexico-get-to-know-the-stories-of-other-women/>.

³⁷⁰ *Abortion*, GIRE, <https://gire.org.mx/en/abortion/> (last visited June 23, 2022).

public discourse on abortions.³⁷¹ GIRE has also collaborated with the MOH to standardize abortion procedures in all public hospitals and train providers so women can receive quick and respectful abortion care.³⁷² As more women access these abortion services, including educated Catholic women, their courage has been influential in destigmatizing and normalizing abortions.³⁷³

e. Application to Lebanon

As mentioned by Karim Nammour, Lebanon is a mosaic where the Catholic Church is very influential.³⁷⁴ Although Mexico has separation of church and state, the Catholic Church's influence is powerful. With this in mind, GIRE launched a battle on various fronts that combined careful framing, campaigns, and social advocacy strategies to spread information as to the impacts of criminalization. GIRE also took advantage of conflict within the political parties, global attention to abortion rights and scandals following the Catholic Church to sway the public on abortion. Thus, in the fight for abortion rights, timing along with effective framing can be key. There were no evident colonial arguments made.

Central America

III. Honduras

Honduras is one of a few Latin American countries that completely bans abortion.³⁷⁵ While the 1906 penal code provided no exceptions, in 1964 abortion was legalized only if necessary to preserve the woman's life.³⁷⁶ In 1983, a new penal code was enacted that would permit abortion on three grounds: when the pregnancy is a result of rape, to protect the women's health and life, and when fetal deformities are incompatible with life.³⁷⁷ Before these provisions could enter into effect, the legislators involved with the reform repealed the provisions, stating that the exceptions violated the Honduran constitution, which states that "human life was inviolable" and thus the fetus "should be considered born for all purposes that benefit them".³⁷⁸ Then, in 1996, the new Penal Code increased sentences for both pregnant persons who have an abortion and medical professionals who fail to report abortion-related crimes, re-defining abortion as homicide against "another human being during pregnancy."³⁷⁹ Despite the existing strict abortion regulation, in early 2021, the Honduran National Congress amended the national Constitution to prohibit abortion

³⁷¹ Maria Luisa Sanchez Fuentes et al., *The Decriminalisation of Abortion in Mexico City* 345, 354.

³⁷² *Id.* at 358.

³⁷³ *Id.*

³⁷⁴ See Interview with Karim Nammour, Attorney, the Legal Agenda (Mar. 24, 2022) (Walter Leitner Int'l Human Rights Clinic) (notes on file with author).

³⁷⁵ *Abortion*, SOMOS MUCHAS, <https://somosmuchas.hn/aborto/> (last visited June 23, 2022).

³⁷⁶ Dep't of Econ. & Social Affs. Population Div., *Abortion Policies: A Global Review* Vol II, UNITED NATIONS 49 (2001), https://www.un.org/en/development/desa/population/theme/policy/AbortionPoliciesAGlobalReview2001_Vol2.PD

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Honduras: Sexual Violence and Total Bans on Emergency Contraception and Abortion*, CTR. FOR REPROD. RTS. (2016), [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/25MAR15%20GLP_LAC_Honduras_Factsheet_Final%20AS%20FILED%20\(1\).pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/25MAR15%20GLP_LAC_Honduras_Factsheet_Final%20AS%20FILED%20(1).pdf)

completely, making it difficult to allow access to abortion in the future.³⁸⁰ Among the groups denouncing this move is the Somos Muchas coalition.³⁸¹

The case of Honduras illustrates the difficulties of decriminalizing abortion within a conservative country. This section outlines the various arguments the Somos Muchas movement has asserted and how social campaigns and the international human rights framework is being used to influence abortion perceptions in the country.

a. Legal Advocacy Experiences

In 2016, the Somos Muchas coalition was formed with the aim of influencing the Honduran National Congress to decriminalize abortion on three grounds: 1) where the pregnancy is a result of rape, 2) where the pregnant person's health or life is at risk, and/or 3) where there are fetal abnormalities "incompatible with life."³⁸² The coalition takes the stance that pregnant persons must have the free choice to decide to become mothers and that reproductive restrictions are a mechanism of control to exploit women.³⁸³ The coalition is organized into four teams that focus on: 1) disseminating the movement's activities at the national level and creating spaces for debates, 2) providing training and compiling debate content, 3) providing women who are being prosecuted for having an abortion with legal support, and 4) ensuring self-care of the members of the coalition.³⁸⁴

Although the movement has been unsuccessful in decriminalizing abortion, it has attracted a growing number of members following the constitutional abortion ban.³⁸⁵ Indeed, the movement remains hopeful and immediately gathered international signatures to oppose the bill, denouncing it as 1) undemocratic, 2) a punishment for women that does not prevent abortions, 3) contrary to justice, 4) contrary to international human rights law and the constitution by taking away the power of future generations to decide on abortion rights, and 5) potentially invalid due to the bill passing with less than the necessary eighty-six votes.³⁸⁶ Along with other groups, including the Center for

³⁸⁰ *Honduras Bans Abortion by Amending its Constitution*, CTR. FOR REPROD. RTS. (Feb. 1, 2021), <https://reproductiverights.org/honduras-bans-abortion-amending-its-constitution/>. The amendment explicitly forbids "any 'interruption of life' to a fetus, 'whose life must be respected from the moment of conception,'" while also raising the necessary votes to modify the abortion law from 2/3 majority to ¾ majority. Tatiana Arias, *How Lawmakers Made it Nearly Impossible to Legalize Abortion in Honduras*, CNN (Jan. 31, 2021), <https://www.cnn.com/2021/01/31/americas/honduras-abortion-ban-ratified-intl/index.html>

³⁸¹ Other organizations include Centro de Derechos de Mujeres (CDM), Equipo Jurídico por los Derechos Humanos, and the Center for Reproductive Rights's Latin America and the Caribbean (LAC). *Honduras Bans Abortion by Amending its Constitution*, CTR. FOR REPROD. RTS. (Feb. 1, 2021), <https://reproductiverights.org/honduras-bans-abortion-amending-its-constitution/>.

³⁸² *Abortion*, SOMOS MUCHAS, <https://somosmuchas.hn/aborto/> (last visited June 23, 2022).

³⁸³ Somos Muchas frames its discourse around scientific factual information, highlighting that by understanding gestation it can help reduce stigma, discrimination, and hate produced by anti-rights groups who say abortion is murder because there is a child not an embryo. *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Honduras – In Response to the New Abortion Ban, Somos Muchas is Growing*, INT'L CAMPAIGN FOR WOMEN'S RIGHT TO SAFE ABORTION (Feb. 10, 2021), <https://www.safeabortionwomensright.org/news/honduras-in-response-to-the-new-abortion-ban-somos-muchas-is-growing/>. The recent actions by the Honduran government encouraged young women between 18 to 30 to join the movement. *Id.*

³⁸⁶ *Press Release: Today is Honduran Women's Day – an unjust Constitutional amendment that disregards women's lives must be rejected*, INT'L CAMPAIGN FOR WOMEN'S RIGHT TO SAFE ABORTION (Feb. 3, 2021),

Reproductive Rights, Somos Muchas participated in sending a warning letter to the UN that rejects the constitutional reform because it violates Honduras' international obligations which may amount to gender-based violence, garnering the attention of the international community and resulting in the UN Working Group on Discrimination against Women and Girls condemning the reform.³⁸⁷

In April 2021, Somos Muchas submitted an appeal to the Honduran Supreme Court arguing that the law is unconstitutional and advocating for the decriminalization of abortion.³⁸⁸ The appeal was admitted, marking the first time in Honduras' history that an unconstitutional appeal was accepted against the abortion ban and in favor of treating abortion as a public health matter.³⁸⁹ Somos Muchas presented arguments in favor of modifying the penal code to allow abortion on three grounds and against modifying the constitution to ban abortion.³⁹⁰ On the first issue, the coalition—like other organizations—centered its argument on human rights, arguing that 1) decriminalization is a minimum human rights standard, 2) criminalizing abortion where women are at risk due to pregnancy results in victimization by the State, 3) criminalization can amount to intentional torture that is either physical and/or mental, 4) forced maternity can be discrimination, and 5) criminalization with no exception violates the constitution's guarantee of freedom and justice.³⁹¹ On the second issue, the coalition argued the amendment would violate “the principle of progressiveness,” intrude on women and girl's right to equality and non-discrimination, and arbitrarily modify the process for constitutional reforms.³⁹²

b. Permanence or Repeals of Decriminalization

If the constitutional amendment appeal is upheld, then the recent election of Xiomara Castro, Honduras's first woman president whose government plans to legalize abortion, may provide the right conditions for movements like Somos Muchas to assist in changing the law.³⁹³

<https://www.safeabortionwomensright.org/news/press-release-today-is-honduran-womens-day/>. A member of Somos Muchas, Neesa Medina, attributed the rushed passage of the constitutional amendment as growing fears in the government due to increased support of abortion rights, evident from 30% of legislators not supporting the amendment solidifying that abortion is completely illegal as opposed to 2017 when only eight of the 128 legislators voted to allow abortion for three conditions. *Honduras – In Response to the New Abortion Ban, Somos Muchas is Growing*, INT'L CAMPAIGN FOR WOMEN'S RIGHT TO SAFE ABORTION (Feb. 10, 2021),

<https://www.safeabortionwomensright.org/news/honduras-in-response-to-the-new-abortion-ban-somos-muchas-is-growing/>

³⁸⁷ *UN Experts Condemn Constitutional Reform that Would Deny the Right to Safe Abortion in Honduras*, CTR. FOR REPROD. RTS. (Jan. 21, 2021), <https://reproductiverights.org/un-experts-condemn-constitutional-reform-would-deny-right-safe-abortion-honduras/>.

³⁸⁸ *Honduras Admite Recurso Por El Aborto En Tres Causales*, SOMOS MUCHAS, (July 13, 2021),

https://somosmuchas-hn.translate.google/victoria-por-el-derecho-a-decidir/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ Anna-Catherine Brigada, *Analysis: In Honduras, First Woman President Faces Tough Fight on Abortion*, REUTERS (Dec. 8, 2021), <https://www.reuters.com/world/americas/honduras-first-woman-president-faces-tough-fight-abortion-2021-12-08/>. Neesa Medina stated that the election of Castro is an advancement of Honduras as a country by voting for a “woman close to the feminist movement.” *Id.*

c. Social Advocacy to Support Legal Reforms

The coalition has been active in using social media to spread information and organize campaigns.³⁹⁴ To further raise awareness, the coalition requests that those with large public platforms use their platforms to discuss reproductive rights.³⁹⁵ As indicated in part (a) above, the coalition has also engaged with human rights mechanisms by calling on the UN to condemn Honduras' violation of its international obligations. Although it is unclear whether the changing perceptions on abortion in Honduras are a result of the hard work of Somos Muchas, an investigation by the organization showed that compared to 2016, when about half of the population surveyed believed women who abort should go to jail, a recent survey reveals that number has decreased to less than half, with about sixty-one percent believing that women should not go to jail for aborting.³⁹⁶ A mailbox established by companions of Somos Muchas allowing the public to respond to the question, "Why do you think that motherhood should be desired?" was in line with this trend as responses acknowledged that forced motherhood has mental health consequences and adolescent pregnancies hinder the development of girls.³⁹⁷

d. Application to Lebanon

Honduras is similar to Lebanon in terms of its colonial history and vast influence of the Church. Acknowledging the constraints of working within a conservative country, Somos Muchas is working on challenging abortion restrictions in courts and changing public perceptions. Notably, the movement has used the human rights framework and the international community to condemn the Honduran government and mount pressure for change. The group does not seem to use colonial arguments, but rather focuses on rights guaranteed to women in international treaties and by the State.

South America

IV. Colombia

Since 1936, abortion has been illegal in Colombia in all circumstances.³⁹⁸ However, reduced penalties were permitted if the abortion was to protect the pregnant woman's honor.³⁹⁹ Since the 1970s, there have been many attempts to expand when women may have legal abortions

³⁹⁴ See Somos Muchas (somosmuchashn), INSTAGRAM, <https://www.instagram.com/somosmuchashn/?hl=en> (last visited Apr. 25, 2022); Somos Muchas (#SomosMuchasHN), TWITTER, <https://twitter.com/somosmuchashn?lang=en> (last visited Apr. 25, 2022).

³⁹⁵ Dashiell Allen, *Feminist Organizations Advocate for the Right to Choose in Honduras*, LATINA REPUBLIC (Mar. 26, 2021), <https://latinarepublic.com/2021/03/26/feminist-organizations-advocate-for-the-right-to-choose-in-honduras/>. While a 2016 public survey revealed that most of the Honduran population favored "legalizing abortion in exceptional cases", only eight percent agreed to legalize abortion indiscriminately, making spreading abortion awareness an important part of Somos Muchas. *Id.*

³⁹⁶ Josselyn Lopez, *March with "M" for Maternity Desired*, SOMOS MUCHAS (Mar. 11, 2022), https://somosmuchashn.translate.google/marzo-m-maternidad-deseada/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc.

³⁹⁷ *Id.*

³⁹⁸ HUM. RTS. WATCH, *Abortion: Colombia*, <https://www.hrw.org/legacy/women/abortion/colombia.html> (last visited June 23, 2022).

³⁹⁹ *Id.*

but most failed.⁴⁰⁰ In the 1990s, the Constitutional Court found that prohibiting abortion was constitutional but in 2001, it affirmed the possibility of waiving punishments in cases of rape.⁴⁰¹ In 2006, in response to a constitutional challenge filed by the Women's Link Worldwide in alliance with La Mesa Por la Vida y Salud de las Mujeres (La Mesa),⁴⁰² Colombia's Constitutional Court partially decriminalized abortions on three grounds: 1) where the pregnancy is due to rape, incest, or non-consensual insemination, 2) where the physical and/or mental health of the pregnant person is a risk, and 3) where there is "fetal malformation incompatible with life."⁴⁰³ Then, in February 21, 2022, Colombia's Constitutional Court ruled that abortion would be decriminalized up to twenty-four weeks of gestation in response to the Causa Justa Movement's 2020 lawsuit, which is an organization of various women's groups, including La Mesa.⁴⁰⁴

This case study illustrates how supporting legislative and judicial battles with data gathering and social campaigns aimed at socially decriminalizing abortion led to the 2022 Constitutional Court decision.

a. Legal Advocacy Experiences

La Mesa was founded in 1998 as a feminist organization comprised of experts in health, law, and other related fields to fight for the decriminalization of abortion in Colombia.⁴⁰⁵ It has employed various strategies: 1) providing women who face difficulties in obtaining an abortion with legal advice (has accompanied over 1,200 women in the country); 2) monitoring decisions of the various branches of government and intervened with legal support and technical assistance to shape legislation and public policies; and 3) litigating in High Courts and providing public interventions briefs at sentencing hearings.⁴⁰⁶ La Mesa has accumulated legal knowledge through arguing individual cases before the court, validated its interpretations with experts and public

⁴⁰⁰ Many of these bills would have also imposed the requirement that the pregnant woman's husband consent to the abortion. *Id.*

⁴⁰¹ Judges were given discretion to waive all penalties in cases of rape or "'extraordinary situations of abnormal motivation'" where the judge believed punishment is unnecessary. *Id.*

⁴⁰² Alba Ruibal, *Movement and Counter-Movement: A History of Abortion Law Reform and the Backlash in Colombia 2006-2014*, REPROD. HEALTH MATTERS, 42, 42-43 (2014), <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2814%2944803-1>. La Mesa is considered to be "the most important coalition for the defense of abortion rights in Colombia." *Id.* at 43.

⁴⁰³ Ana Cristina González-Vélez et al., *Eliminating Abortion from Criminal Law in Colombia: A Just Case*, 21 HEALTH & HUM. RTS. J. 85, 86 (Dec. 2019), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2019/12/Gonzales.pdf>. In their lawsuit, plaintiffs argued that criminalization limits the rights of the pregnant person and is in direct violation of various international human rights treaties, forcing women into humiliating and dangerous clandestine abortions that breach "a woman's fundamental right to life and physical integrity". WOMEN'S LINK WORLDWIDE, C-355/2006. EXCERPTS OF THE CONSTITUTIONAL COURT'S RULING THAT LIBERALIZED ABORTION IN COLOMBIA 15-16 (2007), <https://www.womenslinkworldwide.org/files/6d52ebe0680c34fd48738ee76e4080af.pdf>

⁴⁰⁴ *Colombia's Highest Courts Rules to Decriminalize Abortion*, CTR. FOR REPROD. RTS. (Feb. 22, 2022), <https://reproductiverights.org/colombia-court-decriminalize-abortion/>. Even after 24 weeks, a pregnant person may obtain an abortion for the original reasons stated in the 2006 ruling. *Id.*

⁴⁰⁵ Ana Cristina González-Vélez et al., *Eliminating Abortion from Criminal Law in Colombia*: 85, 86-87.

⁴⁰⁶ *Our Strategies*, LA MESA, https://despenalizaciondelaborto-org-co.translate.google.com/la-mesa/nuestras-integrantes/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc.

officials, and spread its knowledge through training sessions aimed at teaching health providers that abortion is an enforceable duty and a freedom that belongs to women.⁴⁰⁷

The organization looks at how other countries, like Canada, eliminated abortion as a crime based on critiques of criminal abortion laws and perpetuated inequalities.⁴⁰⁸ Thus, La Mesa argues that criminal abortion laws violate women's autonomy and citizenship and are arbitrary as the abortion grounds do not reflect women's needs or why women seek abortions.⁴⁰⁹ La Mesa has questioned the classification of abortion as a crime because under Colombia's penal code, the punishment must be enforced with the purpose of prevention, just retribution, or reintegration.⁴¹⁰ Restrictive abortion grounds do not satisfy any of these purposes because they do not prevent abortions, there is no just retribution since they violate women's constitutional rights, and there is no promotion of women's reintegration into society since abortion access does not affect "civic coexistence."⁴¹¹

In 2017, La Mesa began forming the Causa Justa movement.⁴¹² Causa Justa is a coalition comprised of more than ninety organizations working together to decriminalize abortion in Colombia,⁴¹³ promoted by La Mesa and other human rights organizations, including the Center for Reproductive Rights, and pioneered by two women who co-founded La Mesa.⁴¹⁴ In 2020, the Causa Justa coalition initiated a lawsuit seeking to remove abortion as a crime and to terminate the criminal prosecution of women and girls for abortion care;⁴¹⁵ La Mesa and the Center for Reproductive Rights assisted in drafting the demand.⁴¹⁶

The coalition framed abortion as an essential health service that should not be regulated by the penal system and requested that the Court provide a regulatory framework for the ruling.⁴¹⁷ Although the 2006 decision was key in advancing women's reproductive rights, it maintained the

⁴⁰⁷ Ana Cristina Gonzalez Velez & Isabel Cristina Jaramillo, *Legal Knowledge as a Tool for Social Change: La Mesa por la Vida y la Salud de las Mujeres as an Expert on Colombian Abortion Law*, HEALTH AND HUM. RTS. J. (June 2, 2017), <https://www.hhrjournal.org/2017/06/legal-knowledge-as-a-tool-for-social-change-la-mesa-por-la-vida-y-la-salud-de-las-mujeres-as-an-expert-on-colombian-abortion-law/>

⁴⁰⁸ Ana Cristina González-Vélez et al., *Eliminating Abortion from Criminal Law in Colombia* 85, 87.

⁴⁰⁹ *Id.* at 87–88.

⁴¹⁰ *Id.* at 89.

⁴¹¹ *Id.*

⁴¹² *La Mesa Por La Vida y La, CAUSA JUSTA*, <https://causajustaporelaborto.org/quienes-hacen-parte-de-causa-justa/> (last visited June 23, 2022).

⁴¹³ CTR. FOR REPROD. RTS., *Colombia's Highest Courts Rules to Decriminalize Abortion*.

⁴¹⁴ *Quiénes Somos*, CAUSA JUSTA, <https://causajustaporelaborto.org/quienes-somos-2/> (last visited June 23, 2022); see also *Causa Justa, Pioneras*, <https://causajustaporelaborto.org/pioneras/> (last visited June 23, 2022).

⁴¹⁵ CTR. FOR REPROD. RTS., *Colombia's Highest Courts Rules to Decriminalize Abortion*. Causa Justa argued for the regulation of abortion through public health, arguing that criminalizing abortion violates women's and health professionals' "fundamental rights to health, gender equality, and freedom" and thus encourages abortion stigma and unsafe abortion practices, increasing maternal mortality, burdening migrant women, and forcing health care workers to risk criminal prosecution if they provide abortion care. *Id.*

⁴¹⁶ *Resumen Ejecutivo Demanda de inconstitucionalidad del artículo 122 de la Ley 599 de 2000 del Código Penal*, CAUSA JUSTA, <https://www.womenslinkworldwide.org/files/3133/resumen-de-la-demanda-aborto-en-colombia-causa-justa.pdf>. The other organizations are Women's Link Worldwide, Católicas por el Derecho a Decidir, and Grupo Médico por el Derecho a Decidir. *Id.*

⁴¹⁷ Catalina Martinez Coral, *The Key Argument on Abortion that Changed Everything in Colombia*, N.Y. TIMES (Mar. 14, 2022), <https://www.nytimes.com/2022/03/14/opinion/latin-america-colombia-abortion.html>

regulation of abortion under the penal code, which continued to stigmatize the procedure.⁴¹⁸ In response, the coalition emphasized the inefficiency of criminalizing abortion and how it unfairly persecutes vulnerable women.⁴¹⁹ The main arguments made by the coalition in the 2020 lawsuit were that criminalizing abortion (1) creates stigma, which prevents abortion access and violates women's right to voluntarily terminate their pregnancies; (2) violates the constitutional right to health by encouraging unsafe abortions and increasing maternal mortality; (3) forces health workers to risk prosecution for providing abortion services; (4) burdens migrant workers who already face barriers to reproductive healthcare because of their status and have higher risk of human trafficking and sexual violence; (5) violates the secular state by forcing women to abide with religious and moral codes they may not agree with; and (6) violates criminal law's constitutional principles as criminalizing abortion does not protect women's health or prevent women from accessing abortions.⁴²⁰

As to the fifth point, the demand stated that by limiting abortion to three exceptions, women are forced to abide with considerations that may not conform with their conscience.⁴²¹ The state has an obligation not to impose norms tailored to one religion.⁴²² Only the pregnant woman can make the choice to continue with a pregnancy based on her own religious and moral convictions.⁴²³ This right to freedom of conscience is considered guaranteed under the 1991 Political Constitution's Social State of Law that recognizes constitutional rights and freedoms as supreme, and guarantees autonomy based on personal freedoms.⁴²⁴ Freedom of conscience holds three prerogatives: 1) forbids harassment and persecution for one's own personal convictions; 2) no one is required to share their convictions; and 3) no one can be required to act against their conscience.⁴²⁵ Thus, the exercise of freedom of religion is limited by people's fundamental rights, the need to protect health and public morality, and the duty of the Colombian state to protect all beliefs.⁴²⁶ All over the world, including Colombia, abortion regulation is often tied to the morality of protecting prenatal life.⁴²⁷ But laws are not meant to protect moral objective rules, but to guarantee rights.⁴²⁸ And reproductive autonomy is a life choice that must be protected—whether

⁴¹⁸ CTR. FOR REPROD. RTS., *Causa Justa Lawsuit to Decriminalize Abortion in Colombia (Colombian Constitutional Court)* (Feb. 21, 2022), <https://reproductiverights.org/case/causa-justa-decriminalize-abortion-colombia/>.

⁴¹⁹ *Id.*

⁴²⁰ *Id.* Prior to the lawsuit, the Causa Justa released various arguments in favor of abortion decriminalization in Colombia. Causa Justa, *Argumentos Para el Debate Sobre la Despenalización Total del Aborto en Colombia*, LA MESA POR LA VIDA Y LA SALUD DE LAS MUJERES (2019), https://despenalizaciondelaborto.org.co/wp-content/uploads/2021/02/Argumentos_CausaJusta-virtual-final-1-1-1-2.pdf. Various of these arguments emphasized women's right to reproductive autonomy. *See id.* at 75, 99, 143. For example, the coalition stated that gender equality assumes that both men and women are free to determine how many children to have and that safe access to abortion requires respect for privacy and intimacy. *Id.* at 81. Many international human rights treaties define privacy in a manner that assumes the ability to make autonomous choices and enjoy necessary confidentiality to protect reproductive decisions. *Id.* at 84–85.

⁴²¹ Public action for the unconstitutionality of article 122 of Law 599 of 2000 (Penal Code) presented by Just Cause on September 16th 2020,

<https://www.corteconstitucional.gov.co/secretaria/actuacion.php?proceso=1&palabra=D0013956&mostrar=ver>.

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.* at 109.

⁴²⁵ *Id.* at 110.

⁴²⁶ *Id.* at 111.

⁴²⁷ *Id.* at 112.

⁴²⁸ *Id.*

it be procreation or terminating a pregnancy, both are not merely biological acts but a choice.⁴²⁹ The demand noted that this brings criminal law into question as it penalizes a life option: by criminalizing abortion, it creates an obligation on the pregnant person to become a mother.⁴³⁰ Thus, freedom of conscience from religious freedom or morality is a fundamental right immediately applicable and recognized by international law.⁴³¹ As such, the demand argued that laws that impose consequences on people who do not practice the majority religion are inadmissible.⁴³² They put at risk the pillars of the Social and Democratic State of Law by institutionalizing principles that violate the secular state, which is what guarantees freedom of religion and conscience.⁴³³

The lawsuit also emphasized the Court's obligation to ensure "women's fundamental rights are honored" given that Congress failed to protect the right to abortion, running contrary to the global trend towards decriminalization.⁴³⁴ In its decision, the Court "accepted the charges regarding the violation of the right to health," acknowledged that criminalization creates barriers to safe abortions that also violates the right to equality of women and girls, and affirmed that criminalization does not respect the constitution's principles of how the criminal law should be used.⁴³⁵

b. Permanence or Repeals of Decriminalization

Since the Court's decision to decriminalize abortion occurred this year, there is no information yet as to permanence or repeals of decriminalization. However, Colombia's victory in partially decriminalizing abortion seems to be—in part—a result of a liberal Court. Although the 2006 partial decriminalization was a result of various factors, including the new political and legal environment that encouraged individual fundamental rights, and increasing public support for legal abortions in certain situations, a progressive Court that permitted debate on decriminalization was important. Indeed, many of the arguments cited in the Court's opinion referred to various international treaties that affirmed the right of women and children to decide for themselves.⁴³⁶ The Court also had a key role in developing jurisprudence on how to apply its decision, mandating public authorities and health care professionals to comply, and upholding claims by women's organizations, like La Mesa, which denounced violations of the right to abortion granted by the

⁴²⁹ The demand further noted that whether an embryo is a person depends on the pregnant person *See id.* at 113.

⁴³⁰ *Id.*

⁴³¹ *Id.* at 114.

⁴³² *Id.* at 115.

⁴³³ *Id.* at 116.

⁴³⁴ CTR. FOR REPROD. RTS., *Causa Justa Lawsuit to Decriminalize Abortion in Colombia*.

⁴³⁵ *Id.*

⁴³⁶ Eduardo Diaz Amado et al., *Obstacles and Challenges Following the Partial Decriminalization of Abortion in Colombia*, 18 REPROD. HEALTH MATTERS 118, 119 (2010); *see also* Rebecca J. Cook, *Excerpts of the Constitutional Court's Ruling that Liberalized Abortion in Colombia*, 15 REPROD. HEALTH MATTERS 160, 161 (2007). In their 2006 opinion, the Court referred to various international treaties, including the Convention on the Elimination of All Form of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child to strike down a provision penalizing abortions on women less than 14 years old, to advocate for the elimination of gender discrimination, and to strike down criminalization of services only women need. Rebecca J. Cook, *Excerpts of the Constitutional Court's Ruling that Liberalized Abortion in Colombia*, 15 REPROD. HEALTH MATTERS 160, 161 (2007).

Court's previous ruling.⁴³⁷ As right-wing Catholics mobilized, conservative activists were appointed in State institutions, and a conservative was placed as head of the Attorney General's Office, the Court continued to defend its position.⁴³⁸ After the Court's 2022 decision to decriminalize abortion up to 24 weeks, many legal experts noted that the Court is "more liberal than the country at large" as it has been key in recent shifts, such as legalizing same-sex marriage in 2016.⁴³⁹ The keystone changes accomplished by this liberal court highlight that the right to abortion can be undermined if conservative members control the Constitutional Court.⁴⁴⁰

c. Application in Reality

Despite the partial decriminalization of abortion in 2006, access remained stigmatized and hard to access, even in circumstances where women could legally obtain an abortion under an exception.⁴⁴¹ Furthermore, abortion services varied widely throughout the country, mainly concentrated in large cities and scarce for abortions later in pregnancy.⁴⁴² This created burdens for women who live in rural areas, forcing them to travel long distances to the main cities, missing work, and incurring travel and childcare expenses.⁴⁴³ Other systematic barriers include: (1) noncompliance due to lack of knowledge as to when abortion is allowed; (2) restrictive interpretation of the legal framework and imposing additional barriers such as requiring that a third party authorize the procedure; and (3) failure among healthcare professionals and administrators to comply with the framework by not issuing guidelines that meet the Constitutional Court's standards.⁴⁴⁴ Furthermore, as abortion continued to be stigmatized as a "morally reprehensible practice" and women who obtained the procedure were labeled as "transgressing the feminine

⁴³⁷ Alba Ruibal, *Movement and Counter-Movement: A History of Abortion Law Reform and the Backlash in Colombia 2006-2014*, REPROD. HEALTH MATTERS, 42, 43 (2014), <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2814%2944803-1>. The Court repeatedly upheld women's claims requesting court intervention to protect their rights. *Id.* at 45.

⁴³⁸ *Id.* at 46-47, 49.

⁴³⁹ Julie Turkewitz, *Colombia Decriminalizes Abortion, Bolstering Trend Across Region*, N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/world/americas/colombia-abortion.html>

⁴⁴⁰ Alba Ruibal, *Movement and Counter-Movement: A History of Abortion Law Reform and the Backlash in Colombia 2006-2014*, REPROD. HEALTH MATTERS, 42, 49 (2014), <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2814%2944803-1>. The Colombian Constitutional Court has shown how courts can have a vital role in supporting women's reproductive rights through "issuing groundbreaking legal reforms" and by protecting against backlash resulting from conservative mobilization as it "played a vanguard role" in abortion rights. *Id.* But, the "Court's ability to protect abortion rights may be undermine if conservative activists were to be appointed to the Court itself." *Id.*

⁴⁴¹ *Causa Justa Lawsuit to Decriminalize Abortion in Colombia (Colombian Constitutional Court)*, CTR. FOR REPROD. RTS. (Feb. 21, 2022), <https://reproductiverights.org/case/causa-justa-decriminalize-abortion-colombia/>.

⁴⁴² Ana Cristina González-Vélez et al., *Eliminating Abortion from Criminal Law in Colombia* 85, 90.

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* In thirty-six cases reviewed by La Mesa, abortion requests were denied because health providers believed the "fetus' rights outweighed the woman's." Eduardo Diaz Amado et al., *Obstacles and Challenges Following the Partial Decriminalization of Abortion in Colombia*, 18 REPROD. HEALTH MATTERS 118, 122 (2010). Lack of clarity surrounding fetal "malformation incompatible with life" and "health" encompassed a broad range of conditions left up to doctors to interpret, leading to many doctors refusing to perform an abortion procedure. *Id.* In other situations, abuse of the law presented injustices. In one case, a judge refused to allow a woman's petition to force a hospital to comply with her legal right to abortion until he was advised that the denial can lead to him being accused and charged of ethical misconduct. *Id.*

ideal” that links women with maternity, many women and abortion providers were treated poorly and the barriers aggravated.⁴⁴⁵

Although the 2022 decision to decriminalize abortion in Colombia was in part to remedy discrimination against low-income persons who often can’t access legal abortion procedures, it remains unclear how this decision will be applicable on the ground, but advocate groups remain poised to ensure the implementation of the Court’s ruling.⁴⁴⁶

d. Social Advocacy to Support Legal Reforms

Aside from the judiciary, La Mesa has been key in gathering information about abortion rights in Colombia, collaborating with other regional organizations to spread information and provide training to law enforcement and others on “the legal and medical aspects of the voluntary interruption of pregnancy (IVE).”⁴⁴⁷

Meanwhile, the Causa Justa coalition aimed to socially decriminalize abortion through efforts to destigmatize the procedure and to dispel misinformation.⁴⁴⁸ The coalition garnered public attention organizing social media campaigns, using radios for areas with limited connectivity, “march[ing] across the country,” and garnering celebrity support.⁴⁴⁹ To support its lawsuit, the coalition used the media and virtual mobilizations to gather publicity, resulting in the Constitutional Court receiving over 100 amicus briefs calling for the decriminalization of abortion.⁴⁵⁰ In one video, supporters from all sectors, including religious leaders and activists emphasized how women in need of abortions “cut across social, political and religious lines.”⁴⁵¹ To better understand the situation in Colombia, the coalition mobilized local organizations such as La Mesa who spoke with various women across the country and documented the obstacles they faced in abortion access.⁴⁵² The resulting information—that low-income women living in rural, remote areas were more likely to face legal consequences and resort to unsafe abortions that led to complications—was key in changing attitudes toward abortion in Colombia and supporting the lawsuit.⁴⁵³

⁴⁴⁵ Ana Cristina González-Vélez et al., *Eliminating Abortion from Criminal Law in Colombia* 85, 90-91.

⁴⁴⁶ *Colombia’s Highest Court Legalizes Abortion up to 24 Weeks*, NPR (Feb. 21, 2022), <https://www.npr.org/2022/02/21/1082236222/colombias-highest-court-legalizes-abortion-up-to-24-weeks>. The Causa Justa coalition and the Center for Reproductive Rights plans to advocate to the Ministry of Health to regulate abortion access and to continue to socially decriminalize abortion through advocacy and communication campaigns. CTR. FOR REPROD. RTS., *Causa Justa Lawsuit to Decriminalize Abortion in Colombia*.

⁴⁴⁷ *Our Strategies*, LA MESA, https://despenalizaciondelaborto-org-co.translate.google.com/la-mesa/nuestras-integrantes/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc (last visited June 23, 2022).

⁴⁴⁸ Coral, *The Key Argument on Abortion that Changed Everything in Colombia*.

⁴⁴⁹ Julie Turkewitz, *How Colombian Feminists Decriminalized Abortion: With Help from their Neighbors*, N.Y. TIMES (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/world/americas/colombia-abortion.html>

⁴⁵⁰ International Campaign for Women’s Right to Safe Abortion, *Colombia – “Causa Justa”: 100 amicus briefs submitted to the constitutional court* (Jan. 6, 2021), <https://www.safeabortionwomensright.org/news/colombia-100-amicus-briefs-submitted-to-the-constitutional-court/>

⁴⁵¹ Coral, *The Key Argument on Abortion that Changed Everything in Colombia*.

⁴⁵² *Id.*

⁴⁵³ *Id.*

e. Application to Lebanon

The collective work of La Mesa and the Causa Justa coalition exemplifies the importance of accumulating and disseminating legal knowledge to change abortion perceptions. The coalition understood that to socially decriminalize abortion, it must work on dispelling misinformation and launched initiatives that focused on the country as a whole, utilizing radios for areas with limited connectivity and encouraging celebrities to use their social media platforms. Concerted efforts to publicize the 2020 lawsuit led to wide support and human rights arguments asserted by the lawsuit were later acknowledged by the Constitutional Court in their decision. Although it appears that both organizations did not make anti-colonial challenges to the law, they asserted many other arguments that range from the need to protect women's health, women's right to make free and private choices, and the significance of a secular state.

V. Argentina

Argentina has a history of criminalizing and legalizing abortion. In the 1880s, abortion was criminalized with no exception through the penal code.⁴⁵⁴ However, in 1922, the penal code was amended to allow three exceptions: 1) if the woman's life or health is in danger, 2) if the pregnancy is a product of rape, and/or 3) where the pregnant person is mentally disabled.⁴⁵⁵ These exceptions were later restricted under the military dictatorship of 1976-83 to requiring that the woman's life be in "grave" danger and that there be criminal proceedings in cases of rape.⁴⁵⁶ When a democratic government was reinstated in 1984, the abortion exceptions reverted back to the 1922 standard, except that in cases of rape, abortion was no longer permitted unless the pregnant person was "declared mentally unstable."⁴⁵⁷ Although there were several bills attempting to amend the penal code, it was not until early 2021, in a major and historic victory, that Argentina legalized abortion up to the first 14 weeks of gestation through the Voluntary Interruption of Pregnancy Law.⁴⁵⁸ This victory was not only due to the political branches but also resulted from many years of persistent activism in the face of significant obstacles like conservative groups and the COVID-19 pandemic.⁴⁵⁹ Of significant importance was the 2005 launch of the National Campaign for the Right to Legal, Safe, and Free Abortion (the "Campaign"), a coalition of hundreds of organizations,⁴⁶⁰ and the Ni Una Menos collective, which started as a hashtag and later emerged as a regional movement.⁴⁶¹

⁴⁵⁴ *Abortion: Argentina*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/women/abortion/argentina.html> (last visited June 23, 2022).

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ *In Historic Victory, Argentina Legalizes Abortion*, CTR. FOR REPROD. RTS. (Jan. 15, 2021), <https://reproductiverights.org/historic-vote-argentina-legalize-abortion/>. Originally, abortions were only permitted when the pregnancy was a result of rape, incest, or if necessary to preserve the pregnant person's life. *Id.*

⁴⁵⁹ Barbara Sutton, *Clandestine No More: Legal, Safe, and Free Abortion in Argentina*, GEORGETOWN J. INT'L AFFAIRS (Feb. 16, 2021), <https://gjia.georgetown.edu/2021/02/16/ clandestine-no-more-legal-safe-and-free-abortion-in-argentina/>.

⁴⁶⁰ *Id.* Some of these organizations include human rights groups, indigenous communities' associations, students, lawyers, healthcare workers, and LGBTQ+ activists. *Id.*

⁴⁶¹ Jaclyn Diaz, *How #NiUnaMenos Grew From the Streets of Argentina into a Regional Women's Movement*, NPR (Oct. 15, 2021), <https://www.npr.org/2021/10/15/1043908435/how-niunamenos-grew-from-the-streets-of-argentina-into-a-regional-womens-movemen>

The case of Argentina illustrates how effective social advocacy campaigns led to increased support that built up to partial decriminalization. This section will outline the work of the Campaign and Ni Una Menos, and how their collective effort changed abortion perceptions.

a. Legal Advocacy Experiences

The Campaign serves as a federalist movement that gave activists a platform across the country.⁴⁶² It strives to build a highly democratic movement that brings together the various organizations to strategize and advance abortion reform.⁴⁶³ The Campaign was key in presenting the first abortion bill in 2008. At the time, despite some support for it, most lawmakers feared their political careers would be negatively impacted and doubted the bill's ability to pass with the lobbying of the Catholic Church.⁴⁶⁴ While feminist groups continued to work to keep abortion rights alive, the brutal murders of women in 2015, including that of a 16-year old pregnant girl who was murdered by her boyfriend who did not want to keep the baby, led to the creation of Ni Una Menos.⁴⁶⁵

In 2018, the Campaign was successful in bringing abortion legalization for the first time into a parliamentary debate.⁴⁶⁶ This would not have been possible without seizing on the growth of feminist movements, such as Ni Una Menos, to effectively frame the criminalization of abortion as violence against women and placed culpability on the state for inaction that results in preventable deaths.⁴⁶⁷ Having gained inspiration from a previous movement in Argentina called Mothers of Plaza de Mayo that wore white scarves, the Campaign used green scarves as its symbol and soon green scarves were shown on people demonstrating in the streets and on TV shows.⁴⁶⁸ The bill's failure to pass only strengthened abortion rights activism.⁴⁶⁹ Although the support of Argentinian President Alberto Fernandez helped decriminalize abortion, it would not have been possible without activists on the ground changing public opinion on abortion.⁴⁷⁰

⁴⁶² Cora Fernández Anderson, *Argentina Legalized Abortion Until 14 Weeks—and We have Feminist Organizers to Thank*, MS MAGAZINE (Jan. 11, 2021), <https://msmagazine.com/2021/01/11/argentina-legalized-abortion-until-14-weeks-the-national-campaign-for-safe-free-and-legal-abortion-is-the-hero-behind-it/>.

⁴⁶³ *Id.*

⁴⁶⁴ Daniel Politi & Ernesto Londoño, *How Support for Legal Abortion Went Mainstream in Argentina*, N.Y. TIMES (Jan. 1, 2021), <https://www.nytimes.com/2021/01/01/world/americas/argentina-abortion.html>

⁴⁶⁵ *Id.*

⁴⁶⁶ Sutton, *Clandestine No More: Legal, Safe, and Free Abortion in Argentina*.

⁴⁶⁷ Anderson, *Argentina Legalized Abortion Until 14 Weeks*.

⁴⁶⁸ *Id.* The Campaign used demonstrations as a “main strategy” with participants reaching “about one million in 2018.” *Id.* The campaign accompanied green scarves with the slogan: ““Sexual education to decide, contraception so as not to have an abortion, legal abortion so as not to die.”” *Id.* The Mothers of Plaza de Mayo were the campaigns of mothers and grandmothers who protested the abuse of military juntas and ushered them out of Argentina in the 1980s. Politi et al., *How Support for Legal Abortion Went Mainstream in Argentina*. White scarves were used by them as a symbol of protest. *Id.*

⁴⁶⁹ Sutton, *Clandestine No More: Legal, Safe, and Free Abortion in Argentina*. The bill's denial was in part due to the collective organization of the Catholic Church to put pressure against the bill. Cele Fierro & Pablo Vasco, *The Struggle for Abortion Rights in Argentina*, INT'L SOCIALIST REV., <https://isreview.org/issue/112/struggle-abortion-rights-argentina/index.html> (last visited May 1, 2022). Bishops and the Pope spoke against the bill and numerous blue demonstrations followed, encouraging union with evangelical congregations, and finding support in the ruling coalition. *Id.*

⁴⁷⁰ Sutton, *Clandestine No More: Legal, Safe, and Free Abortion in Argentina*.

b. Permanence or Repeals of Decriminalization

Anti-abortion proponents in at least 10 provinces filed lawsuits to declare the new law unconstitutional.⁴⁷¹ In Chaco, a province in Argentina, a judge issued a preliminary injunction that blocked the law from taking into effect, but activists believe that even if this or another case makes it up to the Supreme Court, the Court will uphold the law.⁴⁷² Still, it is important to note that the defeat of President Mauricio Macri in 2019, an antiabortion incumbent, and his replacement with President Alberto Fernandez who campaigned for abortion legalization was key in decriminalizing abortion in Argentina.⁴⁷³

c. Application in Reality

Despite abortion being legalized in Argentina, access has been difficult, as each Argentinian province is free to implement their own health policies and varying economic and social gaps among the provinces impact the effective implementation of the law.⁴⁷⁴ Many rural areas do not have adequate reproductive health services or trained staff.⁴⁷⁵ Lack of information also hinders the ability of pregnant persons to make free choices.⁴⁷⁶ For example, in rural areas, women are often not aware of their rights or are given false information to scare them away from accessing the procedure.⁴⁷⁷ Furthermore, conscientious objections to the law, especially in rural areas where catholic and evangelical churches have much influence, has led to some regions having as much as 90% of health care professionals refusing to provide abortions services.⁴⁷⁸ Due to limited availability of hospitals where abortions can be performed, women in some regions must start the procedure by calling a confidential hotline at the national Ministry of Health and many are given little privacy and confidentiality, forced to undergo abortion procedures in the same area where pregnant women are receiving prenatal care with “no closed place that preserves confidentiality.”⁴⁷⁹

d. Social Advocacy to Support Legal Reforms

The Ni Una Mentos movement organized massive demonstrations that changed perceptions on “sexism, gender parity and women’s rights” in the country and throughout Latin America.⁴⁸⁰ The gained more members and different voices through street demonstrations often

⁴⁷¹ Daniel Politi, *Abortion is Now Legal in Argentina, but Opponents are Making it Hard to Get*, N.Y. TIMES (Mar. 7, 2021), <https://www.nytimes.com/2021/03/07/world/americas/argentina-abortion-opposition.html/>

⁴⁷² *Id.*

⁴⁷³ Taylor Boas et al., *Argentina Legalized Abortion. Here’s How It Happened and What It Means for Latin America*, WASH. POST (Jan. 18, 2021), <https://www.washingtonpost.com/politics/2021/01/18/argentina-legalized-abortion-heres-how-it-happened-what-it-means-latin-america/>

⁴⁷⁴ Mariela Belski, *The Struggle to Secure Access to Abortion in Argentina Goes On*, ALJAZEERA (Aug. 9, 2021), <https://www.aljazeera.com/opinions/2021/8/9/the-struggle-to-secure-access-to-abortion-in-argentina-goes-on>

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ Politi, *Abortion is Now Legal in Argentina, but Opponents are Making it Hard to Get*.

One woman claims that she was told by her gynecologist that having an abortion will cause cancer. *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ Debora Rey & Almudena Calatrava, *Argentina: Shadows over Abortion a Year After Legalization*, ABC NEWS (Dec. 7, 2021), <https://abcnews.go.com/Health/wireStory/argentina-shadows-abortion-year-legalization-81955957>.

⁴⁸⁰ Politi et al., *How Support for Legal Abortion Went Mainstream in Argentina*.

chanting, “Down with the patriarchy” or “Long live feminism,”⁴⁸¹ eventually expanding its focus from machista violence to reproductive rights.⁴⁸² Unlike other countries that framed the abortion argument as about individual rights, Ni Una Menos framed it as a social justice and public health issue, highlighting that poor women are more likely to experience dangerous situations when they seek abortions, eventually popularizing, “the rich abort, the poor die” chant in demonstrations.⁴⁸³ Ni Una Menos further states that the right to abort means women have sovereignty over their bodies and is necessary to protect women’s health and integrity with its denial amounting to institutional violence that subjects women to “torture, cruel and humiliating treatment.”⁴⁸⁴ The vast demonstrations produced and the unity presented on women’s issues was key in changing citizens attitudes towards legalization.⁴⁸⁵

e. Application to Lebanon

Like the rest of Latin America, Argentina has both a colonial history and strong influence from the Catholic Church. While its colonial history does not appear to have been important in the fight for decriminalization, for many years, advocates failed in their efforts to decriminalize in part because of the Church. It took aggressive social advocacy and the mutual work of coalitions to gather the necessary political support to decriminalize abortion.

AFRICA

VI. Kenya

Major strides towards decriminalization of abortion have been achieved in Kenya through judicial training, legal clinics, targeted litigation efforts, and the legislature. The 1970 Penal Code criminalized abortion, but in 2010, the Constitution was amended through a referendum to make exceptions to this criminalization.⁴⁸⁶ Article 26(4) of the new 2010 Constitution guarantees the right to abortion when, in the opinion of a trained health professional, the pregnant person’s life or health is in danger, or if permitted by any other written law.⁴⁸⁷ A lack of guidance on how the 2010 change in the Constitution should be implemented created uncertainty among both women and healthcare providers as to the circumstances under which abortion was legal, and data collected by the Center for Reproductive Rights (CRR) that same year reported that there was still an average of three court cases per week in which women were prosecuted for illegal abortions.⁴⁸⁸

⁴⁸¹ *Id.*

⁴⁸² Boas et al., *Argentina Legalized Abortion*.

⁴⁸³ This focus on the disparity that restrictive abortion laws cause is like GIRE’s tactic of framing abortion as a preventable health issue that disproportionately affects poor women. *Id.*

⁴⁸⁴ Ni Una Menos, *Organic Letter*, https://niunamenos-org-ar.translate.goog/quienes-somos/carta-organica/?_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc&_x_tr_sch=http (last visited June 23, 2022).

⁴⁸⁵ Boas et al., *Argentina Legalized Abortion*. Public opinion data indicates that favorable attitudes towards legalization arose only after Ni Una Menos was created in 2015. *Id.*

⁴⁸⁶ Alice E. Finden, *The Laws, Trials, and Imprisonment for Abortion in Kenya*, INT’L CAMPAIGN FOR WOMEN’S SAFE RIGHT TO ABORTION (2017), <https://www.safeabortionwomensright.org/news/the-law-trials-and-imprisonment-for-abortion-in-kenya/>

⁴⁸⁷ *Incidence and Complications of Unsafe Abortion in Kenya*, GUTTMACHER INST. <https://www.guttmacher.org/report/incidence-and-complications-unsafe-abortion-kenya> (last visited April 25, 2022).

⁴⁸⁸ Finden, *The Laws, Trials, and Imprisonment for Abortion in Kenya*.

In 2011, the Ministry of Health created a working group of NGOs to draft guidelines on abortion provision that complied with the Constitution.⁴⁸⁹ These guidelines were published in 2012 and took into consideration the 2012 WHO Safe Abortion Guidance materials.⁴⁹⁰ According to a nurse at Bungoma hospital, implementation of the guidelines and better training for healthcare providers allowed for more women and girls to receive services.⁴⁹¹

In 2013, the Ministry of Health arbitrarily issued memorandums withdrawing the 2012 standards and guidelines that implemented this constitutional provision and banned healthcare professionals from being trained on abortion services and the use of abortion medication.⁴⁹² The Ministry cited the need for “wider stakeholder consultation” on the guidelines, but this withdrawal was a direct consequence of changes in United States’ foreign aid policy.⁴⁹³ The Helms Amendment in the U.S. halted all work promoting safe abortion by USAID-funded institutions – USAID funds most of Kenya’s family planning work.⁴⁹⁴ This policy, coupled with the heavy influence of pro-life attitudes from Kenya’s large Christian population, caused thousands of women and girls to seek unsafe abortions from unregulated clinics and practitioners.⁴⁹⁵

a. Legal Advocacy Experiences

i. Litigation & Pro Bono Legal Support

In 2015, CRR and the Federation of Women Lawyers (FIDA), filed a case against the Attorney General of Kenya, the Director of Medical Services, and the Ministry of Health in response to the death of a 14-year-old rape victim who died as a result of an unsafe abortion.⁴⁹⁶ The Center for Reproductive Rights’ complaint alleged that the arbitrary withdrawal of the 2012 guidelines violated the right to abortion enshrined in the Constitution by “creating uncertainty as to the status of legal abortion and discouraging medical providers from performing abortions for fear of criminal prosecution.”⁴⁹⁷ The complaint alleged that women seek out unsafe abortion due to a lack of information as to when abortion is allowed.⁴⁹⁸ The Court ruled in The Center for Reproductive Rights’ favor, finding that abortion is a constitutional right for victims of sexual violence and that the memo withdrawing abortion guidelines threatened the rights of healthcare workers, and was thus void.⁴⁹⁹

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Abortion Services in Kenya*, CTR. FOR REPROD. RTS. (Feb. 4, 2022), <https://reproductiverights.org/center-reproductive-rights-abortion-services-kenya/>.

⁴⁹³ Finden, *The Laws, Trials, and Imprisonment for Abortion in Kenya*.

⁴⁹⁴ *Id.*

⁴⁹⁵ Nita Bhalla & Humphrey Malalo, *Kenya’s Rape Survivors Win Right to Abortion in Landmark Court Ruling*, REUTERS (June 12, 2019), <https://www.reuters.com/article/us-kenya-abortion-ruling/kenyas-rape-survivors-win-right-to-abortion-in-landmark-court-ruling-idUSKCN1TD2HG>

⁴⁹⁶ *Id.*

⁴⁹⁷ CTR. FOR REPROD. RTS., *FIDA-Kenya and others v. Attorney General and others (High Court of Kenya)*, CTR. FOR REPROD. RTS. (June 29, 2015), <https://reproductiverights.org/case/fida-kenya-and-others-v-attorney-general-and-others-high-court-of-kenya/>.

⁴⁹⁸ See *Federation of Women Layers (FIDA-Kenya) & 3 others v. Attorney General & 2 others* (2015) 266 K.L.R. 1, 6 (H.C.K.) (Kenya).

⁴⁹⁹ CTR. FOR REPROD. RTS., *FIDA-Kenya and others v. Attorney General and others (High Court of Kenya)*.

CRR also works with Reproductive Health Network Kenya (RHNK) to provide strategic litigation and pro bono legal support to abortion providers.⁵⁰⁰ In coordination, these organizations document reproductive rights violations and advocate for laws and policies that promote access to reproductive health services and information.⁵⁰¹

CRR also recently litigated another reproductive health case in *PAK and Salim Mohammed v. Attorney General et al.*⁵⁰² The case involved a minor who sought medical care after experiencing complications that resulted from loss of a pregnancy.⁵⁰³ Police officers stormed the clinic, arrested the minor, and denied her access to medical treatment for 2 days before detaining her for a month.⁵⁰⁴ In November 2020, the High Court of Malindi held for CRR and the minor, affirming the illegality of arbitrary arrests, and subsequent prosecutions, of patients who seek or medical practitioners who provide abortion services.⁵⁰⁵ Additionally, the Court directed Kenya's parliament to a law and public policy framework in alignment with the right to abortion as enshrined in the Constitution.⁵⁰⁶

In 2018, pro-bono lawyers from KELIN Kenya brought suit against the Kenyan Medical Practitioner Board, challenging its ban on Marie Stopes Kenya's provision of abortion services and its decision to cease broadcasting of sexual and reproductive health information in the country.⁵⁰⁷ The Ministry imposed the ban because it believed Marie Stopes' media campaign was encouraging women to have abortions.⁵⁰⁸ KELIN argued that abortion services and post-abortion care are a form of emergency medical treatment and that the deprivation of sexual and reproductive health information contributes to abortion stigma and unsafe abortion.⁵⁰⁹

ii. Judicial Training

To engage the judiciary in legal advocacy to advance abortion rights, some organizations offer judicial trainings, guidance, and workshops. Ipas Africa Alliance has published a handbook for judges to interpret and apply domestic abortion laws while considering global human rights

⁵⁰⁰ *Legal Support*, REPROD. HEALTH NETWORK KENYA, <https://rhnk.org/services/legal-support/> (last visited April 25, 2022).

⁵⁰¹ Africa Program, CTR. FOR REPROD. RTS., <https://reproductiverights.org/our-regions/africa/> (last visited April 25, 2022).

⁵⁰² *High Court Judgement in Malindi Protects Women, Girls, and Healthcare Providers from Arbitrary Abortion-Related Arrests and Prosecution*, CTR. FOR REPROD. RTS. (Mar. 25, 2022), <https://reproductiverights.org/high-court-judgement-in-malindi-protects-women-girls-and-healthcare-providers-from-arbitrary-abortion-related-arrests-and-prosecutions/>; *Kenyan High Court Affirms the Right to Abortion under the Constitution and Directs Parliament to Enact Reforms*, CTR. FOR REPROD. RTS. (Mar. 25, 2022), <https://reproductiverights.org/malindi-kenya-court-affirms-abortion-right-pak/>.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ *Case Tracker*, KELIN KENYA, <https://www.kelinkenya.org/case-tracker/> (last visited Apr. 25, 2022).

⁵⁰⁸ Lin Taylor, *Kenya Lifts Abortion Ban on Global Charity Marie Stopes*, REUTERS (2018), <https://www.reuters.com/article/us-kenya-abortion-charities/kenya-lifts-abortion-ban-on-global-charity-marie-stopes-idUSKCN1ON0PS>

⁵⁰⁹ *Case Tracker*, KELIN KENYA.

standards.⁵¹⁰ It draws on human rights lessons from the constitutional decisions of national courts, analyzing the issues presented in each case.⁵¹¹ For example, the handbook evaluates the question, “[d]oes threat to life of the pregnant person as a ground for abortion include her physical and mental health?” by analyzing the English case *R v. Bourne*.⁵¹² Judges and Ipas advocates have reported that the handbook is an affirmative implementation effort of Article 26 of the Kenyan Constitution.⁵¹³

iii. Legal Clinics

The Reproductive Health Network Kenya and KELIN conduct legal clinics during outreach events to educate medical care providers on existing reproductive health laws and policies.⁵¹⁴ In 2016, KELIN hosted a legal aid clinic which gave participants an opportunity to address any legal questions they had regarding the provision of sexual and reproductive health rights.⁵¹⁵ The legal clinic informed medics on how to formally register their medical clinics and how to be compliant with clinic regulations.⁵¹⁶

iv. Legislative Advocacy

The Reproductive Healthcare Bill of 2019 proposed to implement Article 43 of the Kenyan Constitution, which guarantees “the right to the highest attainable standard of health...including the right to reproductive healthcare”.⁵¹⁷ The bill aimed to make abortion accessible by allowing for abortion where, in the opinion of a trained medical professional, there is need for emergency treatment, where the mother’s life or health is at risk, or where there exists a substantial risk of severe mental or physical abnormality in the fetus.⁵¹⁸ The 2019 bill came as a new, more ambitious iteration of a 2014 bill that preceded it and failed to pass. The 2019 bill further expanded on its prior version by including free prenatal, delivery, and postnatal services, outlawing forced sterilization, regulating surrogacy, and establishing comprehensive sex education.⁵¹⁹

⁵¹⁰ *Human Rights and African Abortion Laws: A Handbook for Judges*, IPAS, <https://www.ipas.org/resource/human-rights-and-african-abortion-laws-a-handbook-for-judges/> (last visited Apr. 25, 2022); Leah Wanaswa, *Launch of Judicial Handbook on Abortion Laws*, AKVORSR (Feb. 23, 2015), <https://rsr.akvo.org/es/project/2482/update/8708/>

⁵¹¹ Prof. Charles Ngwenya, *Human Rts. and African Abortion Laws: A Handbook for Judges* (2020),

<https://www.ipas.org/wp-content/uploads/2020/07/AAHRALE14-NgwenyaAlliance2014.pdf>

⁵¹² *Id.*

⁵¹³ Leah Wanaswa, *Launch of judicial handbook on abortion laws*, AKVORSR (Feb. 23, 2015), <https://rsr.akvo.org/es/project/2482/update/8708/>; *Tag Archives: Reproductive Health Network*, KELIN KENYA (2016), <https://www.kelinkkenya.org/tag/reproductive-health-network/>

⁵¹⁴ *Legal Support*, REPROD. HEALTH NETWORK KENYA, <https://rhnk.org/services/legal-support/> (last visited Apr. 25, 2022).

⁵¹⁵ *Tag Archives: Reproductive Health Network*, KELIN KENYA .

⁵¹⁶ *Id.*

⁵¹⁷ Laila Le Guen, *In Kenya, Abortion Focus Obscures Legislation Towards Safe Reproductive Healthcare Services* GLOBALVOICES (2021), <https://globalvoices.org/2021/03/30/in-kenya-abortion-campaigners-obscure-legislation-towards-safe-reproductive-healthcare-services/>.

⁵¹⁸ The Reproductive Healthcare Bill, No. 23 (2019) KENYA GAZETTE SUPPLEMENT No. 186 § 26 <http://www.parliament.go.ke/sites/default/files/2020-02/Reproductive%20Healthcare%20Bill%2C%202019.pdf>

⁵¹⁹ Le Guen, *In Kenya, Abortion Focus Obscures Legislation Towards Safe Reproductive Healthcare Services*.

b. Permanence/Repeals of Decriminalization Wins

The Reproductive Healthcare Bill of 2019 has been temporarily withdrawn from consideration in Kenya's parliament to allow "further public consulting" and potential redrafting.⁵²⁰ The Chief Administrative Secretary for the Ministry of Health justified the decision to withdraw the bill because it is vague on the technical issues of sexual and reproductive health and rights and would amount to a "back door legalization of abortion".⁵²¹ The bill and other decriminalization efforts have faced strong opposition from religious groups and anti-abortion groups.⁵²²

The 2018 ban on Marie Stopes Kenya and suspension of its abortion services was lifted a month after being implemented.⁵²³ After review of the organization's media campaigns regarding unsafe abortion, the Kenyan health ministry found Marie Stopes to be in total compliance with the law and not to be encouraging women to have abortions.⁵²⁴

c. Application in Reality

Despite establishing Constitutional protections for the right to abortion when the pregnant person's life or health is in danger and wins in the judiciary expanding legal abortion in cases of rape, 2,6000 Kenyan women still die every year due to unsafe abortions.⁵²⁵ Accounting for 35% of Kenya's maternal deaths, this translates to seven deaths from unsafe abortion per day.⁵²⁶

Improving the effective implementation of Article 26(4) of the Constitution is instrumental in realizing abortion access. Additionally, contradictions between the Constitution (which allows abortion when the mother's life is at risk) and the Penal Code (which criminalizes abortion) create confusion that discourages women from seeking care, stigmatizes abortion providers,' and limits the capacity of providers to deliver post-abortion care.⁵²⁷ Women who want to safely terminate a pregnancy must navigate a labyrinth of misinformation, as well as social, financial, and policy barriers.⁵²⁸ These barriers include social stigma, lack of legal clarity as to when abortion is legal due to contradictions in the law, and costs associated with the procedure.⁵²⁹ Access to abortion is thus determined by a women's ability to find, afford, and get transportation to an abortion provider,

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ Lin Taylor, *Kenya Lifts Abortion Ban on Global Charity Marie Stopes*, REUTERS (2018), <https://www.reuters.com/article/us-kenya-abortion-charities/kenya-lifts-abortion-ban-on-global-charity-marie-stopes-idUSKCN1ON0PS>

⁵²⁴ Taylor, *Kenya Lifts Abortion Ban on Global Charity Marie Stopes*.

⁵²⁵ Collins Baswony, *Kenya: The Right to Reproductive Healthcare is Not Only a Constitutional Obligation, it is also a Sound Public Health Policy*, DSW (2020), <https://www.dsw.org/en/2020/08/kenya-the-right-to-reproductive-healthcare-is-not-only-a-constitutional-obligation-it-is-also-sound-public-health-policy/>

⁵²⁶ *Id.*

⁵²⁷ Michael Mbithi Mutua et al., *Policy, Law, and Post-abortion Services in Kenya*, PLOS ONE 1, 2 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6150499/>

⁵²⁸ *Id.*

⁵²⁹ *Id.*

disproportionately affecting poor women.⁵³⁰ There is also a lack of provider training on safe abortion services.⁵³¹

d. Social Advocacy to Support Legal Reforms

A lack of information on safe abortion options as well as cultural and religious beliefs throughout the heavily Christian country contribute to stigma surrounding abortion in Kenya.⁵³² In response, social campaigns are coupled with legal strategies to affect public opinion regarding abortion. For example, Ipas Africa Alliance is addressing this stigma through a social campaign to “[b]reak the silence around abortion”.⁵³³ To do so, they have partnered with several grassroots organizations to sponsor local radio programs facilitating “intergenerational” community dialogues, and workshops for open discussion.⁵³⁴ One such organization is She Deserves to Soar, which hosts “sensitization forums,” community discussions to engage young people and their parents in conversations about sexual and reproductive health.⁵³⁵ Another org, Ipas, engages in school outreach and creates space for young people to discuss the facts surrounding abortion and contraception.⁵³⁶ Ipas reports that the campaign seems to be finding some success in schools where teachers are now providing students with information to access safe abortion, rather than trying to get them expelled from school.⁵³⁷

e. Application to Lebanon

Practical barriers, potentially more so than criminalization, make abortion inaccessible in Lebanon.⁵³⁸ Thus, like in Kenya, a woman’s ability to access abortion is dependent on social capital, networks, and wherewithal to find and negotiate with a provider.⁵³⁹ Addressing practical barriers such as the negative attitudes held by medical providers would increase women’s ability to access abortion in Lebanon. Additionally, because religion, and specifically the Catholic church,⁵⁴⁰ heavily influences attitudes toward abortion in Lebanon, it may be beneficial to look at how advocates in Kenya engaged with community leaders in educational dialogues around unsafe abortion and contraception. These efforts could alter negative perceptions held by religious leaders and the medical community as well as address practical access barriers as a step towards decriminalization.

⁵³⁰ *Id.*

⁵³¹ *Incidence and Complications of Unsafe Abortion in Kenya*, GUTTMACHER INST., <https://www.guttmacher.org/report/incidence-and-complications-unsafe-abortion-kenya> (last accessed Apr. 25, 2022).

⁵³² *Abortion Stigma a Possible Death Sentence for Kenyan Women*, FRANCE 24, <https://www.france24.com/en/live-news/20211001-abortion-stigma-a-possible-death-sentence-for-kenyan-women> (last accessed Apr. 25, 2022).

⁵³³ IPAS, *Taking Aim at Abortion Stigma in Kenya and Uganda, One Community at a Time* (2019), <https://www.ipas.org/news/taking-aim-at-abortion-stigma-in-kenya-and-uganda-one-community-at-a-time/>

⁵³⁴ IPAS, *Taking Aim at Abortion Stigma in Kenya and Uganda*.

⁵³⁵ *Moraa Beryl: Champion of Youth Reproductive Rights in Kenya*, IPAS (Mar. 6, 2019), <https://www.ipas.org/news/moraa-beryl-champion-of-youth-reproductive-rights-in-kenya/>

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ Fathallah, *Moral Work and the Construction of Abortion Networks*.

⁵³⁹ *Id.*

⁵⁴⁰ Information from Karim.

VII. Malawi

Under the Penal Code, abortion is only legal in Malawi if necessary to save the pregnant person's life.⁵⁴¹ As a former British Protectorate, Malawi acquired many of its laws from England.⁵⁴² The provisions of the penal code dealing with abortion are thus based on an English law, the Offences Against the Person Act of 1861.⁵⁴³ The U.K. repealed this section of their penal code in 2019 pursuant to a report from the CEDAW Committee finding that this law violated women's human rights under the Treaty.⁵⁴⁴ Although Malawi is also a State party to CEDAW, it has yet to repeal the same provisions of its penal code.⁵⁴⁵ Advocacy efforts aimed at expanding the grounds for legal abortion have taken place in the legislature and through targeted litigation.

a. Legal Advocacy Experiences

i. Litigation & Pro Bono Legal Support

In 2021, CRR and the Women and Law in Southern Africa Research and Educational Trust-Malawi (WLSA-Malawi) engaged in impact litigation in the case of a 15-year-old rape victim who was denied an abortion.⁵⁴⁶ The complaint argued that prosecution for abortion can be avoided under Section 243 of the Penal Code, which permits abortion for the preservation of the mother's life "if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case."⁵⁴⁷ WLSA-Malawi argued that the abortion was reasonable because, after her assault, the victim's mental and physical health deteriorated and she even contemplated committing suicide.⁵⁴⁸ Although healthcare providers routinely interpret this Section to exclude victims of sexual assault, the High Court interpreted it more broadly and ruled in favor of abortion access, using language that suggests that preservation of a pregnant person's life entails both mental and physical well-being.⁵⁴⁹ This case is important because it is the very first instance in which the High Court has acknowledged that abortion can be lawfully

⁵⁴¹ *Abortion and Postabortion Care in Malawi*, GUTTMACHER INST. (2017) <https://www.guttmacher.org/fact-sheet/abortion-malawi>

⁵⁴² Dr. Chisali Mhango, *FEATURE: Gynecologist Sheds Lights on Abortion Law Reform in Malawi*, INT'L CAMPAIGN FOR WOMEN'S RIGHT TO SAFE ABORTION (May 21, 2018), <https://www.safeabortionwomensright.org/news/feature-gynaecologist-sheds-light-on-abortion-law-reform-in-malawi/>

⁵⁴³ Godfrey Dalitso Kangaude, *Through Her Eyes The Harms of Abortion Criminalization and the Need for Reform*, GEO. L. WOMEN'S HUMAN RTS. CLINIC (2020), <https://www.law.georgetown.edu/wp-content/uploads/2020/09/Through-Her-Eyes-The-Harms-of-Abortion-Criminalisation-and-the-Need-for-Reform.pdf>

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ Press Release, Center for Reproductive Rights, *High Court of Malawi Clarifies Law on Abortion* (June 24, 2021), <https://reproductiverights.org/high-court-of-malawi-clarifies-law-on-abortion/>.

⁵⁴⁷ *Malawi's First Abortion Ruling Sheds Light on Law and Hospital Norms*, International Reproductive and Sexual Health Law Program, U. OF TORONTO REPROHEALTHLAW BLOG (Oct. 1, 2021), <https://reprohealthlaw.wordpress.com/2021/10/01/malawis-first-abortion-ruling-sheds-light-on-law-and-hospital-norms/>.

⁵⁴⁸ Lewis Bande & Godfrey Kanguade, *Malawi: Ruling on a Judicial Review Application to Access Safe Abortion*, U. TORONTO (Sept. 30, 2021), https://www.law.utoronto.ca/sites/default/files/documents/reprohealth/malawi_2021_judicial_review_refusal.pdf

⁵⁴⁹ Press Release, Center for Reproductive Rights, *High Court of Malawi Clarifies Law on Abortion* (June 24, 2021) (on file with author).

performed in Malawi and its interpretation aligns with the human rights consensus that the rights to life and health are intertwined.⁵⁵⁰

ii. Legislation

The above ruling is particularly important because it comes directly after a failed parliamentary attempt to liberalize existing exceptions that allow for abortions. Political priority for safe abortion developed in the 1990's, when rapid population growth created increased need for family planning and as new evidence emerged regarding the public health burden of unsafe abortion and maternal mortality.⁵⁵¹ International organizations such as the UN Population Fund and the WHO generated data on population growth in the country and brought attention to concepts such as family planning and reproductive health.⁵⁵² As Malawi faced growing international pressure throughout the 2000's to address the issue of unsafe abortion, the domestic political environment was pushing for abortion law reform as well.⁵⁵³ Ipas Malawi and the Coalition for Prevention of Unsafe Abortion (COPUA) engaged key stakeholders – members of parliament, chiefs, and religious leaders – to raise awareness on the implications of unsafe abortion for women's health and how law reform would address this.⁵⁵⁴ The coalition also engaged the public through workshops, debates, social media discussions, radio shows, and newspaper articles.⁵⁵⁵ The combination of international influences and this domestic advocacy created political momentum for safe abortion legislation, resulting in the drafting of the Termination of Pregnancy Bill in 2014, which proposed carve-outs in cases of rape, incest, and fetal deformity.⁵⁵⁶ Despite the initial amenable political environment for reform, by 2014 almost a third of parliamentary seats were flipped in the general election and outrage from anti-abortion groups intensified.⁵⁵⁷ Malawi's parliament subsequently withdrew the Bill from debate in June of 2021.⁵⁵⁸

The Coalition for Prevention of Unsafe Abortion attributed this failed attempt to the cultural and religious influence over parliament.⁵⁵⁹ Intense lobbying by Roman Catholic groups is one such influence.⁵⁶⁰ The Malawi parliament also demonstrated its resistance to liberalization of abortion – three months prior to the withdrawal of the Termination of Pregnancy Bill when

⁵⁵⁰ *Malawi's First Abortion Ruling Sheds Light on Law and Hospital*, U. OF TORONTO, REPROHEALTHLAW BLOG.

⁵⁵¹ Judith Daire et al., *Political Priority for Abortion Law Reform in Malawi: Transnational and National Influences*, HEALTH & HUM. RTS. J. (2018), <https://www.hhrjournal.org/2018/03/political-priority-for-abortion-law-reform-in-malawi-transnational-and-national-influences/>

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*; see also Lameck Masina, *Malawi Parliament Withdraws Abortion Rights Bill After Objections*, VOA NEWS (June 9, 2021), <https://www.voanews.com/a/africa-malawi-parliament-withdraws-abortion-rights-bill-after-objections/6207221.html> (Organizations involved in advocacy around the introduced bill include the Coalition for the Prevention of Unsafe Abortion, NGO Gender Coordination Network, Coalition for the Empowerment of Women and Girls, The Religious Network for Choice, and Centre for Solutions Journalism.).

⁵⁵⁷ Masina, *Malawi Parliament Withdraws Abortion Rights Bill After Objections*.

⁵⁵⁸ Current law continues to criminalize abortion unless the mother's life is in danger *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ Charles Pensulo, *MPs Block Debate of Bill to Ease Malawi's Strict Abortion Law*, REUTERS (2021), <https://www.reuters.com/article/us-malawi-women-abortion-trfn/mps-block-debate-of-bill-to-ease-malawis-strict-abortion-law-idUSKBN2B32U0>

lawmakers unanimously rejected a motion to even debate the measure.⁵⁶¹ Activists believe the resistance from parliament is also fueled by political aspirations as well as class disparities, because people with money and social connections are often still able to access safe abortion.⁵⁶² When parliament withdrew the bill, the deputy chairperson for the Coalition said that the next step in decriminalization would be going to the High Court for legal interpretation of the current law to “see whether [the bill] is in line with the constitution or other legal instruments.”⁵⁶³

b. Application in Reality

The High Court’s holding affirming women’s right to abortion when their life or health is at risk has not been overruled. The Court reasoned that, as a minimum, an applicant for judicial review must demonstrate that their request for an abortion was denied by a public body/official (such as the public hospital that denied the victim’s abortion as discussed in part a[i]).⁵⁶⁴ This reasoning reveals the challenges that women face in asserting their right to access safe abortion services.⁵⁶⁵ Women’s abortion requests are often not recorded and decisions to deny termination are given orally, making it difficult to prove that an abortion request was denied in court.⁵⁶⁶ Also, people in Malawi use health passport books, which record one’s medical history.⁵⁶⁷ Thus, recording a request for termination could prejudice women, as any future medical provider would be able to see that she had previously requested an abortion.⁵⁶⁸ This requirement promulgated by the Court will thus make it difficult for most women to access judicial review of denied abortions. Additionally, unsafe abortion remains a major issue in Malawi because most instances of abortion are still criminalized. More than 140,000 illegal abortions take place every year, resulting in 12,000 deaths.⁵⁶⁹

c. Social Advocacy to Support Legal Reforms

Ipas Malawi is also building a social advocacy movement in support of abortion access.⁵⁷⁰ Ipas created platforms at the local and national levels for youth and adolescents to engage in the Termination of Pregnancy Bill policy discourse.⁵⁷¹ Youth activists met with community and faith leaders, members of parliament, and government officials to discuss the need for abortion law reform.⁵⁷² This social advocacy aimed to engage key stakeholders and transform public sentiment in favor of abortion.

⁵⁶¹ *Id.*

⁵⁶² Laura Angelo Bagnetto, *Malawi’s Abortion Bill Pits Pro-life Against Pro-choice*, RFI (Oct. 17, 2020), <https://www.rfi.fr/en/africa/20201017-malawi-s-abortion-bill-pits-pro-life-against-pro-choice>

⁵⁶³ *Id.*

⁵⁶⁴ Bande et al., *Malawi: Ruling on a Judicial Review Application to Access Safe Abortion*. .

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ Masina, *Malawi Parliament Withdraws Abortion Rights Bill After Objections*.

⁵⁷⁰ *Malawian Youths Call for Abortion Legal Reforms*, HIVOS NEWS (2020), <https://hivos.org/news/malawian-youths-call-for-abortion-legal-reforms/> (last visited Apr. 25, 2022).

⁵⁷¹ *Id.*

⁵⁷² *Id.*

d. Application to Lebanon

Karim explained that most of Lebanon's criminal code is a direct result of colonialism, as it was governed under a French mandate until the 1930s.⁵⁷³ This situation is similar to Malawi, a former British colony, where targeted litigation efforts have been more successful than legislation in achieving abortion reform. Looking to Malawi's use of targeted litigation could be beneficial to the Lebanon context, especially if there is a lack of political will in parliament to reform long-standing abortion laws. Karim emphasized being intentional when picking a judge to litigate in front of and knowing their case history.⁵⁷⁴ Another litigation strategy Karim discussed, which was employed by CRR in Malawi, is working with a sympathetic plaintiff.⁵⁷⁵ In the Malawi case, this meant a minor who suffered a sexual assault. Courts may be more likely to sympathize with this type of plaintiff and her ability to access abortion may be considered more "defendable". However, there are consequences of and disadvantages to proceeding with a sexual assault survivor as a plaintiff as well. Some advocates worry that this approach may legitimize carve-outs allowing abortion only in cases of rape and take away from advocacy for on-demand abortion. Additionally, some advocates also fear that this establishes a sense of the "right" and "wrong" types of abortion, working to perpetuate stigmatization. In looking to Malawi as a case study, it's important to weigh these factors.

Additionally, because of religion's strong influence over attitudes towards and acceptance of abortion in Lebanon, it would also be beneficial to look at how youth advocates in Malawi engaged with faith leaders to discuss the need for safe and legal abortion.

VIII. Namibia

Under Namibia's Abortion and Sterilization Act of 1975, abortion is illegal except in cases involving rape, incest, or where the child or pregnant person's life is in danger.⁵⁷⁶ This law is a remnant of colonial era authoritarian legislation criminalizing sexuality and gender identity.⁵⁷⁷ South Africa imposed this law on Namibia during apartheid, as Namibia was under its control until 1990.⁵⁷⁸ Government activists are now attempting to bring the abortion debate into parliament.

a. Legal Advocacy Experiences

Esther Muinjangu, the Deputy Minister of Health and Social Services, put forward a motion in June of 2020 to debate the pros and cons of making on-demand abortions legal, urging lawmakers to think critically about repealing the restrictive conditions where abortion is

⁵⁷³ See Interview with Karim Nammour, Attorney, the Legal Agenda (Mar. 24, 2022) (Walter Leitner Int'l Human Rights Clinic) (notes on file with author).

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ Abortion and Sterilization Act, 2 RSA 4608 (1975), [https://www.lac.org.na/laws/annoSA/MEDICINE%20\(1975\)%20-%20Abortion%20and%20Sterilization%20Act%20of%201975%20\(annotated\).pdf](https://www.lac.org.na/laws/annoSA/MEDICINE%20(1975)%20-%20Abortion%20and%20Sterilization%20Act%20of%201975%20(annotated).pdf)

⁵⁷⁷ Sarah Newey, *Apartheid-era Anti-abortion Law Under Fire in Namibia*, TELEGRAPH (Nov. 2, 2021), <https://www.telegraph.co.uk/global-health/women-and-girls/apartheid-era-anti-abortion-law-fire-namibia/>

⁵⁷⁸ *Id.*

available.⁵⁷⁹ Muinjangué argued that whether abortion is legal or not, women are still going to seek unsafe abortions, which she argued negatively impacts many aspects of society, including women's mental health especially as they increasingly travel to neighboring countries to access abortion.⁵⁸⁰

Nearly two years after Muinjangué's motion, the Namibian government held a week-long consultation on reform of the Abortion and Sterilization Act, the first time that abortion reform has been meaningfully debated in two decades.⁵⁸¹ During these hearings, lawyers, medical personnel, and religious groups all gave testimony and evidence.⁵⁸² Anti-abortion groups argued to keep abortion illegal, citing the consequences of the procedure in terms of wounding the soul, body, and society and adding that "post-abortion syndrome" has effects such as denial, guilt and depression.⁵⁸³ Pro-choice organizations like Voices for Choices (VCRC) framed their argument in terms of bodily autonomy and human rights, noting that the current law takes away an individual's right to choose if and when to start a family and penalizes pregnant persons for making their own health decisions.⁵⁸⁴ The process will continue with regional public hearings regarding abortion followed by a report summarizing the findings to be submitted to parliament for a vote.⁵⁸⁵

Muinjangué's reason for choosing to debate over other legal advocacy strategies is multifaceted. Muinjangué emphasized the need for debate because "whether or not legalized, abortion is a reality...hence the need to debate on it, weigh the pros and cons, the advantages, and disadvantages, in order to make informed decisions."⁵⁸⁶ She urged lawmakers to look at the real reasons women get abortions before deciding.⁵⁸⁷ The presence of thorough debate on the issue will give legitimacy to the decision as well. Additionally, it was a good time politically to push the issue – the current government is led by a relatively progressive president who appears to be supportive of altering the Act to "purge apartheid" from the Namibian constitution.⁵⁸⁸ Because the Act was inherited from South Africa, activists have argued that it was never created for or by Namibians and does not take into consideration Namibian social issues.⁵⁸⁹ True discussion by Namibians themselves would show autonomy from colonial influence, further legitimizing a decision to repeal the Abortion and Sterilization Act under a post-colonial lens.

⁵⁷⁹ Aisha Salaudeen & Bukola Adebayo, *Abortion is Legal in Namibia, but Only if a Woman is in Danger or has been Sexually Abused. Advocates are Demanding Reform*, CNN (Nov. 27, 2020), <https://edition.cnn.com/2020/11/26/africa/namibia-abortion-reform-intl/index.html>.

⁵⁸⁰ *Namibia: Abortion Rivals Square Off...Church vs. Pro-Choice in Heated Hearing*, ALLAFRICA (Oct. 19, 2021), <https://allafrica.com/stories/202110190326.html>.

⁵⁸¹ Newey, *Apartheid-era Anti-abortion Law Under Fire in Namibia*.

⁵⁸² *Id.*

⁵⁸³ *Namibia: Abortion Rivals Square Off...Church vs. Pro-Choice in Heated Hearing*, ALLAFRICA (Oct. 19, 2021).

⁵⁸⁴ *Id.*

⁵⁸⁵ Newey, *Apartheid-era Anti-abortion Law Under Fire in Namibia*.

⁵⁸⁶ Salaudeen et al., *Abortion is Legal in Namibia, but only if a Woman is in Danger or has been Sexually Abused. Advocates are Demanding Reform*, CNN (Nov. 27, 2020).

⁵⁸⁷ *Id.*

⁵⁸⁸ Newey, *Apartheid-era Anti-abortion Law Under Fire in Namibia*.

⁵⁸⁹ *Legalize Abortion in Namibia*, CHANGE.ORG, <https://www.change.org/p/honorable-dr-kalumbi-shangula-minister-of-health-and-social-services-legalize-abortion-in-namibia?redirect=false> (last visited June 23, 2022).

b. Social Advocacy to Support Legal Reform Efforts

Getting to the stage of open debate of abortion took years of grassroots activism. A coalition of abortion advocacy organizations⁵⁹⁰ have included protests and petitions calling for abortion law reform to pave the way for legalization and to on-demand abortion.⁵⁹¹ A recent petition to liberalize abortion laws garnered 62,000 signatures.⁵⁹² Protests demanding that women's sexual and reproductive rights be upheld have taken place in person and online, with some Namibians joining through the hashtag #LegalizeAbortionNA and #AbortionPublicHearings.⁵⁹³

c. Application to Lebanon

Building public opinion is a helpful tool to integrate into any advocacy strategy. Getting to the point of public debate in Namibia required years of grassroots activism and coalition building. Thus, it may be beneficial for advocates in Lebanon to look to Namibia's use of social media campaigns to spread information on safe abortion and to garner public support. Women in Lebanon still seek and undergo illegal abortions, so there is opportunity to apply public pressure for reform and potentially support from the medical community. Additionally, because religion is so influential in Lebanon in terms of individual rights and the law, it will be important to engage faith leaders in abortion reform discussions.

It may also be useful to look to arguments by advocates in Namibia pointing out the colonial roots of the laws criminalizing abortion. Similar to Lebanon, the current abortion law was imposed on Namibia while under European rule. Many post-colonial governments, including Namibia, maintain conservative laws on social issues like abortion to assert their independence from liberal Western influence.⁵⁹⁴ It could be useful to look at advocacy arguments used in Namibia in response to this sentiment, which emphasize that these inherited laws are not based on Namibian culture or experiences. Additionally, these arguments point to the racist origins of such laws, noting that lawmakers in Namibia and South Africa were worried that the white population would be outnumbered if white women continued getting abortions.⁵⁹⁵

IX. South Africa

Until 1996, abortion was largely illegal in South Africa.⁵⁹⁶ During apartheid, abortion could be obtained when a pregnancy posed a threat to a woman's mental well-being under the common

⁵⁹⁰ The coalition includes organizations such as Voices for Choices and Rights Coalition (VCRC), SheDecides, Power Pad Girls, OutRight Action International, and Outright Action International.

⁵⁹¹ Salaudeen et al., *Abortion is Legal in Namibia, but only if a Woman is in Danger or has been Sexually Abused*

⁵⁹² Newey, *Apartheid-era anti-abortion law under fire in Namibia*.

⁵⁹³ Salaudeen et al., *Abortion is Legal in Namibia, but only if a Woman is in Danger or has been Sexually Abused*.

⁵⁹⁴ Ryan Lenora Brown, *In Namibia's Abortion Debate, Echoes of a Repressive History*, CHRISTIAN SCIENCE MONITOR (Jan. 11, 2018), <https://www.csmonitor.com/World/Africa/2018/0111/In-Namibia-s-abortion-debate-echoes-of-a-repressive-history>.

⁵⁹⁵ See *id.*

⁵⁹⁶ GUTTMACHER INST., *Abortion Reform in South Africa: A Case Study of the 1996 Choice on Termination of Pregnancy Act*, GUTTMACHER INST., <https://www.guttmacher.org/journals/ipsrh/1998/12/abortion-reform-south-africa-case-study-1996-choice-termination-pregnancy-act> (last accessed Apr. 25, 2022).

law.⁵⁹⁷ However, abortion was still only accessible mostly to wealthy white women who could access private practitioners.⁵⁹⁸ Abortions outside of this criterion remained illegal.⁵⁹⁹ In the 1970's, the medical establishment, seeking protection from the illegal abortions they were providing, and women's organizations such as the Abortion Reform Action group (ARAG) created momentum for abortion law reform. However, their advocacy efforts were hampered by the prevalent fear and hysteria among parliament ministers that the white population was stagnating and that the Black population would soon outnumber them.⁶⁰⁰ This hysteria led parliament to pass the 1975 Abortion and Sterilization Act, drafted by an all-male, all-white committee, meant to prevent white women from terminating their pregnancies.⁶⁰¹

Parliament pandered to progressive constituents and advocacy groups such as ARAG, by framing the Act to seem as if it granted greater access to abortion.⁶⁰² The Act did expand the circumstances allowing for legal abortions, for example in cases of rape or incest, or whether the mother or child's life or health was at risk.⁶⁰³ In practice, however, the Act imposed restrictions on abortion access by requiring specific conditions that were nearly impossible to achieve.⁶⁰⁴ For example, the Act created a new carve-out allowing for abortion in the instance of rape, or when carrying a pregnancy to term could cause severe handicap to the child, but the procedure required approval from two independent physicians as well as a third physician to actually perform the procedure.⁶⁰⁵ In essence, the Act failed to acknowledge the practical and legal barriers to access that were baked into the law.

a. Legal Advocacy Experiences

Negotiations to free South Africa from apartheid and transition to democracy began in the 1990's.⁶⁰⁶ After this transition, reproductive rights were enshrined in the new constitution, paving the way for repeal of the 1975 Abortion law.⁶⁰⁷ The 1996 Choice in Termination of Pregnancy Act is an example of successful lobbying efforts and legislation to decriminalize, and in this case legalize, abortion within the first 12 weeks of pregnancy.⁶⁰⁸ Learning from its mistakes in the 1970's, ARAG, and other abortion advocacy groups lobbied for abortion on demand.⁶⁰⁹

The struggle between these groups and anti-abortion advocates was complicated because of the historically racist use of abortion as a population control policy under apartheid, as well as

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ Newey, *Apartheid-era Anti-abortion Law Under Fire in Namibia*.

⁶⁰¹ GUTTMACHER INST., *Abortion Reform in South Africa*.

⁶⁰² *Id.*

⁶⁰³ *Id.*

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.*

⁶⁰⁷ Mary Favier & Jamie M.S. Greenberg, *Safe Abortion in South Africa: "We have wonderful laws but we don't have people to implement those laws"*, INT'L J. GYNECOLOGY & OBSTETRICS (2018) <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1002/ijgo.12676>.

⁶⁰⁸ *The Impact of Legal Reform of Abortion in South Africa*, WOMEN DELIVER, <https://womendeliver.org/impact-legal-reform-abortion-south-africa/>.

⁶⁰⁹ GUTTMACHER INST., *Abortion Reform in South Africa*.

the influence of religious ideologies on anti-abortion activists.⁶¹⁰ Many legislators, although committed to gender equality, were either devout Christians or Muslims, or were Black South Africans who viewed abortion as a racist policy to control the growth of the Black population.⁶¹¹ ARAG and other organizations were successful this time around because of their framing, emphasizing a woman's right to choose according to her own beliefs and that abortion access is a means for creating gender equality and furthering all women's rights.⁶¹² Prior to democratization, activists focused on public health arguments in their advocacy instead of a framework focused on the right to choose or individual rights.⁶¹³ After apartheid ended, racial equality was at the forefront of public policy and discourse, and even those committed to gender equality often felt that it should take a backseat to racial issues.⁶¹⁴

In lobbying for the 1996 Act, abortion advocates thus engaged public health rhetoric that addressed racial inequality, specifically in terms of South Africa's maternal mortality rate, emphasizing that 90% of the women admitted to hospitals for incomplete abortion were Black and *all* 425 women who died from an illegal abortion were Black.⁶¹⁵ Advocacy groups linked the effects of inadequate apartheid healthcare policies on Black South Africans with positive health and economic consequences generated by equitable reproductive healthcare and reproductive rights.⁶¹⁶ Framing reproductive rights and abortion as a choice issue and a racial equality issue was vital to the success of the 1996 Act. Since this law came into effect, the number of women who died from abortion complications declined by over 90% in seven years.⁶¹⁷

b. Permanence/Repeals of Decriminalization Wins

The Choice in Termination of Pregnancy Act remains one of the most liberal abortion laws in the world, allowing abortion on demand up to 12 weeks of pregnancy and an extension to 20 weeks in specific cases.⁶¹⁸

c. Application in Reality

Despite the legal protections for abortion, barriers to access persist in South Africa due to the lack of an effective reproductive healthcare system. The most pervasive barriers are the "lack of accessible designated public abortion facilities, abortion providers' [negative] attitudes, the lack of an effective referral system, failure to introduce self-managed abortion, and the unavailability of abortion medicines."⁶¹⁹

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

⁶¹² *Id.*

⁶¹³ Favier et al., *Safe Abortion in South Africa*.

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Fact Sheet: Applying the Maputo Protocol Can Reduce Unsafe Abortions*, SAFE ENGAGE & POPULATION REFERENCE BUREAU (2019), <https://www.prb.org/wp-content/uploads/2019/12/maputo-protocol-fact-sheet-safe-engage.pdf>.

⁶¹⁸ *The Impact of Legal Reform of Abortion in South Africa*, WOMEN DELIVER.

⁶¹⁹ Sibusiwe Ndlela, et al., *South Africa: Open Letter – It Takes More Than a March to Remedy Systemic Challenges to Abortion Access*, ALLAFRICA (2022), <https://allafrica.com/stories/202203050113.html>.

Healthcare providers often invoke conscientious objection as an excuse for not providing abortion services, which causes entire facilities in rural, conservative areas to lack these services.⁶²⁰ However, objection has less to do with conscience than with the workload and professional or community stigma.⁶²¹

The South African healthcare system does the bare minimum to remain in compliance with the Choice in Termination of Pregnancy Act. Only a fraction of public facilities actually offer abortion services.⁶²² There are only two public facilities that provide second-semester abortions in the country. A prominent public interest law center, SECTION27, has received reports that women seeking abortions are being turned away from Frere Hospital, one of the two public hospitals that are supposed to be providing second-semester abortions.⁶²³ In addition, there is no official policy advising the public of how to access the tools needed for self-managed abortions.⁶²⁴ Furthermore, the National Department of Health has not addressed the low availability of abortion medication and its website fails to list any information on abortion access.⁶²⁵

d. Social Advocacy to Support Legal Reform Efforts

The stigma surrounding abortion, conscientious objection by medical providers, and poor infrastructure have resulted in many pregnant persons lacking access to information regarding legal abortion in South Africa.⁶²⁶ In response, Global Health Strategies and its partners⁶²⁷ launched the #MyBodyMyChoice campaign in 2018, aimed at mainstreaming the dialogue around abortion and advocating for abortion rights.⁶²⁸ The initial phase of the campaign created an abortion rights toolkit and documentary, which reached 1.4 million people. It was also included in talk and radio show conversations regarding abortion rights.⁶²⁹

e. Application to Lebanon

The South African medical establishment was one of the first unified groups to lobby for abortion decriminalization, since physicians needed to seek protection from prosecution for the abortions that they were providing. Engaging the medical community may be a viable option in Lebanon, since doctors are still providing abortions under the current regime.

⁶²⁰ Favier et al., *Safe Abortion in South Africa*.

⁶²¹ *Id.*

⁶²² Dr. Tlaleng Mofokeng, *It Takes More than Pro-choice Laws to End Deaths from Unsafe Abortions*, GUARDIAN (June 6, 2018), <https://www.theguardian.com/global-development/2018/jun/06/pro-choice-laws-deaths-unsafe-abortion-south-africa-dr-tlaleng-mofokeng>.

⁶²³ Sibusiwe Ndlela et al., *South Africa: Open Letter – It Takes More Than a March to Remedy Systemic Challenges to Abortion Access*, ALLAFRICA (2022).

⁶²⁴ *Id.*

⁶²⁵ Dr. Tlaleng Mofokeng, *It Takes More than Pro-choice Laws to End Deaths from Unsafe Abortions*.

⁶²⁶ *My Body My Choice Campaign*, GLOBAL HEALTH STRATEGIES (2019), <https://globalhealthstrategies.com/blog/impact/my-body-my-choice-campaign/>.

⁶²⁷ Amnesty International, the South African Human Rights Commission, Gender Links, and Marie Stopes.

⁶²⁸ *My Body My Choice Campaign*, GLOBAL HEALTH STRATEGIES (2019), <https://globalhealthstrategies.com/blog/impact/my-body-my-choice-campaign/>.

⁶²⁹ *Id.*

X. Democratic Republic of the Congo (DRC)

Until 2018, the DRC penal code criminalized abortion in all forms, even in instances where the pregnant person's life was at risk.⁶³⁰ Steps toward partial decriminalization of abortion have been taken through targeted lobbying for policy change.

a. Legal Advocacy Experiences

Legal access to abortion in the DRC was expanded in 2018 when the country adopted the Maputo Protocol.⁶³¹ The Maputo Protocol is a treaty guaranteeing extensive rights to African women and girls,⁶³² including a provision guaranteeing the right to medical abortion in cases of sexual assault, rape, incest, and when the pregnancy endangers the mental and physical health of the mother or the fetus.⁶³³

Although adoption of the Protocol does not signal total decriminalization, it is a significant step towards this goal. It was also an easier option, since reforming the existing law on a national level would have required support from 251 parliamentarians as well as harmonized change to the penal code, reproductive health law, and the code of medical ethics.⁶³⁴ This would be an onerous and likely impossible undertaking considering the religious community's strong opposition.⁶³⁵

To lobby for this vital policy change, abortion activists built coalitions and engaged with key stakeholders. Prominent regional coalitions, such as the *Coalition de lute contre les grossesses non désirées* (CGND), brought together international organizations and civil society actors to lobby for access to safe abortion.⁶³⁶ The coalition was able to streamline advocacy efforts and create a cohesive policy with targeted messaging.⁶³⁷ The CGND coalition also identified key decisionmakers and stakeholders who would be critical to government support for the Protocol.⁶³⁸ Ipas also launched a project called 'Makoki y Mwasi' which will implement the Maputo Protocol by engaging the government and legislators to develop national standards and guidelines for abortion care.⁶³⁹

⁶³⁰ African Population & Health Rsch. Ctr., *Domestication of the Maputo Protocol in DRC: Lessons to Advance Access to Safe Abortion on the African Continent*, http://aphrc.org/wp-content/uploads/2022/02/Maputo-protocol-in-Democratic-Republic-of-Congo_English-1.pdf (last accessed Apr. 25, 2022).

⁶³¹ *The Democratic Republic of the Congo Leads the Way on Abortion Access: A Pathway for Reproductive Rights Advocates in Francophone Africa*, PRB (Oct. 28, 2021), <https://www.prb.org/resources/the-democratic-republic-of-the-congo-leads-the-way-on-abortion-access-a-pathway-for-reproductive-rights-advocates-in-francophone-africa/>.

⁶³² *The Maputo Protocol: Protecting Women's Rights*, EQUALITY NOW (2021), https://www.equalitynow.org/promoting_african_womens_rights/.

⁶³³ *Fact Sheet: Applying the Maputo Protocol Can Reduce Unsafe Abortions*, SAFE ENGAGE & POPULATION REFERENCE BUREAU (2019).

⁶³⁴ *The Democratic Republic of the Congo Leads the Way on Abortion Access: A Pathway for Reproductive Rights Advocates in Francophone Africa*, PRB (Oct. 28, 2021).

⁶³⁵ African Population & Health Rsch. Ctr., *Domestication of the Maputo Protocol in DRC*.

⁶³⁶ *Id.*

⁶³⁷ *Id.*

⁶³⁸ *Id.*

⁶³⁹ "Makoki ya Mwasi" Aims to Strengthen Women's Rights and Improve Abortion Access in the DRC, IPAS NEWS (Apr. 26, 2021) <https://www.ipas.org/news/makoki-ya-mwasi-aims-to-strengthen-womens-rights-and-improve-abortion-access-in-the-drc/>.

b. Permanence/Repeals of Decriminalization Wins

Since the DRC adopted the Maputo Protocol in 2018, the country has also taken other affirmative steps towards implementation. The government published materials that informed the public of abortion care services and, in 2020, the Ministry of Public Health endorsed “standards and guidelines for implementing the Protocol’s directives”.⁶⁴⁰ PRB and the African Population Health Research Center created the SAFE ENGAGE project to promote safe abortion and expanded abortion access.⁶⁴¹ The project provides policymakers with up-to-date data on abortion, works to expand civil society’s ability to spread pertinent information, and improves media reporting on abortion to reflect real data and evidence.⁶⁴² The project offers media and policy training regarding the law surrounding abortion and the possible consequences of an unsafe abortion.⁶⁴³

c. Application in Reality

The adoption of the Maputo Protocol creates hope for reducing unintended pregnancies and unsafe abortions in the DRC. However, the Protocol is still being implemented and abortion does not yet have clear legal protections.⁶⁴⁴ As a result, most women in the DRC who choose to terminate a pregnancy still do so under unsafe conditions.⁶⁴⁵ Throughout the coronavirus pandemic, when accessing reproductive services was more difficult, there was an increase in the number of unwanted pregnancies and deaths due to clandestine abortions in the DRC.⁶⁴⁶

d. Social Advocacy to Support Legal Reform Efforts

In coordination with Ipas DRC, youth organizations across the DRC⁶⁴⁷ have recently engaged in an online campaign called “Abortion – Let’s Talk About It!” to promote sexual and reproductive health and rights during the coronavirus pandemic.⁶⁴⁸ The campaign was conducted on social media and it provided information on myths and misconceptions regarding sexual health and abortion under the Maputo Protocol.⁶⁴⁹ The campaign also used hashtags such as

⁶⁴⁰ *The Democratic Republic of the Congo Leads the Way on Abortion Access: A Pathway for Reproductive Rights Advocates in Francophone Africa*, PRB (Oct. 28, 2021).

⁶⁴¹ *Id.*

⁶⁴² *Id.*

⁶⁴³ *Id.*

⁶⁴⁴ Annie L. Glover et al., *Assessing Readiness to Provide Comprehensive Abortion Care in the DRC After Passage of the Maputo Protocol*, 46 INT’L PERSPECTIVES ON SEXUAL & REPROD. HEALTH 3 (2020), https://www.jstor.org/stable/10.1363/46e0420#metadatainfo_tab_contents.

⁶⁴⁵ Naomi Lince-Deroche et al., *Unintended Pregnancy and Abortion in Kinshasa, Democratic Republic of the Congo: Challenges and Progress*, GUTTMACHER INST., <https://www.guttmacher.org/report/unintended-pregnancy-abortion-kinshasa-drc> (last accessed Apr. 25, 2022).

⁶⁴⁶ *Social Media Campaign in DRC Reaches Youth with Abortion Information*, IPAS (2020), <https://www.ipas.org/news/social-media-campaign-in-drc-reaches-youth-with-abortion-information/>.

⁶⁴⁷ Youth organizations included Youth Action Movement, Afia Mama, Habari RDC, and the African Youth and Adolescents Network (AfriYAN).

⁶⁴⁸ *Social Media Campaign in DRC Reaches Youth with Abortion Information*, IPAS (2020), <https://www.ipas.org/news/social-media-campaign-in-drc-reaches-youth-with-abortion-information/>.

⁶⁴⁹ *Id.*

#StopFakeNews and #ParlonsAvortements (translating to “Let’s talk about abortions”) on platforms like Twitter to raise awareness.⁶⁵⁰

e. Application to Lebanon

Lebanon and the DRC have similarly restrictive laws regarding abortion. Advocates in Lebanon can look to abortion reform efforts in the DRC that engage international bodies and treaties. Karim stated that although it is sometimes difficult to get Lebanese judges to see international law as legitimate, more recently advocates have successfully deconstructed the narrative among judges that international law applies only to states and not to private parties or local law.⁶⁵¹ Lebanon has engaged with international law previously when it ratified the International Covenant on Social, Economic, & Cultural Rights and CEDAW.⁶⁵² Thus, it may be beneficial to also engage with the Special Rapporteur on the Right to Health and invite them to investigate the effect of criminalization of abortion on maternal mortality and overall reproductive health in Lebanon.

XI. Senegal

a. Legal Advocacy Experiences

The Senegalese criminal code prohibits abortion in all circumstances. The Senegalese Code of Medical Ethics allows for abortion with the consent of three doctors who agree that the procedure is necessary to save a pregnant person’s life, but these conditions are nearly impossible to meet and thus, most abortions remain illegal.⁶⁵³

i. Legal Training

Since 2008, the Association of Women Jurists (AJS) has trained over 1,000 “parajuristes”, or legal lay people, to help improve the handling of abortion-related cases currently being prosecuted. In addition to improving access to justice for women, parajuristes also serve a crucial role by locating young, pregnant girls who may need legal help.⁶⁵⁴

ii. Legislation & Lobbying Efforts

Activists in Senegal have challenged the country’s restrictive abortion laws multiple times. One such challenge was in 2005, when the AJS proposed a bill which would, in part, amend the

⁶⁵⁰ *Id.*

⁶⁵¹ See Interview with Karim Nammour, Attorney, the Legal Agenda (Mar. 24, 2022) (Walter Leitner Int’l Human Rights Clinic) (notes on file with author).

⁶⁵² Fathallah, *Moral Work and the Construction of Abortion Networks*.

⁶⁵³ *Social Media Campaign in DRC Reaches Youth with Abortion Information*, IPAS (2020), <https://www.ipas.org/news/social-media-campaign-in-drc-reaches-youth-with-abortion-information/>.

⁶⁵⁴ Nandini Archer et al., *Campaign Report: The Law, Trials, and Imprisonment for Abortion in Senegal*, INT’L CAMPAIGN FOR WOMEN’S RIGHT TO SAFE ABORTION (April 2018), <https://www.safeabortionwomensright.org/wp-content/uploads/2020/09/The-law-trials-and-imprisonment-for-abortion-in-Senegal-April-2018.pdf>.

Reproductive Health Law to permit abortion in cases of rape and incest.⁶⁵⁵ Members of the National Assembly threatened to reject the bill in its entirety if abortion was on the ticket.⁶⁵⁶

In 2013, a taskforce created by the Ministry of Health, called the Advocacy Committee for Access to Safe Abortion in Senegal, and the AJS drafted another bill on safe abortion.⁶⁵⁷ Although the work of the taskforce expanded the conversation about abortion to the public sphere, it has largely been unsuccessful.⁶⁵⁸ The Senegal penal code still prohibits abortion.⁶⁵⁹

b. Application to Lebanon

Senegal and Lebanon are both former French colonies that inherited their abortion laws directly from the French penal code.⁶⁶⁰ During the colonial era, the French operated under a system of direct rule, dictating laws and governance in their colonies.⁶⁶¹ Restrictive, colonial-era laws remain in effect in both countries.⁶⁶² It may be beneficial for advocates to emphasize that abortion criminalization is not native to either country or its laws, but is a remnant of the oppressive colonization by France.

XII. Sierra Leone

Abortion is criminalized in Sierra Leone under the Person Act and the Pharmacy & Drugs Act.⁶⁶³ Efforts towards decriminalization through the legislature have not been successful.

a. Legal Advocacy Experiences

Human Rights Watch, Amnesty International, and local organizations lobbied for a bill that would legalize abortion for women who were less than 12 weeks pregnant. The bill also sought to legalize abortion for women who were up to 24 weeks pregnant in cases of rape, incest, or fetal impairment.⁶⁶⁴ The bill was passed by parliament. However, in 2016, after consulting with various religious stakeholders, President Bai Koroma refused to sign the legislation.

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ *Abortion in Senegal: The Dilemma of Single Women*, FREIDRICH NAUMANN FOUNDATION (Nov. 19, 2020), <https://www.freiheit.org/sub-saharan-africa/abortion-senegal-dilemma-single-women>.

⁶⁶⁰ *Id.*

⁶⁶¹ Meghan Gallagher et al., *Restrictive Abortion Laws in Sub-Saharan Africa: A Legacy of Colonization*, BLOOMBERG SCHOOL OF PUBLIC HEALTH (2015).

⁶⁶² *Id.*

⁶⁶³ Foday Moriba Conteh, *Commemorating Safe Abortion Day. PARHA Calls for Immediate Action to End Abortion*, CALABASH (Sept. 29, 2021), <https://thecalabashnewspaper.com/commemorating-safe-abortion-day-parha-calls-for-immediate-action-to-decriminalize-abortion/>.

⁶⁶⁴ *Sierra Leone Abortion Bill Blocked by President Bai Koroma Again*, BBC (Mar. 12, 2016), <https://www.bbc.com/news/world-africa-35793186>.

b. Social Advocacy to Support Legal Reforms

After the President of Sierra Leone refused to sign the original Bill on Safe Abortion, advocates used the media to significantly increase awareness about unsafe abortion and its toll on women.⁶⁶⁵ One woman's public story triggered this increase in media attention, after she reported being raped as a teenager by her religious leader and getting a safe abortion which saved her life and gave her a future.⁶⁶⁶ These efforts were temporarily successful in changing the public narrative surrounding abortion. However, success was short-lived once powerful religious leaders began sharing their opposition to abortion.⁶⁶⁷

c. Application to Lebanon

Religion played a substantial role in criminalizing abortion in Sierra Leone. Since Lebanon also has strong Christian and Muslim influences, it may be helpful to understand why reform efforts were unsuccessful. Although advocates in Sierra Leone thought engaging the Inter-Religious council would have helped the Reproductive Health Bill, the council expressed it could not support the legalization of abortion because of the moral and Biblical consequences. In a religious society such as Lebanon, it may be useful to engage potentially sympathetic religious leaders and find arguments in favor of abortion rights that are supported by religion. Karim noted that abortion is viewed as less controversial in Islam as compared to Christianity, so engaging Muslim leaders could be a good starting point for this.

EUROPE

XIII. Poland

Poland once enjoyed a relatively liberal abortion regime.⁶⁶⁸ In 1932, the criminal code allowed abortion when the pregnancy resulted from a crime or when it put the woman's health in jeopardy.⁶⁶⁹ However, in 1956, the government liberalized its abortion law in response to the high number of maternal deaths that were resulting from illegal abortions.⁶⁷⁰ The 1956 law required the approval of two doctors for a woman to obtain an abortion, but a Ministry of Health regulation in 1959 effectively reduced this barrier and created a system of elective abortion.⁶⁷¹ This legal scheme lasted in Poland for over thirty years.⁶⁷²

Polish women saw their reproductive freedoms slashed in 1993, when a conservative law limited legal abortion to three instances.⁶⁷³ In 2020, a Constitutional Court decision further limited

⁶⁶⁵ *Expanding Political Support for Abortion Access and Rights*, IPAS (2021).

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ Julia Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights: Abortion Restriction in Poland, the European Consensus, and the State's Margin of Appreciation*, 23 HEALTH & HUM. RTS. J. 213, 214 (2021).

⁶⁶⁹ Wanda Nowicka, *The Struggle for Abortion Rights in Poland*, SEXPOLITICS: REPORTS FROM THE FRONTLINES, at 169, https://www.sxpolitics.org/frontlines/book/pdf/capitulo5_poland.pdf.

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² *Id.*

⁶⁷³ Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 214.

abortion access, outlawing the exception under which the majority of abortions were performed.⁶⁷⁴ The trajectory of Poland's reckoning with its abortion laws serves as an example of a conservative and religiously charged viewpoint, held by an influential minority, infiltrating the pillars of power to cast the liberal majority viewpoint under a shadow of reproductive tyranny.⁶⁷⁵ Legal and social advocacy groups have waged a resistance effort in the wake of these laws and court decisions, but those efforts have succeeded in only slowing down the recriminalization of abortion.

a. Recriminalization of Abortion

Poland legalized abortion in 1956. This regime remained largely unchallenged throughout the 70s and 80s.⁶⁷⁶ In the early 1990s, however, Poland's conservative political movement gained traction.⁶⁷⁷ The legislature severely limited abortion with the passage of the Family Planning Act of 1993, which limited abortion to three narrow instances: 1) when the pregnancy threatened the life or health of the woman, 2) when the fetus was nonviable, and 3) when the pregnancy was the result of a crime.⁶⁷⁸

While the 1993 Act was a huge setback for Polish reproductive rights, it was viewed among the heavily Catholic populace as an adequate "compromise" between women's and fetal rights.⁶⁷⁹ The fallacy of "Abortion Compromise" persisted for decades and infiltrated the Polish understanding of reproductive freedom.⁶⁸⁰ In the 2010s, conservative lawmakers began to further chip away at Poland's already-limited set of reproductive freedoms.⁶⁸¹ In 2015, the Constitutional Court ruled that "a medical practitioner invoking conscientious objection to refuse to perform abortion should not be under a duty to refer the woman to another doctor or health care institution."⁶⁸² In 2016, the Law and Justice Party (PiS)—Poland's conservative political party—tried twice to pass limiting legislation.⁶⁸³ First, PiS introduced legislation to abolish abortion in all instances except when the pregnancy threatens the woman's life.⁶⁸⁴ Later that year, they introduced legislation to abolish abortion except in instances of fetal abnormalities. Widespread protests, led by the activist group Women's Strike, revolted against the PiS efforts and stopped the legislation. These protests against both the conservative party and the Catholic church's influence in politics,

⁶⁷⁴ *Id.* at 215.

⁶⁷⁵ Łukasz Rogojsz, *Poles Support the "Abortion Compromise" and Anti-government Protests, They Criticize the Verdict of the Constitutional Tribunal. PiS Assessed the Situation Badly*, GAZETA.PL (May 11, 2020), <https://wiadomosci.gazeta.pl/wiadomosci/7,114884,26483162,polacy-popieraja-kompromis-aborcyny-i-antyrzadowe-protesty.html>.

⁶⁷⁶ Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 214.

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.*

⁶⁷⁹ Justyna Zajac, *Successes and Challenges in Poland: The Women's Mass Protest, 2016-21*, AGAINST THE CURRENT (2022) ("The legitimacy of the 'abortion compromise' was challenged, often described as nothing more than a 'myth.' Demands for reproductive rights and changes of the existing abortion law grew louder and wider.").

⁶⁸⁰ *Id.*

⁶⁸¹ *Id.*

⁶⁸² Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 215.

⁶⁸³ Masha Gessen, *The Abortion Protests in Poland Are Starting to Feel Like a Revolution*, NEW YORKER (Nov. 17, 2020).

⁶⁸⁴ *Id.*

came to be known as “Black Monday.”⁶⁸⁵ Many took place within Churches during mass times, an unsettling image to many and an ultimately effective tactic.

Finding little political success in the legislature, PiS shifted its anti-abortion agenda to the courts. The Constitutional Tribunal served as an attractive alternative venue for PiS’s anti-choice agenda, with fourteen of its fifteen members appointed by the conservative party.⁶⁸⁶ PiS started stacking the court with ideologically compliant members since 2015, and has since used it “to change legislation in controversial matters where attempts in parliament to revise legislation or the Constitution had been unsuccessful.”⁶⁸⁷ This political court-packing, combined with the long-term personal friendship between the Tribunal president Julia Przyłębska and PiS chairman Jarosław Kaczyński,⁶⁸⁸ has caused international bodies to question the Tribunal’s legitimacy.⁶⁸⁹ In the last seven years, both the Council of Europe’s legal advisory body and the European Commission have condemned the Polish parliament’s political influence on the judicial system.⁶⁹⁰

In December 2019, 119 members of parliament submitted a formal request to the Tribunal to consider the constitutionality of the fetal abnormality exception to the Family Planning Act of 1993.⁶⁹¹ The petitioners labeled abortions conducted under this exception as “eugenic,” and claimed that the exception betrayed the constitutional principles of human dignity, right to life, prohibition of discrimination, and democratic rule of law.⁶⁹² In October of 2020, the Tribunal agreed with the PiS parliament, declaring the fetal abnormalities abortion exception unconstitutional. Over ninety percent of abortions in Poland were carried out under that exception—1,074 of 1,100 in 2019.⁶⁹³

Constitutional Tribunal decisions cannot be appealed.⁶⁹⁴ Activists, therefore, are focusing their efforts on demanding that domestic policymakers change Poland’s abortion regime. Advocates are also demanding that international bodies, such as the European Commission and the European Court of Human Rights, condemn and penalize Poland for its abortion policy’s human rights abuses.⁶⁹⁵

⁶⁸⁵ *Id.*

⁶⁸⁶ Monika Pronczuk, *Poland Court Ruling Effectively Bans Legal Abortions*, N.Y. TIMES (Oct. 22, 2020), <https://www.nytimes.com/2020/10/22/world/europe/poland-tribunal-abortion.html>.

⁶⁸⁷ Anna Meehlinska, *Polish Constitutional Tribunal Abortion Judgement*, HUM. RTS. PULSE (Dec. 14, 2020), <https://www.humanrightspulse.com/mastercontentblog/polish-constitutional-tribunal-abortion-judgment>.

⁶⁸⁸ Maria Wilczek, *Constitutional Court Ends Almost All Legal Abortion in Poland*, NOTES FROM POLAND (Oct. 22, 2020), <https://notesfrompoland.com/2020/10/22/constitutional-court-ruling-ends-almost-all-legal-abortion-in-poland/>.

⁶⁸⁹ Ewa Łętowska, *A Tragic Constitutional Court Judgement on Abortion*, VERFASSUNGSBLOG (Nov. 12, 2020), <https://verfassungsblog.de/a-tragic-constitutional-court-judgment-on-abortion/>.

⁶⁹⁰ *Poland’s Constitutional Tribunal Rolls Back Reproductive Rights*, AMNESTY INT’L (Oct. 22, 2020), <https://www.amnesty.org/en/latest/news/2020/10/polands-constitutional-tribunal-rolls-back-reproductive-rights/>.

⁶⁹¹ Monika Prończuk, *MPs Call on Constitutional Tribunal to Restrict Abortion in Poland*, NOTES FROM POLAND (Dec. 24, 2019), <https://notesfrompoland.com/2019/12/24/polish-mps-submit-request-for-constitutional-tribunal-to-restrict-abortion/>.

⁶⁹² *Id.*

⁶⁹³ *Id.*

⁶⁹⁴ *Id.*

⁶⁹⁵ *Poland: A Year On, Abortion Ruling Harms Women*, HUM. RTS. WATCH (Oct. 19, 2021), <https://www.hrw.org/news/2021/10/19/poland-year-abortion-ruling-harms-women>.

A wave of protests, similar to the 2016 protests, swept across Poland in 2020 and 2021 in response to the Tribunal's decision. In 2021, after the death of a young woman whose doctors refused to terminate her pregnancy to save her own life, an outcry of "Not One More!" spread across the country. This resulted in a Catholic fundamentalist backlash.⁶⁹⁶ The conservative hold on Poland's political institutions indicates little hope for an immediate change from within the legislature or the courts.

b. Legal Advocacy for Decriminalization

i. Political Advocacy

Organizations in Poland that conduct legal interventions include the Federation for Women and Family Planning ("Federa"), which offers legal counseling to women who have been victimized by restrictive abortion laws.⁶⁹⁷ Federa engages in both international and domestic work, by providing legal consultations to Polish women directly. In the year following the Tribunal's ruling, Federa provided over eight thousand consultations, including inquiries from their hotline and online platforms.⁶⁹⁸ Federa and other human rights organizations are working with the Lewica party in parliament to collect signatures on a civic initiative bill which would legalize elective abortions up to twelve gestational weeks, and permit them thereafter under certain circumstances, such as fetal nonviability, maternal health, rape, or incest.⁶⁹⁹ Civic initiative bills require 100,000 signatures, after which parliament must debate the bill. In tandem, the liberal party in parliament introduced the "Rescue Act" to similarly decriminalize abortion.

ii. Petitioning the European Court of Human Rights

In addition to the abovementioned domestic efforts, advocates also engaged with international institutions to challenge Poland's abortion ban by arguing that the Constitutional Court decision squarely violates the right to privacy, the right to life, the right to be free from torture, and the right to be free from discrimination.⁷⁰⁰ International NGOs, like the Center for Reproductive Rights, have intervened in cases to the Court. These cases include *K.B. v. Poland and 3 other applications*; *K.C. v. Poland and 3 other applications*; and *A.L.- B. v. Poland and 3 other applications*.⁷⁰¹

c. Application in Reality

While commentators believe that the pro-choice backlash to the Constitutional Court's decision has permanently altered public perception of the Catholic Church and its influence on Polish politics, the Rescue Act will still most likely not pass. Scholars also predict that while a

⁶⁹⁶ "Not One More!" – Mass Protests in Poland, INT'L VIEWPOINT MAG. (Nov. 11, 2021).

⁶⁹⁷ Monitoring & Advocacy, FED'N FOR WOMEN & FAM. PLANNING, <https://en.federa.org.pl/activities/monitoring/>

⁶⁹⁸ Poland: A Year On, Abortion Ruling Harms Women, AMNESTY INT'L (Oct. 19, 2021)

<https://www.amnesty.org/en/latest/news/2021/10/poland-a-year-on-abortion-ruling-harms-women/>

⁶⁹⁹ *Id.*

⁷⁰⁰ Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 216.

⁷⁰¹ Center and Partners File Third-Party Submissions to European Court of Human Rights in Cases Challenging Poland's Abortion Restrictions, CTR. FOR REPROD. RTS. (Jan. 31, 2022), <https://reproductiverights.org/submissions-poland-abortion-european-court-human-rights/>.

case brought before the European Court of Human Rights would result in a favorable outcome for human rights and reproductive rights advocates, it will have little impact on public policy in Poland.⁷⁰²

d. Social Advocacy to Support Legal Reforms

The Women's Strike movement—which led a successful campaign against anti-abortion legislation in 2016—works at the grassroots level. While the 2016 protests did not permanently keep anti-abortion forces at bay, they did alter the public opinion about the so-called “abortion compromise,” which had been largely unchallenged in Polish political culture up until that point.⁷⁰³ Marta Lempart, one of the campaign's leaders who now faces criminal charges for her advocacy efforts, utilized social networking sites to coordinate simultaneous protests in cities all over Poland.⁷⁰⁴ Lempart stated that the widespread participation in smaller cities is what convinced the legislature to temporarily back down in 2016.⁷⁰⁵ The outward hostility, particularly among young people, toward the Catholic Church and its influence on politics challenged social norms. Additionally, the mass protests in 2021 directly impacted the public opinion of the PiS, which fell by about ten percentage points (while support for the Women's Strike movement rose about fifteen percent).⁷⁰⁶

e. Application to Lebanon

Like Poland, Lebanon faces strong religious influences in its governing institutions⁷⁰⁷ and has a history of colonial occupation.⁷⁰⁸ The social advocacy techniques in Poland could inform advocates' work in Lebanon.

XIV. Ireland

In 2018, Irish voters legalized abortion by referendum. This represented a culmination of decades of work on the part of legal advocates and local activists. Like Poland, Ireland's culture and politics are heavily influenced by the Catholic church, which creates significant pushback for advocates to navigate as they strive for progress. Ireland's abortion referendum came on the heels of two highly publicized European Court of Human Rights cases, which positively influenced the abortion debate and educated many about the plight of women seeking reproductive healthcare.

⁷⁰² See Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 216-17.

⁷⁰³ Zajac, *Successes and Challenges in Poland*.

⁷⁰⁴ Kacper Sulowski, *Law and Justice Takes Revenge for Polish Women's Strike*, BALKAN INSIGHT (Oct. 22, 2021), <https://balkaninsight.com/2021/10/22/law-and-justice-takes-revenge-for-polish-womens-strike/>.

⁷⁰⁵ Mira Ptacin, *After Poland Issued a Near-Total Ban on Abortions, Marta Lempart Has Been on the Front Line of the Protests*, VOGUE (Feb. 11, 2021), <https://www.vogue.com/article/poland-abortion-marta-lempart>

⁷⁰⁶ Joy Neumeyer, *Poland's Abortion Ban Protests Changed the Country Forever*, FOREIGN POL'Y (Nov. 8, 2021).

⁷⁰⁷ HUM. RTS. WATCH, *Lebanon: Laws Discriminate Against Women*.

⁷⁰⁸ Irene Maffi & Liv Tønnessen, *The Limits of the Law*, 21 HEALTH HUM. RTS. 1 (2019).

a. Legal Advocacy Experiences

i. Pre-2016 Abortion Law in Ireland

In Ireland, a 1983 referendum equated an unborn person's life with the life of the person carrying it. This was known as the Eighth Amendment.⁷⁰⁹ Irish law had prohibited abortion since 1861 with the Offense Against the Person Act.⁷¹⁰ The Eighth Amendment, however, indoctrinated anti-abortion principles into the Constitution, making reform efforts more difficult by requiring another referendum to reverse it. Nevertheless, advocates continued to chip away at abortion restrictions. In 1992, Ireland passed two reforms that allowed women to travel out of the country to obtain abortions and established the right to learn about abortion services outside of the country. In 2010, The European Court of Human Rights its first abortion-related case in the country, *A, B & C v Ireland*. In that case, the court found that Ireland had violated the population's "consensus regarding access to abortion."⁷¹¹ This decision, however, did not have an immediate impact on Irish politics.

However, in 2012, mass public outrage pursuant to the death of Savita Halappanavar, started to move the needle. Halappanavar was a 31-year-old woman who died of sepsis, after doctors refused to terminate her incomplete miscarriage because a fetal heartbeat was still detectable. On November 12th, 2012, in response to Halappanavar's death, fifteen thousand people marched in Dublin in what is now known as the "Never Again" protest.⁷¹² The protests, vigils, and postings that followed her death gave the abortion movement momentum to act on the changing public opinion that had been dormant for years.⁷¹³

ii. Mellet and Whelan Cases

In 2016 and 2017, Amanda Mellet and Siobhán Whelan filed cases with the United Nations Human Rights Committee for the hardships that they endured living under Ireland's restrictive abortion regime. The Center for Reproductive Rights and international NGOs brought cases on their behalf.

In 2010, when Ireland resident Siobhán Whelan, who was twenty weeks into her pregnancy, learned that her baby would likely die *in utero* or immediately after birth, no medical professional advised her of her termination options.⁷¹⁴ Rather than endure the mental and physical suffering, or have her baby endure the physical suffering of childbirth, Whelan decided to end the pregnancy.⁷¹⁵ Due to Ireland's restrictive abortion laws which made receiving or providing

⁷⁰⁹ *Timeline: The History of Abortion in Ireland*, THEJOURNAL.IE (Dec. 30, 2018), <https://www.thejournal.ie/abortion-in-ireland-4382738-Dec2018/>

⁷¹⁰ Pauline Cullen & Elżbieta Korolczuk, *Challenging Abortion Stigma*, 27 SEXUAL & REPROD. HEALTH MATTERS 6, 10 (2019).

⁷¹¹ Kapelańska-Pręgowska, *The Scale of the European Court of Human Rights* 213, 219.

⁷¹² Cullen et al., *Challenging Abortion Stigma* 6, 11.

⁷¹³ Megan Specia, *How Savita Halappanavar's Death Spurred Ireland's Abortion Rights Campaign*, N.Y. TIMES (May 27, 2018), <https://www.nytimes.com/2018/05/27/world/europe/savita-halappanavar-ireland-abortion.html>

⁷¹⁴ Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2425/2014, CCPR/C/119/D/2425/2014 (June 2017), paras. 2.1-2.3.

⁷¹⁵ *Id.*

abortion in most cases punishable by life imprisonment, Whelan travelled outside the country to receive the medical care she needed.⁷¹⁶

In 2011, Amanda Mellet’s doctor informed her that her fetus was not viable. the doctor also told her that termination was not permitted in Ireland and refused to give her any information on termination options in the UK or any other surrounding jurisdiction.⁷¹⁷ She travelled to the UK to get costly abortion care, which was not covered by state health insurance.⁷¹⁸ She was also then denied state-sponsored bereavement therapy, which she said she badly needed.⁷¹⁹

The decisions, which denounced Ireland’s restrictive abortion regime, were handed down in 2016 and 2017, directly contributed to the parliamentary reexamination of abortion reforms.⁷²⁰ In 2018, the reexamination of those reforms led to the landmark referendum (discussed more below in Section B). While the U.N. cases did call on Irish lawmakers to rectify the law, the cases themselves most likely contributed to the movement more so for the stories they told than the legal ramifications they had. Experts credit the cases—Mellet’s in particular—with swaying both public and parliamentary opinion on how the law treats women in need of reproductive healthcare by attaching human stories to the policy debate.⁷²¹

iii. Referendum on Eighth Amendment

In response to the Human Rights Committee’s findings in 2016, the Irish parliament created a Citizen’s Assembly comprising 99 randomly selected persons to discuss and debate the Eighth Amendment.⁷²² The Citizen’s Assembly surprised lawmakers and the public by recommending far more liberal reforms to abortion law than anyone expected from a group sampled from a mostly Catholic, conservative country.⁷²³ One of the recommendations was a referendum on the removal of the Eighth Amendment, which parliament embraced in January 2018.⁷²⁴

Three existing abortion rights groups—the National Women’s Council of Ireland, the Abortion Rights Campaign, and the Coalition to Repeal the 8th Amendment—joined forces to

⁷¹⁶ *Id.*

⁷¹⁷ *Id.*

⁷¹⁸ *Id.*

⁷¹⁹ *Id.*

⁷²⁰ In *Whelan*, the Committee determined that Ireland’s abortion laws violated Whelan’s right to privacy, as they “compromised her reproductive autonomy and her right to integrity and mental well-being by denying her the support of her family during a moment of trauma and crisis.” Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2425/2014, CCPR/C/119/D/2425/2014 (June 2017), paras. 2.1-2.3; see also *Mellet v. Ireland*, 2016; *Whelan v. Ireland*, 2017 (*United Nation Human Rights Committee*), CTR. FOR REPROD. RTS. (2013), <https://reproductiverights.org/case/mellet-v-ireland-2016-whelan-v-ireland-2017-united-nations-human-rights-committee/>.

⁷²¹ Isaac Stanley-Becker, *How an Irish-American Woman’s Legal Case Helped Spur Ireland’s Abortion Referendum*, WASH. POST (May 17, 2018), https://www.washingtonpost.com/world/europe/how-an-irish-american-womans-legal-case-helped-spur-irelands-abortion-referendum/2018/05/16/c84e506e-4d7a-11e8-85c1-9326c4511033_story.html

⁷²² Anna Carnegie & Rachel Roth, *From the Grassroots to the Oireachtas: Abortion Law Reform in the Republic of Ireland*, 21 HEALTH & HUM. RTS. J. 109, 113 (2019).

⁷²³ *Id.* at 114.

⁷²⁴ *Id.* at 113.

formally lead the referendum effort.⁷²⁵ These organizations together formed Together for Yes—the official civil society campaign for abortion rights in the lead up to the referendum vote. The referendum campaign started on March 22 and concluded in victory on May 25, 2018 with 66.4 percent of the voters favoring decriminalization.⁷²⁶

b. Existing Legal Restrictions

After the referendum, parliament passed the Health (Regulation of Termination of Pregnancy) Act of 2018, which allows for elective abortion for up to twelve gestational weeks and permits abortions after twelve weeks if the mother’s health is in danger or if there are signs of fetal nonviability. The statute also mandates a review of its impact and potential need for reform or amendment every three years.⁷²⁷ The Health Act, while a welcomed improvement to Irish law, is not perfect. Its limitations are outlined below in Section C. Activists are still deploying advocacy strategies from the 2018 referendum to address these limitations, such lobbying legislatures and promoting public awareness of the harms of restrictive abortion access.⁷²⁸

c. Application in Reality

To achieve a victory in 2018, authors of the Eighth Amendment reform had to make several compromises draft bill language. This included permitting a “three-day waiting period after requesting an abortion and having the gestational age of the pregnancy certified by a doctor.”⁷²⁹ Additionally, doctors still operate under criminal liability if they act outside of the law, creating a chilling effect with results in misinformation and delays.⁷³⁰ For this reason, doctors often interpret the law narrowly.⁷³¹ For example, they can interpret the three-day waiting period and doctor consultation as both needing to be completed before twelve-week gestational limit, creating confusion during this crucial time period.⁷³²

Only ten percent of general practitioners and only half of maternity clinics in Ireland offer abortion services,⁷³³ which creates widespread geographic inequity to abortion access.⁷³⁴ Also attributable to the lack of access are the statute’s broad conscientious objection qualifications.⁷³⁵

⁷²⁵ Máiréad Enright et al., *Abortion Activism, Legal Change, and Taking Feminist Law Work Seriously*, 71 NORTHERN IRELAND L. Q. 359, 362 (2020).

⁷²⁶ Sasha Ingber, *Ireland Resoundingly Votes to Legalize Abortion*, NPR (May 26, 2018), <https://www.npr.org/sections/thetwo-way/2018/05/26/614655703/ireland-votes-to-lift-its-abortion-ban-exit-polls-show>

⁷²⁷ Sydney Calkin & Ella Berny, *Legal and Non-Legal Barrier to Abortion in Ireland and the United Kingdom*, MEDICINE ACCESS 3 (2021).

⁷²⁸ Killy Holland, *Delays in Accessing Abortions in Ireland Are Violating Women’s Rights, Says Expert*, IRISH TIMES (Sept. 23, 2021), <https://www.irishtimes.com/news/social-affairs/delays-in-accessing-abortions-in-ireland-are-violating-women-s-rights-says-expert-1.4681214>

⁷²⁹ Sydney Calkin, *One Year On, It’s Clear that the New Irish Abortion Services Have Serious Limitations*, CONVERSATION (Jan. 15, 2020).

⁷³⁰ *Id.*

⁷³¹ Calkin et al., *Legal and Non-Legal Barrier to Abortion in Ireland and the United Kingdom*.

⁷³² *Id.*

⁷³³ #AbortionAccess, NAT. WOMEN’S COUNCIL, <https://www.nwci.ie/abortionaccess> (last visited Apr. 3, 2022).

⁷³⁴ Calkin et al., *Legal and Non-Legal Barrier to Abortion in Ireland and the United Kingdom*.

⁷³⁵ *Id.* at 4.

In 2020, despite COVID-19 travel restrictions, 194 women traveled to the UK for abortion services.⁷³⁶

d. Social Advocacy to Support Legal Reforms

A grassroots group—Together for Yes—led the referendum campaign for abortion rights.⁷³⁷ Together for Yes utilized grassroots organizing efforts, digital campaigning, and massive fundraising efforts to gain the support it needed from an already liberalizing country that still lives with Catholicism etched into its identity.⁷³⁸ Much of this advocacy work was not necessarily legal in nature—at times it was merely law-adjacent. One advocate characterized pro-choice groups’ social advocacy as “tickling law,” that is, deploying agentic resources to go beyond a docile and disciplinary relation to law in order to engage in play and provocation around law and its limits.”⁷³⁹

e. Application to Lebanon

The two aspects of Ireland’s national identity that have influenced its tumultuous relationship with abortion rights are its religious identity and its history of occupation by the United Kingdom.⁷⁴⁰ Lebanon also faces strong religious influences in its governing institutions⁷⁴¹ and has a history of colonial occupation.⁷⁴² Thus, the legal reform achieved in Ireland could inform advocates’ work in Lebanon.

ASIA

East Asia

XV. South Korea

The case of South Korea illustrates effective intersectional coalition building and framework strategies. This section will outline the path to a landmark 2019 decision that fully decriminalized abortion across the country.

⁷³⁶ Kitty Holland, *Working Group Pushes for Changes to Abortion Legislation*, IRISH TIMES (Mar. 15, 2022), <https://www.irishtimes.com/news/social-affairs/working-group-pushes-for-changes-to-abortion-legislation-1.4827817>

⁷³⁷ Anna Carnegie & Rachel Broth, *From the Grassroots to the Oireachtas: Abortion Law Reform in the Republic of Ireland*, HEALTH & HUM. RTS. J. (Dec. 9, 2019) <https://www.hhrjournal.org/2019/12/from-the-grassroots-to-the-oireachtas-abortion-law-reform-in-the-republic-of-ireland/>

⁷³⁸ TOGETHER FOR YES, <https://www.togetherforyes.ie/>, (last visited Mar. 27, 2022).

⁷³⁹ Máiréad Enright et al., *Abortion Activism, Legal Change, and Taking Feminist Law Work Seriously*, 71 NORTHERN IRELAND L. Q. 359, 370 (2020).

⁷⁴⁰ Cullen et al., *Challenging Abortion Stigma* 6 (2019) (“Both [Poland and Ireland] share turbulent histories of centuries-long struggles for independence from imperial powers, which feed nationalistic discourses on family and reproduction, and both are Catholic nations, where the Church has been an important religious and political institution. The regulation and control of sexual behaviour were deployed in specific ways in both contexts to consolidate the power of church, state and societal elites articulated through nationalist projects in line with their respective post-colonial and post-communist legacies.”).

⁷⁴¹ HUM. RTS. WATCH, *Lebanon: Laws Discriminate Against Women*.

⁷⁴² Maffi et al., *The Limits of the Law* 1.

a. Legal Advocacy Experiences

i. Abortion in South Korea until the mid-2000

Population control, including the anti-natalist policies of the 1960s and 1980s and pronatalist policies of the 2000s, has always been a big part of the South Korean political landscape.⁷⁴³ Articles 269 and 270 of the South Korean Criminal Act criminalized abortion in all circumstances from 1953 until January 1, 2021, when they were decriminalized.

During its occupation of Korea, the Japanese government prohibited abortion in order to promote population growth. Japan framed individual reproductive decisions as national policy issues, which significantly affected the South Korean attitude toward abortion.⁷⁴⁴ In 1947, the now-independent South Korea was divided between those who supported criminalization as a measure to recover its population size after war, and those who opposed the criminal code, arguing that they needed to prepare for the rapid growth of population in the near future.⁷⁴⁵ Eventually, the 1953 Criminal Act fully criminalized abortion.

However, government officials rarely enforced the 1953 law between 1960 and the mid-2000s.⁷⁴⁶ For the latter half of the twentieth century, mainstream feminist movements did not consider abortion rights as an urgent matter. During the mid-2000s, however, the government started to enforce the abortion ban.

ii. Abortion as an urgent matter (2009-2012)

In 2005, “Framework Act on Low Birth Rate in an Aging Society” which revived the criminal provisions on abortion was approved, and “The master plan for the prevention of illegal abortion” was established. Additionally, the Pro-Life Doctor’s Association was formed in 2009.⁷⁴⁷ This resurgence of anti-abortion activity immediately impacted women’s lives in South Korea, as those who had unwanted pregnancies during this period of time couldn’t access the services and some women with resources had to travel abroad.

In 2010, feminist and social justice groups, workers’ unions, and others formed the Network for Women’s Right to Decide Pregnancy and Delivery, a coalition that aimed to challenge

⁷⁴³ Sunhye Kim, *Reproductive technologies as population control: how pronatalist policies harm reproductive health in South Korea*, 27 US NAT’L LIBR. OF MED. 6-12 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7888060/pdf/ZRHM_27_1610278.pdf

⁷⁴⁴ Young- Ah Lee, *A Study on the Discourse and Reality of Abortion in Korea: 1920s~1930s*, 22 US NAT’L LIBR. OF MED. 133-78 (2013), <https://pubmed.ncbi.nlm.nih.gov/23695751/>.

⁷⁴⁵ Kim Jinri (金律里), *Kankoku ni Okeru Sentakuteki Chūzetsu o Meguru Giron* (韓国における選択的中絶をめぐる議論), CTR. FOR DEALTH & LIFE STUD. AND PRACTICAL ETHICS AT GRADUATE SCH. OF HUMAN. AND SOCIO., THE UNIV. OF TOKYO, <https://ci.nii.ac.jp/naid/120005657960> (last updated Apr. 18, 2022).

⁷⁴⁶ Sunhye Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea’s Abortion Ban*, 21 HEALTH AND HUM. RTS. J. 97, 100 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6927381/> (“Under the strong anti-natalist policies implemented by the government from the 1960s to the 1980s, abortion, contraception, and sterilization were widely encouraged to reduce the nation’s total fertility rate and, in some cases, were even used coercively among certain populations, including women with disabilities.”).

⁷⁴⁷ Dr. Anna Choi, *Anti-Abortion Movement Led by Obstetrician/Gynecologists in South Korea*, 79 LINACRE Q 243-244 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6026971/>

the arising anti-abortion movements.⁷⁴⁸ This was the first collective action in South Korea that vocalized the harms of abortion bans. However, the network failed to recontextualize the abortion ban as government infringement on women's and human rights, as opposed to the traditional pro-life vs. pro-choice discourse. Maintaining this binary system of the pro-life and choice obscured the root causes of social inequality and the government's positive responsibility.

Moreover, the network struggled to project a unified position on which grounds for legal abortion should be added to Article 14 of the Mother and Child Health Act.⁷⁴⁹ While some argued that socioeconomic concerns should qualify as exceptions to illegal abortion, others believed that doing so without challenging the criminalization itself would further reinforce the prejudice that women with disabilities and those in poverty shouldn't have a child.⁷⁵⁰ Without a clear position on these fundamental issues, the network failed to meet its advocacy goals.

The first decision on the constitutionality of the Criminal Act was made in 2012 when a midwife who operated a maternity clinic was charged for performing an illegal abortion and on October 17, 2010, filed an appeal to the Constitutional Court. The complaint was made based on the ground that Article 270 Section 1 of the Criminal Act is unconstitutional.⁷⁵¹ The court's 4:4 decision ruled that the existing abortion bans were constitutional, noting that "the fetus's right to life is in the public interest" while "a woman's right to choose abortion is in an individual's interest," concluding that "women's rights cannot be more important than the fetus's rights."⁷⁵² They argued that the abortions will be "so openly performed that a trend to make light of human life will prevail throughout our society."⁷⁵³

iii. The movement to decriminalize abortion: Intersectional Coalition building (2015-2019)

After the 2012 ruling, the network gradually became inactive. However, Women with Disabilities Empathy (WDM), a group of activists, brought the issue of abortion rights back to the forefront of political debates in Korean society when they formed the Planning Group to Make a New Paradigm for Reproductive Rights for Women with Disabilities in 2015.⁷⁵⁴

WDM activists ushered in a transitional period of abortion advocacy in South Korea by embracing a reproductive justice framework and acknowledging the forced abortions and sterilizations that women, especially those with disabilities, have historically endured. Reproductive rights advocacy also realized that the court's rationale in recent rulings largely depended on the pro-life vs. pro-choice rhetoric, and therefore WDM aimed to reframe the abortion issue as a social justice matter.

⁷⁴⁸ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban*, 97-107.

⁷⁴⁹ *Id.*

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.*

⁷⁵² *Id.*

⁷⁵³ *Id.*

⁷⁵⁴ *Id.*; KIM E., *CURATIVE VIOLENCE: REHABILITATING DISABILITY, GENDER, AND SEXUALITY IN MODERN KOREA* (Duke University Press 2017).

In 2016, the Planning Group renamed itself the Sexual and Reproductive Rights Forum.⁷⁵⁵ The Forum played a crucial role in creating a new paradigm, highlighting the government's failure to protect women's reproductive rights.⁷⁵⁶ It was successful in building a diverse and inclusive coalition that enabled them to reframe the issue as government vs. women.⁷⁵⁷ Activists realized that they needed the public discourse to reflect this reproductive justice framework in order to overturn the 2012 ruling. Over the course of their activism, the Forum published newspaper articles and books discussing the abortion ban issue and organized several events to attract public attention.⁷⁵⁸ The Forum pointed out that government needed to take an immediate action to protect women instead of criminalizing their behavior.

In 2016, the Korean Ministry of Health and Welfare announced a new law, the Medical Service Act, which imposed tougher punishment on doctors who assisted in pregnancy termination. This action triggered public outrage and a mass protest in South Korea now known as the "Black Protest."⁷⁵⁹ Poland's successful 2016 protests in response to a proposed restrictive abortion law inspired the Black Protest in Korea. "If abortion is a crime, the criminal is the state" was the powerful statement made by the Forum during a press conference after the first rally on October 15, 2016. Again, all messaging consistently emphasized the government's responsibility to address reproductive injustices.⁷⁶⁰

Decriminalization of abortion became one of the most important agendas among Korean feminists. In response, the Forum organized the Joint Action for Reproductive Justice in 2017 on the Global Day of Action for Access to Safe and Legal Abortion, where more organizations mobilized than ever before.⁷⁶¹

⁷⁵⁵ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban*, 97, 100 (stating that the Forum was comprised of "WDM, Network for Global Activism, the Center for Health and Social Change, Korean Lawyers for Public Interest and Human Rights, and individual researchers."); *S. Korea's "black protest" movement gaining momentum for abortion rights*, HANKYOREH, http://english.hani.co.kr/arti/english_edition/e_national/766232.html (stating that Forum held a press conference to call for "the overturning of the government's legislative announcement and the decriminalization of abortion.").

⁷⁵⁶ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100.

⁷⁵⁷ See Sunhye Kim, "If Abortion Is a Crime, the State Is the Criminal": *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban*, OXFORD HUM. RTS. HUB (July 27, 2021), <https://ohrh.law.ox.ac.uk/if-abortion-is-a-crime-the-state-is-the-criminal-the-role-of-reproductive-justice-movements-in-challenging-south-koreas-abortion-ban/>; *Decriminalisation and Reimagining Legal Change in South Korea and Thailand*, INT'L NETWORK FOR THE REPROD. OF ABORTION DISCRIMINATION & STIGMA(INROADS), <https://www.makeinroads.org/making-inroads/2021/March/decriminalisation-and-reimagining-legal-change-in-south-korea-and-thailand>, https://www.youtube.com/watch?v=3L4isuUh3U&feature=emb_title

⁷⁵⁸ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100 (2019).

⁷⁵⁹ Sunhye Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban*, 21 HEALTH & HUM. RTS. J. 97, 100 (2019).

⁷⁶⁰ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100 (2019) (citing the government's obligation "to protect everyone's sexual and reproductive rights, including the right to terminate a pregnancy or to have a child regardless of marital status, sexual orientation, ability, and socioeconomic status.").

⁷⁶¹ *South Korea: Joint Action for Reproductive Justice formed & activities for 28 September*, INT'L CAMPAIGN FOR WOMEN'S RTS. TO SAFE ABORTION, <https://www.safeabortionwomensright.org/news/south-korea-joint-action-for-reproductive-justice-formed-activities-for-28-september/>; Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100 (Original participating organizations include "the Center for Health and Social Change, Femidangdang, Femimonsters, Flaming Feminist Action, Korea Sexual Violence Relief

iv. The Action's important role in decriminalization (2017-2019)

The Action's two major strategies were to 1) file an appeal to the Constitutional Court to decriminalize abortion, and 2) build a public consensus on this issue. The Action upheld the reproductive justice framework in their advocacy approach by working collectively with various actors such as other social justice organizations, marginalized communities, doctors, trade union, lawyers, and political parties. They extended membership to and include all communities previously excluded from past coalitions, such as queer and trans women, sex workers, and women with HIV/AIDS⁷⁶². By including various progressive social justice groups in the movement, they also aimed to frame access to abortion rights as a social justice issue.⁷⁶³

Lobbying was also a part of their movement. The Action targeted political parties and government ministries, persuading the Ministry of Gender Equality and Family, National Human Rights Commission of Korea, and Green Party Korea to submit briefs to the Constitutional Court in support of decriminalization.⁷⁶⁴

At the same time, the Action organized several mass protests in front of the court building and attended broadcast debates during the case to draw public attention. Their members also engaged in some international movement such as International Safe Abortion Day 2018. Furthermore, they held a press conference to support the campaign to legalize abortion in Argentina in 2018.⁷⁶⁵

A month before the ruling, the Action organized the largest protest in March 2019. Their final demands included that 1) the government “fully legalize abortion for the safe termination of pregnancy,” 2) “expand comprehensive sex education and access to contraceptives,” 3) completely revise the eugenic elements of the Mother and Child Health Act,” and 4) guarantee reproductive rights without stigma or discrimination.”⁷⁶⁶ As a result of tenacious advocacy, the landmark decision finally struck down Articles 269 and 270 of the Criminal Act. This 3:2 ruling urged the legislature to change the law by December 31, 2020, suggesting that abortion should not be restricted until fourteen weeks of pregnancy.⁷⁶⁷ These provisions were repealed because of the legislature's failure to finalize their proposal.⁷⁶⁸

Center, Korean Women's Association United, Korea Women's Hotline, Network for Global Activism, Sexual and Reproductive Rights Forum, Women with Disabilities Empathy, Womenlink.”).

⁷⁶² Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100 (“the Association of Korea Doctors for Health Rights, E-LOOM Action for Anti-Prostitution and Human Rights, Green Party Korea, Korean Confederation of Trade Unions, Korean Labor Party, Korean Women's Environmental Network, People's Solidarity for Social Progress, Sarangbang Group for Human Rights, Socialist Revolutionary Workers' Party, Student March, Tactennaeil (ECPAT Korea), and the Association of Physicians for Humanism.”).

⁷⁶³ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100.

⁷⁶⁴ *Id.*

⁷⁶⁵ *Id.*

⁷⁶⁶ *Id.*

⁷⁶⁷ *Law and Policy Guide: Criminality*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/worlds-abortion-laws/law-and-policy-guide-criminality/> (last visited June 23, 2022).

⁷⁶⁸ *South Korea: Abortion Decriminalized since January 1, 2021*, LIBR. OF CONG. (Mar. 18, 2021), <https://www.loc.gov/item/global-legal-monitor/2021-03-18/south-korea-abortion-decriminalized-since-january-1-2021/>

v. The 2019 landmark decision

The petitioner, an obstetrician-gynecologist who was prosecuted for performing 69 abortions from 2013 to 2015 with the consent of the patients, filed the complaint to the Constitutional Court on February 8, 2017. The petitioner claimed that Article 269 Section 1 and Article 270 Section 1 of the Criminal Act are unconstitutional as those provisions violate a woman's right to self-determination, a right to health, a right to protection of motherhood, a right to bodily integrity, and a right to equality.

Continuous efforts by advocates led to this victory. The advocacy framework influenced the court's decision and rationale. For instance, the Court recognized women's rights to decide whether to have a child or not as constitutional rights which include the right to make a decision on keeping a pregnancy.⁷⁶⁹ Additionally, the Court acknowledged that a woman's "choice" is directly connected to her social, economic, and cultural background. People in South Korea also witnessed a historical moment when the Court put an emphasis on the government's positive responsibility to protect reproductive rights. Some judges even made comments that the government should take measures to address and eliminate various social structural barriers.⁷⁷⁰

The biggest difference between the 2012 and 2019 rulings is that the judges in 2019 framed the abortion issue as one of government intrusion on women's individual rights, emphasizing governmental obligation to ensure women's reproductive rights.⁷⁷¹

b. Permanence or Repeals of Decriminalization Wins

Complete decriminalization was achieved on December 31, 2020, with the National Assembly's failure to legislate on abortion in compliance with the decision by that deadline. This means that the future government and National Assembly can bring back statutes criminalizing abortion if they are so inclined. Currently, there are six pending bills regarding illegal abortions, including a government bill.⁷⁷² Three of these bills call for the complete decriminalization of abortion. On the other hand, the government bill would only permit elective abortions up to

⁷⁶⁹ Constitutional Court of Korea, Apr. 11, 2019, 2017Hun-Ba127 (S. Kor.), http://search.ccourt.go.kr/xmlFile/0/010400/2019/pdf/e2017b127_2.pdf; *Case on the Crimes of Abortion*, CONST. CT. OF KOR. (Aug. 23, 2012),

http://search.ccourt.go.kr/ths/pr/eng_pr0101_E1.do?seq=1&cname=%EC%98%81%EB%AC%B8%ED%8C%90%EB%A1%80&eventNum=30803&eventNo=2010%ED%97%8C%EB%B0%94402&pubFlag=0&cId=010400.

⁷⁷⁰ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100; Constitutional Court of Korea, Apr. 11, 2019, 2017Hun-Ba127 (S. Kor.).

⁷⁷¹ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100.

⁷⁷² *Daechipbeop Eopsi Naktaejoe Hyoryeok Sangsil... Naktaesisul, Hae? Mareo? Gijuneun? (대체입법 없이 낙태죄 효력 상실... 낙태시술, 해? 팔어? 기준은?)*, DR. NEWS (Jan. 10, 2021), <https://www.doctorsnews.co.kr/news/articleView.html?idxno=137672>. Those bills were proposed by: Kwon In-suk, a representative of Education Committee of the Democratic Party of Korea; Eun-ju Lee, a member of Administrative Safety Committee of the Justice Party; Jo Hae-jin, a representative of Planning and Finance Committee of the People Power Party; Park Jumin, a representative of Law and Judiciary Committee of the Democratic Party of Korea; and Seo Jeong-suk, a representative of Health and Welfare Committee of the People Power Party. *Id.*

fourteen gestational weeks of pregnancy. The other two would allow abortion up to ten weeks.⁷⁷³ The fact that abortion rights are still on hold may contribute to repeals of decriminalization wins. Changing governments and the judiciary can accelerate these repeals.

c. Application in Reality

Although abortion in South Korea is entirely decriminalized, it does not mean all women have access to safe and affordable abortion services.⁷⁷⁴ In South Korea, abortion services are not considered part of essential health care even after decriminalization. A lack of legal recourse confuses women and doctors, oftentimes leading to the refusal by hospitals to offer abortion services. Stigma around abortion remains a serious issue in South Korea.⁷⁷⁵ Moreover, a medical team emphasized that they would have to kill the fetus when performing an abortion if abortion is allowed up to twenty-two weeks. In this regard, the Korean Society of Obstetrics and Gynecology and the Korean Association of Obstetricians and Gynecologists recently issued a joint statement that they will not perform abortions after twenty-two weeks. Furthermore, one of the most prevalent issues is a lack of trained medical practitioners. Since 1953, medical school curricula have gradually reduced the amount of education on abortion procedures.⁷⁷⁶

However, some efforts to comply with the new law have been made. Medical consultations on abortion have been included in the National Health Insurance Service in August 2021 following the landmark decision by the Constitutional Court in 2019.⁷⁷⁷ Pregnant women in South Korea are now able to have a one-on-one consultation with a physician for guidance on abortion procedures, operative instructions for pre- and post-procedures, and possible risks and complications related to abortion. The fee for this consultation is around US\$26 and the patient is expected to pay thirty to sixty percent of this cost, while the remaining amount is covered by insurance. Still, advocates further demand the inclusion of abortion procedures themselves in the insurance given that approximately eighty-two percent of women seeking abortion face financial barriers.⁷⁷⁸

⁷⁷³ *Kankoku Ichi Gatsu Tsuitachi Kara Dataizai ga Mukou ni Josei to Ishi Nomi Tsumi ni Towareru Shakai ha Kawaruka* (韓国1月1日から墮胎罪が無効に女性と医師のみ罪に問われる社会は変わるか), NEWSWEEK JAPAN (Jan. 2021), <https://www.newswweekjapan.jp/stories/world/2021/01/post-95367.php>.

⁷⁷⁴ Kim, "If Abortion Is a Crime, the State Is the Criminal."

⁷⁷⁵ *South Korea Decriminalises Abortion: A Historic Moment In Women's Rights*, HUM. RTS. PULSE, <https://www.humanrightspulse.com/mastercontentblog/south-korea-decriminalises-abortion-a-historic-moment-in-womens-rights>.

⁷⁷⁶ *Kankoku Ichi Gatsu Tsuitachi Kara Dataizai ga Mukou ni Josei to Ishi Nomi Tsumi ni Towareru Shakai ha Kawaruka* (韓国1月1日から墮胎罪が無効に女性と医師のみ罪に問われる社会は変わるか), NEWSWEEK JAPAN (Jan. 2021), <https://www.newswweekjapan.jp/stories/world/2021/01/post-95367.php>

⁷⁷⁷ *Ingongimsinjungjeol Geonbojeongnyong Tallyeok... Imsinjungjeol Gyoyuk-Sangdamnyo Sinseol* (인공임신중절 건보 적용 탄력... 임신중절 교육 · 상담료 신설), HEALTH CHOSUN NEWS (June 25, 2021), https://m.health.chosun.com/svc/news_view.html?contid=2021062501624.

⁷⁷⁸ Lee Hyo-Jin, 'Abortion Consultation' Included in Health Insurance, THE KOREA TIMES (Aug. 2021), https://www.koreatimes.co.kr/www/nation/2021/08/113_313299.html.

d. Social Advocacy to Support Legal Reforms

As mentioned earlier, a number of community awareness activities have been conducted by advocacy groups such as the Forum and the Action. These activities ultimately contributed to changing public opinion on abortion issues and include the broadcast debate and mass protests.⁷⁷⁹

e. Application to Lebanon

As mentioned by Karim, Lebanon has a colonial history which still influences its Criminal Code. Advocates can draw upon the experiences of South Korea where their abortion laws are influenced by colonialization. South Korean abortion bans originate from the Japanese Criminal Code during its occupation of Korea. Advocates such as the Action and SHARE have stressed that their abortion laws are influenced by the old Japanese Penal Code.⁷⁸⁰ We can assume that this emphasis was particularly impactful in nations that have experienced a continuous diplomatic conflict with the Japanese government. The South Korean case shows the importance of making these facts known to the public, since many people are unaware of the remaining impact of the colonial law on the existing abortion bans.

South-East Asia

XVI. Philippines

A case in the Philippines shows a challenging advocacy experience in the Catholic-majority country with a deep-rooted colonial history. On the other hand, it is also an example of a successful regional coalition building by working collectively with international organizations such as Center for Reproductive Rights.

a. Legal Advocacy Experiences

The Philippines have the most restrictive abortion laws in the world.⁷⁸¹ Abortion has been criminalized under the 1870 (under Spanish colonial rule) and 1930 Penal Code (under U.S. occupation) with no exceptions.⁷⁸² Although the Responsible Parenthood and Reproductive Health Act 2012 states that “the government shall ensure that all women needing care for post-abortion complications shall be treated and counseled in a humane, non-judgmental and compassionate manner,” it remains unclear when women can access legal abortion.⁷⁸³

⁷⁷⁹ Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100.

⁷⁸⁰ See Kim et al., *The Role of Reproductive Justice Movements in Challenging South Korea's Abortion Ban* 97, 100; *Decriminalisation and Reimagining Legal Change in South Korea and Thailand*, INT'L NETWORK FOR THE REPROD. OF ABORTION DISCRIMINATION & STIGMA(INROADS), <https://www.makeinroads.org/making-inroads/2021/March/decriminalisation-and-reimagining-legal-change-in-south-korea-and-thailand> .

⁷⁸¹ *Unintended Pregnancy and Unsafe Abortion in the Philippines*, GUTTMACHER INST. (July 2013), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-unsafe-abortion-philippines> ,

⁷⁸² CTR. FOR REPROD. RTS., *Facts on Abortion in the Philippines: Criminalization and a General Ban on Abortion*, CTR. FOR REPROD. RTS. (2010), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_philippines_1%2010.pdf.

⁷⁸³ *Philippines*, THE ASIAN-PACIFIC RES. & RSCH. CTR. FOR WOMEN (ARROW), https://arrow.org.my/our_region/philippines/ (last visited June 23, 2022).

In 2014, the Philippine Safe Abortion Advocacy Network (PINSAN), the first NGO network that openly campaigned for decriminalization, was co-founded by the Center for Reproductive Rights.⁷⁸⁴ PINSAN states that the decriminalization of abortion in the Philippines is one of their goals. In 2020, the Center for Reproductive Rights and PINSAN worked collaboratively to draft the first proposed bill to decriminalize abortion drafted by Filipino advocates.⁷⁸⁵ If the bill passes, the colonial penal abortion laws would be overturned, which would be a significant step toward facilitating access to safe and legal abortions.⁷⁸⁶

The bill urges that “the Philippines must decriminalize abortion now, otherwise, allowing outmoded colonial penal abortion laws in Philippine law makes us all complicit to the high number of women who die each day from unsafe abortion complications.” It also emphasizes that the existing abortion law, the 1930 Revised Penal Code abortion law, is an antiquated colonial law. It is substantially the same as the 1870 Old Spanish Penal Code and some provisions can be found in the 1822 Spanish Penal Code.

The bill also lays out various consequences of criminalization including complications, high maternal mortality and morbidity with the emphasis on the disproportionate impact on the marginalized communities such as “adolescents, women with disabilities, poor women, persons with diverse sexual orientation, gender identity and expressions, indigenous and Muslim women.” In the document, PINSAN also argues that the Philippine Constitution allows access to safe and legal abortion, in tandem with its international law and human rights-based arguments. Furthermore, the document provides examples of other countries with the same constitutional prenatal protection that permit access to safe and legal abortion.⁷⁸⁷

b. Application in Reality

In the Philippines, the Catholic Church has a significant hold on politics and culture.”⁷⁸⁸ Despite the Church’s imposition of its beliefs surrounding abortion and contraceptives on Philippine society, some legislative progress has been supportive of women’s reproductive rights and health. For instance, President Benigno S. Aquino III, explicitly supported the highly controversial Responsible Parenthood and Reproductive Health Act of 2012 which provides

⁷⁸⁴ *The Center’s Work in the Philippines*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/center-reproductive-rights-work-philippines/> (last visited June 23, 2022).

⁷⁸⁵ CTR. FOR REPROD. RTS., *Facts on Abortion in the Philippines*; see also *Statement on Women’s Organization-led Draft Bill to Decriminalize Abortion*, PINSAN, <https://pinsan.ph/2020/06/statement-on-womens-organization-led-draft-bill-to-decriminalize-abortion/> (“Facebook post has gone viral with 7,600 shares and has gotten over 11,000 positive reactions (like, love, and care) while getting 2,000 angry reactions. Majority of the 12,000 comments support the prevention of unsafe abortion, women’s right to bodily autonomy, and the decriminalization of abortion.”).

⁷⁸⁶ Jona Turalde, *[OPINION] Our Fight to Reform the Philippines’ Restrictive Abortion Laws*, RAPPLER (Oct. 22, 2022), <https://www.rappler.com/voices/ispeak/opinion-our-fight-reform-philippines-restrictive-abortion-laws/>.

⁷⁸⁷ Proposed Bill, PINSAN, <https://decriminalizeabortion.ph/wp-content/uploads/2020/12/Proposed-Bill-Decriminalizing-Abortion-v9-Sept-28-CPadilla-10am-launch-final.pdf> at 16 (“Other countries with the same constitutional prenatal protection allow abortion such as Costa Rica, Hungary, Kenya, Poland, Slovak Republic, and South Africa. These examples show that the Constitution, being the law of the people, is justifiably interpreted liberally in favor of women.”).

⁷⁸⁸ CTR. FOR REPROD. RTS., *Facts on Abortion in the Philippines*.

contraceptive services, counseling, and sex education to marginalized communities such as poor women in rural areas. He signed the bill despite opposition by the church in 2013.⁷⁸⁹

However, the Philippines have a high number of unsafe abortions. Around 1.26 million abortions were performed in 2020, an over one hundred percent increase compared to 2012 estimates that reported nearly 610,000 abortions.⁷⁹⁰ It is estimated that about 100,000 women are hospitalized owing to abortion complications every year, and over 1,000 women die from unsafe abortions in the Philippines annually. Most clandestine abortions performed by trained doctors cost up to \$470, which is expensive in a country where the per capita gross national income is \$3,660.⁷⁹¹ At the same time, advocacy for safe abortion remains extremely challenging in the Catholic-majority country with few progressive politicians. Over 90% of the population identifies as Christian, which makes it extremely difficult to change public opinion on abortion.

c. Social Advocacy to Support Legal Reforms

There have been social campaigns that support legal reform. For instance, PINSAN held a zoom event “CALL-TO-ACTION: Decriminalize Abortion Now, Save People’s Lives” together with other global women’s rights groups such as SheDecides in commemoration of the International Safe Abortion Day on September 28, 2021.⁷⁹² PINSAN and SheDecides also hosted the online art event “Telling Truer Stories” in an effort to share various individual’s abortion experiences on October 1, 2020.⁷⁹³

d. Application to Lebanon

Lebanese advocates can draw upon the experiences of the Philippines where their abortion laws are influenced by colonialization. Filipino abortion laws are directly translated from the 1870 Spanish Penal Code and some provisions can be found in the older 1822 Spanish Penal Code. Advocates such as PINSAN emphasize these colonial dimensions in their arguments to challenge colonial roots.

South Asia

XVII. India

Indian abortion advocacy groups have refrained from embracing the reproductive justice framework. Dipika Jain, professor of law and the director of the Center for Justice, noted that “this lack of robust feminist movement...allowed for the perpetuation of policies and laws adversely

⁷⁸⁹ *Unintended Pregnancy and Unsafe Abortion in the Philippines*, GUTTMACHER INST..

⁷⁹⁰ Shiphrah Belonguel, *Making Unsafe Abortion History in the Philippines*, GIRL’S GLOBE (Sept. 28, 2021), https://www.girlsglobe.org/2021/09/28/making-unsafe-abortion-history-in-the-philippines/?doing_wp_cron=1648482625.5118830204010009765625.

⁷⁹¹ Nick Aspinwall, *Manila’s Abortion Ban Is Killing Women*, FOREIGN POL’Y (May 29, 2019), <https://foreignpolicy.com/2019/05/29/manilas-abortion-ban-is-killing-women/>.

⁷⁹² See PINSAN, *LIVE: CALL-TO-ACTION: Decriminalize Abortion Now, Save People’s Lives!*, FACEBOOK (Sept. 28, 2021), <https://www.facebook.com/WGNRR/posts/6457133227645231>.

⁷⁹³ *Telling Truer Stories III*, SAVE WOMEN’S LIVES: DECRIMINALIZE ABORTION NOW! (Oct. 1, 2020), <https://decriminalizeabortion.ph/2020/10/telling-truer-stories-iii/>.

affecting women's reproductive rights and justice.”⁷⁹⁴ The case in India reminds us of the importance of centering directly affected communities in the debate and reform, and having a comprehensive and clear strategy for advocacy.

a. Legal Advocacy Experiences

Since 1971, abortion has been legal in India for up to twenty gestational weeks under various circumstances, including to save a woman's life, in cases of rape, fatal anomaly, economic and social necessity, and contraceptive failure. However, about fifty-six percent of all abortions performed in India were unsafe between 2001 and 2004.⁷⁹⁵ In addition, almost eight women die from unsafe abortions every day according to the UNFPA's State of the World Population Report 2022.⁷⁹⁶ On March 16, 2021, the president of India assented to the upper house of Parliament's reform of the Medical Termination of Pregnancy Act 1971 after 50 years of its enactment. This reform was the result of persistent grassroots advocacy from the Pratigya Campaign, a domestic organization advocating for abortion rights in India which was launched in 2013. According to the Center for Reproductive Rights, the amendment extended abortion access from the twenty- to twenty-four-week limit in the cases of rape or incest with two doctor authorizations. It also increased gestational periods from twelve to twenty weeks with one doctor authorization.⁷⁹⁷ Here, “doctor” is a registered medical practitioner with experience or training in obstetrics or gynecology.⁷⁹⁸

However, despite the increase in gestational limits, the Center for Reproductive Rights calls for more effort to ensure women's reproductive rights in India by getting rid of the doctor authorization requirements included in the law.⁷⁹⁹ It is crucial to note that this legal reform was done during the COVID-19 pandemic when there was no consultation with stakeholders such as doctors and women during the process. Consultation with stakeholders is critical to creating laws responsive to the needs of all people, particularly in India where abortion rights and access are heavily impacted by caste system and socioeconomic status. Therefore, lack of consultation with

⁷⁹⁴ Dipikah Jain, *Law Reforms on Abortion in India: The Need for a Nuanced Collaborative Approach*, OXFORD HUM. RTS. HUB (June 29, 2021), <https://ohrh.law.ox.ac.uk/law-reforms-on-abortion-in-india-the-need-for-a-nuanced-collaborative-approach/>.

⁷⁹⁵ CTR. FOR REPROD. RTS., *India Passes Abortion Reform but Fails to Undo Barriers to Access* (Mar. 19, 2021), <https://reproductiverights.org/parliament-india-passes-abortion-reform-entrenches-barriers-access/>; Akshita Nagpal, *Amended Abortion Law Still Gives Doctors, Not Women, the Final Say*, INDIA SPEND (Apr. 27, 2021), <https://www.indiaspend.com/gendercheck/amended-abortion-law-still-gives-doctors-not-women-the-final-say-744747>.

⁷⁹⁶ *Report: 67% Abortions in India Unsafe, Cause Nearly 8 Deaths Every Day*, INDIAN EXPRESS, <https://indianexpress.com/article/india/india-unintended-pregnancy-abortion-7845655/>.

⁷⁹⁷ Esha Roy, *Proposed Changes to Abortion Law Continue to Sideline Pregnant Persons*, SCI. THE WIRE (Mar. 31, 2022), <https://science.thewire.in/health/proposed-changes-to-abortion-law-continue-to-sideline-pregnant-persons/>; *India's amended abortion law still gives doctors, not women, the final say in terminating pregnancy*, SCROLL.IN, <https://scroll.in/article/993527/indias-amended-abortion-law-still-gives-doctors-not-women-the-final-say-in-terminating-pregnancy>; *India's Amended Law Makes Abortion Safer and More Accessible*, WHO (Apr. 13, 2021), <https://www.who.int/india/news/detail/13-04-2021-india-s-amended-law-makes-abortion-safer-and-more-accessible>.

⁷⁹⁸ *The Medical Termination of Pregnancy (Amendment) Bill, 2020*, PRS, <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020>.

⁷⁹⁹ CTR. FOR REPROD. RTS., *India Passes Abortion Reform but Fails to Undo Barriers to Access*.

those most impacted by the legislature in the decision-making process completely undermined the meaning of the reform.⁸⁰⁰

The Center for Reproductive Rights also works closely with the Pratigya Campaign to achieve its advocacy goals. The Campaign's focus is to address the issue of gender-biased sex selection and women's right to legal abortion in India. They also intend to work with the Drug Controller General of India (DCGI) and Ministry of Health and Family Welfare (MoHFW), and the government to ensure medical abortion drugs are accessible to women. The primary work done by the campaign is "Recommendations for a Progressive and Inclusive MTP Amendment Bill 2020" calling for the reform of abortion laws.⁸⁰¹

b. Application in Reality

In India, abortion is only partially decriminalized and the access to safe and affordable abortion services for all women is not yet a reality. For example, a lack of obstetricians and gynecologists, facilities, equipment, health care infrastructure, authorization requirements, and remaining social stigma deter women from seeking abortions.⁸⁰² Furthermore, in instances of severe fetal anomaly, a gynecologist, a pediatrician, and a radiologist must all give a confirmation of the diagnosis in order for the patient to be able to access abortion services. This disproportionately impacts women in rural areas who may not have easy access to three different medical providers.

Another problem is that the extension of gestational limit beyond twenty-four weeks does not apply to survivors of sexual violence.⁸⁰³ In addition, the amendment only permits abortion to be performed by doctors with a specialization in gynecology or obstetrics.

c. Social Advocacy to Support Legal Reform Efforts

The Pratigya Campaign produces documents that provide guidance in navigating relevant laws for providers such as medical personnel and law enforcement authorities. In addition, the Campaign provides information on abortion to the media, who in turn inform the public in order to raise awareness.⁸⁰⁴

d. Application to Lebanon

Lebanese advocates can look at how the abortion rights movement addresses inequalities in a society where abortion access is negatively affected by the caste system. Experiences in India

⁸⁰⁰ *Id.*

⁸⁰¹ *Recommendations for a Progressive and Inclusive MTP Amendment Bill 2020*, PRATIGYA CAMPAIGN (Aug. 2020), <https://pratigyacampaign.org/wp-content/uploads/2020/08/recommendations-for-a-progressive-and-inclusive-mtp-amendment-bill-2020.pdf>.

⁸⁰² Sneha Kumari and Jugal Kishore, *Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care??*, 43 US NAT'L LIBR. OF MED. 367-369 (Oct. 13, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8575235/>.

⁸⁰³ *India Passes Abortion Reform but Fails to Undo Barriers to Access*, CTR. FOR REPROD. RTS. (Mar. 19, 2021), <https://reproductiverights.org/parliament-india-passes-abortion-reform-entrenches-barriers-access/>.

⁸⁰⁴ *What We Do*, PRATIGYA CAMPAIGN, <https://pratigyacampaign.org/what-we-do/> (last visited June 23, 2022).

teach us the importance of consulting with those most impacted by legislation in the drafting and decision-making process.

Oceania

XVIII. Australia

The South Australian Abortion Action Coalition succeeded in mobilizing diverse and intersecting groups of people and getting support from forty influential state and national organizations.⁸⁰⁵

a. Legal Advocacy Experiences

In Australia, the legal framework varies from state to state and territory to territory.⁸⁰⁶ Abortion became legal in all jurisdictions when South Australia joined the list in 2021. In March, 2021, the Termination of Pregnancy Bill, which removed abortion from the South Australia state's criminal code, was passed by the state's upper house. Before decriminalization, women could have legal abortions only with the approval of two medical practitioners.⁸⁰⁷ Abortion is now regulated under the health law and treated like any other health care service.⁸⁰⁸

The South Australian Abortion Action Coalition played a crucial role in the decriminalization of abortion in South Australia.⁸⁰⁹ It stressed that abortion care is still health care. The Coalition organized several protests and lobbied in front of the Parliament House, shared their message and agenda via social media such as Instagram and Twitter, and informed the public by explaining what the opponents of abortion law reform say, and what their counter-arguments to their assertions are.⁸¹⁰

⁸⁰⁵ *About Us*, S. AUSTRALIAN ABORTION ACTION COAL. (SAAAC), <https://saabortionactioncoalition.com/about-us/> (last visited June 23, 2022). State and national organizations include Family Planning Alliance, Abortion Health Council of SA, Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, National Council for Single Mothers and their Children, Human Rights Law Centre, etc. *See Our Supporters*, SAAAC, <https://saabortionactioncoalition.com/supporters/> (last visited June 23, 2022).

⁸⁰⁶ *Access to Abortion Services in Australia: Position Statement*, FAM. PLAN. ALL. AUSTL. (Aug. 6, 2018), <https://www.familyplanningallianceaustralia.org.au/wp-content/uploads/2018/11/FPAA-Abortion-Position-Statement-August-2018-FINAL.pdf>.

⁸⁰⁷ *The Facts About SA's Abortion Bill: Not a Radical Reform, But an Evidence-based Modernisation of Outdated Laws*, THE LAW SOC'Y OF S. AUSTL., https://www.lawsocietysa.asn.au/Public/Publications/Resources/The_facts_about_SAs_Abortion_Bill.aspx.

⁸⁰⁸ *South Australian Abortion Action Coalition*, SAAAC, <https://saabortionactioncoalition.com/> (last visited June 23, 2022); *Abortion is No Longer a Crime in Australia. But Legal Hurdles to Access Remain*, CONVERSATION (Mar. 3, 2021), <https://theconversation.com/abortion-is-no-longer-a-crime-in-australia-but-legal-hurdles-to-access-remain-156215>.

⁸⁰⁹ *South Australian Abortion Action Coalition*, SAAAC, <https://saabortionactioncoalition.com/>.

⁸¹⁰ @SA_AAC, TWITTER, https://twitter.com/sa_aac; SA Abortion Action Coalition (@sa_aac), INSTAGRAM, https://www.instagram.com/sa_aac/?hl=en.

b. Application in Reality

Despite the decriminalization of abortion in South Australia, the new laws have not yet been implemented. Because of this, women in rural areas continue to face many obstacles, including long travel to Adelaide. Additionally, many women still don't know whether they need to consult a second doctor in order to get an abortion because of the lack of clarity in the current rule.⁸¹¹ The government is still discussing the proposal which requires hospital CEOs or doctors to report information to the health minister after abortions. Advocates are concerned about whether "everything's going to be held back until after the election is held."⁸¹² Moreover, after decriminalization in South Australia, South Australia Abortion Action Coalition began advocating to improve abortion access in the country. The Coalition acknowledges the issues around the Medicare rebate for medical abortion in primary care which they will continue working on.⁸¹³

c. Social Advocacy to Support Legal Reform Efforts

The Coalition utilized social media such as Twitter, Instagram, and Facebook to educate and mobilize people to raise awareness and provide them a platform to speak up against the criminalization of abortion. This approach was especially effective in drawing the attention of younger people. Additionally, Coalition members took part in Adelaide International Women's Day Breakfast to inform people about abortion law reform.⁸¹⁴

d. Application to Lebanon

While the South Australian case is unique in the fact that abortion advocacy was widely recognized and supported by the state and national government, Lebanese advocacy can learn from their case that an effective use of social media such as Twitter and Instagram can contribute to a greater mobilization and to a shift in public opinion. It is crucial in countries like Lebanon where political will to ensure women's access to reproductive services seems not to be strong enough.

⁸¹¹ Evelyn Leckie, *SA Women Face Delays Accessing Abortions with Historic Law Reforms Yet To Be Enacted*, ABC NEWS (Mar. 4, 2022), <https://www.abc.net.au/news/2022-03-04/sa-abortion-access-delays-year-after-reforms-pass/100883906>.

⁸¹² Stephanie Ririchards, *SA Abortion Law Reform Stalled One Year After Passing*, INDAILY (Mar. 3, 2022), <https://indaily.com.au/news/2022/03/03/sa-abortion-law-reform-stalled-one-year-after-passing/>.

⁸¹³ Thomas Kelsall, *Abortion Decriminalised in SA*, INDAILY (Mar. 3, 2022), <https://indaily.com.au/news/2021/03/03/abortion-decriminalised-in-sa/>.

⁸¹⁴ *Id.*

Decriminalization of Sex Work

Part 1: Background on Sex Workers' Rights

This section will discuss sex workers' rights and global advocacy strategies to achieve decriminalization. Part I explores the human rights abuses that result from criminalizing sex work. Part II examines three alternative approaches to the criminalization model and explains why decriminalization is championed by the sex workers' rights movement. Part III briefly highlights feminist debates regarding sex work.

I. Human Rights Abuses that Result from the Criminalization of Sex Work

Stigma surrounding sex work causes social, economic, and legal inequities for sex workers. In particular, the criminalization of sex work fuels this stigma, further encouraging human rights abuses against sex workers.⁸¹⁵ Additionally, while anti-prostitution activists present sex work as inherently harmful to women, the abuses sex workers undergo are not tied to the commercialization of sexual services, or to sex work itself, but instead to criminalization.⁸¹⁶ Sex work is criminalized through sanctions including criminal prosecution, detention, and fines.⁸¹⁷ Indirect criminalization occurs through laws targeting related activities, such as the purchase of sexual services, the organization of sex workers, and laws on vagrancy.⁸¹⁸

The criminalization of sex work is a human rights issue because it violates sex workers' right to be free from discrimination and violence, right to health, right to work, and right to bodily autonomy.

A. Right to Live Free from Discrimination and Violence

Criminalization enables police abuse of sex workers with no consequence.⁸¹⁹ Sex workers face severe human rights violations at the hands of police.⁸²⁰ Violations include, but are not limited to, assault, harassment, bribery, exploitation, arbitrary profiling, mocking and shaming, unjustified detention, and deportation.⁸²¹

⁸¹⁵ See generally CHI ADANNA MGBAKO, *TO LIVE FREELY IN THIS WORLD: SEX WORKER ACTIVISM IN AFRICA* (2016).

⁸¹⁶ See *id.*

⁸¹⁷ See AMNESTY INT'L, *Sex Workers at Risk: A Research Summary on Human Rights Abuses Against Sex Workers* 18 (May 26, 2016), <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL4040612016ENGLISH.pdf>

⁸¹⁸ See *id.*; see also MGBAKO, *TO LIVE FREELY IN THIS WORLD* 63 ("Criminalization falls into one of two categories: (1) Prostitution itself, as well as activities related to prostitution like solicitation, living off the earnings of prostitution, and brothel-keeping, is explicitly illegal. Or (2) prostitution itself is not technically illegal—that is, the law is silent on the exchange of sex for money between adults—but prostitution-related activities remain illegal, therefore effectively making it impossible to engage in prostitution.").

⁸¹⁹ See *id.* ("Human Rights Watch has documented that, in criminalized environments, police officers harass sex workers, extort bribes, and physically and verbally abuse sex workers, or even rape or coerce sex from them.").

⁸²⁰ See *id.*

⁸²¹ See Ine Vanwesenbeeck, *Sex Work Criminalization Is Barking Up the Wrong Tree*, *ARCHIVES OF SEXUAL BEHAVIOR* 1631, 1631-40 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5529480/>; see also *Collateral Damage: The Impact of Anti-trafficking Measures on Human Rights Around the World*, GLOB. ALL. AGAINST TRAFFIC IN WOMEN (2007),

Sex workers in a criminalized regime must work in high-risk locations to avoid police oversight, making them more vulnerable to violence, including rape, assault, and murder, by assailants posing as clients who believe they can abuse sex workers with impunity.⁸²² This impunity is evidenced by a lack of police protection, as law enforcement often refuse to listen to sex workers' claims, perpetuating a cycle of violence against them.⁸²³

Police abuse of authority also creates health risks.⁸²⁴ In criminalized jurisdictions, police confiscate condoms from sex workers which then serve as evidence used by prosecutors to support prostitution charges.⁸²⁵ This practice makes sex workers reluctant to carry condoms out of fear that the condoms will be used as evidence against them.⁸²⁶ In turn, sex workers are forced to engage in unprotected sex, increasing their risk of contracting HIV and other STIs.⁸²⁷

Sex workers experience broader social and economic exclusion and discrimination as a result of criminalization.⁸²⁸ Criminalization fuels stigma against sex workers making them socially excluded and isolated, and this isolation extends to their children and can affect child custody.⁸²⁹ Sex workers also face economic exclusion because under a criminalized system where sex workers get fined, arrested, incarcerated, and left with a criminal record, it becomes extremely difficult to obtain legal employment or get government aid.⁸³⁰ Additionally, criminalization denies sex workers access to bank accounts and rental housing.⁸³¹ Sex workers also face discrimination in access to healthcare as discussed below.

B. Right to Health

Criminalization results in the discrimination of sex workers seeking access to health care services.⁸³² The Joint United Nations Programme on HIV/AIDS ("UNAIDS"), public health experts, sex workers' rights and human rights organizations, have all determined that when sex work is criminalized, sex workers' right to health suffers.⁸³³ Health care workers often view sex

https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/collateral_damage_gaatw_2007.pdf; Women's Legal Centre, Sisonke, & The Sex Workers Education and Advocacy Taskforce, *"Stop harassing US! Tackle real crime!" A Report on Human Rights Violations by Police Against Sex Workers in South Africa* (2012), <https://wlce.co.za/wp-content/uploads/2017/02/210812-FINAL-WEB-version.pdf>.

⁸²² See HUM. RTS. WATCH, *Q&A*; see also MGBAKO, *TO LIVE FREELY IN THIS WORLD* 59.

⁸²³ See *id.*

⁸²⁴ See HUM. RTS. WATCH, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities* (July 19, 2012), <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities> [hereinafter HUM. RTS. WATCH, *Sex Workers at Risk*]; see also MGBAKO, *TO LIVE FREELY IN THIS WORLD* 11, 54-55.

⁸²⁵ See *id.*

⁸²⁶ See HUM. RTS. WATCH, *Sex Workers at Risk*.

⁸²⁷ See *id.*

⁸²⁸ See AMNESTY INT'L, *Sex Workers at Risk*; see also MGBAKO, *TO LIVE FREELY IN THIS WORLD* 61-63.

⁸²⁹ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 61-63.

⁸³⁰ See Ine Vanwesenbeeck, *Sex Work Criminalization Is Barking Up the Wrong Tree*, ARCHIVES OF SEXUAL BEHAVIOR 1631, 1631-40 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5529480/>; see also HUM. RTS. WATCH, *Sex Workers at Risk*.

⁸³¹ See AMNESTY INT'L, *Sex Workers at Risk*.

⁸³² See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 64.

⁸³³ See HUM. RTS. WATCH, *Q&A*.

workers as “vectors of disease,” which results in various abuses including denial of services, verbal attacks, and breaches of confidentiality, like outing the HIV or STI status of sex workers in front of other patients.⁸³⁴ Sex workers sometimes go without medical care because they fear poor treatment by medical staff if they are revealed to be a sex worker.⁸³⁵ Criminalization reduces sex workers’ visibility, creating barriers to healthcare outreach.⁸³⁶ Healthcare discrimination drives sex workers underground and away from necessary health prevention and treatment services including STIs and HIV.⁸³⁷

C. Right to Work

Where sex work is criminalized, sex workers have no recourse to labor protections, such as employee grievance procedures, benefits, and occupational health and safety measures.⁸³⁸ Sex workers have little to no ability to stand up for their labor rights, including organizing via workers’ unions to ensure labor protections.⁸³⁹ This all places more power into the hands of bosses and third-party managers who operate with impunity and out of sight from the law.⁸⁴⁰ These bosses and managers underpay sex workers, charge exorbitant fees, and do not give them overtime pay because without occupational and safety standards and other labor rights protections, bosses are free to take advantage of sex workers.⁸⁴¹ When a sex worker is arrested and prosecuted, a criminal conviction can limit that individual’s future opportunities for employment.⁸⁴²

D. Right to Bodily Autonomy

Policies that criminalize self-determination are not aligned with the right to personal

⁸³⁴ MGBAKO, TO LIVE FREELY IN THIS WORLD 64.

⁸³⁵ See MGBAKO, TO LIVE FREELY IN THIS WORLD 4; see also AMNESTY INT’L, *Amnesty International Publishes Policy and Research on Protection of Sex Workers’ Rights* (May 26, 2016), <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>; see also Ine Vanwesenbeeck, *Sex Work Criminalization Is Barking Up the Wrong Tree*, ARCHIVES OF SEXUAL BEHAVIOR (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5529480/>.

⁸³⁶ See *id.*

⁸³⁷ See Michele Decker et al., *The Lancet Series on HIV In Sex Workers; Paper 4 Burden and HIV Impact of Human Rights Violations Against Sex Workers*, LANCET (Feb. 10, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4454473/>; see also Christine Harcourt et al., *Sex Work and the Law*, NAT’L LIBR. OF MED. (2005), <https://pubmed.ncbi.nlm.nih.gov/16335539/>.

⁸³⁸ See MGBAKO, TO LIVE FREELY IN THIS WORLD 60-61.

⁸³⁹ See HUM. RTS. WATCH, *Q&A*; see also MGBAKO, TO LIVE FREELY IN THIS WORLD 60-61; see also Lucy Platt et al., *Sex Workers Must Not be Forgotten in the COVID-19 Response*, LANCET (July 4, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31033-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31033-3/fulltext); Alison Saldanha, *COVID’s Invisible Toll on Seattle’s Trans Community*, SEATTLE TIMES (Jan. 16, 2022), <https://www.seattletimes.com/seattle-news/health/covid-19s-invisible-toll-on-seattles-trans-community/>. For example, sex workers in the United States faced difficulties obtaining unemployment benefits as the economy shut down — due to the illegal nature of their work.

⁸⁴⁰ See Michele Decker et al., *The Lancet Series on HIV In Sex Workers; Paper 4 Burden and HIV Impact of Human Rights Violations Against Sex Workers*, LANCET (Feb. 10, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4454473/>; see also Christine Harcourt et al., *Sex Work and the Law*, NAT’L LIBR. OF MED. (2005), <https://pubmed.ncbi.nlm.nih.gov/16335539/>.

⁸⁴¹ See *id.*; see also HUM. RTS. WATCH, *Q&A*; see also MGBAKO, TO LIVE FREELY IN THIS WORLD 52, 60.

⁸⁴² See MGBAKO, TO LIVE FREELY IN THIS WORLD 132.

autonomy and privacy, and this includes the commercial selling of sex.⁸⁴³ Security of the persona and privacy are denied when a government intervenes by criminalizing and policing consenting adults on who they can have sexual relations with.⁸⁴⁴

E. Intersectionality

Criminalization of sex work disproportionality impacts vulnerable groups such as persons of color, immigrants, HIV-positive individuals, and queer and trans persons who are the overwhelming majority of arrest cases.⁸⁴⁵ Queer and trans sex workers face a “double stigma” because of the criminalization of sex work and because of transphobia and homophobia against people who are or are perceived to be LGBTQIA+.⁸⁴⁶ This transphobia and homophobia are harmful to trans, queer, and male sex workers of varying sexual orientations who are perceived to be gay.⁸⁴⁷ Transphobia and homophobia against sex workers results in murder, insults from police, being publicly stripped by police, and for transwomen who are sex workers, intentional police placement into jail cells with men who are encouraged by police to physically and sexually abuse them.⁸⁴⁸

II. Decriminalization of Sex Work

Aside from criminalization, there are three legal frameworks that address sex work: legalization and regulation, partial criminalization (i.e., the Nordic Model), and decriminalization.⁸⁴⁹ Decriminalization is recognized by the sex workers’ rights movement as the optimal framework to advance the human rights and labor rights of sex workers.

A. Legalization and Regulation of Sex Work: Grounds for Rejection

When legalized and regulated, sex work is legal only in “certain highly regulated circumstances” subject to restrictive requirements.⁸⁵⁰ Such requirements may mandatory registration or STI/HIV screenings.⁸⁵¹ In states that legalize and regulate sex work—like Senegal, Germany, and the Netherlands—both the purchase and selling of sex can be lawful in limited circumstances.⁸⁵² These regimes are not for the protection of sex workers’ rights, but rather “the

⁸⁴³ See HUM. RTS. WATCH, *Q&A; see also Addressing Violence against Sex Workers*, WORLD HEALTH ORG. (Oct. 18, 2013), https://www.who.int/hiv/pub/sti/sex_worker_implementation/swit_chpt2.pdf; see also THE NATIONAL LGBTQIA+ PRIMARY CARE ALLIANCE, *Current Campaigns: Sex Work Decriminalization*, <https://www.lgbtqcare.org/sex-work-decriminalization>.

⁸⁴⁴ See *id.*

⁸⁴⁵ See HUM. RTS. WATCH, *Q&A; see also Marco Poggio, Competing Bills Seek To Decriminalize Sex Work In NY*, LAW360 (Nov. 14, 2021), <https://www.law360.com/articles/1431732/competing-bills-seek-to-decriminalize-sex-work-in-ny>.

⁸⁴⁶ MGBAKO, *TO LIVE FREELY IN THIS WORLD* 67-69.

⁸⁴⁷ See *id.*

⁸⁴⁸ See *id.*

⁸⁴⁹ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 149.

⁸⁵⁰ *Id.*

⁸⁵¹ See Chi Mgbako, *The Mainstreaming of Sex Workers’ Rights as Human Rights*, 43 HARV. J. L. & GENDER 92, 121 (2020); JUNO MAC & MOLLY SMITH, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 176 (2018).

⁸⁵² See Mgbako, *The Mainstreaming of Sex Workers’ Rights*, 92.

regulation of vice.”⁸⁵³

Global sex workers’ rights movements oppose legalization and regulation of sex work for numerous reasons. These regimes are proven to result in hyper-regulation of the industry and the sanctioning of sex workers for noncompliance.⁸⁵⁴ When sex workers are unwilling or unable to abide by certain regulations, they are sanctioned just as they would be in a criminal regime.⁸⁵⁵ Consequently, legalization and regulation of sex work has the unintended but inevitable effect of creating large classes of underground sex workers, driven to work in more isolated locations to avoid “stigmatizing hyper-regulations.”⁸⁵⁶ As such, this model is rejected for continuing to perpetuate the criminalization of sex workers.⁸⁵⁷ Moreover, most regulations imposed negatively impact sex workers. For example, mandatory health and STI screenings increase stigmatization of sex workers and as a result, sex workers are less willing to seek out necessary healthcare.⁸⁵⁸

Senegal legalized and regulated sex work in 1969, but the hyper-regulatory and discriminatory legislation resulted in a growing population of sex workers operating outside of legal bounds.⁸⁵⁹ For example, all female sex workers are required to undergo mandatory monthly HIV testing and to record those results in a health book to prove they do not have any STIs.⁸⁶⁰ Regulations like this only serve to encourage further stigma against targeted populations. Senegal also mandates that sex workers register with the Bureau of Health and Social Services of the Institute of Social Hygiene but because of deeply ingrained stigma against sex workers, many do not undergo the required health checks or register with the government—effectively making them operate illegally within a class of sex workers known as *les clandestines*.⁸⁶¹

B. Partial Criminalization of Sex Work (Nordic Model): Grounds for Rejection

Countries like Canada, Norway, Iceland and Sweden have partially criminalized sex work—or implemented what is commonly known as “The Nordic Model.” This legal approach criminalizes the buying but not the selling of sex.⁸⁶² Specifically, this model criminalizes sex workers’ clients and other third parties involved in the industry, like brothel managers.⁸⁶³ Because supporters “see ‘prostitution’ as inherently harmful and coerced; they aim to end sex work by killing the demand for transactional sex.”⁸⁶⁴

⁸⁵³ See JUNO MAC & MOLLY SMITH, REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS 176 (2018).

⁸⁵⁴ *Id.* at 149-50

⁸⁵⁵ See MGBAKO, TO LIVE FREELY IN THIS WORLD 149.

⁸⁵⁶ *Id.* at 148

⁸⁵⁷ *Id.* 150

⁸⁵⁸ *Id.*

⁸⁵⁹ *Id.*

⁸⁶⁰ *Id.*; see also Chi Mgbako & Laura Smith, *Sex Work and Human Rights in Africa*, FORDHAM INT’L L. J. 1178, 1212 (2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1710654.

⁸⁶¹ See MGBAKO, TO LIVE FREELY IN THIS WORLD 150; see also Chi Mgbako & Laura Smith, *Sex Work and Human Rights in Africa*, FORDHAM INT’L L. J. 1178, 1213-14 (2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1710654.

⁸⁶² Mgbako, *The Mainstreaming of Sex Workers’ Rights* 92, 121.

⁸⁶³ See MGBAKO, TO LIVE FREELY IN THIS WORLD 149; See also Hila Shamir, *Feminist Approaches to the Regulation of Sex Work: Patterns in Transnational Governance Feminist Law Making*, 52 CORNELL INT’L L.J. 177, 209 (2019).

⁸⁶⁴ See HUM. RTS. WATCH, Q&A.

Sex workers and their supporters oppose the Nordic Model for a host of reasons. First, it harms the economic and professional interests of sex workers, who often see sex work simply as work. Most sex workers are driven to the industry by economic incentives, such as the need to support themselves and their families. By criminalizing sex workers' client base, the Nordic Model effectively presents an "assault" on their earnings—as you cannot criminalize one side of the transaction without implicitly criminalizing the entire transaction.⁸⁶⁵ Second, to protect clients from police detection, sex workers must provide their services in isolated locations. This isolation exposes sex workers to increased risk of violence/abuse from both police and clients.⁸⁶⁶ In addition to facing location-related risks, studies show that sex workers have less time to negotiate with and vet potentially dangerous clients, who are far less willing to reveal information about themselves.⁸⁶⁷ Continued police abuse and harassment of sex workers is further perpetuated by the Nordic Model: police in Sweden, for instance, have been reported for subjecting sex workers to intrusive searches and questioning over client activity.⁸⁶⁸ Third, in practice, criminalizing buyers of sex only negatively impacts the sex worker as the seller, as sex workers 'need' to sell sex much more than any client 'needs' to buy it.⁸⁶⁹ There is no evidence that the Nordic Model reduces the incidence of sex work—only that it creates a large underground class of sex workers—further illustrating that in both failing to achieve its aim of reducing demand for and incidence of sex work and imposing its most harmful effects on sex workers themselves (and not their clients), this Model brings no protection of or benefit to sex workers. In fact, unable to unionize, access redress methods available to other industries, or report manager misconduct to police, isolated sex workers are more vulnerable to abuse from their bosses.⁸⁷⁰ Finally, migrant workers often cannot legally sell sex, which creates a subclass of sex workers forced to work illegally, thus more vulnerable to abuse from police and customers.⁸⁷¹

When livelihoods supported by earnings from sex work are criminalized, as often happens under the Nordic Model, several problems arise. Sex workers are more vulnerable to eviction because when landlords discover a tenant is a sex worker, they will evict rather than risk being charged with living off earnings from prostitution. In Norway, police often threaten landlords with prosecution for promoting prostitution if they do not forcibly evict sex workers, causing many sex

⁸⁶⁵ See MGBAKO, TO LIVE FREELY IN THIS WORLD 149.

⁸⁶⁶ *Id.*

⁸⁶⁷ *Id.*

⁸⁶⁸ *Id.*

⁸⁶⁹ See MAC & SMITH, REVOLTING PROSTITUTES 148 ("The criminali[z]ation of only one party to a transaction might intuitively be expected to benefit the other party. However, this overlooks that crucial fact – which cannot be repeated enough! – that the sex worker needs to sell sex much more than the client 'needs' to buy it.").

⁸⁷⁰ See Dodillet & Ostergren, 2011; Levy & Jakobsson, 2014.

⁸⁷¹ See MGBAKO, TO LIVE FREELY IN THIS WORLD 148-49; see also HUM. RTS. WATCH, *Why Sex Work Should Be Decriminalized, Questions and Answers* (Aug. 7, 2019), <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>; see also AI, NORWAY at 28. (While selling sex itself is not illegal under the Nordic model, police can target vulnerable sex workers in ways such as through "public nuisance policing, anti-sex work and anti-trafficking operations and immigration enforcement, as a means to reduce and/or eradicate commercial sex." Police use immigration and sex work laws "interchangeably" to target and deport migrant sex workers.); see also *The Human Cost Of 'Crushing' The Market: Criminalization of Sex Work in Norway*, AMNESTY INT'L 31 (2016) (Sweden's legal framework in no way involved sex worker communities in Sweden; from the drafting to the passage, governmental actors did not consult sex worker communities and still fail to do so when reviewing the Swedish law.); see also Mgbako, *The Mainstreaming of Sex Workers' Rights* 92, 126.

workers to be evicted.⁸⁷² Criminalizing living off of earnings from prostitution also hinders sex workers' ability to work together or use safety-enhancing third party services such as security guards and drivers, as all could be seen as living off earnings of prostitution.⁸⁷³

C. Decriminalization of Sex Work: Grounds for Widespread Implementation

Decriminalization entails full decriminalization of the sale and purchase of sex and all sex work-related activities—including those involving third parties.⁸⁷⁴ Decriminalization acknowledges sex workers as workers that deserve equal protection under labor laws, and as humans that deserve equal dignity.⁸⁷⁵ The goal of decriminalization is “to remove criminal laws attached to sex work between consenting adults and protect sex workers as a marginalized labor class by bringing them under the aegis of employment labor laws and policies via minimal state regulation.”⁸⁷⁶ International organizations like WHO, UNAIDS, Amnesty International, and HRW have been vocal supporters of the decriminalization of sex work.⁸⁷⁷

Decriminalization is championed by the sex workers' rights movement because it is the only legal framework designed with the input of sex workers to increase control over their own labor. It is the only approach to sex work that empowers sex workers and realizes their human and labor rights.⁸⁷⁸ Sex workers are protected by workplace industry standards that uphold the validity of sex work agreements while maintaining that it will constitute assault if consent is compelled.⁸⁷⁹ Sex workers also have access to employee tribunals to resolve workplace disputes and employee grievance procedures.⁸⁸⁰ In addition, they can unionize, form businesses, or hire security without the threat of criminal liability. The Global Commission on HIV and the Law noted that in places that support sex workers' ability to organize, incidences of police harassment are reduced, healthcare services are improved, sex workers have lower rates of STIs, have more economic power, and have greater ability to educate their children.⁸⁸¹ Previous criminal convictions from sex work are also removed from sex workers' criminal records.⁸⁸²

In 2003, New Zealand became the first country to decriminalize sex work by enacting the New Zealand Prostitution Reform Act (NZPRA).⁸⁸³ New Zealand sex workers played a central role in pushing decriminalization forward in Parliament, and assisted human rights groups, health groups, and lawmakers in drafting the Act. In a legislative impact review conducted in 2008, decriminalization was found to have a “marked effect in safeguarding the rights of sex workers to refuse particular clients and practices.”⁸⁸⁴ The report noted that sex workers testified to higher

⁸⁷² AMNESTY INT'L, *The Human Cost Of 'Crushing' The Market: Criminalization of Sex Work in Norway*, 31 (2016), <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR3640342016ENGLISH.pdf>.

⁸⁷³ See HUM. RTS. WATCH, *Q&A*; see also Mgbako, *The Mainstreaming of Sex Workers' Rights* 92, 126.

⁸⁷⁴ Mgbako, *The Mainstreaming of Sex Workers' Rights* 92, 121, 126.

⁸⁷⁵ *Id.*

⁸⁷⁶ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 149.

⁸⁷⁷ Mgbako, *Mainstreaming* at 122-123.

⁸⁷⁸ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 158.

⁸⁷⁹ *Id.* at 159.

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.* at 8.

⁸⁸² *Id.* at 160.

⁸⁸³ *Id.* at 151

⁸⁸⁴ *Id.*

levels of well-being and confidence, enhanced ability to negotiate safe-sex practices, and an increased willingness to report abuse to the police. Contrary to what many opponents argue is the chief danger with decriminalization, the report concluded that no evidence suggested that the numbers of sex workers or youth in the sex trade in New Zealand increased because of decriminalization.⁸⁸⁵ Therefore, decriminalization is needed to create a legal environment where sex workers are not subject to discriminatory and stigmatizing regulations or laws, where sex work is regulated in a manner developed in consultation with sex workers, and where sex workers' health and safety is advanced.

III. Feminist Debates Around Sex Work

Calls for the decriminalization of sex work are often met with various critiques that the sex workers' rights movement works to debunk. Section A first explores how sex work is both an economic opportunity and a survival strategy and the distinction between "choice" and agency when one is faced with limited economic opportunities. Section B considers the harmful effects of conflating sex work with human trafficking.

A. Economic Opportunity, Survival Strategies, "Choice," and Agency

Many individuals get involved in sex work because of economic necessity.⁸⁸⁶ Simply put: selling sex is a way to make money.⁸⁸⁷ The term "sex work" was coined in 1978 by Carol Leigh, a sex-worker activist and artist.⁸⁸⁸ Sex worker activists all over the world have embraced the term because it captures why many people enter the industry—to earn money.⁸⁸⁹ For many sex workers, choosing sex work over other low-wage jobs can be an economically rational choice among limited opportunities.⁸⁹⁰ Reform efforts should focus on how sex workers can have more power and control over their own labor.⁸⁹¹

For some sex workers, especially marginalized individuals like trans women, sex work is the only means available to survive.⁸⁹² This is due to the government's failure to provide a sufficient social safety net such as healthcare, housing, and education.⁸⁹³ An ideal society should

⁸⁸⁵ *Id.* See also *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, NEW ZEALAND GOV'T 14 (May 2008), <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>; see also AMNESTY INT'L, *Sex Workers at Risk* (May 26, 2016), <https://www.amnesty.org/en/documents/pol40/4061/2016/en/>. (New Zealand's justice ministry also conducted a review where they found that before decriminalization, sex workers weren't willing to disclose their occupation to health care workers and did not carry condoms for fear of them being used as evidence in criminal sanctions. After decriminalization, sex workers were empowered to refuse particular clients and were able to negotiate safer sex. The relationship between sex workers and police was also changed with 70% of sex workers reporting in a 2008 study that they'd be more likely to report abuses against them to police. Police were also more likely to be seen as protectors rather than the enemy. Decriminalization also allowed sex workers to seek justice through the courts to address sexual harassment by brothel owners.).

⁸⁸⁶ See JUNO MAC & MOLLY SMITH, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS' RIGHTS* 47 (2018).

⁸⁸⁷ See MAC & SMITH, *REVOLTING PROSTITUTES* 45.

⁸⁸⁸ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 33.

⁸⁸⁹ See *id.*

⁸⁹⁰ See MGBAKO, *TO LIVE FREELY IN THIS WORLD* 30.

⁸⁹¹ See *id.*

⁸⁹² MAC & SMITH, *REVOLTING PROSTITUTES* 49.

⁸⁹³ See *id.* at 51.

expand economic opportunities for all people so that workers have more choices and opportunities,⁸⁹⁴ but such expansion should be done without stigmatizing and criminalizing people for pursuing economic opportunities or survival strategies they have at the present, such as sex work.⁸⁹⁵

When anti-prostitution advocates argue that sex workers are forced into the job because they have no other choice, they misunderstand the concept of choice in a low-wage labor market under capitalism and overlook the concept of agency and self-determination.⁸⁹⁶ Most modern workers under capitalism do not have unfettered “choice” regarding the types of work they engage in, they face limited economic opportunities.⁸⁹⁷ But because someone experiences limited economic opportunity, it does not mean they cannot exhibit agency or self-determination in their lives.⁸⁹⁸ They assert their agency to pick one option over the other even when options are limited.⁸⁹⁹ This concept often applies to sex work as well.⁹⁰⁰

B. Critiques of the Use of Anti-Human Trafficking Campaigns to Target Sex Work

Some anti-human-trafficking campaigns miss a critical point: sex work does not cause human trafficking.⁹⁰¹ Rather, it is draconian immigration policies and systemic poverty which fuel human trafficking.⁹⁰² These conditions drive migrants to put themselves at the mercy of human smugglers to cross borders.⁹⁰³ To combat human trafficking, therefore, resources should focus on easing border restrictions and increasing workers and migrants’ rights.⁹⁰⁴ Sex work is done consensually, while trafficking is expressly non-consensual; however, anti-prostitution activists purposefully conflate the two.⁹⁰⁵ They argue that when it comes to sex work, consent is impossible and therefore all sex workers are forced into sex work either by someone or by circumstance.⁹⁰⁶ They also argue that all sex workers must be rescued. These anti-trafficking policies incentivize law enforcement to conduct violent raids on brothels, which are dangerous for both sex workers and trafficking victims.⁹⁰⁷

⁸⁹⁴ *See id.*

⁸⁹⁵ *See id.* at 54

⁸⁹⁶ *See* MGBAKO, TO LIVE FREELY IN THIS WORLD 8.

⁸⁹⁷ *See id.* at 10.

⁸⁹⁸ *See id.* at 4-5.

⁸⁹⁹ *See id.* at 8.

⁹⁰⁰ *See id.*

⁹⁰¹ *See* MGBAKO, TO LIVE FREELY IN THIS WORLD 80.

⁹⁰² *See id.*

⁹⁰³ *See* MAC & SMITH, REVOLTING PROSTITUTES 56-57.

⁹⁰⁴ *See* Mac, TED TALK.

⁹⁰⁵ *See* AMNESTY INT’L, *Sex Workers at Risk*; *see also* MGBAKO, TO LIVE FREELY IN THIS WORLD 79-80.

⁹⁰⁶ *See* MAC & SMITH, REVOLTING PROSTITUTES 47; *see also* MGBAKO, TO LIVE FREELY IN THIS WORLD 79-80.

⁹⁰⁷ *See* Aziza Ahmed & Meena Seshu, “We Have The Right Not To Be ‘Rescued’...”: When Anti-Trafficking Programmes Undermine The Health And Well-Being Of Sex Workers, ANTI TRAFFICKING REV. at 163-64 (June 2012), <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/28/30>.

Part 2: Case Studies

Global Advocacy Strategies for the Decriminalization of Sex Work

The fight for equal protection and dignity by sex workers' rights organizations can be seen around the world in places such as Australia, Belgium, Canada, India, Mexico, New Zealand, South Africa, and the United States.⁹⁰⁸ This memo examines organizations' legal advocacy efforts through the legislature and/or judiciary on the local and national levels,⁹⁰⁹ and outlines both their victories and setbacks. For each case study, where applicable, this memo outlines (a) legal advocacy experiences, (b) permanence of decriminalization, (C) application in reality, (d) social advocacy strategies, and (e) application in Lebanon.

AFRICA

I. South Africa

This case study illustrates how activists engaged with various political and religious leaders to advance sex worker's rights in South Africa, to shape public perceptions on sex workers, and to create positive dialogue regarding sex work and religion.

a. Legal Advocacy Experiences

In South Africa, prostitution and prostitution-related activities are illegal.⁹¹⁰ For decades, activists in South Africa have lobbied to decriminalize sex work.⁹¹¹ The Asijiki Coalition for the Decriminalization of Sex Work ("Asijiki") is a collective of over seventy organizations of sex workers, human rights activists, and advocates, who work together to decriminalize sex work in South Africa.⁹¹² The Sex Workers Education and Advocacy Task Force (SWEAT) and Sisonke (a sex worker led advocacy group) have played a pivotal role in these ongoing efforts.⁹¹³

In 2011, SWEAT and Sisonke launched a decriminalization campaign by pressuring the legislature to repeal anti-prostitution laws.⁹¹⁴ SWEAT and Sisonke partnered with Tim Barnett, a former MP who was pivotal in the efforts to decriminalize sex work in New Zealand to help design their legal reform strategy.⁹¹⁵ Sex workers were trained in lobbying techniques and advancing legal arguments.⁹¹⁶ These activists then met with South African MPs to explain why decriminalization is the framework championed by the sex workers' rights community.⁹¹⁷

⁹⁰⁸ See generally MGBAKO, TO LIVE FREELY IN THIS WORLD.

⁹⁰⁹ See *id.*

⁹¹⁰ See MGBAKO, TO LIVE FREELY IN THIS WORLD 153 (2016).

⁹¹¹ See *id.*

⁹¹² See *About Us*, ASIJIKI COALITION, <https://asijiki.org.za/about-us/> (last visited Apr. 25, 2022).

⁹¹³ See HUM. RTS. WATCH, WHY SEX WORK SHOULD BE DECRIMINALIZED IN SOUTH AFRICA 12 (2019), https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf [hereinafter HRW SA REPORT].

⁹¹⁴ See MGBAKO, TO LIVE FREELY IN THIS WORLD 153 (2016).

⁹¹⁵ See *id.*

⁹¹⁶ See *id.*

⁹¹⁷ See *id.*

Sex workers used their personal experiences to advocate for changes to the law.⁹¹⁸ For example, noting how the South African Constitution provides basic economic rights as well as the right to dignity, equality, and the right to choose one's own work,⁹¹⁹ sex workers explained to MPs how criminalizing sex work violates their personal rights and subjected them to abuse by police. Members of parliament were often "shocked" to learn of the treatment sex workers face.⁹²⁰ Activists have also linked the sex workers' rights movement to local trade unions.⁹²¹

Moreover, activists in South Africa acknowledged that one of the biggest opponents of decriminalization are religious groups. In 2012, SWEAT and Sisonke organized a public forum to engage with progressive religious scholars and reconcile religion and sex work.⁹²² In the meeting, panelists discussed the personal nature of religion⁹²³ and critiqued the top-down lecturing of sex workers by religious leaders. They encouraged a bottom-up approach — where leaders consider the role of spirituality in sex workers' lives.⁹²⁴ The panelists also engaged with liberal readings of religious texts that destigmatize sex workers.⁹²⁵ One panelist, for example, discussed the Muslim practice of *nikah mut'ah* (a temporary marriage),⁹²⁶ which could facilitate sex work⁹²⁷ and has not been stigmatized historically.⁹²⁸

Decriminalization efforts in South Africa have gained momentum. Advocates have had audiences with the African National Congress (ANC) Women's League and the South African Multi-Party Women's Caucus, as well as the Congress of South African Trade Unions (COSATU), which subsequently endorsed decriminalization.⁹²⁹ In 2013, the South African Commission for Gender Equality endorsed the decriminalization of sex work.⁹³⁰ In 2017, the ANC as a party seemingly endorsed the decriminalization of sex work at a party conference.⁹³¹ That support, however, was then qualified to call for sex workers to be protected and for society to help determine the social norms of sex work.⁹³² Also in 2017, the South African Law Reform Commission (SALRC) recommended in a report that South African prostitution laws be updated—however, criminalization of both the selling and buying of sex remains on the books.⁹³³

In February of 2022, more than a decade after the launch of Sisonke, the South Africa Department of Justice and Constitutional Development (DJCD) began conversations with

⁹¹⁸ *See id.*

⁹¹⁹ *See id.*

⁹²⁰ *See id.* at 156.

⁹²¹ *See id.* at 155.

⁹²² *See id.* at 171

⁹²³ *See id.*

⁹²⁴ *See id.*

⁹²⁵ *See id.*

⁹²⁶ *See id.*

⁹²⁷ *See id.*

⁹²⁸ *See id.*

⁹²⁹ *See id.* at 153.

⁹³⁰ *See id.*

⁹³¹ *See* HRW SA REPORT, at 16.

⁹³² *See id.*

⁹³³ *See id.*

decriminalization advocates.⁹³⁴ Both SWEAT and Sisonke participated in the meetings. SWEAT's director, Emily Craven expressed cautious enthusiasm about the meeting with the DJCD.⁹³⁵ Craven also noted that while many are interested in the debate, not all are equally affected by the laws.⁹³⁶

b. Social Advocacy to Support Legal Reform Efforts

In 2019, SWEAT teamed up with Human Rights Watch and released a 78-page report detailing “Why Sex Work Should Be Decriminalised in South Africa.”⁹³⁷ In conducting its report, HRW and local NGOs interviewed 46 women sex workers,⁹³⁸ representatives from 40 NGOs that provide services to sex workers, government officials from the DJCD, and government agencies.⁹³⁹ HRW tried several times to interview officials from the South African Police Service (SAPS) but received no response.⁹⁴⁰

b. Application to the Lebanese Situation

In Lebanese society, the Catholic church has a lot of power and influence.⁹⁴¹ It may be beneficial to take note of the way that activists in South Africa engaged with religious scholars to push back against religious-based objections. Moreover, the personalized approach that activists undertook in meeting with MPs could be useful to apply to Lebanese policymakers.

ASIA

II. India

India serves as a case study of how advocate groups employ various methods such as campaigning, lobbying, and data gathering to advance sex workers' rights through the courts, remaining diligent as to accessibility issues and stepping in when the government fails to successfully implement its policies.

⁹³⁴ See Nompilo Kunene, *Talks to Decriminalise Sex Work In South Africa Begin*, THE WITNESS (Feb. 12, 2022), <https://www.news24.com/witness/news/kzn/talks-to-decriminalise-sex-work-in-south-africa-begin-20220212>.

⁹³⁵ See SWEAT (@SweatTwets), TWITTER (Feb. 9, 2022), <https://twitter.com/SweatTweets/status/1491357426288934914>.

⁹³⁶ See *id.*

⁹³⁷ See HRW SA REPORT, at 15.

⁹³⁸ See *id.* at 9.

⁹³⁹ See *id.* at 11.

⁹⁴⁰ See *id.* at 11.

⁹⁴¹ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic).

a. Legal Advocacy Experiences

Sex-work-related activities remain illegal in India. The Immoral Traffic (Prevention) Act (ITPA) of 1956 regulates sex work.⁹⁴² The law criminalizes keeping a brothel, living on sex work wages, engaging in sex work in public areas, and soliciting sex work.⁹⁴³

i. Legal Advocacy in Courts

In 2010, the Indian Supreme Court dismissed the appeal of Budhadev Karmaskar, who was convicted of murdering a sex worker.⁹⁴⁴ In response to the case, the Court appointed a panel to explore amending IPTA⁹⁴⁵ with the goal of creating an environment where sex workers would be able to live with dignity under the provisions set forth in the Indian Constitution.⁹⁴⁶ Indian sex worker advocacy groups, including the National Network of Sex Workers (NNSW), fostered working-group meetings with sex workers to provide recommendations to the panel.⁹⁴⁷ The groups recommended changes to the law that would decriminalize sex work and sex work related activities.⁹⁴⁸ Activists also noted restrictions that are imposed when sex work is criminalized. For example, the panel report stated how difficult it is for sex workers to acquire ration cards or voter ID cards.⁹⁴⁹ As a result, sex workers are unable to access many benefits.⁹⁵⁰

In 2021, five years after the panel submitted its recommendations, the Indian Supreme Court expanded sex workers' rights during the pandemic.⁹⁵¹ The Court ruled that Indian federal and local governments must issue both voter and ration cards to sex workers.⁹⁵² The Court also ruled that sex workers need to be enrolled in the country's biometric system which is integral for receiving welfare benefits.⁹⁵³ The Court's actions were in direct response to a plea from the Durbar Mahila Samanwaya Committee (DMSC), an Indian NGO dedicated to fighting for sex worker

⁹⁴² See *Indian Sex Workers Fight For Decriminalisation In Supreme Court Panel Law Reform Investigation*, NSWP, (Dec. 18, 2014), <https://www.nswp.org/news/indian-sex-workers-fight-decriminalisation-supreme-court-panel-law-reform-investigation> [hereinafter NSWP Post on Indian SC Panel Investigation].

⁹⁴³ See *News from Supreme Court for Indian Sex Workers*, NSWP (2016), <https://www.nswp.org/ru/node/8789>.

⁹⁴⁴ See *How A Criminal Appeal by An Appellant, While Being Dismissed By The Supreme Court, Brought Succour to Sex Workers During Covid Times*, THE LEAFLET (Jan. 11, 2022), <https://theleaflet.in/how-a-criminal-appeal-by-an-appellant-while-being-dismissed-by-the-supreme-court-brought-succour-to-sex-workers-during-covid-times/> [hereinafter THE LEAFLET Article].

⁹⁴⁵ See NSWP Post on Indian SC Panel Investigation.

⁹⁴⁶ See *id.*

⁹⁴⁷ See *id.*

⁹⁴⁸ See *id.*

⁹⁴⁹ See Amrita Madhukalya, *Give Legal Recognition to Sex Workers: Supreme Court Panel*, DNA INDIA (Nov. 9, 2016), <https://www.dnaindia.com/india/report-give-legal-recognition-to-sex-workers-supreme-court-2271497>.

⁹⁵⁰ See *id.*

⁹⁵¹ See THE LEAFLET Article.

⁹⁵² See Sameer Yasir, *India's Sex Workers Win Benefits from The Country's Top Court*, N.Y. TIMES (Dec. 15, 2021), <https://www.nytimes.com/2021/12/15/world/asia/india-sex-workers-benefits.html>.

⁹⁵³ See *id.*

rights.⁹⁵⁴ DMSC petitioned the Court to emphasize problems faced by sex workers during the pandemic.⁹⁵⁵

In May 2022, in a landmark ruling, the Court “expanded the rights of sex workers by defining prostitution as a profession, ordering an end to police violence and affirming health and labor protections introduced during coronavirus lockdowns.”⁹⁵⁶

ii. Lobbying Efforts

NNSW engaged in an extensive lobbying campaign to amend the Trafficking Bill of 2018, which members of parliament had recently drafted.⁹⁵⁷ The organization undertook a four-month campaign to highlight their concerns that the bill’s language could criminalize all sex work with no distinction between voluntary sex work and human trafficking.⁹⁵⁸ The NNSW wrote to leaders in parliament, asking for dialogue with the communities that would be impacted by the bill⁹⁵⁹ and called on government officials to recognize sex workers’ agency.⁹⁶⁰ NNSW consulted with both sex workers and stakeholders, gathering endorsements from 4,000 individuals across seven states in its lobbying efforts.⁹⁶¹ NNSW also provided members of parliament with suggested amendments to the bill, including adding language that explicitly states that adult consenting sex workers would not be covered by the bill.⁹⁶² However, these changes were not added to the final bill.⁹⁶³ While the 2018 Anti-trafficking bill was ultimately passed in the lower house of parliament, it failed to pass in the upper house and did not become law.⁹⁶⁴ In 2021, the Indian Parliament introduced a similar anti-trafficking bill.⁹⁶⁵

⁹⁵⁴ See DURBAR, <https://durbar.org> (last visited Apr. 25, 2022).

⁹⁵⁵ *SC Directs States To Continue Sex Worker Identification, Continue Dry Ration Distribution*, ANI NEWS (Feb. 28, 2022), <https://www.aninews.in/news/national/general-news/sc-directs-states-to-continue-sex-worker-identification-continue-dry-ration-distribution20220228184101/>

⁹⁵⁶ Miriam Berger, *Indian sex workers win new rights but still fear police violence*, THE WASH. POST (May 30, 2022), <https://www.washingtonpost.com/world/2022/05/30/indias-sex-workers-win-new-rights-still-fear-police-violence/>.

⁹⁵⁷ See *About Us*, NAT’L NETWORK OF SEX WORKERS, <http://www.nnswindia.org/about-us.aspx> (last visited April 25, 2022).

⁹⁵⁸ Jagriti Chandra, *Sex Workers, Lawyers Seek To Amend Language Of Anti-Trafficking Bill*, THE HINDU (Dec. 27, 2018), <https://www.thehindu.com/news/national/sex-workers-lawyers-urge-changes-to-anti-trafficking-bill/article25836092.ece>; see also *Nat’l Initiatives of NNSW*, NATIONAL NETWORK OF SEX WORKERS, <http://www.nnswindia.org/activities.aspx> (last visited Apr. 25, 2022).

⁹⁵⁹ See Jagriti Chandra, *Sex Workers, Lawyers Seek To Amend Language Of Anti-Trafficking Bill*, THE HINDU (Dec. 27, 2018), <https://www.thehindu.com/news/national/sex-workers-lawyers-urge-changes-to-anti-trafficking-bill/article25836092.ece>.

⁹⁶⁰ See Letter from the Nat’l Network of Sex Workers, to Maneka Sanjay Gandhi, Union Minister of Women and Child (July 9, 2018), <http://www.nnswindia.org/upload/trafficking-bill-2018-docs/Letter-to-WCD.pdf>.

⁹⁶¹ See *id.*

⁹⁶² See NNSW Suggested Amendments to Trafficking Bill (2018), <http://www.nnswindia.org/upload/trafficking-bill-2018-docs/Suggested-Amendments-to-Trafficking-Bill.pdf>

⁹⁶³ See The Trafficking of Persons (Prevention, Protection And Rehabilitation) Bill, 2018, Bill No. 89 of 2018, [https://prsindia.org/files/bills_acts/bills_parliament/2018/The%20Trafficking%20of%20Persons%20\(Prevention,%20Protection%20and%20Rehabilitation\)%20Bill,%202018.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2018/The%20Trafficking%20of%20Persons%20(Prevention,%20Protection%20and%20Rehabilitation)%20Bill,%202018.pdf).

⁹⁶⁴ See Sravasti Dasgupta, *What Is Draft Anti-Trafficking Bill 2021 And How It Is Different From The 2018 Bill*, THE PRINT (July 9, 2021), <https://theprint.in/theprint-essential/what-is-draft-anti-trafficking-bill-2021-and-how-it-is-different-from-the-2018-bill/692096/>.

⁹⁶⁵ See *id.*

b. Application in Reality

Since the implementation of the 2021 Indian Supreme Court ruling, which expands social benefits to sex workers including the issuing of voter and ration cards and enrolling sex workers in the national welfare plan, there have been many bureaucratic hurdles to implementation.⁹⁶⁶ This is largely because the only government agency available for sex workers is the National AIDS Control Organization (NACO), designed to focus on alleviating the impact of AIDS, and not specifically the needs of sex workers.⁹⁶⁷ Sex workers can only communicate with the government through NACO, but instead of supporting their needs, NACO tends to view sex workers as “vectors of the disease.”⁹⁶⁸ This has made it difficult to expand social benefits to sex workers.⁹⁶⁹ However, where the government has been unsuccessful in enrolling sex workers in their new benefits, community-based organizations have stepped in.⁹⁷⁰ For instance, these community organizations have set up help desks that assist sex workers in obtaining ration cards, bank accounts, and account information.⁹⁷¹ It is too early to know the effects of the May 2022 landmark ruling.

c. Social Advocacy to Support Legal Reform Efforts

In 2020 Sadhana Mahila Sangha, an Indian sex worker organization, submitted a report to the United Nations Special Rapporteur on Violence Against Women.⁹⁷² Sadhana Mahila Sangha works to protect sex workers from police violence.⁹⁷³ The report requested that the Special Rapporteur include a recommendation for the decriminalization of sex work in her upcoming report on “States Responsibility to Criminalize And Prosecute Rape as a Grave and Systematic Human Rights Violation and a Manifestation of Gender-Based Violence Against Women, in line with International Human Rights Standards.”⁹⁷⁴ The submission requested that UN Member states, including India, repeal legislation that criminalizes sex work,⁹⁷⁵ calling on India and other States to afford sex workers labor protections, access to justice, and confidential health services.⁹⁷⁶ In addition, the submission called for increased penalties for individuals, including police, who commit acts of violence against sex workers.⁹⁷⁷

d. Application to the Lebanese Situation

⁹⁶⁶ See Rohitha Naraharisetty, *The Indian Govt Conflates Sex Workers with AIDS Control, Further Marginalizing Them*, THE SWADDLE (Mar. 24, 2022), <https://theswaddle.com/the-indian-govt-conflates-sex-workers-with-aids-control-further-marginalizing-them/>.

⁹⁶⁷ See *id.*

⁹⁶⁸ See *id.*

⁹⁶⁹ See *id.*

⁹⁷⁰ See *id.*

⁹⁷¹ See *id.*

⁹⁷² Sadhana Mahila Sangha, SUBMISSION TO THE UNITED NATIONS SPECIAL RAPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES (Dec. 2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/180-general.pdf> [hereinafter Sangha, SUBMISSION TO THE UN].

⁹⁷³ Pragna L. Krupa, *Sex Workers Fear Govt Move to Hold Survey*, TIMES OF INDIA (May 22, 2015), <https://timesofindia.indiatimes.com/city/bengaluru/sex-workers-fear-govt-move-to-hold-survey/articleshow/47379106.cms>.

⁹⁷⁴ See Sangha, SUBMISSION TO THE UN.

⁹⁷⁵ See *id.*

⁹⁷⁶ See *id.*

⁹⁷⁷ See *id.*

India is an example of how advocacy groups can attempt to advance sex worker rights through the court system, a preferred method of advocacy in Lebanon per our conversation with Lebanese lawyer Karim Nammour.⁹⁷⁸ The 2021 Supreme Court ruling is an example of how a win doesn't necessarily equate accessibility in practice. Thus, advocates have a special role in ensuring that when sex workers rights are expanded, sex workers can access these benefits in practice by filling the void when government's fail to act.

AUSTRALIA AND OCEANIA

III. New South Wales, Australia

New South Wales illustrates how information gathering on the abuses suffered by sex workers is crucial and how lobbying for political support enables decriminalization. It also serves as an example of how decriminalization is hindered when heavy regulations make it difficult for sex workers to work.

a. Legal advocacy experiences

New South Wales is one of three regions in Australia that has decriminalized sex work on a state/sub-national level.⁹⁷⁹ The largest and longest-existing sex worker advocacy organization is the Sex Workers Outreach Project ("SWOP").⁹⁸⁰ SWOP's methodology for legal reform was to conduct research to document violations of sex workers' human rights and to work in collaboration with governmental bodies and state representatives to push for much needed reform.

After reaching their breaking point with widespread police corruption and abuse, including regular fining and bribery, sex workers in New South Wales began their legal advocacy in the 1970s.⁹⁸¹ Soon after, internal investigations were conducted and revealed evidence of extensive police involvement in crime.⁹⁸² Rather than adhere to demands for decriminalization, the government responded to these findings by implementing new, restrictive regulations.⁹⁸³ To combat such regulations, SWOP interviewed 100 sex workers and found that half had been violently assaulted and one-third raped while at work.⁹⁸⁴ SWOP also worked with other organizations, each contributing research on the damage of criminalization.⁹⁸⁵ These submissions

⁹⁷⁸ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic).

⁹⁷⁹ See *About SWOP*, SEX WORKERS OUTREACH PROJECT, <https://swop.org.au/about-swop#:~:text=SWOP%20is%20Australia's%20largest%20and,as%20all%20other%20Australian%20workers. The Northern Territory of Australia in 2019 also has sex work decriminalized.>

⁹⁸⁰ See *id.*

⁹⁸¹ See *Decriminalisation: The Smart Sex Worker's Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf.

⁹⁸² See *id.*

⁹⁸³ See *id.*

⁹⁸⁴ See *id.*

⁹⁸⁵ See Eurydice Aroney & Penny Crofts, *How Sex Worker Activism Influenced the Decriminalisation of Sex Work in NSW, Australia*, UNIVERSITY OF TECHNOLOGY SYDNEY, <https://www.crimejusticejournal.com/article/download/955/754/4096>.

were then compiled and published.⁹⁸⁶ SWOP's research was regarded as the most important contribution to the New South Wales Select Committee's review of sex work laws from 1983-1986, ultimately resulting in the committee's recognition of the need for complete reform.⁹⁸⁷ The committee's final report often cited SWOP's report.⁹⁸⁸ SWOP garnered public attention by presenting data that challenged preconceptions held toward sex workers,⁹⁸⁹ worked with state representatives, and discussed sex work laws with the New South Wales Attorney General regularly.⁹⁹⁰ These efforts culminated in the New South Wales government decriminalizing brothels in 1995.⁹⁹¹

b. Permanence or Repeals of Decriminalization Wins

SWOP's relationship with the government and campaigning experience has ensured the permanence of decriminalization in New South Wales. SWOP became the first government-funded sex workers' rights organization in the world, getting its primary funding from the NSW Ministry of Health in an effort to maintain low rates of STIs amongst sex workers.⁹⁹² This funding started in 1990 during SWOP's legal reform efforts and continues to today.⁹⁹³ SWOP's relationship with the NSW Ministry of Health was another way SWOP positioned itself to lobby for decriminalization.⁹⁹⁴ For example, when the Brothels Legislation Amendment Act of 2007 threatened to increase local council's power to control and close brothels at will and a 2015 regulation of brothels inquiry proposed a police-regulated national licensing system for brothels, SWOP found support in the NSW Ministry of Health when they released a report supporting decriminalization.⁹⁹⁵ Like many other organizations globally, SWOP used lobbying methods to fight for decriminalization, but they also formed a relationship and found support with a government body whose findings could not be ignored.

c. Application in Reality

In 2012 the NSW Ministry of Health on sex work released a report stating that because of decriminalization, there were no longer any incidents of police corruption related to sex work, the size of the sex industry did not increase, and the mental and sexual health of sex workers was at a

⁹⁸⁶ See *id.*

⁹⁸⁷ See *id.*

⁹⁸⁸ See *id.*

⁹⁸⁹ See Eurydice Aroney & Penny Crofts, *How Sex Worker Activism Influenced the Decriminalisation of Sex Work in NSW, Australia*, UNIVERSITY OF TECHNOLOGY SYDNEY, <https://www.crimejusticejournal.com/article/download/955/754/4096>.

⁹⁹⁰ See *id.*

⁹⁹¹ See *Decriminalisation: The Smart Sex Worker's Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf.

⁹⁹² See *About SWOP*, SEX WORKERS OUTREACH PROJECT, <https://swop.org.au/about-swop#:~:text=SWOP%20is%20Australia's%20largest%20and,as%20all%20other%20Australian%20workers>.

⁹⁹³ See *Submission on the Exposure Draft of the Online Safety Bill 2020*, SEX WORKERS OUTREACH PROJECT OF NSW, <https://www.infrastructure.gov.au/sites/default/files/submissions/osb-sex-workers-outreach-project-nsw.pdf>

⁹⁹⁴ See generally *Decriminalisation: The Smart Sex Worker's Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf.

⁹⁹⁵ See *id.*; see also *The Brothels Legislation Amendment Act 2007 No 29.*, NEW SOUTH WALES PARLIAMENT (2007); see also *A summary of the Brothels Legislation Amendment Act 2007*, SWOP (2007); *Extract From Votes and Proceedings - Regulation of Brothels Inquiry*, NEW SOUTH WALES PARLIAMENT (2015); *The Sex Industry in New South Wales, A Report to the NSW Ministry of Health*, UNSW (2012).

similar level to the general population of New South Wales—all findings that supported SWOP’s campaign.⁹⁹⁶ Additionally, decriminalization allowed sex workers to report crimes against abusers without fear of getting arrested themselves and implemented a police oversight mechanism where complaints are submitted if the police are not treating them fairly.⁹⁹⁷ However, in practice, New South Wales’s current system is not without issues as heavy restrictions on sex work remain, such as being unable to operate near schools, churches, hospitals, or homes.⁹⁹⁸ If sex workers do not abide by these restrictions they can be arrested.⁹⁹⁹ Heavy regulations are also implemented against brothels and independent sex workers by local councils, with stringent limitations on sex work advertisement.¹⁰⁰⁰ These local councils find many excuses to reject applications to open sex work premises and this makes most sex work venues unauthorized or illegal.¹⁰⁰¹ As a result, sex work premises operate under the guise of being massage parlors which must operate with discretion such as not keeping condoms on the premises.¹⁰⁰² For an independent sex worker, they must apply publicly to do sex work from home, and that too is a highly prohibitive process that informs the applicant’s neighbors that the applicant is a sex worker.¹⁰⁰³

d. Social Advocacy to Support Legal Reform Efforts

In 1983 SWOP made sure to present its research findings from their study to the media to garner support and challenge myths.¹⁰⁰⁴ The findings were published in a national newspaper that revealed that up to 44% of sex workers had children, most were single mothers, and all of them viewed sex work as work to provide economic stability to their children.¹⁰⁰⁵ These research findings were shocking to the community and helped foster interest in the matter.

e. Application to the Lebanese Situation

Activists in New South Wales relied heavily on garnering public support for decriminalization, creating reports that shocked the public with findings the government could not ignore. While activists in New South Wales could previously only rely on newspapers to spread awareness of the abuses sex workers faced under a criminalized framework, now there is the internet and social media. Lebanese attorney Karim Nammour pointed out that for those activists

⁹⁹⁶ See *The Sex Industry in New South Wales, A Report to the NSW Ministry of Health*, UNSW (2012).

⁹⁹⁷ See *Decriminalisation: The Smart Sex Worker’s Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf

⁹⁹⁸ See *id.*; see also *Decriminalisation of Sex Work in New South Wales*, NSWP, <https://www.nswp.org/timeline/event/decriminalisation-sex-work-new-south-wales>; see also Barbara Sullivan, *When (Some) Prostitution Is Legal: The Impact of Law Reform on Sex Work in Australia*, 37 J. L. & SOC. 85 (2010).

⁹⁹⁹ See *id.*

¹⁰⁰⁰ See *Decriminalisation: The Smart Sex Worker’s Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf

¹⁰⁰¹ See *id.*; see also *Decriminalisation Since 1995*, SCARLET ALLIANCE, <http://www.scarletalliance.org.au/laws/nsw/> (“...less than 15% of brothels operate with development consent due to strict regulations, a lack of appropriate planning policies, and the fact that legal appeals to the council are prohibitively long-winded and expensive.”).

¹⁰⁰² See *Decriminalisation: The Smart Sex Worker’s Guide*, GLOBAL NETWORK OF SEX WORK PROJECTS, https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf

¹⁰⁰³ See *id.*

¹⁰⁰⁴ See Eurydice Aroney & Penny Crofts, *How Sex Worker Activism Influenced the Decriminalisation of Sex Work in NSW, Australia*, UNIVERSITY OF TECHNOLOGY SYDNEY, <https://www.crimejusticejournal.com/article/download/955/754/4096>

¹⁰⁰⁵ See *id.*

in Lebanon that utilize strategic litigation, the media is paramount because the more support there is on an issue, the more judges are emboldened to issue a landmark ruling.¹⁰⁰⁶ As such, SWOP's method of researching and gathering data on the abuses sex workers face and then releasing the findings on social media and other media outlets could be particularly helpful.

IV. Northern Territory, Australia

The struggle for sex workers' rights in the Northern Territory (NT) of Australia illustrates advocacy groups' use of political support from the larger labor movement and human rights mechanisms to fight for decriminalization and uplift the experiences of sex workers.

a. Legal Advocacy Experiences

In 2019, the NT became the second territory in Australia to decriminalize sex work.¹⁰⁰⁷ This was achieved through the collective organizing of sex work as a labor issue.¹⁰⁰⁸ Prior to 2019, the Northern Territory had highly restrictive laws related to sex work.¹⁰⁰⁹ For example, escort agencies had to be licensed, massage parlors and brothels were illegal, and sex workers were not allowed to work together.¹⁰¹⁰

i. Northern Territory Bill Language

Under the 2019 reforms in NT, the soliciting of sex work, home-based sex work, and brothels are no longer illegal.¹⁰¹¹ The object of the bill is to decriminalize sex work and make legal sex-work-related contracts.¹⁰¹² In addition, the object of the bill is to enhance sex worker and client safety, prohibit the exploitation of sex workers, combat the use of children in sex work, and allow the sex industry to operate within NT in the same way that other individuals and businesses operate.¹⁰¹³

Specifically, the bill notes that contracts for sex work cannot be voided on public policy grounds as sex workers and operators must take steps to promote the practice of safe sex, and sex workers may, notwithstanding any contract, refuse to perform sex work at any time.¹⁰¹⁴ The act

¹⁰⁰⁶ See Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (on file with Walter Leitner Int'l Human Rights Clinic).

¹⁰⁰⁷ See *UNAIDS Welcomes the Decision by the Northern Territory of Australia to Decriminalize Sex Work*, UNAIDS (Dec. 2, 2019), <https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2019/december/decision-northern-territory-australia-decriminalize-sex-work>.

¹⁰⁰⁸ See DECRIMINALISATION THE SMART SEX WORKER'S GUIDE, NSW (2020), https://www.nswp.org/sites/default/files/sg_to_decriminalisation_prf05.pdf [hereinafter NSW DECRIMINALISATION GUIDE].

¹⁰⁰⁹ See *id.*

¹⁰¹⁰ See *id.*

¹⁰¹¹ See Inga Stünzer, *Queensland Accused of Falling Behind Other States as Sex Workers Pressure Government to Change Laws*, ABC NEWS (Dec. 19, 2019), <https://www.abc.net.au/news/2019-12-19/sex-workers-pressure-for-changes-to-queensland-laws/11806420>

¹⁰¹² Sex Industry Act, 2019, (NT), (Austl.), <https://legislation.nt.gov.au/en/Legislation/SEX-INDUSTRY-ACT-2019>

¹⁰¹³ See *id.*

¹⁰¹⁴ See *id.*

requires sex service businesses comprised of three or more individuals to obtain a suitability certificate from the government and imposes civil fines for noncompliance.¹⁰¹⁵ To obtain a suitability certificate a business must be deemed to have “suitable persons” to operate a sex-related business.¹⁰¹⁶ The government reviews compliance with regulations and State laws to determine suitability.¹⁰¹⁷

The act *does criminalize* advertising for sex work in a newspaper / TV and some instances of concealing to clients when a sex worker has an STI.¹⁰¹⁸

ii. Northern Territory Activism

The Sex Worker Outreach Program (SWOP NT), a peer-based NGO in the Northern Territory,¹⁰¹⁹ organized sex workers to create a unified message. They inserted sex workers into conversations about decriminalization and sex work laws.¹⁰²⁰ Sex workers and activists noted how they know the industry and the issues, providing evidence and case studies to anyone who would listen.¹⁰²¹ SWOP NT formed an alliance with the Scarlet Alliance, a national sex worker’s NGO in Australia, to enhance its decriminalization campaign.¹⁰²² The two NGOs then aligned themselves with Australian trade unions, who gave the NGOs platforms to speak at their events.¹⁰²³ In 2016, the Australian Labor Party was elected into power — a party whose platform supports workers’ rights.¹⁰²⁴

This enabled sex worker rights advocates, who were already aligned with working parties and trade unions to align themselves with the political party’s platform.¹⁰²⁵ The advocates gained support from all Labor party ministers in the Northern Territory to decriminalize sex work.¹⁰²⁶ Then, in consultation with sex workers, the NT government issued a discussion paper on the topic.¹⁰²⁷

In 2019, the Sex Industry Bill went to the NT Legislative Assembly.¹⁰²⁸ The Scarlet Alliance also provided a submission to parliament on the bill, in which they noted how the bill’s passing would provide an opportunity to build on prior experience in other Australian states, set an example for decriminalization of the sex industry, and provide protections for sex workers.¹⁰²⁹

¹⁰¹⁵ See *id.*

¹⁰¹⁶ See *id.*

¹⁰¹⁷ See *id.* at 9.

¹⁰¹⁸ See *id.*

¹⁰¹⁹ See *Sex Worker Outreach Program – SWOP NT*, NTAHC (last visited Apr. 25, 2022), <https://www.ntahc.org.au/swopnt>.

¹⁰²⁰ See NSW DECRIMINALISATION GUIDE, 19-21.

¹⁰²¹ See *id.*

¹⁰²² See *id.*

¹⁰²³ See *id.*

¹⁰²⁴ See *id.*

¹⁰²⁵ See *id.*

¹⁰²⁶ See *id.*

¹⁰²⁷ See *id.*

¹⁰²⁸ See *id.*

¹⁰²⁹ See Lauren Roberts & Jacqueline Breen, *NT Decriminalises Sex Work as Attorney-General Natasha Fyles Pushes Through Change*, ABC NEWS (Nov. 26, 2019), <https://www.abc.net.au/news/2019-11-26/northern-territory->

c. Social Advocacy to Support Legal Reform Efforts

In 2014, UNAIDS initiated a meeting in Melbourne, Australia, with the goal of convening global leaders to discuss how to end the AIDS epidemic by the year 2030.¹⁰³⁰ At the time, the Scarlet Alliance wrote an article that was published by the Australian Federation of AIDS Organisations (AFAO) journal as part of the UN conference.¹⁰³¹ The article is titled “Sex work legislation stands in the way of Australia’s commitments: decriminalisation for sex workers health, safety and rights.”¹⁰³²

Australia is a signatory to the 2011 United Nations Political Declaration (UNPD) on HIV and AIDS,¹⁰³³ and has committed to upholding human rights and the elimination of stigma for persons with HIV.¹⁰³⁴ Thus, the article emphasizes how sex workers are critical to combat HIV and achieve the UNPD targets.¹⁰³⁵ It also points to various UN documents that recommend that countries take action to decriminalize sex work.¹⁰³⁶ By highlighting that decriminalization is an effective model to help prevent HIV, the article tied the decriminalization of sex work to the global fight against AIDS.¹⁰³⁷ Sex workers in decriminalized communities have high rates of condom use and low rates of HIV and other STIs.¹⁰³⁸

d. Application to the Lebanese Situation

Advocacy in the NT was centered on lobbying and passing legislation. Our understanding, based on conversations with Karim Nammour, is that in Lebanon legal reform efforts that focus on engaging the judiciary are more effective.¹⁰³⁹ However, general lessons for how to engage with policymakers could be applicable. Furthermore, engaging with UN organizations, such as was the case in Australia may also be applicable to activists in Lebanon.

V. New Zealand

New Zealand is an example of sex workers’ rights groups using strategic courting of key political players to push a decriminalization agenda. Although decriminalization came with limits,

[sex-industry-bill-passed/11739820?fbclid=IwAR292VuUgUotRUd8zSD0KtZXYxqCz5SO1ebZQB7nwRWU_bEUPn7PDjL0nPM](https://www.parliament.nz/en/parliamentary/bills/sex-industry-bill-passed/11739820?fbclid=IwAR292VuUgUotRUd8zSD0KtZXYxqCz5SO1ebZQB7nwRWU_bEUPn7PDjL0nPM) .

¹⁰³⁰ See *Global Leaders Commit to Ending The AIDS Epidemic In Cities By 2030*, UNAIDS (July 20, 2014),

<https://www.unaids.org/en/keywords/aids2014-2014-international-aids-conference-australia> .

¹⁰³¹ See *Human Rights*, SCARLET ALLIANCE (last visited Mar 29, 2022), <https://scarletalliance.org.au/issues/human-rights/>.

¹⁰³² See Janelle Fawkes, *Sex Work Legislation Stands in the Way of Australia’s Commitments: Decriminalisation for Sex Workers Health, Safety and Rights*, AFAO, HIV AUSTRALIA (July 2014), <https://www.afao.org.au/article/sex-work-legislation-stands-way-australias-commitments-decriminalisation-sex-workers-health-safety-rights/> .

¹⁰³³ See *id.*

¹⁰³⁴ See *id.*

¹⁰³⁵ See *id.*

¹⁰³⁶ See *id.*

¹⁰³⁷ See *id.*

¹⁰³⁸ See *id.*

¹⁰³⁹ See Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file with Walter Leitner Int’l Human Rights Clinic).

New Zealand has well documented evidence of the positive effects decriminalization has on sex workers.

a. Legal Advocacy Experiences

In 2003, New Zealand became the first country to decriminalize sex work by enacting the Prostitution Reform Act (PRA). Although sex work was not technically criminalized prior, many activities ancillary to sex work, like operating a brothel, were criminalized.¹⁰⁴⁰ The New Zealand Prostitutes Collective (“NZPC”) was one instrumental group in drafting and implementing the PRA, the preeminent example of lasting legal reform thus far.¹⁰⁴¹

NZPC’s role in catalyzing the formulation of the PRA, and thus advancing decriminalization in New Zealand, was central.¹⁰⁴² NZPC is a peer-run organization that has fought tirelessly since 1987 for the rights of sex workers through legal reform.¹⁰⁴³ NZPC’s primary legal strategies include assisting in legislative drafting, conducting qualitative and quantitative research, and coalition building with government bodies and other strategic partners. NZPC strategically partnered with organizations and other stakeholders like the New Zealand Federation of Business and Professional Women to effectively promote its legislative aims and educate the public.¹⁰⁴⁴ Intent on always grounding arguments in empirical evidence, NZPC fostered close ties with researchers, especially public health researchers.¹⁰⁴⁵ Moreover, NZPC gained support from high-ranking parliamentarians of different political parties, and networked with lawyers, academics, and sex workers across New Zealand to develop the PRA.¹⁰⁴⁶ The organization also attended Parliament meetings to insert itself into the political sphere.¹⁰⁴⁷ As such, NZPC activists received media training which proved essential.¹⁰⁴⁸

When drafting the PRA, NZPC and its affiliates made the strategic decision to keep the proposed bill’s language narrow, noncontentious, and thus widely appealing to the electorate.¹⁰⁴⁹

¹⁰⁴⁰ See M. Hynes, *Sex Work and the Law in South Africa, Sweden and New Zealand: An Evidence-based Argument for Decriminalization*, 5 COLUM. UNIV. J. OF GLOB. HEALTH 24–30 (2015), <https://doi.org/10.7916/thejgh.v5i2.5305>.

¹⁰⁴¹ *Decriminalisation of Sex Work in New Zealand (Booklet)*, NZPC AOTEAROA NEW ZEALAND SEX WORKERS’ COLLECTIVE, https://www.nzpc.org.nz/pdfs/Video-Booklet-Decriminalisation_of_Sex_Work_in_New_Zealand.pdf.

¹⁰⁴² Gillian M. Abel, *A Decade of Decriminalization: Sex Work ‘down under’ but Not Underground*, 14 CRIMINOLOGY & CRIM. JUST. 580, 582 (2014).

¹⁰⁴³ *Id.* at 582–83.

¹⁰⁴⁴ *Id.*; see also Fraser Crichton, *Decriminalizing Sex Work in New Zealand: Its History and Impact*, OPENDEMOCRACY (2015), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/>.

¹⁰⁴⁵ *Id.*; see also M. Hynes, *Sex Work and the Law in South Africa, Sweden and New Zealand: An Evidence-based Argument for Decriminalization*, 5 COLUM. UNIV. J. OF GLOB. HEALTH 24–30 (2015), <https://doi.org/10.7916/thejgh.v5i2.5305>. A clever partnership considering public health workers as a collective field had already endorsed decriminalization as a harm mitigation strategy.

¹⁰⁴⁶ Abel, *A Decade of Decriminalization* 580, 583 (2014).

¹⁰⁴⁷ NSW, *Decriminalization the Smart Sex Worker’s Guide* (2020), <https://www.nswp.org/resource/nswp-smart-guides/smart-sex-workers-guide-decriminalisation#:~:text=This%20Smart%20Guide%20provides%20an,workers%20human%20and%20labour%20rights>

¹⁰⁴⁸ *Id.*

¹⁰⁴⁹ *Id.*

NZPC then decided on the optimal politician to front their cause: liberal MP Tim Barnett.¹⁰⁵⁰ When a progressive politician, Helen Clarke, subsequently became Prime Minister, she gave MP Barnett the latitude to proceed with decriminalization legislation.¹⁰⁵¹ Barnett brought the bill before his party and then Parliament, where public comments were heard both for and against the bill.¹⁰⁵² Although opposed by the likes of evangelical Christians, proponents of the PRA found success in framing sex work as work, and decriminalization as both a labor issue and a means of mitigating the transmission of HIV/STIs.¹⁰⁵³

b. Application in Reality

Under the PRA, sex workers enjoy the same rights as other workers, including the ability to join unions, sue for sexual harassment or other employment grievances, and challenge unsafe working conditions.¹⁰⁵⁴ It is evident that the PRA has enhanced the human rights of sex workers in New Zealand.¹⁰⁵⁵ Robust evidence of the positive changes decriminalization creates on sex workers' lives suggests it is the regulatory scheme that should be implemented in other countries.¹⁰⁵⁶

A state-run impact review conducted five years after implementation of the PRA found that despite some shortcomings—such as the Act's failure to protect migrant workers—decriminalization has decreased the rate of disease transmission and the risk of violence posed to sex workers, improved relations with law enforcement and rates of reporting to police, increased migration of street-based workers indoors, and brought no increase in human trafficking or prevalence of sex work throughout New Zealand.¹⁰⁵⁷ The report concluded: “Many of the social

¹⁰⁵⁰ *Id.*

¹⁰⁵¹ *Id.*

¹⁰⁵² *Id.*

¹⁰⁵³ *Id.*

¹⁰⁵⁴ M. Hynes, *Sex Work and the Law in South Africa, Sweden and New Zealand: An Evidence-based Argument for Decriminalization.*, 5 COLUM. UNIV. J. OF GLOB. HEALTH 24–30 (2015), <https://doi.org/10.7916/thejgh.v5i2.5305>.

¹⁰⁵⁵ Gillian M. Abel, *A Decade of Decriminalization: Sex Work ‘down under’ but Not Underground*, 14 CRIMINOLOGY & CRIM. JUST. 580, 585 (2014).

¹⁰⁵⁶ *Id.* at 584–88; see also Gillian M. Abel, *Decriminalisation: A Harm Minimisation and Human Rights Approach to Regulating Sex Work. PhD Thesis, Public Health and General Practice*, University of Otago, Christchurch (2010); and Gillian M. Abel et al., *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee*, Univ. of Otago (2007); GILLIAN M. ABEL ET AL., *TAKING THE CRIME OUT OF SEX WORK: NEW ZEALAND SEX WORKERS’ FIGHT FOR DECRIMINALISATION* (Bristol: Policy Press 2010); Gillian M. Abel, *A Decade of Decriminalization: Sex Work ‘down under’ but Not Underground*, 14 CRIMINOLOGY & CRIM. JUST. 580, 585 (2014).

¹⁰⁵⁷ M. Hynes, *Sex Work and the Law in South Africa, Sweden and New Zealand: An Evidence-based Argument for Decriminalization.*, 5 COLUM. UNIV. J. OF GLOB. HEALTH 24–30 (2015), <https://doi.org/10.7916/thejgh.v5i2.5305>; see also New Zealand: *The Ideal Legal Framework for Decriminalized Sex Work*, DECRIMINALIZE SEX WORK (2020), <https://decriminalizensex.work/why-decriminalization/briefing-papers/new-zealand-ideal-legal-framework/>: To summarize key qualitative findings, the 2007 impact review of the PRA found that 80% of female participants reported using protection for all forms of penetration, and 90% reported using a condom during every sexual encounter within the past month. The report also revealed that 87% of respondents had a regular doctor, and only half of those respondents did not inform their physicians about their profession out of fear that stigma would impact their quality of care. The review committee also tasked the Christchurch School of Medicine with conducting an independent review of the PRA, which found: over 90% of sex workers believed the PRA gave them employment, legal and health and safety rights, 64% found it easier to refuse clients, and 57% reported that police attitudes towards them had changed for the better.

evils predicted by some who opposed the decriminalization of the sex industry have not been experienced. The PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.”¹⁰⁵⁸

Brothel operators are now required to pass health inspections, obtain certifications, inform sex workers of their rights, and display and distribute NZPC materials prominently.¹⁰⁵⁹ Sex workers are permitted to work in managed brothels without size restrictions and can choose to unionize with colleagues or work alone as a street-based worker.¹⁰⁶⁰ Further, the PRA imposes no mandatory testing or licensing requirements.¹⁰⁶¹

The PRA further expands sex workers’ access to justice by providing them with forums and tribunals to resolve employment disputes.¹⁰⁶² Because New Zealand now recognizes brothel workers as independent contractors, they are afforded avenues of recourse.¹⁰⁶³ In 2014, for example, one sex worker won her case against a brothel owner for sexual harassment by an employer in the Human Rights Review Tribunal.¹⁰⁶⁴ These developments over the past decade have reduced the gross power imbalance between managers and sex workers to more of an equilibrium.¹⁰⁶⁵

Another profoundly positive effect of decriminalization efforts in New Zealand has been the notable change in public discourse around sex work.¹⁰⁶⁶ Residents are now able to speak frankly about commercial sex without fear of entrapment and/or criminal sanction.¹⁰⁶⁷ Sex workers are also better able to negotiate safe sex practices, fair rates and the services they will and will not provide—both virtually and in person.¹⁰⁶⁸ Research shows that over 90% of sex workers are now aware of their labor and legal rights, with many arguing that this awareness has increased their confidence when negotiating with clients.¹⁰⁶⁹

However, the bill leaves certain groups unprotected. For example, the NZPC and the Human Rights Commissions have lobbied for amendments to the PRA to decriminalize sex work for migrant workers.¹⁰⁷⁰ This came after the organizations conducted interviews of migrant sex

¹⁰⁵⁸ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, NEW ZEALAND GOV’T 168 (May 2008), <http://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>; Fraser Crichton, *Decriminalising Sex Work in New Zealand: Its History and Impact* (2015), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/>.

¹⁰⁵⁹ M. Hynes, *Sex Work and the Law in South Africa, Sweden and New Zealand: An Evidence-based Argument for Decriminalization.*, 5 COLUM. UNIV. J. OF GLOB. HEALTH 24–30 (2015), <https://doi.org/10.7916/thejgh.v5i2.5305>.

¹⁰⁶⁰ *Id.*

¹⁰⁶¹ *Id.*

¹⁰⁶² Abel, *A Decade of Decriminalization* 580, 585-86.

¹⁰⁶³ *Id.* at 585

¹⁰⁶⁴ Crichton (2015)

¹⁰⁶⁵ Abel, *A Decade of Decriminalization* 580, 585.

¹⁰⁶⁶ *Id.* at 586-87

¹⁰⁶⁷ *Id.*

¹⁰⁶⁸ *Id.*

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ Decriminalization the Smart Sex Worker’s Guide, NSW.

workers in New Zealand and found evidence of their vulnerability at work due to their criminalized status in work.¹⁰⁷¹

j. Application in Lebanon

Two crucial elements of New Zealand decriminalization tactics may be applicable to Lebanon: (1) including sex workers' voices in legal reform and policymaking and (2) pulling back from engaging in moral arguments around sex work in favor of making human rights arguments.¹⁰⁷² New Zealand's PRA is exemplary in that it was developed and reviewed in full consultation with sex workers.¹⁰⁷³ In the months and years leading up to its passage, NZPC and its colleagues engaged in no moral discourse to support decriminalization other than to say that Parliament has no business legislating morals. Instead, they opted to present health and human rights arguments which proved central to passing the PRA.¹⁰⁷⁴

EUROPE

VI. Belgium

a. Legal Advocacy Experiences

On March 18, 2022, Belgium became the first European country to decriminalize sex work.¹⁰⁷⁵ Previously, while selling sex itself was not illegal in Belgium, actions of third parties providing services to sex workers were criminalized.¹⁰⁷⁶

i. Language of the Bill

Under the new law, third parties related to sex work are no longer criminalized.¹⁰⁷⁷ Making a website, banking, and selling insurance and apartment rentals to sex workers are no longer illegal.¹⁰⁷⁸ Sex workers who are self-employed have the same rights as other self-employed individuals.¹⁰⁷⁹ Advertising and pimping remain criminalized in certain instances, but both have broader exceptions than before.¹⁰⁸⁰ Advertising sex services is not criminalized when advertising for oneself, or where sex services are offered such as at a club or on a website that demonstrates it

¹⁰⁷¹ *Id.*

¹⁰⁷² Abel, *A Decade of Decriminalization* 580, 581-82.

¹⁰⁷³ *Id.*

¹⁰⁷⁴ *Id.*; see also Tim Barnett et al, *Lobbying for Decriminalisation*, in *TAKING THE CRIME OUT OF SEX WORK: NEW ZEALAND SEX WORKERS' FIGHT FOR DECRIMINALISATION* 75-84 (Gillian Abel et al., eds, Bristol: Policy Press 2010).

¹⁰⁷⁵ See Laxmi Lota & Regjep Ahmetaj, *La Belgique Dépénalise La Prostitution, Une Première En Europe: "Tout Va Changer"*, *Selon Marie, Ex-Travailleuse Du Sexe*, RTL (Mar. 19, 2022), <https://www.rtl.be/info/belgique/societe/la-belgique-depenalise-la-prostitution-une-premiere-en-europe-tout-va-changer-selon-marie-ex-travailleuse-du-sexe-1364637.aspx>. Translated with Google Translate.

¹⁰⁷⁶ *See id.*

¹⁰⁷⁷ *See Decrim in English*, UTSPOI (last visited Apr. 25 2022), <https://utsopi.be/covid-19/>.

¹⁰⁷⁸ *See id.*

¹⁰⁷⁹ *See id.*

¹⁰⁸⁰ *See id.*

makes efforts to combat human trafficking.¹⁰⁸¹ Furthermore, under the new law, it is not considered pimping to offer ancillary services to a sex worker (such as web development or driving).¹⁰⁸² Nor is it pimping for sex workers to share housing so long as there is no hierarchy between them.¹⁰⁸³ In addition, under a law passed in February 2022, a business dealing with a sex worker can no longer claim that a contract with a sex worker is null and void merely because, as was previously the case, courts considered sex work against public morals.¹⁰⁸⁴ Publicly inciting an individual to prostitution through advertising remains illegal.¹⁰⁸⁵

ii. Activism in Belgium

The lead sex worker union in Belgium has been UTSOPI. One of UTSOPI's two stated goals on its website is to represent Belgian sex workers and to improve their living conditions.¹⁰⁸⁶ UTSOPI focuses on legislative change and works to insert itself into sex work debates and conversations.¹⁰⁸⁷ In April of 2021, the new Belgian Minister of Justice announced his intention to seek to decriminalize sex work in Belgium.¹⁰⁸⁸ In October 2021, UTSOPI participated in parliamentary hearings held by the Belgian Justice Commission regarding sexual criminal justice reform.¹⁰⁸⁹ Finally, on Thursday, March 17, 2022, the Belgian Federal Parliament approved the new sexual penal code which officially decriminalized sex work.¹⁰⁹⁰

b. Application to the Lebanese Situation

Similar to the passage of decriminalization laws in the Northern Territory of Australia, decriminalization efforts in Belgium occurred via the legislature. Belgium is an example of how quickly decriminalization efforts can progress once activists obtain a necessary ally in a policy-making position.

¹⁰⁸¹ See *id.*

¹⁰⁸² See *id.*

¹⁰⁸³ See *id.*

¹⁰⁸⁴ See *id.*

¹⁰⁸⁵ See *id.*

¹⁰⁸⁶ See *Ui Sommes-Nous?*, UTSOPI (last visited Apr. 25, 2022), <https://utsopi.be/presentation/>.

¹⁰⁸⁷ See *id.*

¹⁰⁸⁸ See *Minister Van Justitie Van Quickenborne Wil Sekswork Decriminaliseren: "Maak Er Een Economische Activiteit Van,"* NIEUWS (Apr. 1, 2021), https://www.nieuwsblad.be/cnt/dmf20210401_95269201. Translated with Google Translate.

¹⁰⁸⁹ See UTSOPI, FACEBOOK (Oct. 26, 2021), https://www.facebook.com/utsopi/?ref=page_internal; *La Réforme Du Droit Pénal Sexuel Approuvée En Commission*, DHNET (Feb. 02, 2022), https://www.dhnet.be/actu/belgique/la-reforme-du-droit-penal-sexuel-approuvee-en-commission-6214e55c9978e253989e1eb4?fbclid=IwAR3EkasgyMQmtKd8YonuZWt2PrKBG7C1z3KugpNzgudFIMMWA_FiNxMdIY8. Translated via Google Translate.

¹⁰⁹⁰ See Maïthé Chini, 'Historic': Belgium First In Europe To Decriminalise Sex Work, BRUSSELS TIMES (Mar. 18, 2022), <https://www.brusselstimes.com/211351/historic-reform-belgium-first-in-europe-to-officially-decriminalise-sex-work>.

NORTH AMERICA

VII. Canada

This case study outlines the work advocacy groups have done to attempt to decriminalize sex work through strategic litigation and highlights concurrent social efforts.

a. Legal Advocacy Experiences

By enacting the Protections of Communities and Exploited Persons Act (PCEPA) in 2014, the Canadian government imposed the Nordic Model on sex workers for the first time in the nation's history. While decriminalization of sex work has not yet been achieved, an overview of recent impact litigation in Canada, brought in conjunction with organizations like Pivot Legal Society and SWUAV,¹⁰⁹¹ provides a blueprint for a decriminalization legal advocacy strategy.

Pivot is a non-profit renowned for using legal means to combat various social issues.¹⁰⁹² It is dedicated to decriminalizing sex work and abolishing laws that perpetuate criminalization.¹⁰⁹³ Pivot's legal-reform strategies include bringing impact litigation, conducting qualitative and quantitative research, coalition building, public education, and engaging media and social media.

In 2003, Pivot's Sex Work Subcommittee interviewed low-income sex workers and reported their testimonies to parliamentarians to furnish accurate, first-hand knowledge of those whom criminalization most directly affects.¹⁰⁹⁴ Pivot later published *Beyond Decriminalization*, an invaluable decriminalization guide focused on legal reform advocacy.¹⁰⁹⁵

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society ("SWUAV") (2007) is the first of three recent examples of strategic litigation in which Pivot was involved. The core legal argument of this case—and a parallel one, *Bedford*—was that the provisions of the Criminal Code banning acts ancillary to sex work (i.e., communicating about sex work in public, owning or operating a brothel, procuring) violated sex workers' rights to security of the person and freedom from imprisonment under the Canadian Charter. But before the *SWUAV* court could make or consider a substantive finding, the Attorney General argued that plaintiffs lacked either private or public interest standing.¹⁰⁹⁶ Ruling only on this issue of standing, a unanimous Supreme Court held that SWUAV should be allowed to bring the challenge.¹⁰⁹⁷ In doing so, the court rearticulated the test for granting public interest standing in Canadian courts,

¹⁰⁹¹ SWUAV is a sex workers' rights group run by and for sex workers out of Vancouver's Downtown Eastside.

¹⁰⁹² *About Page*, PIVOT LEGAL SOC'Y, <http://www.pivotlegal.org/about> [https://perma.cc/M2M9-VTFB].

¹⁰⁹³ *Id.*

¹⁰⁹⁴ *See* VOICES FOR DIGNITY, at 1, 6–8.

¹⁰⁹⁵ *See* Mgbako, *Mainstreaming* at 158; *See also* PIVOT LEGAL SOCIETY, *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform* 113-15 (2006), http://d3n8a8pro7vnm.cloudfront.net/pivotlegal/legacy_url/275/BeyondDecrimLongReport.pdf?1345765615 (accessed Mar. 18, 2022).

¹⁰⁹⁶ *Id.* *See also* *Access to Justice for Marginalized Litigants Page*, PIVOT LEGAL SOC'Y, https://www.pivotlegal.org/access_to_justice_for_marginalized_litigants and <https://jfcy.org/en/cases-decisions/swuav-publicinteresttest/>. As neither Sheryl individually nor SWUAV collectively faced criminal sanction under the Code.

¹⁰⁹⁷ *Id.*

making it far more lenient towards groups bringing claims on behalf of their members.¹⁰⁹⁸ Despite *SWAUV* not making a substantive impact, Pivot's challenge nonetheless made legal strides by expanding access to justice in courts for marginalized people.¹⁰⁹⁹ This rearticulated test is widely regarded as a "win" for public interest litigation in Canada.¹¹⁰⁰

In *Canada (Attorney General) v. Bedford, Scott and Leibovitch* (2013)—the case running parallel to *SWAUV*—Pivot's challenge resulted in three key provisions of the Code being struck down as unconstitutional.¹¹⁰¹ Those provisions banned communicating in public about prostitution, procuring or living off earnings from prostitution, and owning or operating brothels. The plaintiffs argued that they imperiled the safety and livelihoods of sex workers while prohibiting them from taking measures to improve their security.¹¹⁰² A unanimous Supreme Court agreed, abolishing the provisions for violating appellants' security of the person.¹¹⁰³ The court reasoned that the impugned provisions' driving sex workers underground to perform their jobs in unsafe situations violated their rights.¹¹⁰⁴ This landmark decision was the cumulative result of decades of advocacy efforts by sex workers and allies, together with qualitative and quantitative research, first-hand testimonies, coalition building, public outreach, and education.¹¹⁰⁵

Partly influenced by Pivot's advocacy efforts, the Supreme Court in *Bedford* held the Code provisions unconstitutional for violating Charter-mandated rights.¹¹⁰⁶ However, the Court also gave Parliament one year to replace the impugned provisions.¹¹⁰⁷ Within that allotted year, the federal government responded by passing the PCEPA¹¹⁰⁸—ostensibly the conservative majoritarian's answer to its defeat in *Bedford*.¹¹⁰⁹ Pivot and SWAUV made concerted efforts to publicly counterattack PCEPA by pointing to two of its main deficiencies: (1) as implemented, the Act further criminalizes sex workers via the Nordic Model, and (2) adopted nearly identical provisions in place of the ones held unconstitutional (fails to cure any of the issues facilitating unsafe working conditions and abuse in its predecessors, instead of replicating them with minor

¹⁰⁹⁸ *Id.*

¹⁰⁹⁹ See *Access to Justice for Marginalized Litigants Page*, PIVOT LEGAL SOC'Y, https://www.pivotlegal.org/access_to_justice_for_marginalized_litigants.

¹¹⁰⁰ S. Priya Morley, *The Many Lives of A "Win": Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 52 COLUM. HUM. RTS. L. REV. 1254 (2020). The Court reworded the test, and this much more flexible wording is said to have "shifted public interests standing from the exception to the rule."

¹¹⁰¹ See *Supreme Court Victory Page*, PIVOT LEGAL SOC'Y, https://www.pivotlegal.org/supreme_court_victory.

¹¹⁰² Morley, *The Many Lives of A "Win"* 1255.

¹¹⁰³ *Id.*

¹¹⁰⁴ *Id.* See also Alex McKeen, *How a Canadian Law Meant to Protect Sex Workers is Making it Harder for Them to Stay Safe*, TORONTO STAR (Nov. 15, 2018), <https://www.thestar.com/vancouver/2018/11/08/how-a-canadian-law-meant-to-protect-sex-workers-is-making-it-harder-for-them-to-stay-safe.html>.

¹¹⁰⁵ CANADIAN ALLIANCE FOR SEX WORK LAW REFORM, *Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada*, 20 (March 2017), <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>.

¹¹⁰⁶ Morley, *The Many Lives of A "Win"* 1257.

¹¹⁰⁷ *Id.* The Court suspended its declaration of invalidity for one year to allow for a legislative response to its decision.

¹¹⁰⁸ Morley, *The Many Lives of A "Win"* 1255.

¹¹⁰⁹ Rachel Browne, *Demands Grow for Canada to Decriminalize Sex Work After the Election*, GLOBAL NEWS (Feb. 2020), <https://globalnews.ca/news/5970549/canada-sex-work-decriminalization/>.

tweaks).¹¹¹⁰ Pivot continues to bring challenges against the PCEPA, primarily arguing that its blanket bans prevent sex workers from implementing safety precautions, like third-party security agents, and thus discriminate against an entire class of workers.¹¹¹¹

In 2021, Pivot assisted in bringing the first landmark challenge to the PCEPA: *R. v. N.S.*¹¹¹² The OSCJ found that the Code provisions criminalizing procurement violated sex workers' right to security of the person and those criminalizing advertising of sexual services violated freedom of expression. The court found the provisions unconstitutional for limiting or preventing sex workers ability to take health-and-safety-enhancing precautions.¹¹¹³ The court reasoned that the impugned provisions hindered the Act's purpose of protecting sex workers health and safety by limiting or preventing "some if not all of these means of protection and safety" for most sex workers.¹¹¹⁴ However, on appeal in 2022, the Ontario Court of Appeal reversed this decision.¹¹¹⁵ The Court made a contrary finding that the Act aims not to protect the health and safety of sex workers, but only to mitigate some of the risks affiliated with the industry;¹¹¹⁶ and that N.S.'s right to security of the person was not actually infringed upon because she was able to obtain secured services on a "a shared, cooperative basis."¹¹¹⁷ While confirming that N.S. will be appealing to the Supreme Court, appellant's lawyer lamented that this conclusion was reached "notwithstanding the expert evidence that this compels the use of vague language, impairing clear communication between sex worker and client, and increasing the risk of violence."¹¹¹⁸

b. Application to the Lebanese Situation

As *SWAUV* demonstrates, sometimes challenges to ancillary laws or standards (like expanding the test for granting public interest standing) must be brought and won before any progress can be made to reform sex work laws. In Lebanon it may be beneficial to employ this strategy to set additional precedent reinforcing international law as superior to local law, or to adopt arguments used in other former colonies to overturn relics of French Civil Law that hamper the realization of sex workers' rights in court.¹¹¹⁹

¹¹¹⁰ Morley, *The Many Lives of A "Win"* 1257. For example, the PCEPA still prohibits communicating about sex work in public.

¹¹¹¹ Brenda Belak & Darcie Bennett, PIVOT LEGAL SOC'Y, *Evaluating Canada's Sex Work Laws: The Case for Repeal* 25, 48-51 (2016), https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/1960/attachments/original/1480910826/PIVOT_Sex_workers_Report_FINAL_hires_ONLINE.pdf?1480910826 [<https://perma.cc/E6PP-WPT8>].

¹¹¹² PIVOT LEGAL SOCIETY, *Landmark Ontario Case Rules Certain Sex Work Laws Unconstitutional*, https://www.pivotlegal.org/landmark_ontario_case_rules_certain_sex_work_laws_unconstitutional.

¹¹¹³ *Id.*

¹¹¹⁴ *Id.*

¹¹¹⁵ *Ontario Appeal Court Reinstates Sections of Federal Sex-work Law Struck Down by Superior Court*, LAWYER'S DAILY (Mar. 7, 2022), <https://www.thelawyersdaily.ca/articles/34256/ontario-appeal-court-reinstates-sections-of-federal-sex-work-law-struck-down-by-superior-court>.

¹¹¹⁶ *Id.*

¹¹¹⁷ *Id.*

¹¹¹⁸ *Id.*

¹¹¹⁹ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (Walter Leitner Int'l Human Rights Clinic) (notes on file with author).

VIII. Mexico

Mexico illustrates how La Brigada used impact litigation and intentional framing to change perception of sex workers and advocate for decriminalization. By highlighting the stories of those affected by the law and disseminating information on the law, La Brigada has been vital in protecting sex workers and ensuring that they know their rights.

a. Legal Advocacy Experiences

Sex work was decriminalized in Mexico City in 2019.¹¹²⁰ La Brigada Callejera is a Mexico City-based collective of sex workers led by Elvira Madrid. In championing the health, human and labor rights of sex workers, La Brigada aims to place sex workers' voices at the forefront of policymaking and law reform. The collective regularly negotiates the terms of new legal proposals and engages and supports impact litigation to advance the decriminalization of sex work.¹¹²¹ La Brigada has stood at the forefront of legal advocacy for sex workers rights in Mexico and its capital since 1993 and was instrumental to the 2019 decision to decriminalize sex work in Mexico City.¹¹²²

In 2019, members of Mexico City's congress voted unanimously to decriminalize sex work.¹¹²³ Specifically, the House approved a proposed bill that would remove language from the Civic Culture Law that allows criminal or monetary sanctions against sex workers or clients who are reported to authorities.¹¹²⁴ While Madrid welcomed the victory, she also publicly insisted that such a decision required the development of a new legal framework to protect sex workers' rights.¹¹²⁵ La Brigada has been working to gain support and cooperation from government departments like the Human Rights Commission and Mexico City Council for Prevention of Discrimination to develop this framework.¹¹²⁶

Prior to achieving decriminalization in 2019, La Brigada challenged laws like Article 189 of Mexico City's Criminal Code that sanctions sex workers' clients with 2-10 years imprisonment plus fines for exploitative practices, operating brothels, or otherwise participating in the sex trade, and the General Law for the Prevention, Punishment and Eradication of Crimes of Human

¹¹²⁰ Christine Murray, *Mexico City to Decriminalize Sex Work, Eyes Steps to Cut Trafficking*, THOMSON REUTERS (June 2, 2019), <https://www.reuters.com/article/us-mexico-sexwork-trafficking/mexico-city-to-decriminalize-sex-work-eyes-steps-to-cut-trafficking-idUSKCN1T30OM>.

¹¹²¹ *Id.*; see also *Mexico City Lawmakers Propose Plan to Regulate Sex Work, but Local Activists Aren't Convinced*, DECRIMINALIZE SEX WORK (Oct. 22, 2019), <https://decriminalizesex.work/mexico-city/>.

¹¹²² *Id.*

¹¹²³ Anne-Sophie Neyra, *Mexico Takes First Step Towards Regulating Sex Work*, ORG. FOR WORLD PEACE (July 13, 2019), <https://theowp.org/mexico-takes-first-step-towards-regulating-sex-work/>.

¹¹²⁴ Morgan Brinlee, *Mexico City Moves to Decriminalize Sex Work to Help End Sex Trafficking*, BUSTLE (June 1, 2019), <https://www.bustle.com/p/mexico-city-moves-to-decriminalize-sex-work-in-effort-to-end-sex-trafficking-17941243/>. With eight abstentions.

¹¹²⁵ Christine Murray, *Mexico City to Decriminalize Sex Work, Eyes Steps to Cut Trafficking*, THOMSON REUTERS (June 2, 2019), <https://www.reuters.com/article/us-mexico-sexwork-trafficking/mexico-city-to-decriminalize-sex-work-eyes-steps-to-cut-trafficking-idUSKCN1T30OM>.

¹¹²⁶ NSW, *Mexico City Congress Votes to Decriminalise Sex Workers and Clients* (2019), <https://www.nswp.org/fr/news/mexico-city-congress-votes-decriminalise-sex-workers-and-clients>.

Trafficking (2012), which conflates sex work with exploitation.¹¹²⁷ To combat such laws, La Brigada argued that although some women are forced into sex work, the majority voluntarily take up that occupation, and “[a] client is not the cause of sexual slavery. If clients are criminalized, the business will go even more underground.”¹¹²⁸ The collective is also fighting to eliminate ‘tolerance zones’ where sex work is permitted, arguing that they only force women to work in more dangerous areas given that they will not simply stop working.¹¹²⁹

b. Application in Reality

Although decriminalized in 2019, sex workers still regularly face arrest for lesser offenses like using “words with a sexual connotation on a public street” or “touch[ing] oneself with lascivious intention [in public],” both currently banned under the Civic Culture Law of Mexico City [LCCDMX].¹¹³⁰ In addition, police often threaten sex workers with arrest to obtain sexual favors in exchange for freedom.¹¹³¹ Finally, because sex workers are driven underground to avoid police detection and abuse, provisions like LCCDMX only strengthen their reliance on often exploitative third parties.¹¹³² Organizations like La Brigada remain committed to eradicating such laws for good to halt the power imbalance between sex workers and enforcing authorities.

c. Social Advocacy to Support Legal Reform Efforts

After three decades, La Brigada has developed a toolbox of effective social advocacy strategies.¹¹³³ Along with extensive direct/in-house services, La Brigada uses innovative techniques to disseminate its life-saving information, like publishing and distributing comic books to sex workers that summarize their rights and the risks posed to them.¹¹³⁴ Because of their format and legibility, the comic books have proved popular among their intended audience.¹¹³⁵ To overcome the nonenforcement of new laws that would benefit sex workers, La Brigada primarily organizes marches in high-visibility locations, generates hashtags and social media campaigns, regularly make appearances in the press, etc.¹¹³⁶ And finally, to educate the public and utilize the media most effectively, La Brigada focuses on promoting political awareness and public affirmation of sex worker autonomy and identity.¹¹³⁷ One of its core objectives is to change

¹¹²⁷ *Mexico City Sex Workers in an Endless Battle Against Oppression*, AL DÍA NEWS, <https://aldianews.com/culture/heritage-and-history/mexico-city-sex-workers>

¹¹²⁸ *Id.*

¹¹²⁹ *Id.*

¹¹³⁰ Claudia Torres, *Sex Work, Law and Police in Mexico City*, HARV. REV. OF LATIN AM. (Aug. 22, 2019), <https://revista.drclas.harvard.edu/sex-work-law-and-police-in-mexico-city/>

¹¹³¹ *Id.*

¹¹³² *Id.*

¹¹³³ Mayela Sánchez, *Rights and Risks: Mexico City Organization Promotes Dignity, Offers Services for Sex Workers*, GLOBAL PRESS J. (May 24, 2016), <https://globalpressjournal.com/americas/mexico/rights-risks-mexico-city-organization-promotes-dignity-offers-services-sex-workers/>.

¹¹³⁴ *Id.*

¹¹³⁵ *Id.*

¹¹³⁶ Christine Murray, ‘Who Owns the Street Corner?’: Mexico City Sex Workers March for Rights, THOMSON REUTERS (2019).

¹¹³⁷ *Id.*

Mexican society's stigmatizing perception of sex workers.¹¹³⁸ Sex workers have historically hidden their faces from the press because of such stigma, but La Brigada was revolutionary in encouraging sex workers to appear before the media with their faces uncovered to receive their non-salaried worker's credentials. When sex workers took photos and gave interviews without any "sense of shame," the event gained heightened media attention and sent a strong message that cultural tides were shifting: Mexican sex workers, gaining legal traction, would no longer hide themselves from society out of shame and self-protection.¹¹³⁹

d. Application in Lebanon

Mexico illustrates that merely removing criminal laws, without also applying labor and employment law protections to sex work, is not enough. Mexico is a nation that lacks strong labor protections or unions, and decriminalization in Mexico City has been less successful as a result. Removing criminal laws is a vital first step but cannot be the only step to decriminalize sex work and improve the lives of sex workers, otherwise sex workers will continue to suffer abuse and marginalization.

The Mexican case study also serves as a warning about TIP reports (or "Trafficking in Persons Reports") that might be generated by the U.S. about Lebanon given its own status as a trafficking hub. Since 2001, the U.S. has issued TIP reports ranking countries in order to promote adoption of anti-trafficking legislation.¹¹⁴⁰ Failure to meet these standards can result in sanctions such as withdrawal of financial support.¹¹⁴¹ Many of Mexico's major legal developments and regressions affecting sex workers were incentivized by its receipt of a low score on a TIP report highlighting its severe trafficking problem.¹¹⁴² In response to this report, Mexico passed laws in 2012 aiming to increase federal sentencing for trafficking offenders; however, these laws have unfortunately been used to "initiate raids and prosecution of consensual sex work."¹¹⁴³ The Global Alliance Against Traffic in Women (GAATW) has warned that the "pressure to show prosecutions and convictions of trafficking caused by TIP reports and their conflation of sex work and trafficking results in large numbers of irregularities, false accusations, and wrongful convictions of human trafficking in Mexico against sex workers and migrants."¹¹⁴⁴ Promoting the clear

¹¹³⁸ Marta Lamas, *An End to the Shame: Stigma and Political Participation Among Mexican Sex Workers*, OPEN DEMOCRACY (2016), <https://opendemocracy.net/marta-lamas/end-to-shame-stigma-and-political-participation-among-mexican-sex-workers>.

¹¹³⁹ *Id.*

¹¹⁴⁰ See NSWP, *Policy Brief: The Impact of Anti-Trafficking Legislation and Initiatives on Sex Workers* (2018), https://www.nswp.org/sites/default/files/impact_of_anti-trafficking_laws_pb_nswp_-_2018.pdf. These standards require countries to "reduce demand for commercial sex and international sex tourism," and in turn promote initiatives that erroneously conflate sex work and trafficking.

¹¹⁴¹ *Id.*

¹¹⁴² Morgan Brinlee, *Mexico City Moves to Decriminalize Sex Work to Help End Sex Trafficking*, BUSTLE (2019) <https://www.bustle.com/p/mexico-city-moves-to-decriminalize-sex-work-in-effort-to-end-sex-trafficking-17941243/>.

¹¹⁴³ See NSWP, *Policy Brief*.

¹¹⁴⁴ GAATW, *Sex Workers Organising for Change: Self Representation, Community Mobilization, and Working Conditions*, 281 (2018).

distinction between voluntary adult sex work and human trafficking through public education is a strategic hallmark of La Brigada and nearly every other organization mentioned in this report.¹¹⁴⁵

IX. The United States

The U.S. is an example of how advocates combine legal efforts to decriminalize with social advocacy. Advocacy groups raised awareness of the dangers sex workers face when sex work is criminalized, either through police abuse, stigma, or the disproportionate impact of such laws on sex workers' access to needed services when they are driven underground.

a. Legal Advocacy Experiences

i. DecrimNY

In the United States, full decriminalization of sex work has yet to be reached with criminal statutes against sex work varying state to state.¹¹⁴⁶ The United States is home to many sex workers' rights organizations advocating for decriminalization. One such organization is DecrimNY, which works to "decriminalize, decarcerate, and destigmatize" sex work.¹¹⁴⁷

DecrimNY engages in lobbying and works with elected officials to create bills that would uphold protections for sex workers, and also works to repeal bills that violate sex workers' human rights. One example of DecrimNY's lobbying efforts was the June 2019 Stop Violence in the Sex Trades Act.¹¹⁴⁸ This bill was drafted and introduced in collaboration with an Assemblymember and a New York Senator as a package bill to decriminalize sex work in New York.¹¹⁴⁹ This was the first statewide bill in the U.S. that extensively addresses sex work and would have amended statutes that criminalize the trading of sex between consenting adults, along with collaborators.¹¹⁵⁰ It also would have amended the law so that sex workers could trade sex in spaces where other legal businesses are permitted.¹¹⁵¹

DecrimNY's main legal argument against criminalization of sex work was that police under this model have too much discretion when deciding who to arrest, with officers stopping people for arbitrary reasons such as wearing a skirt they view as too short or waving at cars.¹¹⁵²

¹¹⁴⁵ *Mexico City Sex Workers in an Endless Battle Against Oppression*, AL DÍA NEWS, <https://aldianews.com/culture/heritage-and-history/mexico-city-sex-workers>.

¹¹⁴⁶ See Anna North, *The Movement to Decriminalize Sex Work, Explained*, VOX (Aug. 2, 2019), <https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc>. Sex work is not illegal in some counties in Nevada.

¹¹⁴⁷ *Our Goals*, DECRIMNY, <https://www.decrimny.org/>. Decrim NY is a coalition is comprised of over 20 current and former sex workers, allies, and organizational partners who want to decriminalize, decarcerate, and destigmatize the sex trades in New York City and State. They aim to achieve this by passing legislation and implementing administrative geared to protect sex workers' economic rights and protect them from interpersonal violence. DecrimNY also works to vacate criminal records related to sex work.

¹¹⁴⁸ See Stop Violence in the Sex Trades Act (A.8230/S.6419).

¹¹⁴⁹ See *id.*

¹¹⁵⁰ See *id.*

¹¹⁵¹ See *id.*

¹¹⁵² See Marco Poggio, *Competing Bills Seek To Decriminalize Sex Work In NY*, LAW360 (Nov. 14, 2021), <https://www.law360.com/articles/1431732/competing-bills-seek-to-decriminalize-sex-work-in-ny>.

This discretion also further marginalizes already-vulnerable groups as the overwhelming majority of arrest cases are against Black, Latinx, and trans persons.¹¹⁵³ In addition to discrimination by police, DecrimNY argued that criminalization drives the sex industry underground, making sex workers more susceptible to violence, abuse, and exploitation, exposing them to a higher risk of human trafficking.¹¹⁵⁴ There is no current update on the status of the bill.

Through lobbying and the gathering of public attention, DecrimNY was able to overturn the ‘Walking While Trans’ law—a loitering statute police used to target and abuse trans women even if they were not involved in the sex industry.¹¹⁵⁵ Garnering public sentiment through the development of a hashtag and urging the public to make calls to their representatives put pressure on legislators to repeal the bill.¹¹⁵⁶

In tandem with public pressure, DecrimNY provided free lobbying training to trafficking survivors, current or former sex workers, and other individuals impacted by the criminalization of sex work.¹¹⁵⁷ This culminated in a mass lobby day in New York’s capital to advocate for repeal of the bill, eventually succeeding.¹¹⁵⁸ DecrimNY’s consistent lobbying and coalition building were big factors in the sex work legal reform, the results of which were seen in April 2021 when the Manhattan district attorney’s office declared the end of prosecution for sex work and unlicensed massage.¹¹⁵⁹ Following that announcement, the district attorney moved to dismiss 914 open sex work-related cases and 5,080 loitering for prostitution cases deriving from the now-repealed “Walking While Trans” law.¹¹⁶⁰ The Brooklyn district attorney’s office led the charge months before by moving to dismiss hundreds of open cases related to prostitution and loitering in January 2021.¹¹⁶¹ Queens and the Bronx followed in March 2021 and moved to dismiss hundreds of sex

¹¹⁵³ See *id.*

¹¹⁵⁴ See Jesse McKinley, *Bills to Decriminalize Prostitution Are Introduced. Is New York Ready?*, N.Y. TIMES (June 11, 2019), <https://www.nytimes.com/2019/06/11/nyregion/prostitution-legal-ny.html>.

¹¹⁵⁵ See Cecilia Gentili, *This Is What Will Make Sex Work in New York Safer*, N.Y. TIMES (Oct. 17, 2021), <https://www.nytimes.com/2021/10/17/opinion/decriminalize-sex-work-new-york.html#:~:text=The%20first%2C%20the%20Stop%20the,protect%20minors%20and%20trafficked%20people;see%20also%20Jaclyn%20Diaz%20New%20York%20Repeals%20Walking%20While%20Trans%20Law>; see also Jaclyn Diaz, *New York Repeals ‘Walking While Trans’ Law*, NPR (Apr. 3, 2021), <https://www.npr.org/2021/02/03/963513022/new-york-repeals-walking-while-trans-law>.

¹¹⁵⁶ See *Tell Your Legislators to Stop Criminalizing New Yorkers for #WalkingWhileTrans*, DECRIMNY (Apr. 9, 2019), <https://www.decrimny.org/post/tell-your-legislators-to-stop-criminalizing-new-yorkers-for-walkingwhiletrans> (provided useful scripts for individuals that wanted to call their representatives)

¹¹⁵⁷ See *id.*; see also Nina Luo, *Press Statement: Our Response to Speaker Corey Johnson’s Remarks on the Sex Trades Today*, DECRIMNY (May 16, 2019), <https://www.decrimny.org/post/press-statement-our-response-to-speaker-corey-johnson-s-remarks-on-the-sex-trades-today>; see also Nina Luo, *Decrim NY, Legislators Intro First Statewide Bill to Decriminalize Sex Work*, DECRIMNY (June 10, 2019), <https://www.decrimny.org/post/for-immediate-release-decrim-ny-legislators-introfirst-statewide-bill-to-decriminalize-sex-work/>.

¹¹⁵⁸ See *Tell Your Legislators to Stop Criminalizing New Yorkers for #WalkingWhileTrans*, DECRIMNY (Apr. 9, 2019), <https://www.decrimny.org/post/tell-your-legislators-to-stop-criminalizing-new-yorkers-for-walkingwhiletrans>.

¹¹⁵⁹ Jonah E. Bromwich, *Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html>; see also Danielle Campoamor, *New York Wants To Decriminalise Sex Work — But This Is Just The First Step*, REFINERY29 (Apr. 23, 2021), <https://www.refinery29.com/en-gb/2021/04/10439490/sex-work-new-york-decriminalise-prostitution-steps>.

¹¹⁶⁰ *Id.*

¹¹⁶¹ See Jonah E. Bromwich, *Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html>;

work-related cases.¹¹⁶² This step to reform was credited in great part to DecrimNY and its coalition of sex workers' rights organizations.¹¹⁶³

ii. The Sex Worker Advocates Coalition

In Washington, D.C., sex work is still criminalized with offenses ranging from a \$500 fine to up to two years in jail.¹¹⁶⁴ The Sex Worker Advocates Coalition ("SWAC") is a group of individuals and organizations advocating for legislation against the current criminalization system and for the promotion of human rights, civil rights, health, and safety of sex workers in the D.C. area.¹¹⁶⁵

SWAC, like DecrimNY, relies heavily on lobbying and working with elected officials on proposing decriminalization-focused legislation. SWAC worked with several DC Councilmembers to introduce the Community Safety and Health Amendment Act of 2019—a bill that would reduce violence and improve public health and safety through the decriminalization of consensual sex work for those 18 and older in D.C.¹¹⁶⁶ The bill would have required (1) the establishment of a task force to study and make recommendations based on the impact of the Reducing Criminalization of Commercial Sex Amendment Act of 2019, (2) the changing of criminal penalties for commercial sex, and (3) support for sex workers in DC.¹¹⁶⁷ The bill, however, died on December 31, 2020.¹¹⁶⁸

The legal argument presented to support the bill was that the current model of criminalization in D.C. harms already marginalized groups including communities of color, LGBTQIA+ persons, people with disabilities, immigrants, and people with criminal convictions.¹¹⁶⁹ Over 80% of street-based sex workers in D.C. experience violence while working and one in five sex workers have been propositioned by police asking for sex.¹¹⁷⁰ Moreover, sex

see also Otilia Steadman, *More Than 1,000 Open Prostitution Cases in Brooklyn Are Going To Be Wiped From The Files*, BUZZFEED NEWS (Jan. 28, 2021), <https://www.buzzfeednews.com/article/otillisteadman/prostitution-loitering-cases-brooklyn>.

¹¹⁶²*See* Jonah E. Bromwich, *Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html>; *see also* Aliza Chasan, *More than 800 Prostitution Charges Being Dismissed in the Bronx, DA says*, PIX11 NEWS (Mar. 8, 2021), <https://pix11.com/news/local-news/bronx/more-than-800-prostitution-charges-being-dismissed-in-the-bronx-da-says/>; Aaron Katersky, *New York City Moves to Dismiss Hundreds of Prostitution Cases, Decriminalize Sex Work*, ABC NEWS (Mar. 16, 2021), <https://abcnews.go.com/US/york-city-moves-dismiss-hundreds-prostitution-cases-decriminalize/story?Id=76494315>.

¹¹⁶³ *See id.*

¹¹⁶⁴ *See* Code of the District of Columbia § 22–2701.01

¹¹⁶⁵ *Sex Worker Advocates Coalition*, HIPS, <https://www.hips.org/sex-worker-advocates-coalition-swac.html#:~:text=SWAC%20is%20a%20group%20of,of%20criminalization%20of%20sex%20work>.

¹¹⁶⁶ *See id.*; *see also* Community Safety And Health Amendment Act Of 2019, <https://www.billtrack50.com/BillDetail/1131430#:~:text=It%20requires%20the%20establishment%20of,individuals%20engaging%20in%20commercial%20sex>.

¹¹⁶⁷ *See id.*

¹¹⁶⁸ *See id.*

¹¹⁶⁹ *See* Community Safety and Health Amendment Act of 2019, DAVID GROSSO DC COUNCIL AT-LARGE (June 3, 2019), <http://www.davidgrosso.org/grosso-analysis/decrimnowdc>; *see also* Sex Worker Advocates Coalition, HIPS, <https://www.hips.org/sex-worker-advocates-coalition-swac.html>.

¹¹⁷⁰ *See id.*

workers in D.C. often experience homelessness as they are unable to meet their most basic needs like food, water, and shelter.¹¹⁷¹ By removing criminal penalties for sex work, violence towards sex workers is reduced.¹¹⁷² Decriminalization allows sex workers to screen clients, negotiate, and report trafficking, and police violence.¹¹⁷³

The bill to decriminalize sex work in DC was heard by the relevant committee.¹¹⁷⁴ The hearing had about 14 hours of testimony from sex workers, advocates, and activists, but according to the committee chair, the bill lacked the support needed to survive a committee vote.¹¹⁷⁵ While there were many testifying and advocating for decriminalization at the hearing, there was also fierce opposition from a coalition of anti-trafficking advocates, sex-trafficking survivors, religious leaders, and DC neighborhood commissioners.¹¹⁷⁶ These groups claimed that decriminalizing sex would make DC into a de facto red-light district, driving up demand and encouraging pimps and traffickers.¹¹⁷⁷ Furthermore, the Council Chairman responsible for the committee assignments has a long history of opposing decriminalization, so that privilege was likely used to stack the committee with more conservative members.¹¹⁷⁸ This case study illustrates how important it is to get public support for decriminalization efforts. Wide public support would likely have given the bill a greater chance of approval.

b. Social Advocacy to Support Legal Reform Efforts

i. DecrimNY

DecrimNY utilizes social media platforms to expand its outreach and campaigns. One such campaign is #HousingNotHandcuffs and #RightsNotRescue advocating for the decriminalization of sex work to address the needs of sex workers.¹¹⁷⁹

ii. The Sex Worker Advocates Coalition

SWAC engages in social advocacy by partnering with organizations like the Collective Action for Safe Spaces (“CASS”) to organize the community through sex worker speak-outs, events centered on arts and education, canvassing events across the city, testimony writing workshops, and petitions.¹¹⁸⁰ Additionally, while working with council members to introduce the Community Safety and Health Amendment Act of 2019, SWAC and its partner councilmember

¹¹⁷¹ See *id.*

¹¹⁷² See *id.*

¹¹⁷³ See *id.*

¹¹⁷⁴ See Marissa Lang, *D.C. Effort to Decriminalize Sex Work Won't Move Forward After 14-hour Hearing*, WASH. POST (Nov. 17, 2019), https://www.washingtonpost.com/local/dc-politics/dc-effort-to-decriminalize-sex-work-wont-move-forward-after-tense-14-hour-hearing/2019/11/16/b7c77358-06ef-11ea-ac12-3325d49eacaa_story.html.

¹¹⁷⁵ See *id.*

¹¹⁷⁶ See *id.*; see also Timothy Williams, *In Washington, a Fight to Decriminalize Prostitution Divides Allies*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/17/us/washington-legal-prostitution.html>.

¹¹⁷⁷ See *id.*

¹¹⁷⁸ See Marissa Lang, *D.C. Effort to Decriminalize Sex Work Won't Move Forward After 14-hour Hearing*.

¹¹⁷⁹ See generally DecrimNY #HousingNotHandcuffs, TWITTER, <https://twitter.com/decrimny>

¹¹⁸⁰ See *The Evolution: Our 2020 Annual Report*, COLLECTIVE ACTION FOR SAFE SPACES (2020), <https://www.collectiveactiondc.org/wp-content/uploads/2020/11/Current-CASS-Annual-Report-Template-1.pdf>. SWAC and CASS held 9 canvassing events through DC and collected 3,000 petition signatures in 2019.

created the DecrimNow campaign, a national movement to decriminalize sex work and to promote the well-being and safety of people in the sex trade.¹¹⁸¹ DecrimNow uses hashtags and videos on YouTube and Twitter to expand their social outreach.

c. Application to the Lebanese Situation

According to Lebanese attorney Karim Nammour, Parliament in Lebanon follows the judiciary, and the judiciary follows the media.¹¹⁸² Similarly, media in the U.S. is used by advocates to sway opinions. DecrimNY, SWAC, and other organizations employ social media, campaigns, and newspapers to spread awareness and educate the public on what decriminalization is.

¹¹⁸¹ See Lauryn Froneberger, *Advocates Introduce Bill Aiming to Decriminalize Sex Work in DC*, WUSA9 (June 3, 2019), <https://www.wusa9.com/article/news/advocates-introduce-bill-aiming-to-decriminalize-sex-work-in-dc/65-9277c887-f44d-487d-b931-51a96c8a1cf5>; see also *DecrimNow*, TAHIRAH ALEXANDER GREEN, <https://www.tahirahagreen.com/decrimnow>.

¹¹⁸² See Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (Walter Leitner Int'l Human Rights Clinic) (notes on file with author).

Decriminalization of Sexual Orientation and Gender Identity (SOGI)

Part 1 – Background on SOGI Rights

I. Human Rights Abuses Generated by the Criminalization of SOGI

The criminalization of sexual orientation and gender identity (SOGI) is fundamentally incompatible with human rights. However, many countries still retain discriminatory laws, which create a hostile environment for sexual minorities. As a result, these individuals are stripped of dignity, freedom and safety. The following subsections address how criminalization often leads to violations of the civil, political, economic, and social rights of these individuals.

A. Civil and Political Rights

1. The Right to Privacy and Personal Autonomy

A keystone in international human rights law is the right to privacy. The right to privacy is the right of people to lead their lives as they please, free from government intervention.¹¹⁸³ Laws that criminalize SOGI violate the right to privacy at its core, by stripping individuals of their sovereignty.

A recent case in Uzbekistan presents an example of a violation of the right to privacy perpetrated under these laws. Same-sex relations between men are illegal in Uzbekistan and are punishable with a prison sentence of one to three years.¹¹⁸⁴ In 2021, two men living together were prosecuted under this law and forced into house arrest 500 kilometers apart,¹¹⁸⁵ and were prohibited from using the internet.¹¹⁸⁶ Due to their sexual orientation, these men were deprived of their autonomy, mobility rights, and ability to participate in public life and community.

2. The Rights to Liberty and Security of Person and Due Process

Under the international human rights law, every person should enjoy the right to liberty and security of person, as well as the right to due process. However, the legal processes and punishments surrounding discriminatory laws against queer and trans persons often violate these core principles. These rights are violated when individuals are beaten, mistreated, or abused by state actors.

In Egypt, a country with some of the strictest laws criminalizing SOGI, police beatings is routine.¹¹⁸⁷ Sometimes, these beatings are carried out to extract confessions, and other times, they

¹¹⁸³ Scott Long, *In a Time of Torture*, HUM. RTS. WATCH (Feb. 29, 2004),

<https://www.hrw.org/report/2004/02/29/time-torture/assault-justice-egypts-crackdown-homosexual-conduct> .

¹¹⁸⁴ *Submission to the Committee on Economic, Social and Cultural Rights on Uzbekistan*, HUM. RTS. WATCH (Jan. 28, 2022), <https://www.hrw.org/news/2022/01/28/submission-committee-economic-social-and-cultural-rights-uzbekistan> .

¹¹⁸⁵ *Id.*

¹¹⁸⁶ *Id.*

¹¹⁸⁷ Scott Long, *In a Time of Torture*, HUM. RTS. WATCH.

are executed to shame the targeted individual.¹¹⁸⁸ In Afghanistan, where anti-LGBTQIA+ discrimination has become even more pervasive under the Taliban, individuals reported similar abuse, including punishments for wearing clothes that did not conform to gender norms.¹¹⁸⁹ In Iran, same-sex sexual intercourse between men is punishable by the death penalty.¹¹⁹⁰ Conversely, transsexuality was legalized in Iran in 1987.¹¹⁹¹ However, as a result of this disparity in Iranian law, many queer persons are forced to undergo gender change operations to escape prosecution.¹¹⁹² The medicalization of SOGI is a violation of these individuals' right to security of person because their bodily sovereignty is removed.

Additionally, in many of the countries that criminalize SOGI, gay men are subjected to forced anal examinations for “proof” of same-sex sexual conduct.¹¹⁹³ Advocacy organizations have denounced these exams as torture that violates international human rights law.¹¹⁹⁴ New and intrusive methods of probing detainees continue to be invented, with doctors in Egypt boasting of “methods employing electricity.”¹¹⁹⁵

Within the legal system, individuals find it difficult to access fair justice for a variety of reasons. “Prosecutors press charges based on a defendant’s looks or walk, the style of his hair, or the color of his underwear. Judges rule by rote, regardless of whether evidence is fraudulent—or even whether it adds up to the elements of a crime.”¹¹⁹⁶ Additionally, authorities increasingly use undercover agents and digital tools and surveillance to entrap individuals, including by downloading same-sex dating apps or pornographic materials on otherwise non-incriminating phones.¹¹⁹⁷ This means “right from the outset, the [defendant is] definitively deprived of a fair trial.”¹¹⁹⁸

3. The Right to Freedom of Expression

The right to freedom of expression includes autonomy in choosing how individuals present themselves as well as the “freedom to seek, receive, and impart information and ideas of all kinds.”¹¹⁹⁹ In Ghana, authorities violate this right by using laws regarding unlawful assembly to

¹¹⁸⁸ *Id.*

¹¹⁸⁹ *Even If You Go to the Skies, We'll Find You*, Hum. Rts. Watch (Jan. 26, 2022), <https://www.hrw.org/report/2022/01/26/even-if-you-go-skies-well-find-you/lgbt-people-afghanistan-after-taliban-takeover>.

¹¹⁹⁰ *Iran*, HUM. DIGNITY TRUST (2022), www.humandignitytrust.org/country-profile/iran

¹¹⁹¹ Mark Hodge, *Iran Is Forcing Thousands of Gay People to Have Gender Reassignment Surgery against Their Will or Face...*, The Sun (Feb. 19, 2020), www.thesun.co.uk/news/10998169/iran-gay-people-gender-reassignment-surgery.

¹¹⁹² *Id.*

¹¹⁹³ J. Lester Feder and Maged Atef, *Egyptian Doctors Think This Torturous Exam Can Detect ‘Chronic Homosexuals’*, BuzzFeed News (Feb. 16, 2015), <https://www.buzzfeednews.com/article/lesterfeder/egyptian-doctors-think-this-torturous-exam-can-detect-chroni>.

¹¹⁹⁴ *Id.*

¹¹⁹⁵ Scott Long, *In a Time of Torture*, Hum. Rts. Watch.

¹¹⁹⁶ *Id.*

¹¹⁹⁷ *Id.*; Rasha Younes, *Clean the Streets of Faggots*, Hum. Rts. Watch (Aug. 4, 2021), <https://www.hrw.org/news/2021/08/04/clean-streets-faggots>.

¹¹⁹⁸ Scott Long, *In a Time of Torture*, Hum. Rts. Watch.

¹¹⁹⁹ *Id.*

target and arbitrarily arrest LGBTQIA+ persons.¹²⁰⁰ Under these laws, these individuals could be punished with six to ten years in prison for attempting to advance the LGBTQIA+ rights agenda.¹²⁰¹

For trans persons, these laws may be especially restrictive, given that they can criminalize not just acts but mere physical appearance. As a result, many trans women are forced to hide their identities, yet still face arrest for “having feminine-sounding voices or smooth skin.”¹²⁰² In 2021, a Kuwaiti court sentenced a trans woman to prison for “imitating the opposite sex” after posting a video discussing abuse she endured during an earlier arrest.¹²⁰³ This law was later overturned by Kuwait’s Constitutional Court in February 2022; one of the reasons given for ruling against the article was that it was “overly vague.”¹²⁰⁴ This sort of judicial rationale, which is not based on principles of personal freedom, leaves the door open for more restrictive laws.

4. The Rights to Freedom of Association and Assembly

The use of unlawful assembly laws to prevent the gathering of LGBTQIA+ persons, as seen in Ghana,¹²⁰⁵ and raids on otherwise peaceful gatherings, like Egypt’s infamous Queen Boat raid, violate individuals’ rights to gather and associate with whomever they see fit.¹²⁰⁶ In Singapore, peaceful public demonstrations are severely restricted. Failure to comply with these laws can result in police investigation and prosecution, as seen when students peacefully protesting the treatment of a trans classmate were arrested.¹²⁰⁷ Such violations of the rights to freedom of association and assembly are common across countries with anti-LGBTQIA+ agendas.¹²⁰⁸

B. Social and Economic Rights

Economic and social rights are just as crucial as civil and political rights. Due to the stigma of anti-LGBTQIA+ laws, sexual minorities often face limited employment opportunities, higher levels of poverty, as well as higher obstacles to education, healthcare, and housing.¹²⁰⁹

¹²⁰⁰ Graeme Reid, *On LGBTQ+ Rights, Ghana's Bishops Choose to Ignore Pope*, Hum. Rts. Watch (Dec. 7, 2021), <https://www.hrw.org/news/2021/12/07/lgbtq-rights-ghanas-bishops-choose-ignore-pope>

¹²⁰¹ *Id.*

¹²⁰² Vivian Yee, *Kuwait Overturns Law Used to Prosecute Trans People*, The New York Times (Feb. 17, 2022), www.nytimes.com/2022/02/16/world/middleeast/kuwait-overturns-transgender-law.html

¹²⁰³ *Kuwait: Quash Conviction Against Transgender Woman*, Hum. Rts. Watch (Oct. 14, 2021) <https://www.hrw.org/news/2021/10/14/kuwait-quash-conviction-against-transgender-woman> .

¹²⁰⁴ Vivian Yee, *Kuwait Overturns Law Used to Prosecute Trans People*, The New York Times.

¹²⁰⁵ Graeme Reid, *On LGBTQ+ Rights, Ghana's Bishops Choose to Ignore Pope*, Hum. Rts. Watch (Dec. 7, 2021), <https://www.hrw.org/news/2021/12/07/lgbtq-rights-ghanas-bishops-choose-ignore-pope> .

¹²⁰⁶ Scott Long, *In a Time of Torture*, Hum. Rts. Watch.

¹²⁰⁷ Linda Lakhdhir, *Singapore Arrests Activists Supporting Trans Students*, Hum. Rts. Watch (Feb. 9, 2021), <https://www.hrw.org/news/2021/02/09/singapore-arrests-activists-supporting-trans-students> .

¹²⁰⁸ Scott Long, *In a Time of Torture*, Hum. Rts. Watch.

¹²⁰⁹ Badgett, M. V. Lee, ET AL., *The Relationship Between LGBT Inclusion and Economic Development: Emerging Economies*, Williams Institute (Nov. 2014), williamsinstitute.law.ucla.edu/publications/lgbt-inclusion-economic-dev.

1. Employment

Discrimination can take place during all stages of the employment cycle, starting from hiring and career progression to termination.¹²¹⁰ A 2021 study across Europe, North America, and Australia shows that gay males earned, on average, 6.8% less than their heterosexual peers.¹²¹¹ In countries where same-sex sexual conduct is outlawed, employment discrimination can be particularly severe. This is seen in Kenya, where sexual minorities face ridicule, humiliation, and even discharge from work if their true sexual identities are uncovered.¹²¹²

Trans persons' economic rights are a major issue in India. A 2018 study reveals that approximately 92% of the trans population were deprived of the right to participate in the economy.¹²¹³ There have been small steps of progress, such as in Karnataka, which reserved 1% of public employment for trans persons.¹²¹⁴ However, combating the issue of trans unemployment will require more proactive government action.

Overall, queer and trans persons worldwide often feel the need to conceal their sexual orientations and gender identities, which can have the converse effect of increasing anxiety and decreasing productivity.¹²¹⁵

2. Education

Moreover, LGBTQIA+ students often face increased bullying and abuse within schools, which in turn affects attendance and participation in school and extracurricular activities.¹²¹⁶ Schools are often poorly equipped to address bullying and occasionally, their policies can make the situation worse.¹²¹⁷ For example, dedicating single-use bathrooms for trans students instead of allowing them to use the bathroom in line with their gender identity can make these students feel further ostracized.¹²¹⁸

Laws such as the “Parental Rights in Education” bill (a.k.a. the “Don’t Say Gay” bill) in the United States, which prohibits education on SOGI within schools, can also harm sexual minorities both by effectively dismissing their gender identity and further excluding them from

¹²¹⁰ *Effective Inclusion of LGBT Persons*, United Nations, www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/effective-inclusion-lgbt-persons .

¹²¹¹ Josh Milton, *Gay and Bisexual Men Earn Thousands Less Than Their Straight Peers, Eye-Opening Study Finds*, PinkNews (Jul. 30, 2021), www.pinknews.co.uk/2021/07/30/gay-bisexual-straight-pay-gap-study .

¹²¹² *The Outlawed Among Us*, The Kenya Human Rights Commission (2011), <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html> .

¹²¹³ *The Transgender and Unemployment in India*, Outlook India (Feb. 16, 2022), www.outlookindia.com/national/transgender-and-unemployment-in-india-news-182617 .

¹²¹⁴ *Id.*

¹²¹⁵ Badgett, M. V. Lee, Kees Waaldijk, ET AL., *The Relationship Between LGBT Inclusion and Economic Development: Macro-Level Evidence*, World Development.

¹²¹⁶ *Id.*

¹²¹⁷ *Id.*

¹²¹⁸ Brief of Plaintiff-Appellant at 6, *G.G. v. Gloucester County School Board*, 822 F.3d 709 (2016) (No. 15–2056).

the larger student body.¹²¹⁹ This censorship of SOGI is far worse in countries where these issues are criminalized. In Japan, studies have shown that limiting sex education has contributed to the widespread bullying of LGBTQIA+ students.¹²²⁰ Increased bullying, in turn, leads to higher rates of suicide.¹²²¹ Thus, equal access to quality education is important, not only because studies consistently show that higher education leads to better employment and earning opportunities, but also because a hostile education environment can be life-threatening.¹²²²

3. Health

All humans have the right to the highest attainable standard of mental and physical health.¹²²³ However, the criminalization of SOGI can restrict access to healthcare for sexual minorities even for issues not related to sexual health or gender identity.¹²²⁴ Studies consistently show that LGBTQIA+ populations face higher rates of breast and cervical cancer, HIV infection, and mental health issues, among other medical concerns.¹²²⁵ However, these issues often go untreated, as sexual minorities combat both systematic healthcare discrimination and prejudice from individual healthcare providers.¹²²⁶

Tanzania, which has a maximum penalty of life imprisonment for same-sex sexual activity,¹²²⁷ maintains a policy of withholding HIV care and outreach.¹²²⁸ The government justifies this by arguing “that public health centers provide discrimination-free services so that there is no need for specialized services run by civil society organizations.”¹²²⁹ Nonetheless, discrimination in these public health centers is rampant, as individuals report being subjected to forced anal examinations and told that they contracted HIV because their sexual conduct “angered God.”¹²³⁰ This kind of treatment can lead sexual minorities to avoid healthcare altogether. The resulting health disparities not only diminish individual quality of life but also drive-up costs, thus depriving

¹²¹⁹ Jaclyn Diaz, *Florida’s Governor Signs Controversial Law Opponents Dubbed ‘Don’t Say Gay’*, NPR (Mar. 28, 2022), [choice.npr.org/index.html?origin=https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis](https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis)

¹²²⁰ *The Nail That Sticks Out Gets Hammered Down*, Hum. Rts. Watch (Jul. 12, 2017), www.hrw.org/report/2016/05/05/nail-sticks-out-gets-hammered-down/lgbt-bullying-and-exclusion-japanese-schools .

¹²²¹ Madeleine Roberts, *CDC Releases National Youth Risk Behavior Surveillance Results*, Human Rights Campaign (Aug. 26, 2020), www.hrc.org/news/new-cdc-data-shows-lgbtq-youth-are-more-likely-to-be-bullied-than-straight-cisgender-youth .

¹²²² *Id.*; Dennis Vilorio, *Data on Display: Education Matters*, U.S. Bureau of Labor Statistics (Mar. 2016), <https://www.bls.gov/careeroutlook/2016/data-on-display/education-matters.htm#:~:text=Even%20if%20your%20career%20path,decreases%20as%20educational%20attainment%20ris> es .

¹²²³ *How Is Health a Human Rights Issue for LGBTI Persons?*, Health and Human Rights Resource Guide (May 1, 2014), www.hhrguide.org/2014/03/18/how-is-health-a-human-rights-issue-for-lgbti-persons .

¹²²⁴ *Effective Inclusion of LGBT Persons*, United Nations, www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/effective-inclusion-lgbt-persons .

¹²²⁵ *Id.*

¹²²⁶ *Id.*

¹²²⁷ *Tanzania*, HUM. DIGNITY TRUST (2022), www.humandignitytrust.org/country-profile/tanzania .

¹²²⁸ *Tanzania: Obstructions to LGBT Health, Rights*, Hum. Rts. Watch (Oct. 28, 2020), www.hrw.org/news/2020/02/03/tanzania-obstructions-lgbt-health-rights .

¹²²⁹ *Id.*

¹²³⁰ *Id.*

communities of human resources and funds.¹²³¹

4. Housing

Similarly, the criminalization of SOGI often leads to rampant discrimination of sexual minorities in housing, including displacement and obstacles to obtaining adequate housing. In Kenya, two gay men were forced to move five times as in each subsequent location, neighbors threatened and harassed the couple.¹²³² Also, a 2011 survey in Sri Lanka shows that 24% of LGBTQIA+ respondents had been unable to rent housing or were forced to move within the last two years.¹²³³ Such difficulties in obtaining stable housing further exacerbate the poverty experienced by sexual minorities in these countries.

II. Criminalization and Decriminalization of SOGI around the World

SOGI has been criminalized through both de facto and de jure mechanisms, meaning that laws either directly proscribed conduct relating to same-sex relationships and gender identity, or laws indirectly and disproportionately affected LGBTQIA+ persons through a discriminatory application. Queer and trans persons are harmed, and their rights are violated. LGBTQIA+ issues in this respect can be separated into human rights abuses based on sexual orientation and human rights abuses based on gender identity. While laws criminalizing both sexual orientation and gender identity often have the same justifications and rationales, there are a few important differences.

A. Legal Systems Criminalizing Sexual Orientation

Same-sex activity is often criminalized and targeted directly.¹²³⁴ Approximately seventy countries still criminalize same-sex relations, and twelve countries threaten the death penalty for consensual same-sex relations,¹²³⁵ including Qatar, Saudi Arabia, Mauritania, Nigeria, Sudan, Somalia, Iran, Yemen, Afghanistan, and Brunei.¹²³⁶ In Afghanistan, Pakistan, and Qatar, these laws are often not enforced, but Iran still regularly inflicts the death penalty against LGBTQIA+ persons.¹²³⁷ Additionally, in certain Asian-Pacific countries, homosexual acts can be

¹²³¹ *Health Disparities*, Cigna (2014), <https://www.cigna.com/static/www-cigna-com/docs/health-care-providers/health-equity.pdf>.

¹²³² *LGBT Housing Discrimination Worldwide*, OutRight Action International (Jul. 24, 2009), <https://outrightinternational.org/content/lgbt-housing-discrimination-worldwide>.

¹²³³ EQUAL GROUND Sri Lanka, ET AL., *Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report*, UN Treaty Body Database (Dec. 2013), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf.

¹²³⁴ UNHCR, *Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees*, at 13 (Dec. 2015), <https://www.unhcr.org/en-us/publications/brochures/5ebe6b8d4/protecting-persons-diverse-sexual-orientation-gender-identities.html>.

¹²³⁵ Paul J. Angelo & Dominic Bocci, *The Changing Landscape of Global LGBTQ+ Rights*, Council on Foreign Relations, (Jan. 29, 2021), <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>.

¹²³⁶ *Where Homosexuality is Punishable by Death*, STATISTA (Apr. 3, 2019), <https://www.statista.com/chart/17587/countries-where-homosexuality-can-result-in-the-death-penalty/>.

¹²³⁷ Paul J. Angelo & Dominic Bocci, *The Changing Landscape of Global LGBTQ+ Rights*, Council on Foreign Relations, (Jan. 29, 2021), <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>.

punished by whipping, imprisonment, or death.¹²³⁸ In certain parts of Africa, Muslim men cannot commit “sodomy” with an individual of the same sex, without risk of death by stoning or imprisonment.¹²³⁹

Although there are countries that explicitly criminalize same-sex relationships, de facto criminalization can also occur where the law is not overtly prohibitive.¹²⁴⁰ For example, in countries where same-sex activity is legal, the law may still be deployed to target gay, lesbian, and bisexual persons in various ways.¹²⁴¹ There may be laws prohibiting certain sexual activity and laws of general application that are applied disproportionately against LGBTQIA+ persons, as well as denials of access to legal remedies for violation of anti-discrimination laws.¹²⁴² Laws proscribing sexual crimes—which are justified by the protection of public morals and public order—are used to limit the rights of LGBTQIA+ persons through laws criminalizing indecent exposure or violations of public morality.¹²⁴³ These laws serve to criminalize public expressions of same-sex relationships.¹²⁴⁴ In some cases, anti-bestiality laws have applied to LGBTQIA+ persons because the parameters of the law extended to all “unnatural” sexual activities, which courts have interpreted to include LGBTQIA+ relationships.¹²⁴⁵ Similarly, laws of general application can disproportionately affect and harm LGBTQIA+ persons by, for example, applying laws against sex work more severely to LGBTQIA+ sex workers.¹²⁴⁶

In countries where same-sex relations are not illegal, officials may ignore assaults and murders of LGBTQIA+ persons, which are often perpetrated by police officers, militant groups, gangs, and the victims’ family members.¹²⁴⁷ Forced marriages, honor killings, and corrective rape go unpunished.¹²⁴⁸ In some Catholic and Muslim countries, conservative interpretations of religious texts are often used to justify discrimination against LGBTQIA+ persons.¹²⁴⁹

¹²³⁸ UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees, at 13 (Dec. 2015), <https://www.unhcr.org/en-us/publications/brochures/5ebe6b8d4/protecting-persons-diverse-sexual-orientation-gender-identities.html> .

¹²³⁹ *Id.*

¹²⁴⁰ Nishin Nathwani, *Laws, Legal Frameworks, and the Displacement of LGBTI Persons*, THE GLOBAL OBSERVATORY (Aug. 6, 2019), <https://theglobalobservatory.org/2019/08/laws-legal-frameworks-displacement-lgbti-person/> .

¹²⁴¹ *Id.*; UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees, at 13 (Dec. 2015), <https://www.unhcr.org/en-us/publications/brochures/5ebe6b8d4/protecting-persons-diverse-sexual-orientation-gender-identities.html> .

¹²⁴² Nishin Nathwani, *Laws, Legal Frameworks, and the Displacement of LGBTI Persons*, THE GLOBAL OBSERVATORY.

¹²⁴³ *Id.*; UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities.

¹²⁴⁴ Nishin Nathwani, *Laws, Legal Frameworks, and the Displacement of LGBTI Persons*, THE GLOBAL OBSERVATORY; UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities.

¹²⁴⁵ Nishin Nathwani, *Laws, Legal Frameworks, and the Displacement of LGBTI Persons*, THE GLOBAL OBSERVATORY.

¹²⁴⁶ *Id.*

¹²⁴⁷ Paul J. Angelo & Dominic Bocci, *The Changing Landscape of Global LGBTQ+ Rights*, COUNCIL ON FOREIGN RELATIONS, (Jan. 29, 2021), <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights> .

¹²⁴⁸ *Id.*

¹²⁴⁹ *Id.*

Further, laws criminalizing same-sex relations are often gendered, with men more harshly penalized.¹²⁵⁰ For example, in several countries in the Americas, “indecent practices” between males in public and private are criminalized, while same-sex relations between women are not.¹²⁵¹ Even when laws criminalize both female and male same-sex relations, there is often a disparity in the severity of punishment.¹²⁵² For example, in one African country, the punishment for male “sodomy” is death, while for female same-sex relationships the maximum punishment is three months to two years in prison, along with a fine.¹²⁵³ This distinction is based on sexism and misogyny because these systems believe that no sexual acts can occur in the absence of a penis.

B. Legal Systems Criminalizing Gender Identity

As a result of the ignorance of the distinction between sexual orientation and gender identity, only a small number of countries expressly criminalize individuals based on their gender identity and behavior.¹²⁵⁴ These laws often apply to those who are perceived to be trans or those who transgress gender norms, often in the form of anti-crossdressing laws.¹²⁵⁵

In terms of de jure, or direct, criminalization, countries such as the Gambia, Malawi, Nigeria, and South Sudan in Africa directly criminalize gender identity.¹²⁵⁶ Several countries, including Malaysia, Kuwait, and Nigeria, criminalize “posing” as the opposite sex.¹²⁵⁷ In other countries, trans persons are arrested under laws that criminalize same-sex conduct because of the conflation of sexual orientation and gender identity.¹²⁵⁸ They can be imprisoned, fined, or face mandatory counseling sessions.¹²⁵⁹ Nigeria, Kuwait, the United Arab Emirates, and Saudi Arabia have arrested people for cross-dressing.¹²⁶⁰ Trans persons are also arrested under other government policies. For example, in Nepal, trans women were arrested and sexually abused under the pretense of cleaning up public spaces, and in India, trans women were arrested and evicted as part of a social cleansing effort.¹²⁶¹

As with sexual orientation, de facto criminalization also exists, where the laws do not directly criminalize trans persons but are applied discriminatorily against them.¹²⁶² For example, public order and vagrancy offenses are used to target trans and gender-diverse persons.¹²⁶³ There

¹²⁵⁰ UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities; *Criminalization and SOGI*, WORLD BANK, at 24, <https://thedocs.worldbank.org/en/doc/cc916e96628cbc2d2e44e8d9e3717777-0200022021/original/EQOSOGI-45-56.pdf>.

¹²⁵¹ UNHCR, Protecting Persons with Diverse Sexual Orientations and Gender Identities.

¹²⁵² *Id.*

¹²⁵³ *Id.*

¹²⁵⁴ *Trans Legal Mapping Report: Recognition Before the Law*, ILGA WORLD, at 11 (2019), https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf.

¹²⁵⁵ *Id.*

¹²⁵⁶ *Id.*

¹²⁵⁷ *Rights in Transition: Making Legal Recognition for Transgender People a Global Priority*, HUM. RTS. WATCH (2011), <https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north-0>.

¹²⁵⁸ *Id.*

¹²⁵⁹ *Id.*

¹²⁶⁰ *Id.*

¹²⁶¹ *Id.*

¹²⁶² *Trans Legal Mapping Report: Recognition Before the Law*, ILGA WORLD.

¹²⁶³ *Id.*

are also impersonation, misrepresentation, and fraud laws that target trans and gender-nonconforming persons.¹²⁶⁴ These laws presume that trans and gender-diverse persons are misrepresenting themselves or committing fraud.¹²⁶⁵ In some European countries, the de facto criminalization of trans persons is often in the form of disorderly conduct and hooliganism laws.¹²⁶⁶ Finally, the criminalization of sex work has also been used to disproportionately target trans and gender-diverse people, who are more likely to engage in sex work due to exclusion from formal education and other employment opportunities.¹²⁶⁷

When a country's laws do not allow gender-diverse persons to change their official documents, abuses can also arise.¹²⁶⁸ The procedures required for individuals seeking to legally change their gender identity may subject applicants to humiliating and harmful treatment.¹²⁶⁹ For example, trans persons in some countries must undergo a psychiatric evaluation which can last over a month.¹²⁷⁰ Trans persons may also undergo coerced sterilization and invasive medical tests.¹²⁷¹ These procedures expose trans persons to inhumane and degrading treatment.¹²⁷²

C. Legal Systems Decriminalizing Sexual Orientation

Recently, there has been a wave of reform to decriminalize same-sex relations.¹²⁷³ A few of the most recent countries to decriminalize consensual same-sex activity are India, Botswana, and Angola.¹²⁷⁴ In India, the top court overturned a 157-year-old law criminalizing same-sex relations in 2018.¹²⁷⁵ The law dated back to India's colonial era, and prohibited consensual "carnal intercourse against the order of nature."¹²⁷⁶ The court cited the respect for individual choice as well as the desirability of freedom of choice.¹²⁷⁷ Before this ruling, India was the most populous country that still criminalized homosexuality.¹²⁷⁸ The judges argued that criminalizing same-sex relations violated individual autonomy, nondiscrimination, and privacy.¹²⁷⁹ They also considered the American Psychiatric Association's (APA) decision to stop treating homosexuality as a mental

¹²⁶⁴ *Id.*

¹²⁶⁵ *Id.*

¹²⁶⁶ *Id.* at 111.

¹²⁶⁷ *Id.* at 15, 111.

¹²⁶⁸ *Rights in Transition: Making Legal Recognition for Transgender People a Global Priority*, HUM. RTS. WATCH (2011), <https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north-0>.

¹²⁶⁹ *Id.*

¹²⁷⁰ *Id.*

¹²⁷¹ *Id.*

¹²⁷² *Id.*

¹²⁷³ Nishin Nathwani, *Laws, Legal Frameworks, and the Displacement of LGBTI Persons*, THE GLOBAL OBSERVATORY.

¹²⁷⁴ *Id.*

¹²⁷⁵ Joanna Slater & Vidhi Doshi, *India's Supreme Court Decriminalizes Gay Sex in Historic Ruling*, WASHINGTON POST (Sept. 6, 2018), https://www.washingtonpost.com/world/asia_pacific/indias-supreme-court-decriminalizes-gay-sex-in-historic-ruling/2018/09/06/d15467b6-b111-11e8-8b53-50116768e499_story.html.

¹²⁷⁶ *Id.*

¹²⁷⁷ *Id.*

¹²⁷⁸ *Id.*

¹²⁷⁹ Rebecca A. Clay, *Decriminalizing Homosexuality in India*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Feb. 2019), <https://www.apa.org/monitor/2019/02/homosexuality-india>.

disorder.¹²⁸⁰ The judges cited several APA documents, including the amicus brief in the United States Supreme Court case that decriminalized same-sex relations in 2003.¹²⁸¹

In Botswana in 2019, the Gaborone high court ruled that sections of Botswana's Penal Code criminalizing same-sex conduct are unconstitutional.¹²⁸² The code, like many similar laws, was a model law introduced by Britain during the colonial era and previously imposed a maximum sentence of seven years for consensual same-sex relations.¹²⁸³ The court ruled that this law was discriminatory, as it prevented the only means of sexual expression of an individual.¹²⁸⁴ One of the judges stated that it is not in the public interest of Botswana to continue to criminalize same-sex conduct because there is no victim in consensual relationships.¹²⁸⁵ When the State appealed the judgment, Botswana's High Court upheld the ruling.¹²⁸⁶ Judge Ian Kirby explained that LGBTQIA+ persons lived in constant fear of discovery or arrest when expressing their love for their partners and that this leads to depression, suicidal behavior, alcoholism, and substance abuse.¹²⁸⁷

Angola decriminalized same-sex activity 133 years after the passage of a law banning same-sex relations was put in place during Portuguese colonization.¹²⁸⁸ Unlike the previously mentioned countries, this decriminalization came from the Parliament, which removed the passage and banned discrimination based on sexual orientation.¹²⁸⁹ The changes came when the Penal Code was rewritten for the first time since Angola's 1975 independence.¹²⁹⁰ The Minister of Justice and Human Rights of Angola called this repeal "an act of sovereignty by the Angolan State."¹²⁹¹

D. Legal Systems Decriminalizing Gender Identity

The penal codes of some countries feature statutes that explicitly criminalize trans persons, frequently in the form of laws prohibiting cross-dressing.¹²⁹² In other countries, there are no

¹²⁸⁰ *Id.*

¹²⁸¹ *Id.*

¹²⁸² Carl Collison, *Botswana Decriminalises Homosexuality in Historic Judgment*, MAIL & GUARDIAN (Jun. 11, 2019), <https://mg.co.za/article/2019-06-11-botswana-high-court-ruling-a-victory-for-countrys-queer-communities/>.

¹²⁸³ *Id.*

¹²⁸⁴ *Id.*

¹²⁸⁵ *Id.*

¹²⁸⁶ *Botswana Loses Court Bid to Revoke Gay Rights*, AFRICA NEWS, <https://www.africanews.com/2021/11/29/botswana-loses-court-bid-to-revoke-gay-rights/> (last visited Apr. 10, 2022).

¹²⁸⁷ *Id.*

¹²⁸⁸ *As Angola Decriminalizes Homosexuality, where does the African Continent Stand?*, DW, <https://www.dw.com/en/as-angola-decriminalizes-homosexuality-where-does-the-african-continent-stand/a-47434461> (last visited Feb. 6, 2022).

¹²⁸⁹ *Id.*

¹²⁹⁰ Donald Padgett, *Angola Just Decriminalized Same-Sex Sexual Relationships*, OUT (Feb. 10, 2021), <https://www.out.com/news/2021/2/10/angola-just-decriminalized-same-sex-sexual-relationships>.

¹²⁹¹ *Id.*

¹²⁹² HUM. RTS. WATCH, *Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity* <https://www.hrw.org/news/2017/06/23/human-rights-watch-country-profiles-sexual-orientation-and-gender-identity#>; ILGA WORLD, *Trans Legal Mapping Report: Recognition Before the Law*, (2019); thirteen countries explicitly criminalize transgender identity, usually in the form of anti-cross dressing laws. These countries are: Brunei, the Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Nigeria, Oman, South Sudan, Tonga

explicit laws prohibiting the expression of trans persons, but individuals are prosecuted under a variety of other statutes, such as those prohibiting vagrancy, beggary, impersonation, and public nuisance.¹²⁹³ Other countries have made significant changes in their legal systems to decriminalize the expression of gender identity and to enable trans persons to live in society without facing impossible legal hurdles.¹²⁹⁴

The difficulty with addressing the criminalization of gender identity (mainly trans persons) as opposed to sexual orientation, is that in some countries, the expression of trans identity is not explicitly prohibited.¹²⁹⁵ Rather, some legal systems that discriminate based on sexual orientation deny the existence of trans persons and criminalize them using anti-gay statutes.¹²⁹⁶ Thus, if a transgender woman is detected in an intimate situation with a cisman, the police in some countries can charge her using statutes prohibiting carnal knowledge against the order of nature.¹²⁹⁷ Trans women are targeted by statutes that criminalize the presence of “biological men” in private spaces reserved strictly for ciswomen.¹²⁹⁸ Thus, addressing decriminalization of gender identity involves not only repealing laws that are explicitly discriminating against the expression of one’s chosen gender identity, but also laws that are discriminatory towards queer persons and statutes that do not directly criminalize the existence of trans persons, but punish them for engaging in behaviors that are consistent with their chosen gender.

It is important to address the difference between decriminalization and legalization when discussing laws criminalizing the expression of trans identity. Decriminalization is the elimination of all laws and penalties that criminalize a certain act.¹²⁹⁹ Decriminalization could help with reducing stigma and offering some protection against discrimination and violence.¹³⁰⁰ Legalization, on the other hand, implies that whatever is legalized is subject to governmental regulation.¹³⁰¹ For example, the legalization of sex work can involve restricting the sex trade market through regulations mandating licensing or mandatory medical checkups.¹³⁰²

and the United Arab Emirates.

https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf.

¹²⁹³ ILGA WORLD, *Trans Legal Mapping Report: Recognition Before the Law*.

¹²⁹⁴ *Id.* at 8.

¹²⁹⁵ ILGA WORLD, *Trans Legal Mapping Report: Recognition Before the Law*: some nations, including Cameroon, Egypt, Armenia, Serbia, and Turkey, criminalize transgender people by prosecuting them under laws prohibiting prostitution or solicitation of sex. In Zambia, Burundi, and Kenya, laws prohibiting impersonation, misrepresentation, or fraud are often used to penalize transgender individuals, based on the idea that their gender identity, or their refusal to adhere to societal norms around gender, are a “misrepresentation” of their true identity, in which the states only recognizes a person’s assigned sex at birth.

¹²⁹⁶ *Id.*

¹²⁹⁷ *Id.*

¹²⁹⁸ For example, in Lebanon, Penal Law 1943, Article 521 states: “Any man who disguises himself as a woman and enters a place specifically for women only or a place in which anyone aside from women are prohibited from entering may be jailed for no more than 6 months.” (Human Dignity Trust, <https://www.humandignitytrust.org/country-profile/lebanon/>).

¹²⁹⁹ Hassan Joulaei et al., *Legalization, Decriminalization or Criminalization; Could We Introduce a Global Prescription for Prostitution?* Int. J. High Risk Behav Addict. 1, 4 (2021).

¹³⁰⁰ *Id.*

¹³⁰¹ *Id.*

¹³⁰² *Id.*

In recent years, some countries have successfully decriminalized the expression of trans identity, either through amendments passed by the legislature or through judicial rulings. For example, in 2014, in what was called a “historic ruling”, India’s Supreme Court formally declared that hijras were a third gender, “over and above binary genders under our Constitution and the laws.”¹³⁰³ In India, hijras have traditionally been known as individuals who don’t conform to the conventional notions of male or female gender and move between the two, challenging accepted gender norms.¹³⁰⁴ In this case, the court also noted that “gender identity is integral to the dignity of the individual and is at the core of ‘personal autonomy’ and ‘self-determination.’”¹³⁰⁵ This ruling does not only pertain to hijras. It also allows people assigned females at birth to identify as males and renders surgery unnecessary for one’s self-defined gender to be formally recognized by the government.¹³⁰⁶

In 2017, Botswana’s High Court ruled in favor of a trans man allowing him to hold official documents that reflect his chosen gender identity.¹³⁰⁷ Before this historic ruling, trans persons in Botswana did not have a formal legal mechanism to change the gender marker on their official documents.¹³⁰⁸ This resulted in difficulties during routine administrative matters and invited potential abuse from government officials.¹³⁰⁹ The Court found that by refusing to change the gender marker of the plaintiff on his official documents upon request, Botswana’s Registrar of National Registration had violated several of his basic human rights.¹³¹⁰ This ruling is important because vague or nonexistent mechanisms for changing the gender designation on official documents can expose trans persons to different forms of human rights violations by forcing trans persons to carry documents that don’t reflect their current gender.¹³¹¹ This can lead to accusations of fraud or impersonation and can subject trans persons to abuse, stigma, and/or arbitrary arrest and prosecution.¹³¹²

In 2018, Costa Rica’s Supreme Court approved a resolution allowing trans persons to change their names to reflect their gender identity on official ID cards.¹³¹³ The decision came in response to the Inter-American Court of Human Rights ruling in January 2018, which stated that all member countries, including Costa Rica, must provide full and equal rights to same-sex couples

¹³⁰³ Harmeet Shah Singh, *Indian court recognizes gender self-identification*, CNN WORLD (Apr. 15, 2014), <https://www.cnn.com/2014/04/15/world/asia/india-gender-rights-ruling/>.

¹³⁰⁴ Gurvinder Kalra & Nilesh Shah, *The Cultural, Psychiatric, and Sexuality Aspects of Hijras in India* 14 I’NTL J. TRANS. 171 (2013).

¹³⁰⁵ *Id.*

¹³⁰⁶ *Id.*

¹³⁰⁷ Graeme Reid, *Victory for Gender Identity in Botswana*, HUM. RTS. WATCH (Oct. 3, 2017), <https://www.hrw.org/news/2017/10/03/victory-gender-identity-botswana>.

¹³⁰⁸ B Camminga, *One for one and one for all? Human rights and transgender access to legal gender recognition in Botswana*, 1 I’NTL J. FOR GENDER, SEXUALITY AND THE LAW 241, 244 (2020).

¹³⁰⁹ *Id.*

¹³¹⁰ Graeme Reid, *Victory for Gender Identity in Botswana*.

¹³¹¹ COUNCIL OF EUROPE, *Protecting Human Rights of Transgender Persons: A Short Guide to Legal Gender Recognition* (2015), <https://rm.coe.int/1680492119>.

¹³¹² *Id.*

¹³¹³ Jose Miguel Vivanco, *Costa Rica Joins Global Push to Recognize Legal Gender Self-Identification*, HUM. RTS. WATCH (Aug. 8, 2018), <https://www.hrw.org/news/2018/08/08/costa-rica-joins-global-push-recognize-legal-gender-self-identification>.

and citizens whose self-perceived gender is different from their birth gender.¹³¹⁴ The tribunal declared that the process should be accomplished through a simple and free procedure.¹³¹⁵

While some progress has been made in decriminalizing the expression of gender identity in certain countries, a lot of work remains to be done. In the United States alone, about half of the bills targeting LGBTQIA+ persons that were introduced by state lawmakers this year targeted trans persons.¹³¹⁶ The expression of gender identity remains a controversial topic around the world and its continuing criminalization persists in violating the human rights of trans persons.

Part 2: Case Studies Global Advocacy Strategies

ASIA

I. Lebanon

Article 534 of the Lebanese Penal Code “prohibits ‘sexual intercourse against nature’ with a penalty of up to one-year imprisonment.”¹³¹⁷ Between 2007 to 2017, in four separate rulings, lower courts declined to convict gay and trans persons under Article 534.¹³¹⁸ In 2007, a “judge noted that what is considered unnatural is closely linked to ‘the mood of a society and its traditions,’ and emphasized the willingness of society to accept new or emerging ‘norms of nature.’”¹³¹⁹ Then, in July 2018, an appeals court issued a historic ruling, dictating that consensual same-sex activity was not unlawful.¹³²⁰ While this ruling is not binding on lower courts, advocacy groups hope to build enough precedent to effectively render Article 534 powerless.

a. Legal Advocacy Experiences

Helem is a major Lebanese organization working for the removal of anti-LGBTQIA+ articles from the Penal Code.¹³²¹ Their work primarily involves documenting human rights violations, researching the harm caused by these laws, creating a network of law professionals to serve detained queer persons, and working with state and non-state institutions.¹³²² In their advocacy, they use a model defense that was jointly developed by Helem and the Legal Agenda.¹³²³ They regularly use information gathered in their work to lobby for reform on the national and international level, including with the Lebanese Human Rights Institute, the United Nations Office

¹³¹⁴ *Id.*

¹³¹⁵ *Id.*

¹³¹⁶ Matt Laviertes and Elliott Ramos, *Nearly 240 anti-LGBT bills filed in 2022 so far, most of them targeting trans people* <https://www.nbcnews.com/nbc-out/out-politics-and-policy/nearly-240-anti-lgbtq-bills-filed-2022-far-targeting-trans-people-rcna20418>

¹³¹⁷ *Lebanon*, HUM. DIGNITY TRUST (2022), www.humandignitytrust.org/country-profile/lebanon .

¹³¹⁸ *Lebanon: Same-Sex Relations Not Illegal*, HUM. RTS. WATCH (Jul. 19, 2018), www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal .

¹³¹⁹ *It's Part of the Job*, HUM. RTS. WATCH (Jun. 26, 2013), <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations> .

¹³²⁰ *Lebanon: Same-Sex Relations Not Illegal*, HUM. RTS. WATCH.

¹³²¹ *Advocacy*, Helem (2021), www.helem.net/advocacy .

¹³²² *Id.*

¹³²³ *Id.*

of the High Commissioner for Human Rights, and UNDP.¹³²⁴

Comparably, Proud Lebanon is another organization that uses local and international human rights mechanisms to document human rights violations and advocate for policy reform.¹³²⁵ In a Shadow Report submitted to the Committee Against Torture, Proud Lebanon calls for the Lebanese Parliament to “work on repealing the laws criminalizing the LGBTQIA+ persons: Article 534 must be banned in Lebanon, or at least it must be stated that it has nothing to do with homosexuality and transsexuality.”¹³²⁶

b. Application in Reality

Although can be seen as more socially progressive than most of its neighbors, Lebanon generally has a negative perception of queer and trans persons.¹³²⁷ Indeed, a 2013 survey shows that 80% of the population rejected homosexuality.¹³²⁸ As a result, the LGBTQIA+ community, already marginalized, are among the hardest hit by Lebanon’s economic struggles and the COVID-19 pandemic.¹³²⁹

c. Social Advocacy to Support Legal Reform Efforts

Helem has produced several social media campaigns and advocacy videos, including Al-Shakra Al-Ekhabariya, an annual show that confronts the year’s biggest homophobic events with satire.¹³³⁰ Additionally, their *Your Love Matters* campaign encourages family members of LGBTQIA+ persons to join Helem’s Family Support Program.¹³³¹

In addition to lobbying and advocacy activities, Proud Lebanon also offers various support mechanisms to the queer and trans communities in Lebanon, such as legal support, healthcare services, and empowerment activities.¹³³² They also started a support group specifically for gay men with HIV.¹³³³

III. Turkey

In Turkey, same-sex relationships were decriminalized during the Ottoman Empire in

¹³²⁴ *Id.*

¹³²⁵ *Lobbying and Advocacy*, Proud Lebanon (2020), proudlebanon.org/lobbying-and-advocacy.

¹³²⁶ Proud Lebanon, *Report Submitted to the Committee Against Torture in the Context of the Initial Review of Lebanon*, UN Treaty Body Database (Mar. 20, 2017),

https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LBN/INT_CAT_CSS_LBN_26954_E.pdf

¹³²⁷ Ali Harb, ‘*This Revolution Has Raised the Bar. ’ How Lebanon’s Protests Have Created a Surprising Space for LGBT Rights*, TIME (Nov. 13, 2019), time.com/5726465/lgbt-issues-lebanon-protests

¹³²⁸ *Id.*

¹³²⁹ *Lebanon’s LGBT People Reclaim Their Power*, HUM. RTS. WATCH (May 7, 2020),

www.hrw.org/news/2020/05/07/lebanons-lgbt-people-reclaim-their-power

¹³³⁰ *Advocacy*, Helem (2021), www.helem.net/advocacy

¹³³¹ *Id.*

¹³³² *Legal Support*, Proud Lebanon (2020), proudlebanon.org/legal-support.

¹³³³ *Support+*, Proud Lebanon (2020), proudlebanon.org/support.

1858.¹³³⁴ Similarly, transsexuality is legal in Turkey but requires gender reassignment surgery.¹³³⁵ Turkey's legal framework for (SOGI) confirms the decriminalization of these issues is not purely Western ideology, as often argued by regimes and groups that repress these individuals.¹³³⁶

a. Legal Advocacy Experiences

Kaos GL is one of the main organizations in Turkey working domestically and internationally to promulgate legal, political, and social change.¹³³⁷ Their work involves the production of publications and reports that document human rights abuses faced by the Turkish LGBTQIA+ community.¹³³⁸ In addition to raising awareness around queer and trans issues, Kaos GL also provides policy reform recommendations. A 2014 report published with Turkey's first trans-rights association, Pembe Hayat, calls for increased legal protections for queer and trans persons, such as including (SOGI) in the Constitution's clauses on equality and non-discrimination.¹³³⁹ This report was submitted to the United Nations Universal Periodic Review ("UPR") of Turkey.¹³⁴⁰

Lambda Istanbul is another major Turkish LGBTQIA+ organization.¹³⁴¹ In 2014, they proposed new articles of the Penal Code to the Commission of Justice of the Parliament in Ankara, demanding legal protections for sexual minorities.¹³⁴² Additionally, they have documented human rights violations for submission to all members of the Turkish parliament and campaigned for the inclusion of SOGI in the equality article of the Constitution.¹³⁴³ However, there is no indication that this effort was successful yet.

Recently, Lambda Istanbul has made headlines with a controversy over the group's legal recognition.¹³⁴⁴ In 2008, a court shut down the organization, citing the group's objectives, which they described as "against the law and morality."¹³⁴⁵ The Supreme Court of Appeals rejected the lower court's ruling in 2009 and recognized the right of LGBTQIA+ persons to form associations.¹³⁴⁶ However, this victory is tenuous as the Court hinted the group could be shut down

¹³³⁴ *LGBT Rights in Turkey*, EQUALDEX (2022), www.equaldex.com/region/turkey.

¹³³⁵ *Id.*

¹³³⁶ Camille Cottais, *Gay Rights around the World: Where Are We At?*, GROW THINK TANK (Sept. 19, 2021), www.growthinktank.org/en/gay-rights-around-the-world-where-are-we-at.

¹³³⁷ *Who Are We?*, Kaos GL (2020), kaosgldernegi.org/en/about-us/who-are-we.

¹³³⁸ *Id.*

¹³³⁹ Pembe Hayat, ET AL., *Human Rights Violations of LGBT Individuals in Turkey*, ILGA WORLD (Nov. 2014), <https://ilga.org/wp-content/uploads/2016/02/Shadow-report-16.pdf>; *Biz Kimiz?*, PEMBE HAYAT (2020), www.pembehayat.org/hakkimizda/detay/3/biz-kimiz.

¹³⁴⁰ *Id.*

¹³⁴¹ *Lambdaistanbul LGBTI Solidarity Association*, LAMBDAISTANBUL, www.lambdaistanbul.org/s/lambdaistanbul-lgbti-solidarity-association

¹³⁴² *We, Gays and Lesbians, Are Demanding Protection under New Turkish Penal Code*, KAOS GL (May 29, 2004), kaosgl.org/en/single-news/we-gays-and-lesbians-are-demanding-protection-under-new-turkish-penal-code

¹³⁴³ *Lambdaistanbul LGBTI Solidarity Association*, LAMBDAISTANBUL.

¹³⁴⁴ *Turkey: Court Shows Bias, Dissolves Lambda Istanbul*, HUM. RTS. WATCH (Oct. 28, 2020), www.hrw.org/news/2008/06/01/turkey-court-shows-bias-dissolves-lambda-istanbul.

¹³⁴⁵ *Id.*

¹³⁴⁶ *Turkish LGBT Organization Wins Appeal against Closure*, AMNESTY INTL. (Aug. 17, 2021), www.amnesty.org/en/latest/news/2009/01/turkish-lgbt-organization-wins-appeal-against-closure-20090121.

again if they “promote homosexuality.”¹³⁴⁷ Specifically, while Lambda Istanbul can support LGBTQIA+ persons, it cannot, “[encourage] or [provoke] gay, lesbian, bisexual, transsexual and transvestite behavior or [act] to spread such sexual orientations.”¹³⁴⁸ The group has appealed to the European Court of Human Rights, arguing interference with the rights of LGBTQIA+ persons to free expression, assembly, and life with dignity as guaranteed by European case law.¹³⁴⁹ Their case is pending and a fact sheet has been filed as recently as February 2022.¹³⁵⁰ In the meantime, they are using these difficulties to promote awareness of the obstacles that LGBTQIA+ persons face in Turkey.¹³⁵¹

b. Application in Reality

Without legal protections, sexual minorities still face targeted abuse and harassment in Turkey. For example, on March 21, 2021, an official statement from President Recep Tayyip Erdoğan noted that homosexuality is “incompatible with Turkey’s social and family values.” In 2017, LGBTQIA+ events were banned around Turkey after similar comments from President Erdoğan.¹³⁵² The bans started in Turkey’s capital, Ankara, during a state of emergency but remained in place after the emergency ended and subsequently spread around the country.¹³⁵³ Kaos GL and Pembe Hayat brought lawsuits against the bans, citing violations of the rights to expression, assembly, and association.¹³⁵⁴ However, the bans were not lifted until 2019, when an Ankara court ruled that the ban was unlawful.¹³⁵⁵

c. Social Advocacy to Support Legal Reform Efforts

Kaos GL publishes a magazine and hosts events, such as panels, conferences, and seminars to support their legal advocacy.¹³⁵⁶ In 2014, they hosted the city of Dersim’s first pride parade.¹³⁵⁷ Similarly, Lambda Istanbul has organized various miscellaneous campaigns to support its lobbying activities, such as an LGBTQIA+ helpline, two symposiums, and yearly pride marches/ protests with an attendance of up to 1,500 people.¹³⁵⁸

¹³⁴⁷ *Lambdaistanbul LGBTI Solidarity Association*, LAMBDAISTANBUL.

¹³⁴⁸ *Court: Lambda Istanbul Can Continue Operating*, Kaos GL (May 7, 2009), kaosgl.org/en/single-news/court-lambda-istanbul-can-continue-operating.

¹³⁴⁹ *Id.*

¹³⁵⁰ *Lambdaistanbul; Sexual Orientation Issues - Press Unit*, EUR. CT. OF HUM. RTS. (Feb. 2022), www.echr.coe.int/documents/fs_sexual_orientation_eng.pdf.

¹³⁵¹ *Id.*

¹³⁵² *Turkey Squelching LGBT Events*, HUM. RTS. WATCH (Dec. 1, 2017), www.hrw.org/news/2017/12/01/turkey-squelching-lgbt-events.

¹³⁵³ Graeme Reid, *In Turkey, Ankara Wakes Up to Court Lifting LGBTI Events Ban*, HUM. RTS. WATCH (Apr. 25, 2019), www.hrw.org/news/2019/04/25/turkey-ankara-wakes-court-lifting-lgbti-events-ban.

¹³⁵⁴ *Turkey Squelching LGBT Events*, HUM. RTS. WATCH.

¹³⁵⁵ Graeme Reid, *In Turkey, Ankara Wakes Up to Court Lifting LGBTI Events Ban*.

¹³⁵⁶ *Who Are We?*, KAOS GL (2020).

¹³⁵⁷ *First Ever Pride Parade to Be Held in Dersim: We Won’t Be the Silent Majority*, KAOS GL (Jul. 29, 2014), kaosgl.org/en/single-news/first-ever-pride-parade-to-be-held-in-dersim-we-wonrsquot-be-the-silent-majority.

¹³⁵⁸ *“LGBT Rights in Turkey*, EQUALDEX (2022); *Lambdaistanbul LGBTI Solidarity Association*, LAMBDAISTANBUL.

d. Application to Lebanon

As noted above, Turkey's decriminalization of SOGI during the Ottoman Empire shows that same-sex relationships and transsexuality are not necessarily incompatible with the nation's core values, as argued by President Erdoğan.¹³⁵⁹ In fact, through decriminalization, history shows that Turkey previously accepted sexual minorities. LGBTQIA+ groups in Lebanon can point to this and the history behind their discriminatory laws to show that this anti-LGBTQIA+ framework arose during the French mandate.¹³⁶⁰ Rather than SOGI being seen as purely Western ideology, advocacy organizations can argue that these laws are relics of a colonial era and should therefore not be enforced.¹³⁶¹

IV. India

In 2018, the Indian Supreme Court held that Section 377 of the Indian Penal Code, criminalizing same-sex consensual sexual conduct between adults, was unconstitutional.¹³⁶² The Court noted that such laws violate the right to equality, the right to privacy, and the right to life as sexual orientation is an inherent part of self-identity.¹³⁶³ Additionally, the Court dictated that Section 377 was an unreasonable restriction on the right to freedom of expression since "consensual carnal intercourse in private 'does not in any way harm public decency or morality.'"¹³⁶⁴

a. Legal Advocacy Experiences

This landmark ruling was a culmination of the efforts of several LGBTQIA+ organizations and activists. The litigation began in 2001, when the Naz Foundation, an NGO focused on HIV/AIDS awareness and sexual health, filed a case claiming that Section 377 was unconstitutional.¹³⁶⁵ Notably, HIV/AIDS has been an important launching pad for discussions on LGBTQIA+ issues in India.¹³⁶⁶ As noted by a senior officer at the India HIV/AIDS Alliance, "[w]e did not have our own Stonewall and hence, HIV was our starting point."¹³⁶⁷

b. Permanence or Repeals of Decriminalization Wins

In 2009, the first win came when the lower court ruled that Section 377 was indeed

¹³⁵⁹ *Turkey Squelching LGBT Events*, HUM. RTS. WATCH (Dec. 1, 2017).

¹³⁶⁰ *Lebanon: Same-Sex Relations Not Illegal*, HUM. RTS. WATCH (Jul. 19, 2018, 12:00 AM), www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal.

¹³⁶¹ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic).

¹³⁶² *Navtej Singh Johar v. Union of India*, GLOBAL FREEDOM OF EXPRESSION (Nov. 27, 2018), globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india.

¹³⁶³ *Id.*

¹³⁶⁴ *Id.*

¹³⁶⁵ *India: Supreme Court Strikes Down Sodomy Law*, HUM. RTS. WATCH (Oct. 28, 2020), www.hrw.org/news/2018/09/06/india-supreme-court-strikes-down-sodomy-law

¹³⁶⁶ Abhishyant Kidangoor, *India's Supreme Court Decriminalizes Homosexuality in a Historic Ruling for the LGBTQ Community*, TIME (Sept. 6, 2018), time.com/5388231/india-decriminalizes-homosexuality-section-377

¹³⁶⁷ *Id.*

unconstitutional and violated the rights to dignity, life, liberty, and equality.¹³⁶⁸ However, this ruling came under strong opposition from religious groups.¹³⁶⁹ Consequently, in 2012, it was overturned by the Supreme Court, which ruled that amending the law was not the responsibility of the judiciary, but the legislature.¹³⁷⁰ Next, in 2016, prominent LGBTQIA+ activists and groups filed over a dozen petitions to overturn the ruling, again citing violations of their rights.¹³⁷¹ Their arguments reiterated that Section 377 violated their sexual autonomy and rights to privacy and equality.¹³⁷² This resulted in the historic 2018 ruling decriminalizing same-sex relationships.¹³⁷³

c. Application in Reality

Nonetheless, the Indian queer and trans communities still face harassment and discrimination, even despite decriminalization, thus requiring the continued advocacy of LGBTQIA+ organizations.¹³⁷⁴ One such prominent group is The Humsafar Trust (HST), which works with corporations, educational institutions, health officials, and lawmakers to create legislation aimed at protecting LGBTQIA+ persons.¹³⁷⁵ One HST initiative crafted a roadmap to guide state and community leaders in creating programs that would include sexual minorities in state-provided services and liberties.¹³⁷⁶

d. Social Advocacy to Support Legal Reform Efforts

Another notable strategy bringing awareness to LGBTQIA+ issues was carried out by Queerhythm.¹³⁷⁷ In 2017, the group made headlines for their work with Zara Sheikh, the first trans person in Kerala whose transition and subsequent hiring by a multinational company were well-publicized.¹³⁷⁸ However, trans persons economic rights remain a major issue in India.

¹³⁶⁸ David Slade, *Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study*, THE ARK. J. OF SOCIAL CHANGE AND PUB. SERV. (Feb. 7, 2017), ualr.edu/socialchange/2013/01/13/impact-of-the-decriminalization-of-homosexuality-in-delhi-an-empirical-study.

¹³⁶⁹ Abhishyant Kidangoor, *India's Supreme Court Decriminalizes Homosexuality in a Historic Ruling for the LGBTQ Community*, TIME.

¹³⁷⁰ *Id.*; *India: Supreme Court Strikes Down Sodomy Law*, HUM. RTS. WATCH (Oct. 28, 2020), www.hrw.org/news/2018/09/06/india-supreme-court-strikes-down-sodomy-law

¹³⁷¹ Abhishyant Kidangoor, *India's Supreme Court Decriminalizes Homosexuality in a Historic Ruling for the LGBTQ Community*, TIME.

¹³⁷² *Id.*

¹³⁷³ *Id.*

¹³⁷⁴ Kyle Knight, *Section 377 Is History but Young LGBT Indians Need Concrete Policies to Protect Them from Bullying*, HUM. RTS. WATCH (Oct. 28, 2020), www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying

¹³⁷⁵ *Advocacy*, Humsafar Trust (2018), humsafar.org/advocacy.

¹³⁷⁶ Suneeta Singh, ET AL., *Charting a Programmatic Roadmap for Sexual Minority Groups in India*, The World Bank (Jul 1, 2012), documents.worldbank.org/en/publication/documents-reports/documentdetail/487301468268159125/charting-a-programmatic-roadmap-for-sexual-minority-groups-in-india.

¹³⁷⁷ *About*, Queerhythm (Jul. 19, 2017), queerhythm.wordpress.com/about.

¹³⁷⁸ Shaeroy Chinoy, *Pride Guide: Seven LGBTQ+ Organisations You Should Know About*, GQ INDIA (Jun, 19, 2020), www.gqindia.com/live-well/content/pride-guide-seven-lgbtq-organisations-you-should-know-about.

e. Application to Lebanon

LGBTQIA+ organizations can use the reasoning behind India’s landmark ruling to support their advocacy work. Accordingly, Lebanese judges should be reminded that they have the power to define what constitutes “sexual intercourse against nature,” and should interpret it according to the evolution of social norms.¹³⁷⁹ Using this approach is important not only because it gives power to these judges and incites them to be allies, but in an increasingly globalized society, international comparative law is a strong example of the evolution of such social norms.¹³⁸⁰

V. Nepal

In a 2007 landmark ruling, Nepal’s Supreme Court decriminalized same-sex sexual activity, gave legal recognition to a third gender, and required the Government to draft legislation recognizing same-sex marriage.¹³⁸¹ In Nepal, the “third gender” encompasses sexual and gender minorities broadly.¹³⁸² This legal recognition is seen as a political victory as it conveys the idea that gender identity should be based on self-identification.¹³⁸³ Moreover, in recognizing these rights, the Court noted, “The right to privacy is a fundamental right of an individual. The issue of sexual activity falls under the definition of privacy. No one has the right to question how two adults perform sexual intercourse and whether this intercourse is natural or unnatural.”¹³⁸⁴

a. Legal Advocacy Experiences

The case was filed by several LGBTQIA+ organizations, the most prominent of which is the Blue Diamond Society (BDS).¹³⁸⁵¹³⁸⁶ In August 2004, BDS led an international campaign to secure the release of 39 LGBTQIA+ activists that were arrested at a public demonstration calling for human rights for sexual minorities.¹³⁸⁷ Furthermore, recognizing the systematic oppression of the LGBTQIA+ community under the absolute monarchy, BDS supported the Nepalese pro-democracy movement.¹³⁸⁸ Following King Gyandera’s removal, the organization then worked with the new government to ensure basic human rights for sexual minorities in the new

¹³⁷⁹ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int’l Human Rights Clinic).

¹³⁸⁰ *Id.*

¹³⁸¹ *Sunil Babu Pant and Others/ v. Nepal Government and Others, Supreme Court of Nepal (21 December 2007)*, INT’L COMM’N OF JURISTS (2008), www.icj.org/sogicasebook/sunil-babu-pant-and-others-v-nepal-government-and-others-supreme-court-of-nepal-21-december-2007.

¹³⁸² Holly Young, *Trans Rights: Meet the Face of Nepal’s Progressive ‘Third Gender’ Movement*, THE GUARDIAN (Oct. 6, 2017), www.theguardian.com/global-development-professionals-network/2016/feb/12/trans-rights-meet-the-face-of-nepals-progressive-third-gender-movement.

¹³⁸³ *Id.*

¹³⁸⁴ *Sunil Babu Pant and Others/ v. Nepal Government and Others, Supreme Court of Nepal (21 December 2007)*, INT’L COMM’N OF JURISTS.

¹³⁸⁵ *Id.*

¹³⁸⁶ *A Celebration of Courage: Nepal’s Blue Diamond Society Receives International Recognition*, OUTRIGHT ACTION INT’L (Oct. 1, 2012), outrightinternational.org/content/celebration-courage-nepals-blue-diamond-society-receives-international-recognition-lgbt.

¹³⁸⁷ *Id.*

¹³⁸⁸ *Id.*

constitution.¹³⁸⁹ In addition to lobbying efforts, activists became enmeshed in electoral politics.¹³⁹⁰ Sunil Babu Pant, the founder of BDS, was the first openly queer parliamentarian in Asia.¹³⁹¹

As a result, the new constitution of Nepal, passed in September 2015, contains several articles protecting the rights of LGBTQIA+ persons.¹³⁹² This includes provisions affirming the rights of citizens to choose their preferred gender identity, acknowledging the rights of sexual minorities to participate in public services, and prohibiting the discrimination of these minorities.¹³⁹³

b. Application in Reality

The government has been slow and rigid in implementing decriminalization orders.¹³⁹⁴ A bill passed in June 2020 that requires medical documentation of a sex change to update one's identification papers to reflect the third gender option.¹³⁹⁵ On the ground, LGBTQIA+ persons continue to face harassment by the public and by authorities, as there are still multiple reports of violence against the LGBTQIA+ community, including reports of rape and murder.¹³⁹⁶ Despite remarkable legal progress within the past few years, in reality, queer and trans persons are still denied equal rights to marriage, employment, property, and education.¹³⁹⁷

c. Social Advocacy to Support Legal Reform Efforts

Since 2002, BDS has hosted a large pride parade on the official Nepalese holiday of Gai Jatra.¹³⁹⁸ Though the festival is 500 years old, this annual event has effectively allowed the LGBTQIA+ community to unofficially declare the day as their own.¹³⁹⁹ To this day, they feel accepted by mainstream society and able to show their true identities.¹⁴⁰⁰ Additionally, it is a day

¹³⁸⁹ *Id.*

¹³⁹⁰ Kyle Knight, *How Did Nepal Become a Global LGBT Rights Beacon?*, HUM. RTS. WATCH (Aug. 11, 2017), www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon.

¹³⁹¹ Anna Leach, *Fighting for the Right to Love - Your #LGBTChange Heroes*, THE GUARDIAN (Jan. 19, 2018), www.theguardian.com/global-development-professionals-network/2016/feb/14/fighting-for-the-right-to-love-your-lgbtchange-heroes.

¹³⁹² *The New Constitution of Nepal and LGBT Human Rights*, HUM. RTS. CAMPAIGN GLOBAL (Sept. 17, 2015), assets2.hrc.org/files/documents/NepalConstitution-LGBTRights.pdf.

¹³⁹³ *Id.*

¹³⁹⁴ Kyle Knight, *How Did Nepal Become a Global LGBT Rights Beacon?*, HUM. RTS. WATCH.

¹³⁹⁵ Sanju Gurung, *Nepal, the Beacon of LGBTQ+ Rights in Asia? Not Quite*, THE DIPLOMAT (Feb. 18, 2021), thediplomat.com/2021/02/nepal-the-beacon-of-lgbtq-rights-in-asia-not-quite.

¹³⁹⁶ Nasana Bajracharya, *Why Is Gai Jatra Special for LGBTQIA+ Community in Nepal?*, ONLINEKHABAR ENGLISH NEWS (Aug. 25, 2021), english.onlinekhabar.com/gai-jatra-lgbtqia-community-nepal.html.

¹³⁹⁷ Ankit Khadgi, *Nepal Might Have Made Progress When It Comes to Queer Rights but It Still Has a Long Way to Go*, KATHMANDU POST (May 17, 2020), kathmandupost.com/national/2020/05/17/nepal-might-have-made-progress-when-it-comes-to-queer-rights-but-it-still-has-a-long-way-to-go.

¹³⁹⁸ Tsering Ngodup Lama and Kabin Adhikari, *This Is What the Annual Gai Jatra Pride Parade Looked Like*, KATHMANDU POST (Aug. 16, 2019), kathmandupost.com/visual-stories/2019/08/16/this-is-what-the-annual-gai-jatra-pride-parade-looked-like.

¹³⁹⁹ Nicola Desouzaa, *In Pics: Nepal's 16th LGBT Pride and Gai Jatra*, GAYLAXY MAGAZINE (Aug. 18, 2019), www.gaylaxymag.com/articles/world/in-pics-nepal-lgbt-pride-and-gai-jatra.

¹⁴⁰⁰ Nasana Bajracharya, *Why Is Gai Jatra Special for LGBTQIA+ Community in Nepal?*, ONLINEKHABAR ENGLISH NEWS.

that allows them to commemorate those lost to violence within the community.¹⁴⁰¹

d. Application to Lebanon

Lebanese LGBTQIA+ organizations can also utilize the reasoning behind Nepal's landmark ruling to show that same-sex sexual activity and transsexuality are not inherently unnatural. Moreover, based on the success of Nepalese advocates in electoral politics, Lebanese groups may consider also becoming more involved in decision-making by supporting allies in positions of power.

AFRICA

VI. Kenya

In Kenya, several statutes criminalize SOGI. Such statutes are included in the 1930 Kenyan Penal Code: Section 162 prohibits “carnal knowledge...against the order of nature” and carries a term of fourteen years in prison,¹⁴⁰² Section 163 prohibits attempts to commit the offenses listed in Section 162,¹⁴⁰³ and Section 165 prohibits “indecent practices between males” in public and in private.¹⁴⁰⁴ Sex between women is not specifically mentioned in these statutes, although a former Prime Minister called for women to be arrested under these statutes as well.¹⁴⁰⁵

a. Legal Advocacy Experiences

i. National Gay and Lesbian Human Rights Commission (NGLHRC)

The National Gay and Lesbian Human Rights Commission (NGLHRC) was founded by six legal advocates in Kenya in December 2012.¹⁴⁰⁶ The NGLHRC began its work as an organization by conducting a nine-month study to understand the needs of the LGBTQIA+ community in Kenya.¹⁴⁰⁷ The study found that existing statutes were a major barrier to equality.¹⁴⁰⁸ The NGLHRC report also found that although there are few convictions based on these sections of the Penal Code, LGBTQIA+ persons are often harassed by police, and held in remand houses beyond the constitutionally allowed period without being charged, and presented in court on fabricated charges.¹⁴⁰⁹ Additionally, the report also found that corrupt police officers often extort

¹⁴⁰¹ *Id.*

¹⁴⁰² LAWS OF KENYA, Penal Code, Chapter 63, P6-60, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>.

¹⁴⁰³ *Id.* at P6-61.

¹⁴⁰⁴ *Id.*

¹⁴⁰⁵ *Arrest Gays, Kenyan PM Orders*, BEHIND THE MASK (Nov. 30, 2010), <https://web.archive.org/web/20120720041354/http://www.mask.org.za/arrest-gays-kenyan-pm-orders/>.

¹⁴⁰⁶ *History of NGLHRC*, NAT'L GAY AND LESBIAN HUM. RTS. COMM'N, <https://www.nglhrc.com/about-us#history> (last visited Mar. 5, 2022).

¹⁴⁰⁷ *Id.*

¹⁴⁰⁸ *See generally The Outlawed Among Us: A Study of The LGBTI Community's Search for Equality And Non-Discrimination In Kenya*, KENYA HUM. RTS. COMM'N (2011), <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html>.

¹⁴⁰⁹ *Id.* at 21.

and blackmail LGBTQIA+ persons with the threat of arrest and imprisonment if they do not give the requested bribes.¹⁴¹⁰ Such bribes often included sexual favors.¹⁴¹¹

NGLHRC has participated in numerous legal battles to combat the criminalization of SOGI. The first such battle included the fight for NGLHRC's registration with Kenya's NGO Board in April 2015.¹⁴¹² The NGO Board rejected the application because of the reference to gay and lesbian persons.¹⁴¹³ This case culminated in a favorable ruling by Kenya's High Court holding that the NGO Board had to accept the NGLHRC's registration as an NGO because the agency had no genuine reason to deny the NGLHRC official registration status as an NGO.¹⁴¹⁴ An appeal by the NGO board in March 2019 was dismissed by the court of appeals.¹⁴¹⁵

In another case, NGLHRC filed a petition in September 2015 with the Mombasa High Court challenging forced anal and HIV testing of men suspected of same-sex relations.¹⁴¹⁶ The petitioners were two Kenyan men who were arrested in 2015 on rumors that they might be gay and subjected to forced anal examinations and HIV testing.¹⁴¹⁷ The NGLHRC's petition argued whether it was constitutional to subject the petitioners to examinations and whether the results of the examinations could be admitted as evidence considering that constitutional rights to dignity and fair trial were breached in acquiring that evidence.¹⁴¹⁸ The court upheld the legality of anal testing in June 2016, but in March 2018, the NGLHRC won its appeal by arguing that the men had been denied their constitutional rights to dignity, privacy, and fair trial.¹⁴¹⁹

In 2016, in *Eric Gitari v. Attorney General*, the NGLHRC also joined the case to challenge sections of Kenya's Penal Code that outlawed consensual same-sex relations by filing a suit challenging the law's constitutionality.¹⁴²⁰ The petitioner argued that the laws were vague and that the provisions violate the right to non-discrimination, human dignity, privacy, and health.¹⁴²¹ In May 2019, the high court dismissed the NGLHRC's petition and failed to decriminalize same-sex conduct under Sections 162 and 165 of the Penal Code.¹⁴²² The opponents of the push to

¹⁴¹⁰ *Id.* at 21-23.

¹⁴¹¹ *Id.*

¹⁴¹² *Our Wins*, NAT'L GAY AND LESBIAN HUM. RTS. COMM'N, <https://www.nglhrc.com/litigation#our-wins> (last visited Mar. 5, 2022); *Gitari v. Non-Governmental Organisations Coordination Board*, <https://globalfreedomofexpression.columbia.edu/cases/gitari-v-non-governmental-organisations-co-ordination-board/>.

¹⁴¹³ *Id.*

¹⁴¹⁴ *Id.*

¹⁴¹⁵ *Our Wins*, NAT'L GAY AND LESBIAN HUM. RTS. COMM'N.

¹⁴¹⁶ *Id.*

¹⁴¹⁷ *Id.*; *Kenya Appeal Court Moves to End Forced Examinations of Men Suspected of Being Gay*, Press Release, NAT'L GAY AND LESBIAN HUM. RTS. COMM'N (Mar. 22, 2018), https://static1.squarespace.com/static/581a19852994ca08211faca4/t/5ab395190e2e72ea7690e401/1521718555090/Press+Release+_Forced+Exams+Ruling.pdf.

¹⁴¹⁸ *Id.*

¹⁴¹⁹ *Id.*

¹⁴²⁰ *Our Wins*, NAT'L GAY AND LESBIAN HUM. RTS. COMM'N.

¹⁴²¹ Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUM. RTS. J. (2020), <https://harvardhrj.com/2020/03/decriminalising-homosexuality-reshaping-the-landscape-in-botswana-and-a-missed-opportunity-in-kenya/>.

¹⁴²² *Id.*; *A Blow for Human Rights as High Court Upholds Discriminatory Laws Criminalising LGBT People in Kenya*, Press Release.

decriminalize same-sex relations contended that the petitioners sought to “use judicial craft to legitimize gay liaisons and such other indecent offenses and create a new breed of rights which do not exist in the Constitution.”¹⁴²³ Additionally, they claimed that the criminalization of same-sex relations is within the confines of the law and can be enforced when the same-sex act offends the common good, public policy, and traditional values recognized by the community.¹⁴²⁴ The court held that petitioners failed to prove beyond a doubt that these statutes were used to discriminate against sexual and gender minorities.¹⁴²⁵ The court further held in this decision, which disposes of two consolidated Petitions (150 and 234 of 2016), that the Petitioners had not provided sufficient evidence to successfully argue that their rights had been violated by the criminalization of same-sex conduct because the Petitioners did not allege that they had been denied access to healthcare. The court also determined that the right to a fair trial had not been infringed because there was no evidence demonstrating that the collection of evidence was undignified or dehumanizing. Finally, the court also held that the Petitioners’ rights to freedom and security, freedom of conscience, religion, belief, and opinion, and right to privacy had not been infringed. As to the right to privacy, the court determined that if this claim succeeded, LGBTQIA+ persons would fight for the right to marry, which would violate the “tenor and spirit of the Constitution.” The court essentially stated that decriminalizing same-sex relations would indirectly open the door for same-sex marriage, which would infringe Article 45 of the Constitution.

ii. Gay and Lesbian Coalition of Kenya (GALCK)

The Gay and Lesbian Coalition of Kenya (GALCK) was established by local activists of a women’s rights organization called the Urgent Action Fund and is a union between different organizations in Kenya striving to improve the quality of life for lesbian, gay, bisexual, trans, and intersex people.¹⁴²⁶

Like NGLHRC, GALCK is also fighting Sections 162 and 165 of the Penal Code by participating in submitting Petitions 150 and 234 of 2016, which argue that these sections discriminate against members of the LGBTQIA+ community and are therefore unconstitutional.¹⁴²⁷ GALCK, NGLHRC and other Kenyan organizations (including Nyanza Rift Valley and Western Kenya Network), filed these petitions together.¹⁴²⁸ The petitioners argued that they experienced violence, stigma, discrimination, and arbitrary arrest.¹⁴²⁹ Their experts discussed the mental and physical health implications of the stigma and argued that sexual orientation is innate and those discriminatory laws are a barrier to HIV prevention and treatment.¹⁴³⁰ The State used experts to suggest that homosexuality is the result of child sexual abuse, that sexuality is

¹⁴²³ Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUM. RTS. J.

¹⁴²⁴ *Id.*

¹⁴²⁵ *Our Wins*, NAT’L GAY AND LESBIAN HUM. RTS. COMM’N; *A Blow for Human Rights as High Court Upholds Discriminatory Laws Criminalising LGBT People in Kenya*.

¹⁴²⁶ *About Us*, GAY AND LESBIAN COALITION OF KENYA, <https://www.galck.org/about/>

¹⁴²⁷ *Litigation and Advocacy*, GAY AND LESBIAN COAL. OF KENYA, <https://www.galck.org/litigation-and-advocacy/>.

¹⁴²⁸ *Petition 150 & 234 of 2016*, NAT’L GAY AND LESBIAN HUM. RTS. COMM’N, <https://www.nglhrc.com/petition-150-234-of-20126>

¹⁴²⁹ *Justice Denied: No to #Repeal162*, KENYA LEGAL & ETHICAL ISSUES NETWORK ON HIV AND AIDS, <https://www.kelinkkenya.org/wp-content/uploads/2019/06/Justice-Denied-No-to-Repeal-162.pdf>

¹⁴³⁰ *Id.*

chosen and can be unlearned, and that homosexuality is “against procreation” and should therefore be criminalized.¹⁴³¹ These experts also suggested that declaring the laws unconstitutional would harm Kenyan society, that homosexuality is insulting to traditional morality, that the law applies equally to heterosexual as well as homosexual individuals, and that these laws are based on the Constitution’s recognition of God as the “objective moral lawgiver.”¹⁴³² The State prevailed, and the court refused to repeal the two sections.

b. Social Advocacy to Support Legal Reform Efforts

iii. National Gay and Lesbian Human Rights Commission (NGLHRC)

In addition to legal advocacy, the NGLHRC has been assisting LGBTQIA+ persons to avoid prosecution after being catfished, scammed, and outed.¹⁴³³ These cases include situations where people have been severely beaten and almost killed, raped and robbed at gunpoint, and forced to empty their bank accounts and pay bribes.¹⁴³⁴ The NGLHRC alone has dealt with 679 such cases since 2013.¹⁴³⁵ The NGLHRC also provides legal aid and support, community outreach by increasing reporting of violations against the LGBTQIA+ community, paralegal training and civic education, sensitization training for police officers, prosecutors and other investigating officers, and health practitioners, advocacy and engagement, and services meant specifically for queer women of Kenya.¹⁴³⁶

c. Application to Lebanon

Although the NGLHRC and GALCK were ultimately not successful in decriminalizing sexual orientation, other LGBTQIA+ organizations in Lebanon can use strategic litigation to obtain small victories in the courts which can eventually lead to decriminalization.¹⁴³⁷ Organizations in Lebanon, can handpick “simple” cases, and bring them to young and progressive judges to establish helpful precedents.¹⁴³⁸ As a proactive step, the civil society in Lebanon should also consider the Kenyan court’s reasoning for not decriminalizing same-sex relations, including that the common good, public policy, and traditional values recognized by the community in Kenya would be offended, to prepare and build a more solid counterargument for forthcoming cases.¹⁴³⁹

¹⁴³¹ *Id.*

¹⁴³² *Id.*

¹⁴³³ Sarah Johnson, “I’d Been Set Up”: the LGBTQ Kenyans “Catfished” for Money via Dating Apps, THE GUARDIAN (Jan. 4, 2022), <https://www.theguardian.com/global-development/2022/jan/04/id-been-set-up-the-lgbtq-kenyans-catfished-for-money-via-dating-apps>

¹⁴³⁴ *Id.*

¹⁴³⁵ *Id.*

¹⁴³⁶ *Our Programs*, NATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION.

¹⁴³⁷ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int’l Human Rights Clinic).

¹⁴³⁸ *Id.*

¹⁴³⁹ Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUMAN RIGHTS JOURNAL.

VII. Botswana

Before 1966, Botswana was part of a British protectorate. Botswana adopted anti-homosexuality laws as a legacy of British imperialism.¹⁴⁴⁰ Article 164 of the Penal Code punished “carnal knowledge against the order of nature” with up to seven years in prison, and Article 167 punished “indecent practices between persons.”¹⁴⁴¹ Although these articles originally applied only to homosexual men, in 1990, Botswana revisited Article 167 and “equalized” it to criminalize same-sex conduct between women as well.¹⁴⁴² In 2019 in the case *Letsweletse Motshidiemang v. State*, the High Court in Botswana ruled that laws criminalizing consensual same-sex relations are unconstitutional.¹⁴⁴³ The Court of Appeals affirmed this ruling unanimously.¹⁴⁴⁴

a. Legal Advocacy Experiences

Lesbians, Gays, Bisexuals of Botswana (LEGABIBO) focuses on issues related to sexual orientation, gender identity, and gender expression in Botswana.¹⁴⁴⁵ LEGABIBO was originally founded in the late 1990s, which makes it the oldest LGBTQIA+ organization in Botswana.¹⁴⁴⁶ However, LEGABIBO remained unregistered for twenty years due to policy barriers; and therefore, was hosted by other organizations, including Ditshwanelo and the Botswana Networks on Ethics, Law, and HIV/AIDS.¹⁴⁴⁷ In 2016 LEGABIBO won the court appeal and gained the right to register as an LGBTQIA+ organization.¹⁴⁴⁸

In June 2019, in a case in which LEGABIBO was a friend to the court, the Botswana High Court found that the criminalization of LGBTQIA+ persons violates the constitutional rights of dignity, liberty, privacy, and equality.¹⁴⁴⁹ The applicant argued that the articles at issue were void for vagueness because they failed to clarify the type of conduct that was criminalized, discriminated against LGBTQIA+ persons, violated the fundamental right to liberty, and violated the right of protection from inhumane and degrading treatment.¹⁴⁵⁰ The court ruled that this law was discriminatory, as it prevented the only means of sexual expression of an individual.¹⁴⁵¹ Another judge stated that it is not in the public interest of Botswana to continue to criminalize

¹⁴⁴⁰ *Botswana: High Court Strikes Down Sodomy Laws*, HUM. RTS. WATCH (Jun. 11, 2019), <https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws>

¹⁴⁴¹ *Id.*

¹⁴⁴² *Id.*

¹⁴⁴³ *Id.*

¹⁴⁴⁴ *Botswana Appeals Court Upholds Ruling that Decriminalized Gay Sex*, REUTERS (Nov. 29, 2021), <https://www.reuters.com/world/africa/botswana-appeals-court-upholds-ruling-that-decriminalised-gay-sex-2021-11-29/>.

¹⁴⁴⁵ *About LEGABIBO*, LESBIANS, GAYS, BISEXUALS OF BOTSWANA, <https://legabibo.org.bw/about/>

¹⁴⁴⁶ *Id.*

¹⁴⁴⁷ *Id.*

¹⁴⁴⁸ *Id.*

¹⁴⁴⁹ *Joint Statement: Botswana Court of Appeals Sets Hearing Date for Decriminalization Case for 12 October 2021*, S. AFRICA LITIGATION CTR., Press Release, <https://legabibo.org.bw/wp-content/uploads/2021/12/Botswana-Joint-Statement-on-Appeal-of-Decriminalisation-Case.-Final-2.pdf>.

¹⁴⁵⁰ Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUM. RTS. J.

¹⁴⁵¹ Carl Collison, *Botswana Decriminalises Homosexuality in Historic Judgment*, MAIL & GUARDIAN (Jun. 11, 2019), <https://mg.co.za/article/2019-06-11-botswana-high-court-ruling-a-victory-for-countrys-queer-communities/>.

same-sex conduct because there is no victim in consensual relationships.¹⁴⁵² The court also broadly questioned whether the law was an over-regulation of human conduct and expression, which has the effect of impairing and infringing upon constitutionally ordained, promised and entrenched fundamental human rights.”¹⁴⁵³

Noteworthy that even before ruling in favor of same-sex rights, Botswana’s high court in 2017, ruled that a trans man should be allowed to hold official documents reflecting his gender identity.¹⁴⁵⁴ There, the court found that by refusing to change the man’s gender on his documents, the government violated his basic human rights.¹⁴⁵⁵

b. Permanence or Repeals of Decriminalization Wins

Following Botswana’s decriminalization of consensual same-sex relations, the State appealed the ruling. LEGABIBO, with support from the Southern Africa Litigation Centre, was admitted as *Amicus Curiae* (friend to the court).¹⁴⁵⁶ Ultimately, the court decided unanimously to uphold the 2019 decision, noting that criminalizing same-sex relations violates the constitutional rights of LGBTQIA+ persons.¹⁴⁵⁷ The President of the Court went on to say that the offending sections of the penal code have outlived their usefulness and only serve to encourage law enforcement agents to become keyhole peepers and intrude into the private space of citizens.¹⁴⁵⁸

c. Application in Reality

After the appeals court affirmed the ruling decriminalizing same-sex activities, President Mokgweetsi Masisi vowed to fully implement the court’s ruling.¹⁴⁵⁹

d. Social Advocacy to Support Legal Reform Efforts

LEGABIBO’s current advocacy strategy, running from 2019 to 2023, is called Beyond the Rainbow.¹⁴⁶⁰ Beyond the Rainbow strives for systemic transformation in Botswana and aims to achieve this transformation by building and supporting community organizers and leaders who facilitate community development and provide services to the LGBTQIA+ population, reforming policy and law by collecting and documenting data on LGBTQIA+ issues, and changing systems

¹⁴⁵² *Id.*

¹⁴⁵³ Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUM. RTS. J..

¹⁴⁵⁴ Graeme Reid, *Victory for Gender Identity in Botswana: Country’s High Court Rules in Favor of Transgender Man*, HUM. RTS. WATCH (Oct. 3, 2017), <https://www.hrw.org/news/2017/10/03/victory-gender-identity-botswana>

¹⁴⁵⁵ *Id.*

¹⁴⁵⁶ *Joint Statement: Botswana Court of Appeals Sets Hearing Date for Decriminalization Case for 12 October 2021*, S. AFRICA LITIGATION CTR..

¹⁴⁵⁷ Mqondisi Dube, *Botswana’s Government Loses Bid to Overturn Homosexuality Ruling*, VOA NEWS, <https://www.voanews.com/a/botswana-government-loses-bid-to-overturn-homosexuality-ruling/6331968.html>

¹⁴⁵⁸ *Id.*

¹⁴⁵⁹ *Botswana President Vows to Honour Gay Rights Judgment*, AFRICA NEWS, <https://www.africanews.com/2022/01/25/botswana-president-vows-to-honour-gay-rights-judgment/>

¹⁴⁶⁰ *Beyond the Rainbow*, LESBIANS, GAYS, BISEXUALS OF BOTSWANA, <https://legabibo.org/bw/beyond-the-rainbow/>.

to provide equal access to services to all regardless of sexual orientation, gender identity, gender expression, and sex characteristics.¹⁴⁶¹

e. Application to Lebanon

Based on Botswana's successful experience, the civil society in Lebanon can benefit from the Botswana case study and use comparative law and technical argumentation to exonerate individuals accused of same-sex relations and trans identity.¹⁴⁶² Lebanese organizations can, for example, utilize the argument that over-regulation of human behavior and the right to privacy are at stake, particularly since there are no victims in consensual adult relationships.¹⁴⁶³

VIII. Uganda

Same-sex activity is prohibited under Uganda's 1950 Penal Code. Section 145 criminalizes "carnal knowledge...against the order of nature" and is punishable with life imprisonment.¹⁴⁶⁴ Section 146 criminalizes attempts to commit any of the offenses prohibited under Section 145, punishable with seven years' imprisonment.¹⁴⁶⁵ Finally, Section 148 prohibits acts of gross indecency, punishable with seven years' imprisonment.¹⁴⁶⁶

a. Legal Advocacy Experiences

Sexual Minorities Uganda (SMUG) is a nonprofit umbrella organization formed to address the needs of queer and trans persons. SMUG's primary goal is to advocate for policy reform.¹⁴⁶⁷

SMUG notably participated in two lawsuits in Uganda.¹⁴⁶⁸ In *Kasha Jacqueline v. Rolling Stone* (2010), three Ugandan LGBTQIA+ activists filed suit against a Ugandan magazine for releasing pictures of one hundred LGBTQIA+ persons along with some of their names.¹⁴⁶⁹ The article called for the Ugandan government to hang LGBTQIA+ persons so they do not recruit children.¹⁴⁷⁰ The court held that the actions by Rolling Stone threatened the outed individuals' right to human dignity, privacy, and protection from inhuman treatment as provided by the constitution.¹⁴⁷¹ However, the court also upheld Section 145 of the Ugandan Penal Code by arguing that the section does not broadly discriminate against LGBTQIA+ persons, but that it was

¹⁴⁶¹ *Id.*

¹⁴⁶² Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic).

¹⁴⁶³ Mqondisi Dube, *Botswana's Government Loses Bid to Overturn Homosexuality Ruling*, VOA NEWS, <https://www.voanews.com/a/botswana-government-loses-bid-to-overturn-homosexuality-ruling/6331968.html>; Zanele Nyoni, *Decriminalising Homosexuality: Reshaping the Landscape in Botswana and a Missed Opportunity in Kenya*, HARV. HUM. RTS. J..

¹⁴⁶⁴ PENAL CODE ACT, Uganda, Section 145, <https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09>.

¹⁴⁶⁵ *Id.* at Section 146.

¹⁴⁶⁶ *Id.* at Section 148.

¹⁴⁶⁷ *About*, SMUG, <https://sexualminoritiesuganda.com/about/> (last visited Mar. 6, 2022).

¹⁴⁶⁸ *Court Battles*, SMUG, <https://sexualminoritiesuganda.com/publications/court-battles/> (last visited Mar. 6, 2022).

¹⁴⁶⁹ *Kasha Jacqueline v. Rolling Stone*, High Court of Uganda at Kampala, Miscellaneous Cause No. 163 of 2010.

¹⁴⁷⁰ *Id.* at 2.

¹⁴⁷¹ *Id.* at 9.

more narrow.¹⁴⁷² The argument was that Section 145 did not explicitly discriminate against LGBTQIA+ persons, but rather proscribed certain sexual acts, which includes same-sex intimate relations.¹⁴⁷³

In the second case, *Mukasa and Another v. Attorney-General* (2008), the founding chairperson of SMUG sued the government after government officials subjected him and a guest to harsh and illegal treatment because they were perceived to be gay.¹⁴⁷⁴ Victor's house was raided without a search warrant, after which several documents were seized, and his guest arrested.¹⁴⁷⁵ The court held that the police officers violated Articles 23, 24, and 27 of Uganda's Constitution, which provide for the protection of personal liberty, respect for human dignity and protection from inhuman treatment, and the right to privacy, respectively, as well as international law under Article 3 of the Convention on Elimination of all Forms of Discrimination Against Women ("CEDAW"),¹⁴⁷⁶ and Article 1 of the Universal Declaration of Human Rights.¹⁴⁷⁷

b. Permanence or Repeals of Decriminalization Wins

In Uganda, a Sexual Offenses Bill was approved by the parliament on May 3, 2021.¹⁴⁷⁸ The new bill criminalizes consensual sexual acts between adults by prescribing a 5-year jail term for anyone guilty of same-sex acts.¹⁴⁷⁹ The bill specifically punishes any "sexual activity between persons of the same gender," and anal sex between people of any gender.¹⁴⁸⁰ The bill also states that even if the sexual acts are performed outside of Uganda, the individuals involved can still be prosecuted in Uganda.¹⁴⁸¹ Despite a few court rulings that were indulgent towards the LGBTQIA+ community to some extent, this bill is firmly a step in the wrong direction.

c. Application in Reality

Due to criminalization, the police in Uganda have been arresting, detaining, and abusing queer detainees by forcing them to undergo anal examinations.¹⁴⁸² Several mass arrests have been

¹⁴⁷² *Id.* at 9.

¹⁴⁷³ *Id.*

¹⁴⁷⁴ *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008), INT'L COMM'N OF JURISTS, <https://www.icj.org/sogicasebook/mukasa-and-oyo-v-attorney-general-high-court-of-uganda-at-kampala-22-december-2008/> (last visited Mar. 6, 2022).

¹⁴⁷⁵ *Id.* at 1-2.

¹⁴⁷⁶ Victor Mukasa is transgender, and the court misgendered him throughout the opinion. The reason behind applying CEDAW on this case is because Mukasa, who's a transgender man, was misgendered as a woman by the court. Thus, the court thought it relevant to apply the Convention to Mukasa.

¹⁴⁷⁷ *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008), INT'L COMM'N OF JURISTS.

¹⁴⁷⁸ *Uncertain future for LGBT+ rights in Uganda as controversial bill is passed*, DW, <https://www.dw.com/en/uncertain-future-for-lgbt-rights-in-uganda-as-controversial-bill-is-passed/a-57437925> (last visited Mar. 27, 2022); *Uganda: Reject Sexual Offenses Bill*, HUM. RTS. WATCH, (May 6, 2021), <https://www.hrw.org/news/2021/05/06/uganda-reject-sexual-offenses-bill>.

¹⁴⁷⁹ *Uganda: Reject Sexual Offenses Bill*, HUM. RTS. WATCH.

¹⁴⁸⁰ *Id.*

¹⁴⁸¹ *Id.*

¹⁴⁸² *Uganda: Stop Police Harassment of LGBT People*, HUM. RTS. WATCH, (Nov. 17, 2019), <https://www.hrw.org/news/2019/11/17/uganda-stop-police-harassment-lgbt-people>.

made on fictitious grounds.¹⁴⁸³ In October 2019, police arrested sixteen activists.¹⁴⁸⁴ The activists had called police to help them after a group of people gathered around their office and shelter, and shouted homophobic insults while threatening to break in.¹⁴⁸⁵ But after dispersing the group, police interrogated the activists inside about their gender, used homophobic insults, and arrested them all.¹⁴⁸⁶

Another incident involved a raid on an LGBTQIA+ bar in November 2019, where 125 people were rounded up.¹⁴⁸⁷ Victims were dragged and thrown onto police trucks.¹⁴⁸⁸ They were initially told they were being detained under Uganda's Anti-Tobacco law for illegal use of shisha, but this was fictitious because police arrested everyone in the bar, though only a few people were using shisha.¹⁴⁸⁹

d. Social Advocacy to Support Legal Reform Efforts

Although SMUG's primary goal is to advocate for policy reform, it also monitors and supports eighteen other LGBTQIA+ organizations in Uganda.¹⁴⁹⁰ These organizations provide services to the LGBTQIA+ community such as medical care, counseling services, guidance, as well as support for economic empowerment.¹⁴⁹¹

e. Application to Lebanon

In Uganda, individual court cases initiated or joined by SMUG were successful in relation to the individual petitioners, but the courts failed to go further to fully decriminalize SOGI.¹⁴⁹² The legislature also continues to initiate anti-LGBTQIA+ bills.¹⁴⁹³ Therefore, the Lebanese organizations can continue to engage in strategic litigation to help accused individuals escape prosecution. Additionally, organizations should also choose to focus some of their efforts on the Lebanese legislature, so that favorable rulings by courts are not overshadowed by unfavorable legislative enactments.

¹⁴⁸³ *Id.*

¹⁴⁸⁴ *Id.*

¹⁴⁸⁵ *Id.*

¹⁴⁸⁶ *Id.*

¹⁴⁸⁷ *Id.*

¹⁴⁸⁸ *Id.*

¹⁴⁸⁹ *Id.*

¹⁴⁹⁰ *About*, SMUG, <https://sexualminoritiesuganda.com/about/> (last visited Mar. 6, 2022).

¹⁴⁹¹ *Id.*

¹⁴⁹² *Court Battles*, SMUG, <https://sexualminoritiesuganda.com/publications/court-battles/> (last visited Mar. 6, 2022).

¹⁴⁹³ *Uncertain future for LGBT+ rights in Uganda as controversial bill is passed*, DW; *Uganda: Reject Sexual Offenses Bill*, HUM. RTS. WATCH.

EUROPE

IX. Ireland

Same-sex relations between men were illegal in Ireland under antiquated laws from the 1800s – sections 61 and 62 of the Offences Against the Person Act of 1861 and Section 11 of the Criminal Law Amendment Act of 1885.¹⁴⁹⁴ These laws were finally repealed in 1993.¹⁴⁹⁵

a. Legal Advocacy Experiences

CHLR was established in 1975,¹⁴⁹⁶ and its main goal was to decriminalize homosexuality in Ireland.¹⁴⁹⁷ In 1977, the organization brought a constitutional challenge to sections of the penal code that criminalized homosexuality, arguing that these laws were invalid because they pre-dated the Irish Constitution and only legislation that is compatible with the Constitution is valid.¹⁴⁹⁸ The High Court ruled against the CHLR in 1980, asserting that even though the constitutional rights guaranteed to citizens were violated by the legislation in question, the Christian nature of the Constitution made it inherently hostile to homosexuality.¹⁴⁹⁹ An appeal to the Supreme Court was also unsuccessful.¹⁵⁰⁰

Consequently, in 1988, the CHLR took the case to the European Court of Human Rights arguing that the Irish law violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁵⁰¹ The Court ruled in favor of the CHLR confirming that criminalizing same-sex relations contradicted Europe's Protection of Human Rights and Fundamental Freedoms.¹⁵⁰² The European Court of Human Rights' decision was significant because as a signatory of the Convention for the Protection of Human Rights and Fundamental Freedoms, Ireland was obligated to follow the decision.¹⁵⁰³

The strategy that was applied by the Campaign for Homosexual Law Reform CHLR to successfully decriminalize same-sex activities was to utilize a regional human rights mechanism, which in this case was the European Court of Human Rights.

¹⁴⁹⁴ Brian Wilkinson, *Moving Towards Equality: Homosexual Law Reform in Ireland*, 45 N. IR. LEGAL Q. 252 (1994).

¹⁴⁹⁵ Harry Brent, *Homosexuality was decriminalized in Ireland 28 years ago today*, IRISH POST (June 24, 2021) <https://www.irishpost.com/news/homosexuality-was-decriminalised-in-ireland-28-years-ago-today-187564>.

¹⁴⁹⁶ *Id.*

¹⁴⁹⁷ *Id.*

¹⁴⁹⁸ Brian Wilkinson, *Moving Towards Equality: Homosexual Law Reform in Ireland*.

¹⁴⁹⁹ *Id.*

¹⁵⁰⁰ *Id.*

¹⁵⁰¹ *Id.*

¹⁵⁰² Harry Brent *Homosexuality was decriminalized in Ireland 28 years ago today*, IRISH POST (June 24, 2021).

¹⁵⁰³ Irish Human Rights Commission, *European Convention on Human Rights Guide for the Civil and Public Service* 1, 27.

b. Application in Reality

Despite the victory achieved by the CHLR in the European Court of Human Rights, it took five more years before Irish laws criminalizing sex between men were finally repealed in 1993.¹⁵⁰⁴

c. Application to Lebanon

Since the region still lacks an effective regional human rights mechanism, The civil society should utilize and further engage international human rights mechanisms available in the queer and trans issues in Lebanon.

SOUTH AMERICA

X. Belize

Section 53 of the Belize Penal Code, which criminalized sexual conduct “against the order of nature” was repealed in 2019.¹⁵⁰⁵ Nevertheless, Belize remains a socially conservative,¹⁵⁰⁶ and the Catholic Church is influential. Therefore, Conservative Christian groups, which vital part of the social fabric,¹⁵⁰⁷ have repeatedly asserted opposition to legislative enactments that would provide legal protection to the queer and trans communities.¹⁵⁰⁸

a. Legal Advocacy Experiences

UNIBAM is the only LGBTQIA+ advocacy organization in Belize.¹⁵⁰⁹ Caleb Orozco, the executive director of UNIBAM, was the plaintiff in a landmark 2011 lawsuit that challenged Section 53 of the Belize Penal Code, which criminalized “against the order of nature” conduct, including consensual same-sex activity between adults in private.¹⁵¹⁰ While Orozco was the lead plaintiff, UNIBAM participated in the case as an interested party.¹⁵¹¹ Orozco allowed another three international organizations to join the case as interested parties: the Commonwealth Lawyers Association, the International Commission of Jurists, and the Human Dignity Trust.¹⁵¹²

¹⁵⁰⁴ *Id.*

¹⁵⁰⁵ HUM. DIGNITY TRUST, *Belize: A constitutional challenge to the laws criminalizing same-sex activity* <https://www.humandignitytrust.org/what-we-do/cases/belize-a-constitutional-challenge-to-the-laws-criminalising-homosexuality/>

¹⁵⁰⁶ Tips for Gay and Lesbian Travelers in Belize, FROMMER’S, <https://www.frommers.com/destinations/belize/planning-a-trip/tips-for-gay-and-lesbian-travelers> (last visited June 30, 2022).

¹⁵⁰⁷ Latoya Lazarus, *Enacting citizenship, debating sex and sexuality: conservative Christians’ participation in legal processes in Jamaica and Belize* 58 COMMONWEALTH & COMP. POL. 365, 369 (2020).

¹⁵⁰⁸ Mac Svolos, *In Belize, Catholic Diocese Helps Stop Non-Discrimination Legislation for LGBTQ People*, NEW WAYS MINISTRY (Dec. 15, 2020) <https://www.newwaysministry.org/2020/12/15/in-belize-catholic-diocese-helps-stop-non-discrimination-legislation-for-lgbtq-people/>

¹⁵⁰⁹ United Belize Advocacy Movement UNIBAM, *Overview*, <https://unibam.org/about/> (last visited June 30, 2022).

¹⁵¹⁰ *Id.*

¹⁵¹¹ Caleb Orozco v. Attorney General of Belize, Claim No. 668 of 2010, <https://www.humandignitytrust.org/wp-content/uploads/resources/Judgment-Orozco-v-The-Attorney-General-of-Belize.pdf>

¹⁵¹² Julia Scott, *The Lonely Fight Against Belize’s Antigay Laws*, N.Y. TIMES MAG. (May 22, 2015), <https://www.nytimes.com/2015/05/24/magazine/the-lonely-fight-against-belizes-antigay-laws.html>.

Orozco argued that Section 53 of the Belize Criminal Code contravenes his constitutional rights,¹⁵¹³ and since the Constitution is the supreme law of Belize, any statute is inconsistent with it, it must be declared void.¹⁵¹⁴ He also argued that Section 53 violates his right to human dignity because it stigmatizes him by implying that he is a criminal by the very nature of being a homosexual.¹⁵¹⁵ Orozco additionally asserted that Section 53 violates his rights to protection of personal property, protection of personal privacy, protection of the privacy of the home, right not to be subjected to arbitrary or unlawful interference with privacy, and right to respect for private life, all of which are guaranteed by the Belize Constitution.¹⁵¹⁶ Accordingly, In 2016, the Belize Supreme Court found that Section 53 of the Belize Penal Code violate the constitutional rights to dignity, privacy, equality before the law, non-discrimination on grounds of sex, and freedom of expression, and could not be justified based on “public morality.”¹⁵¹⁷ The Court also found that international treaty obligations must inform the interpretation of the Constitutional rights.¹⁵¹⁸ As a result, the law was declared void.¹⁵¹⁹ On December 30th, 2019, the Court of Appeal issued its judgment on the limited appeal, upholding the judgment of the Supreme Court.¹⁵²⁰

The legal reasoning used by the court in *Caleb Orozco v. The Attorney General of Belize* began with an interpretation of the Belize Constitution.¹⁵²¹ The court determined that, despite references to Christianity throughout the document, the Constitution must be interpreted liberally and purposively, without imposing religious principles on the interpretation.¹⁵²² The court noted that it would use the jurisprudence of various international bodies to determine the validity of provisions of the constitution because the final appellate court of Belize, the Caribbean Court of Justice, had “acknowledged the application of the jurisprudence from international bodies to domestic law.”¹⁵²³ Ultimately, the court determined that any Belizean laws that go against the rights guaranteed by the Constitution should be declared void.¹⁵²⁴ The court went on to list four fundamental rights: the right to dignity, freedom of expression, equality, and privacy.¹⁵²⁵ Using international jurisprudence, it analyzed each of these rights and their validity in light of Section 53.¹⁵²⁶ Finally, the court decided that Section 53 was void because it violated each of the four rights guaranteed by the Belizean Constitution.¹⁵²⁷

¹⁵¹³ THE SUPREME COURT OF BELIZE, Claim No. 668 of 2010, <https://www.humandignitytrust.org/wp-content/uploads/resources/Judgement-Orozco-v-The-Attorney-General-of-Belize.pdf>.

¹⁵¹⁴ BELIZE CONSTITUTION, Ch. 4, Part. I, <https://www.nationalassembly.gov.bz/wp-content/uploads/2022/01/Belize-Constitution-Chapter-4-2021.pdf>.

¹⁵¹⁵ *Id.*

¹⁵¹⁶ *Id.*

¹⁵¹⁷ *Id.*

¹⁵¹⁸ *Id.*

¹⁵¹⁹ Lauren Tisdale, *A Triumphant Victory for Gay Rights in Belize Lays the Foundation for a Domino Effect Throughout the Caribbean*, 41 LOYOLA OF L.A. INT'L & COMP. L. REV. 99, 107 (2018).

¹⁵²⁰ *Belize: A constitutional challenge to the laws criminalizing same-sex activity*, HUM. DIGNITY TRUST.

¹⁵²¹ *Caleb Orozco v. Attorney General of Belize*, Claim No. 668 of 2010, <https://www.humandignitytrust.org/wp-content/uploads/resources/Judgment-Orozco-v-The-Attorney-General-of-Belize.pdf>

¹⁵²² *Id.*

¹⁵²³ *Id.*

¹⁵²⁴ *Id.*

¹⁵²⁵ *Id.*

¹⁵²⁶ *Id.*

¹⁵²⁷ *Id.*

One of UNIBAM's strategies was to enlist the help of international organizations in funding, promoting, and advancing the goal of decriminalization of anti-LGBTQIA+ statutes in Belize. However, while this strategy can be effective in some cases, it can also be used by adversaries to promote a narrative that LGBTQIA+ activists are being influenced by "the Global North," which poses a threat to customs and traditions.

b. Permanence or Repeals of Decriminalization Wins

The government of Belize accepted the overall ruling of decriminalization, but the Attorney General appealed the findings on the freedom of expression and the right to non-discrimination, after pressure from church groups.¹⁵²⁸ In 2019, the Court of Appeals denied the appeal.¹⁵²⁹ Since the Belize government did not file another appeal before the deadline, this decision is final.¹⁵³⁰

c. Application in Reality

Due to a lack of official statistics, human rights reports indicate that the extent of discrimination based on SOGI is difficult to ascertain in Belize.¹⁵³¹

d. Application to Lebanon

The international human rights treaties and instruments can assist to expand the interpretation of human rights on the domestic level. Lebanon is a state party to several international human rights conventions, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights,¹⁵³² which can be utilized domestically based on Article 2 of the Lebanese Civil Procedure Code that states international agreements superior to national legislation to promote human rights.¹⁵³³

XI. Chile

Chilean legislation on SOGI has progressed significantly since sodomy was decriminalized in 1999. For example, there is legislation in place that prohibits discrimination against queer and trans persons in the workplace.¹⁵³⁴ In addition, landmark legislation allowing same-sex marriage

¹⁵²⁸ *Id.*

¹⁵²⁹ *Belize court upholds finding that LGBT people are protected by non-discrimination laws, major victor for human rights*, HUM. DIGNITY TRUST (Dec. 30, 2019), <https://www.humandignitytrust.org/news/belize-court-upholds-finding-that-lgbt-people-are-protected-by-non-discrimination-laws-major-victory-for-human-rights/>

¹⁵³⁰ *Id.*

¹⁵³¹ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Belize Human Rights Report (2018) <https://www.state.gov/wp-content/uploads/2019/03/BELIZE-2018.pdf>.

¹⁵³² United Nations Human Rights Treaty Bodies, UN Treaty Body Database, Lebanon https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=96&Lang=EN (last visited June 30, 2022).

¹⁵³³ Baudouin Dupret ET AL., *Playing by the rules: The search for legal grounds in homosexuality cases – India, Lebanon, Egypt, Senegal*, Legal Rules in Practice: In the Midst of Law's Life, Routledge 1, 4 (2021), https://hal.archives-ouvertes.fr/hal-03093083/file/2020_Dupret%20et%20al_Playing%20by%20the%20rules.pdf

¹⁵³⁴ *LGBTQIA+ Country Guide: Chile*, CHAPMAN U. CTR. FOR GLOBAL EDUC., <https://www.chapman.edu/international-studies/files/lgbtq-country-specific.pdf> (last updated Oct. 2020).

finally passed in 2021, after more than a decade of advocacy by LGBTQIA+ organizations.¹⁵³⁵ However, abuse against LGBTQIA+ persons are still reported around the country.¹⁵³⁶

a. Legal Advocacy Experiences

Beginning in 1995, the Homosexual Liberation and Integration Movement (MOVILH) in Chile spearheaded efforts to decriminalize sodomy.¹⁵³⁷ Activists concentrated on lobbying congress, working with other human rights organizations, launching public education campaigns, and holding a series of seminars and workshops on the issue.¹⁵³⁸ Due in part to this effort, sodomy was decriminalized in Chile in 1999, following an amendment to Article 365 of the Penal Code.¹⁵³⁹

MOVILH used several strategies to decriminalize sodomy. One of their primary strategies involved broadening the scope of the debate to include members of different sectors of society.¹⁵⁴⁰ This included “discussions and exchanges with human rights organizations, professional associations, religious groups, academics, and the media.”¹⁵⁴¹ MOVILH also approached political leaders.¹⁵⁴² In an unusual move, MOVILH organized a meeting that included representatives from political organizations that were on different sides of the political spectrum.¹⁵⁴³ In doing so, MOVILH was able to raise LGBTQIA+ issues in national public debates and make both politicians and the public aware of the importance of this issue.¹⁵⁴⁴

MOVILH has since been very active in the legalization aspect of the fight for LGBTQIA+ rights in Chile.¹⁵⁴⁵ The organization has pushed for the legalization of same-sex marriage, easing the administrative process for change of gender on official documents, and prohibiting discrimination based on sexual orientation in the workplace.¹⁵⁴⁶

b. Application in Reality

Since the decriminalization, laws to protect and advance LGBTQIA+ rights have been enacted, such as civil union and marriage laws, and labor laws.¹⁵⁴⁷

¹⁵³⁵ Claudio Reyes, *Chile's first gay couple weds as same sex marriage law takes effect*, NBC NEWS (Mar. 10, 2022, 1:27 PM) <https://www.nbcnews.com/feature/nbc-out/chile-s-first-gay-couple-weds-same-sex-marriage-law-n1291517>.

¹⁵³⁶ *LGBTQIA+ Country Guide: Chile*, CHAPMAN U. CTR. FOR GLOBAL EDUC..

¹⁵³⁷ *Chile: Treatment of homosexuals; state protection available to them; availability of resources (June 2005 – July 2009)*, Research Directorate: Immigration and Refugee Board of Canada (Aug. 7 2009), <https://www.refworld.org/docid/4b20f036c.html>.

¹⁵³⁸ Outright International Action, *Chile: Activists Launch Campaign to Repeal Sodomy Law* (June 1, 1995), <https://outrightinternational.org/content/chile-activists-launch-campaign-repeal-sodomy-law>.

¹⁵³⁹ *Chile: Treatment of homosexuals*, Research Directorate: Immigration and Refugee Board of Canada.

¹⁵⁴⁰ Victor H. Robles, *History in the making: the homosexual liberation movement in Chile*, 31 NACLA REP. ON THE AM. (1998), <https://nacla.org/article/history-making-homosexual-liberation-movement-chile>.

¹⁵⁴¹ *Id.*

¹⁵⁴² *Id.*

¹⁵⁴³ *Id.*

¹⁵⁴⁴ *Id.*

¹⁵⁴⁵ *Id.*

¹⁵⁴⁶ *Id.*

¹⁵⁴⁷ MOVILH, *Our Achievements* <https://www.movilh.cl/nuestros-logros/> (last updated Dec. 2021).

c. Social Advocacy to Support Legal Reform Efforts

In 1991, MOVILH participated in the 1st Congress of Homosexuals in Concepcion.¹⁵⁴⁸ The discussion focused on the immediate goals and priorities of the movement.¹⁵⁴⁹ The presence of the anti-sodomy law motivated a series of funding proposals with international organizations to defend those charged with violating Article 365.¹⁵⁵⁰ MOVILH also organized workshops on sexuality, politics, and civil rights, thus increasing its influence and visibility,¹⁵⁵¹ and included the media and entertainment industry in their efforts to broaden the scope of the debate on LGBTQIA+ rights.¹⁵⁵² For example, they enlisted a popular radio program to collect signatures in support of the decriminalization of sodomy in Chile from celebrities.¹⁵⁵³

The explosion of the AIDS crisis was effectively ignored by the Pinochet regime.¹⁵⁵⁴ In the early 1990s, MOVILH became active in raising awareness and demanding that the state make available funds for AIDS prevention campaigns within the LGBTQIA+ community.¹⁵⁵⁵

d. Application to Lebanon

Within the Lebanese context, the civil society in Lebanon should consider MOVILH's method of broadening the scope of the debate around queer and trans rights to include different sectors of society, which was successful in facilitating more social acceptance.¹⁵⁵⁶ Further engagement with social media should also be considered by the LGBTQIA+ to reveal human rights violations and abuse against the queer and trans communities. For example, instances, where the Lebanese authorities are abusing their power to interfere queer and trans events. Employing social media should adopt a manner that does not conflict with the safety and security of LGBTQIA+ community members.¹⁵⁵⁷

NORTH AMERICA

XII. United States

In the United States, anti-sodomy laws were successfully repealed under the 2003 Supreme Court decision in *Lawrence v. Texas*.¹⁵⁵⁸ Ironically, while anti-sodomy laws are no longer

¹⁵⁴⁸ Victor H. Robles, *History in the making*, 31 NACLA REP. ON THE AM..

¹⁵⁴⁹ *Id.*

¹⁵⁵⁰ *Id.*

¹⁵⁵¹ *Id.*

¹⁵⁵² *Id.*

¹⁵⁵³ *Id.*

¹⁵⁵⁴ *Id.*

¹⁵⁵⁵ *Id.*

¹⁵⁵⁶ *Id.*

¹⁵⁵⁷ *Lebanon: No Justification for LGBT Crackdown*, HUM. RTS. WATCH, (Feb. 11, 2019, 12:00 AM), <https://www.hrw.org/news/2019/02/11/lebanon-no-justification-lgbt-crackdown> .

¹⁵⁵⁸ *Lawrence v. Texas Overview*, LEGAL INFO. INST. CORNELL L. SCH., https://www.law.cornell.edu/wex/lawrence_v._texas#:~:text=Overview-,Lawrence%20v.,State%20and%20United%20States%20territory (last updated Sept. 2018).

enforced, many of these statutes remain in the penal codes of some states.¹⁵⁵⁹ Lambda Legal has been working for decades to advance the rights of queer and trans persons through judicial and legislative channels.

a. Legal Advocacy Experiences

Lambda Legal is a non-profit organization that does not charge clients for legal representation.¹⁵⁶⁰ It was founded in 1973, which makes it the oldest and largest American organization fighting for LGBTQIA+ rights.¹⁵⁶¹ Lambda Legal has been using the impact litigation strategy, which is a tactic that focuses on selecting “cases that will have the greatest impact in protecting and advancing the rights of LGBTQIA+ persons and those with HIV.”¹⁵⁶² The organization has used this method to bring numerous landmark cases before the courts, including *Lawrence v. Texas*,¹⁵⁶³ which was decided in 2003. From the beginning, Lambda attorneys intended to use *Lawrence* to convince the Supreme Court that statutes that criminalized sodomy were unconstitutional. This is why the attorneys for the original defendants asked their fine to be raised from \$100 to \$125 after the defendants initially pled no contest and waived their right to trial.¹⁵⁶⁴ The increased fine would allow the case to be eligible for appeal.¹⁵⁶⁵ This is one example of how Lambda Legal selects and guides the lawsuits that they bring to challenge discriminatory legal frameworks.

i. Specific legal arguments

In *Lawrence v. Texas*, Lambda argued that the Court of Appeals misinterpreted vital constitutional principles in conflict with controlling U.S. Supreme Court authorities and other Courts of Appeal, and therefore, the discriminatory Texas statute, which criminalizes sodomy, must be invalidated.¹⁵⁶⁶ Thus, Lambda argued that the majority of the Fourteenth Court of Appeals failed to follow recent non-binding precedent (from other Courts of Appeal) and recent binding precedent (from U.S. Supreme Court rulings).

Lambda also argued that bare disapproval is not enough to justify a law criminalizing an activity that is frowned upon by a certain part of society. Lambda stated that the U.S. Supreme Court has repeatedly rejected statutes that were the result of moral disapproval and sought to enable “disadvantageous government treatment of one group.”¹⁵⁶⁷ Lambda noted that “equal protection” means that moral judgments do have a place in legislation, but the laws generated to protect morality *must apply to everyone equally*.¹⁵⁶⁸ Lambda also noted that laws that criminalize the

¹⁵⁵⁹ Tom Dart, *Texas clings to unconstitutional, homophobic laws and it's not alone*, THE GUARDIAN (June 1, 2019, 2:00 AM), <https://www.theguardian.com/world/2019/jun/01/texas-homophobic-laws-lgbt-unconstitutional>

¹⁵⁶⁰ *Who We Are*, LAMBDA LEGAL, <https://www.lambdalegal.org/about-us> (last visited June 30, 2022).

¹⁵⁶¹ *Id.*

¹⁵⁶² *What We Do*, LAMBDA LEGAL, <https://www.lambdalegal.org/about-us> (last visited June 30, 2022).

¹⁵⁶³ *Id.*

¹⁵⁶⁴ *Lawrence v. Texas Overview*, LEGAL INFO. INST. CORNELL L. SCH.

¹⁵⁶⁵ *Id.*

¹⁵⁶⁶ *Lawrence and Garner v. Texas: Briefs (04/17/2001)*, LAMBDA LEGAL, https://www.lambdalegal.org/in-court/legal-docs/lawrence_tx_20010417_petition-for-discretionary-review (last visited April 21, 2022).

¹⁵⁶⁷ *Id.*, at 10.

¹⁵⁶⁸ *Id.*

conduct of only one group of people, while ignoring the same conduct when it is performed by other types of individuals, fails the rational basis test.¹⁵⁶⁹ The rational basis test is a judicial review test that ensures that a statute or ordinance has a legitimate state interest and that there is a reasonable connection between the goals of the statute and the means that it describes accomplishing these goals.¹⁵⁷⁰ Thus, Lambda Legal made the argument that to follow equal protection principles, a law that aims to protect public morality must apply to everyone equally, regardless of their sexual orientation or gender identity.

ii. Judicial rationale

The Associate Justice of the United States Supreme Court Anthony Kennedy wrote the majority opinion of *Lawrence v. Texas* and provided several rationales for the decision. First, he debunked the rationale put forward by the Court in its previous decision in *Bowers v. Hardwick*, which concluded that there was no constitutional protection for acts of sodomy and that states could thus outlaw these practices.¹⁵⁷¹ Justice Kennedy specifically noted the decision of the European Court of Human Rights in *Dudgeon v. the United Kingdom*, which ruled that laws prohibiting intimate relations between members of the same sex violated the European Convention on Human Rights.¹⁵⁷² He used this argument to counter the erroneous conclusion by Justice Burger, who in his concurrence in *Bowers v. Hardwick* stated that Western Civilization and Judeo-Christian moral and ethical standards do not condone legal protection for same-sex intimate conduct.¹⁵⁷³ The reference to an international court decision was important because it showed changing trends in international law as it pertains to intimate conduct between members of the same-sex and debunked assertions that Western Civilization is opposed to homosexual sex.

Justice Kennedy also referred to two U.S. Supreme Court rulings that were decided after *Bowers*: *Planned Parenthood of Southeastern PA v. Casey* (1992) and *Romer v. Evans* (1996). The rulings in these cases reaffirmed that American laws and traditions provide ample constitutional protection for personal decisions relating to private conduct such as marriage, procreation, contraception, child-rearing, and education.¹⁵⁷⁴ Justice Kennedy pointed out that criminalizing protected conduct, even by using laws that are generally not enforced, invites stigma and discrimination in the private sphere, which can be just as damaging to individuals as enforcement of statutes criminalizing their conduct.¹⁵⁷⁵

Justice Kennedy also made a series of compelling remarks about the Constitution and these remarks apply to many other judicial decisions. He noted that the Constitution endures and allows each generation to involve its principles in its search for greater freedom.¹⁵⁷⁶ He described the

¹⁵⁶⁹ *Id.*

¹⁵⁷⁰ *Rational Basis Test*, LEGAL INFO. INST. CORNELL LAW SCH., https://www.law.cornell.edu/wex/rational_basis_test (last visited April 20, 2022).

¹⁵⁷¹ OYEZ, *Bowers v. Hardwick*, <https://www.oyez.org/cases/1985/85-140> (last visited June 30, 2022).

¹⁵⁷² *Lawrence v. Texas: Decision from the U.S. Supreme Court (June 26, 2003)*, LAMBDA LEGAL, https://www.lambdalegal.org/in-court/legal-docs/lawrence_tx_20030626_decision-us-supreme-court (last visited June 30, 2022).

¹⁵⁷³ *Id.*, at 12.

¹⁵⁷⁴ *Id.*, at 13.

¹⁵⁷⁵ *Id.*, at 14.

¹⁵⁷⁶ *Id.*, at 18.

Constitution as a document that guarantees rights without fault; there must be a governmental interest to justify an intrusion into the personal and private life of a citizen.¹⁵⁷⁷ He wrote that “times can blind us to certain truths” and that later generations can consider laws once thought necessary to be merely oppressive.¹⁵⁷⁸ In these remarks, Justice Kennedy underscored the importance of societal changes in understanding and informing judicial decisions.

iii. Relevant social, political, or historical context

As Justice Kennedy noted, societal context is important in determining whether the time is right to mount a legal challenge against discriminatory statutes that have long been part of the penal code. On June 10th, 2003, sixteen days before *Lawrence* was decided, Canada legalized same-sex marriage in Ontario.¹⁵⁷⁹ As mentioned above, Justice Kennedy also discussed the 1991 decision of the European Court of Human Rights in the case of *Dudgeon v. the UK*, which prohibited criminalizing male and female homosexual behavior.¹⁵⁸⁰ Laurence Tribe writes that the culture shift began after the 1986 U.S. Supreme Court decision in *Bowers v. Hardwick*, which energized the gay community and motivated a fight for greater social acceptance.¹⁵⁸¹

b. Permanence or Repeals of Decriminalization Wins

Decriminalization of sodomy led to other legal successes for LGBTQIA+ rights advocates. Soon after *Lawrence* was decided, Massachusetts became the first state to legalize same-sex marriage via a court ruling.¹⁵⁸² On June 26th, 2015, with its decision in *Obergefell v. Hodges*, the U.S. Supreme Court granted same-sex couples across the nation the right to marriage equality.¹⁵⁸³

c. Application in Reality

Anti-sodomy laws in the United States were frequently not enforced and many states never actually prosecuted consenting adults for sodomy that was engaged in privately.¹⁵⁸⁴ Despite this, these discriminatory laws justified stigma and discrimination against LGBTQIA+ persons.¹⁵⁸⁵

Although the Supreme Court’s decision in *Lawrence v. Texas* rendered state anti-sodomy laws unconstitutional, some of these unenforceable laws remain part of the penal codes in some states.¹⁵⁸⁶ For example, the statute that was challenged in *Lawrence*, Section 21.06 of the Texas

¹⁵⁷⁷ *Id.*

¹⁵⁷⁸ *Id.*

¹⁵⁷⁹ The Canadian Encyclopedia, *Same-Sex Marriage in Canada*,

<https://www.thecanadianencyclopedia.ca/en/article/same-sex-marriage-in-canada> (last edited July 20, 2021).

¹⁵⁸⁰ *Lawrence v. Texas: Decision from the U.S. Supreme Court*, LAMBDA LEGAL.

¹⁵⁸¹ Laurence H. Tribe, *Lawrence v. Texas: The “Fundamental Right” That Dare Not Speak Its Name*, 117 HARV. L. REV. 1893, 1901 (2004).

¹⁵⁸² Human Rights Campaign, *The Journey to Marriage Equality in the United States* <https://www.hrc.org/our-work/stories/the-journey-to-marriage-equality-in-the-united-states> (last visited June 30, 2022).

¹⁵⁸³ *Id.*

¹⁵⁸⁴ Jennifer Naeger, *And Then There Were None: The Repeal of Sodomy Laws After Lawrence v. Texas and Its Effect on the Custody and Visitation Rights of Gay and Lesbian Parents*, 78 ST. JOHN’S L. REV. 397 (2004).

¹⁵⁸⁵ *Id.*

¹⁵⁸⁶ Tom Dart, *Texas clings to unconstitutional, homophobic laws and it’s not alone*, THE GUARDIAN (June 1, 2019, 2:00 AM), <https://www.theguardian.com/world/2019/jun/01/texas-homophobic-laws-lgbt-unconstitutional>.

Penal Code, remains on the books.¹⁵⁸⁷ Removal of this law would require the passing of a bill by the Texas legislature, which it so far has refused to do despite the introduction of such a bill to the legislature in 2019.¹⁵⁸⁸ Unenforceable anti-sodomy laws remain in the penal codes of states such as Alabama, Florida, Georgia, and Idaho.¹⁵⁸⁹

d. Social Advocacy to Support Legal Reform Efforts

The social advocacy campaigns that Lambda Legal initiated to support their legal advocacy frequently complement and strengthen their lawsuits.¹⁵⁹⁰ For example, the campaign #DontEraseUs aims to eliminate anti-LGBTQIA+ curriculum laws that restrict or prohibit discussion of queer and trans issues in the classroom.¹⁵⁹¹ Lambda Legal asserts that such laws fuel discrimination and stigma against queer and trans students.¹⁵⁹² A social campaign like #DontEraseUs can be helpful when Lambda Legal files lawsuits challenging discriminatory curriculums in schools.

e. Application to Lebanon

There are two paths to decriminalize SOGI: the legislative route and the judicial route. In 2001, an amended draft that included a repeal of Article 534, which criminalizes “any carnal conjunction running against the order of nature” of the Penal Code was proposed.¹⁵⁹³ However, this attempt was unsuccessful, and Article 534 remained in the Lebanese Penal Code.¹⁵⁹⁴

Decriminalization through the judiciary may be a more promising route to take in most cases.¹⁵⁹⁵ In the United States, Lambda Legal uses strategic litigation to bring cases that are compelling and present a strong incentive to repeal discriminatory laws against LGBTQIA+ persons.¹⁵⁹⁶ Based on recent promising judicial decisions, strategic litigation can also facilitate the decriminalization of SOGI in Lebanon. For example, in 2018, a Lebanese district court of appeal issued a ruling stating that consensual sex between adult people of the same sex is not unlawful.¹⁵⁹⁷ This ruling followed similar rulings from lower courts in the years prior.¹⁵⁹⁸ According to Karim Nammour, a Lebanese lawyer and activist, strategic litigation is essential in the fight for advancing

¹⁵⁸⁷ TEX. CODE tit. 5, § 21.01 (2019), <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.21.htm>.

¹⁵⁸⁸ Tom Dart, *Texas clings to unconstitutional, homophobic laws and it's not alone*, THE GUARDIAN.

¹⁵⁸⁹ *Id.*

¹⁵⁹⁰ *Campaigns*, LAMBDA LEGAL, <https://www.lambdalegal.org/campaigns> (last visited June 30, 2022).

¹⁵⁹¹ #DontEraseUs: A Campaign to End Anti-LGBT Curriculum Laws, LAMBDA LEGAL, <https://www.lambdalegal.org/dont-erase-us> (last visited June 30, 2022).

¹⁵⁹² *Id.*

¹⁵⁹³ Baudouin Dupret ET AL., *Playing by the rules: The search for legal grounds in homosexuality cases – India, Lebanon, Egypt, Senegal*, Legal Rules in Practice: In the Midst of Law's Life, Routledge 1, 4 (2021), https://hal.archives-ouvertes.fr/hal-03093083/file/2020_Dupret%20et%20al_Playing%20by%20the%20rules.pdf.

¹⁵⁹⁴ *Id.*

¹⁵⁹⁵ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic). Mr. Nammour noted that vague statutes should be interpreted very restrictively, and that through effective advocacy judges can become allies, not just governmental “machines of the law.”

¹⁵⁹⁶ Laurence H. Tribe, *Lawrence v. Texas: The “Fundamental Right” That Dare Not Speak Its Name*, 117 HARV. L. REV. 1893, 1896 (2004).

¹⁵⁹⁷ *Lebanon: Same-Sex Relations Not Illegal*, HUM. RTS. WATCH (Jul. 19, 2018, 12:00 AM), www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal.

¹⁵⁹⁸ *Id.*

queer and trans rights¹⁵⁹⁹ Tactics such as bringing cases where the sole offense involves SOGI (to prevent further charges from distracting the focus on the SOGI aspect in the case) before younger, sympathetic, and progressive judges appear as promising to repeal discriminatory legislation in the future.¹⁶⁰⁰

¹⁵⁹⁹ Interview with Karim Nammour, Attorney, THE LEGAL AGENDA (Mar. 24, 2022) (notes on file, Walter Leitner Int'l Human Rights Clinic).

¹⁶⁰⁰ *Id.*