

**Submission to the International Working Group**

**on deprivation of liberty of women and girls related to abortion**

**17 September 2018**

We welcome this call for information and hope you receive submissions on a wide range of topics.

Our submission is on the deprivation of liberty related to abortion, in the following ways:

* Women and girls tried and imprisoned for the crimes of abortion, homicide and infanticide.
* Women and girls kept in detention, sometimes for long periods, to await being charged with the crimes of abortion, homicide and infanticide.
* Women and girls detained in hospital to stop them from seeking abortion elsewhere. In some cases, especially with young girls (as young as age 10), they may be subjected to forced caesarean section (hysterotomy) when it becomes clear that carrying the pregnancy to term will be a risk to their lives.
* Cases of women being detained in hospital following the delivery of a baby because they are unable to pay the hospital fees.
* Abortion providers, men as well as women, who have been charged and imprisoned for providing safe but illegal abortions.

**The following are Campaign reports on these issues**

These reports each summarise the legal situation of abortion and then describe specific cases reported in the published literature and/or reported by groups in the countries concerned, many of whom have organised legal representation for the girls and women detained/in prison and campaigned for their release. It is a characteristic of such cases that the women were poor, living in a rural area, may not even have known they were pregnant, had a sudden delivery, became unconscious from the pain and loss of blood, with no witnesses, and woke up in hospital under arrest. These individual cases cover primarily the first two bullet points above. Here are some specific examples from these reports.

[The law, trials and imprisonment for abortion in Malaysia](http://www.safeabortionwomensright.org/wp-content/uploads/2018/07/The-law-trials-and-imprisonment-for-abortion-in-Malaysia-July-2018.pdf), July 2018

[The law, trials and imprisonment for abortion in Senegal](http://www.safeabortionwomensright.org/wp-content/uploads/2018/04/The-law-trials-and-imprisonment-for-abortion-in-Senegal-April-2018.pdf), April 2018

[The law, trials and imprisonment for abortion in Kenya](http://www.safeabortionwomensright.org/wp-content/uploads/2018/02/Kenya-report-updated-NA-Feb.pdf), April 2017 (updated February 2018, due for further update when current Supreme Court hearing on standards & guidelines and a specific case of a girl who died from injuries of unsafe abortion is finally completed)

[The law, trials and imprisonment for abortion in Mexico](http://www.safeabortionwomensright.org/wp-content/uploads/2017/05/Mexico-Report-FINAL.pdf), May 2017

[The law, trials and imprisonment for abortion in Argentina](http://www.safeabortionwomensright.org/wp-content/uploads/2017/01/FEATURE-The-law-trials-and-imprisonment-for-abortion-in-Argentina-8-November-2016-2.pdf), November 2016

**The following are news stories published in the Campaign newsletter in recent years:**

[Inter-American Commission on Human Rights opens case involving Manuela, wrongfully imprisoned in El Salvador](http://www.safeabortionwomensright.org/inter-american-commission-on-human-rights-opens-case-involving-manuela-wrongfully-imprisoned-in-el-salvador/), 21 April 2017

[EL SALVADOR – 20-year-old faces prison after giving birth to her stepfather’s baby in a latrine](http://www.safeabortionwomensright.org/el-salvador-20-year-old-faces-prison-after-giving-birth-to-her-stepfathers-baby-in-a-latrine/), 17 April 2018

[EL SALVADOR – Freed after 15 years in jail](http://www.safeabortionwomensright.org/el-salvador-freed-after-15-years-in-jail/), 15 March 2018

[EL SALVADOR – Supreme Court commutes 30-year sentence of Teodora del Carmen Vásquez](http://www.safeabortionwomensright.org/el-salvador-supreme-court-commutes-30-year-sentence-of-teodora-del-carmen-vasquez/), 20 February 2018

[UN HIGH COMMISSIONER FOR HUMAN RIGHTS – UN High Commissioner calls on El Salvador to stop jailing women for obstetric emergencies](http://www.safeabortionwomensright.org/un-high-commissioner-for-human-rights-un-high-commissioner-calls-on-el-salvador-to-stop-jailing-women-for-obstetric-emergencies/), 24 November 2017 (It seems they heard him, or at least some judges did, as the reports above indicate.)

[NAMIBIA – “Botched abortion lands woman in handcuffs”](http://www.safeabortionwomensright.org/namibia-botched-abortion-lands-woman-in-handcuffs/), 6 February 2018

[NAMIBIA, EL SALVADOR, USA – Why are so many women being prosecuted for miscarriages and stillbirth?](http://www.safeabortionwomensright.org/namibia-el-salvador-usa-why-are-so-many-women-being-prosecuted-for-miscarriages-and-stillbirth/), 23 February 2018

[INDONESIA – Teenage girl released from prison amid calls for reform of abortion laws](http://www.safeabortionwomensright.org/indonesia-teenage-girl-released-from-prison-amid-calls-for-reform-of-abortion-laws/), 13 August 2018

[PARAGUAY – It’s three years and three months](http://www.safeabortionwomensright.org/paraguay-its-three-years-and-three-months/), 13 August 2018

[IRELAND – Justice for Ms Y – finally](http://www.safeabortionwomensright.org/ireland-justice-for-ms-y-finally/), 14 June 2018 (I believe this was the most egregious case ever.)

[USA – Local Montana prosecutor threatens to imprison pregnant women who use alcohol or drugs](http://www.safeabortionwomensright.org/usa-local-montana-prosecutor-threatens-to-imprison-pregnant-women-who-use-alcohol-or-drugs/), 16 January 2018 (National Advocates for Pregnant Women handle all such cases in the USA and have many women in prison stories to share)

[The appeal of Purvi Patel against 20 years in prison in Indiana, USA](http://www.safeabortionwomensright.org/the-appeal-of-purvi-patel-against-30-years-in-prison-in-indiana-usa/), 25 May 2016 (National Advocates for Pregnant Women handled this case too)

[Sixty-two Rwandan girls imprisoned for abortion when under the age of 16 have been pardoned](file:///C:/marge/International%20Abortion%20Campaign%202015-2016-2017-2018/Listserve%20posts%20to%20send%202018/sixty-two-rwandan-girls-imprisoned-for-abortion-when-under-the-age-of-16-have-been-pardoned), 10 January 2017 (This report should be read as a follow-up to the 2013 article on Rwanda in Reproductive Health Matters, below)

[CYPRUS – Hide the abortions and then prosecute the doctors who provide them](http://www.safeabortionwomensright.org/cyprus-hide-the-abortions-and-then-prosecute-the-doctors-who-provide-them/), 23 February 2018 (This case led to law reform later in 2018)

[BOLIVIA – Seven women arrested for abortion this month; doctors plead compliance with the law](http://www.safeabortionwomensright.org/bolivia-seven-women-arrested-for-abortion-this-month-doctors-plead-compliance/), 1 September 2017

[INDIA – 10-year-old girl delivered by caesarean section, and another case emerges](http://www.safeabortionwomensright.org/india-10-year-old-girl-delivered-by-caesarean-section-and-another-case-emerges/), 22 August 2017

[Ending the stigma and prosecution of self-administered abortions](http://www.safeabortionwomensright.org/ending-the-stigma-and-prosecution-of-self-administered-abortions/), 13 June 2017

**The following are journal articles on the same issues:**

**Pregnancy and the 40-Year Prison Sentence: How “Abortion is Murder” Became Institutionalized in the Salvadoran Judicial System, Health and Human Rights Journal,** [June 2017](https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2017/06/Viterna.pdf)

From hospital to jail: the impact on women of El Salvador’s total criminalization of abortion: Citizen’s Coalition for the Decriminalization of Abortion on Grounds of Health, Ethics and Fetal Anomaly, El Salvador, Reproductive Health Matters, [Volume 22, 2014 - Issue 44](https://www.tandfonline.com/toc/zrhm20/22/44)

Human rights accountability for maternal death and failure to provide safe, legal abortion: the significance of two ground-breaking CEDAW decisions, Reproductive Health Matters, [Volume 20, 2012 - Issue 39](https://www.tandfonline.com/toc/zrhm20/20/39)

Advocating for safe abortion in Rwanda: how young people and the personal stories of young women in prison brought about change, Reproductive Health Matters, [Volume 21, 2013 - Issue 41](https://www.tandfonline.com/toc/zrhm20/21/41)

**Women detained in hospitals for non-payment of fees following childbirth**

Cases of women detained in hospitals for non-payment of fees following childbirth can be found on Google, if you put “women being detained in hospital following the delivery of a baby because they are unable to pay the hospital fees” into the search box and a whole page of stories from the past few years will come up, many from Kenya.

A review paper entitled [Hospital Detentions for Non-payment of Fees: A Denial of Rights and Dignity](https://www.chathamhouse.org/sites/default/files/publications/research/2017-12-06-hospital-detentions-non-payment-yates-brookes-whitaker.pdf), December 2017, is probably the best summary of known cases. It found 60 articles produced between 2003 and 2017 outlining specific detention cases in 14 different countries. The

overwhelming majority of these articles were reports in local newspapers. There were only nine short academic articles. Most cases identified were from sub-Saharan Africa but cases in India and Indonesia were also unearthed. Many reported cases were the result of needing emergency care, which costs far more than many patients can afford to pay. Both new mothers and their babies are detained.

**Abortion providers charged, harassed, detained**

There have been three very disturbing cases but all were of men, two obstetrician-gynaecologists (one from Kenya and the other from Spain) and one nurse (also from Kenya). The two Kenyan cases are described in detail in the Campaign’s report on trials and imprisonment in Kenya.

The third, from Spain, can be found on the Campaign website: [The case of Dr Carlos Morín Barcelona, Spain – “Hasta el final”](http://www.safeabortionwomensright.org/the-case-of-dr-carlos-morin-barcelona-spain-hasta-el-final/), 22 June 2016. This is an unconscionable history of legal harassment that closed down seven abortion clinics, stopped women from all over Europe getting abortions after 24 weeks, and made Carlos Morin a virtual prisoner in his own home over many years. I know you are seeking information about women, but I believe two of these men, John Nyamu and Carlos Morin, were harassed legally because of their unstinting support for women who needed abortions. Indeed we could mention Henry Morgenthaler in Canada and Warren Hern in the USA, both of whom were harassed for years for their willingness to provide abortions. And also the abortion doctors who were assassinated in the USA and Canada, such as George Tiller, more than just loss of liberty but also their lives. All men.

In Britain, a set of cases emerged when an anti-abortion newspaper conducted an “undercover investigation” of doctors who provide abortions to test whether they would agree to sign for an abortion only on the ground that the fetus was female. In this instance, South Asian women doctors were targeted, as well as other doctors known to be pro-choice. Four doctors were referred to the General Medical Council and the Crown Prosecution Service. After being put through several years of questioning and harassment and not being allowed to practice, there was a decision not to prosecute them as it was not in the public interest. Two of them told their stories this year in a meeting; it was heartbreaking what they were put through. Another 25 doctors in 14 abortion clinics were investigated for pre-signing the required legal form women need to obtain a legal abortion in Britain. Some of them were sent on leave. Some were referred to the police. It took several years before cases were resolved after quality of care was confirmed on the part of every doctor investigated. An attempt in Parliament to make abortion of female fetuses illegal almost succeeded on the back of these attacks. (Unpublished reports, 2013/2014/2015)

**Report in Spanish**

The Grupo de Información en Reproducción Elegida (GIRE) has just published a report entitled [Maternidad o Castigo: La Criminalización del Aborto en México](http://criminalizacionporaborto.gire.org.mx/#/), 31 August 2018. It is a history of the many women and abortion providers who have been reported, charged, tried and jailed for abortion in the country that they have put together. They found that in the last ten years, Mexico has registered 4,246 cases of women being denounced to the police, often by health professionals, that is, on average one woman (1.16) is reported to the police every day for seeking an abortion.

**Responses to some of your questions: re the justice system**

1. The fact that abortion is in the criminal law of most countries means that there is always a risk of prosecution, even if no cases have been brought in many years. Cases arise unexpectedly, often isolated, and the false sense of security is suddenly shattered. This has been shown to be as true in the UK as in Malaysia.

The women who are most vulnerable are the poorest, living in very poor conditions (often rural), without access to health care in pregnancy or for abortions, and always without access to legal representation.

The offences they are charged with are illegal abortion, or in cases of stillbirth with homicide or infanticide.

3. Bias in legal proceedings has been blatant in all the cases in El Salvador (see especially Health and Human Rights Journal, June 2017, for an analysis of this). And equally blatant in the cases of the abortion providers mentioned. In the case of the young girl in Peru who was denied a legal abortion following rape and ended up paralysed for life (RHM 2012) and the case of Ms Y in Ireland, the bias was finally acknowledged in the compensation offered but only after many years of legal pursuit of justice.

Access to justice for the women was made impossible by them often being of very young age, lack of support, lack of funds and lack of access to legal advice and expertise, but it was also a consequence of lack of knowledge among the police and judiciary of the countries concerned as to the violence and abuse of legal and human rights they were perpetrating on women. Often women were victims twice and three times over, first of rape or sexual abuse and then denial of legal abortion and then being charged, detained and imprisoned.

In several countries, health professionals are required by law to report any patient who has broken the law in any way. This has resulted in women with complications of unsafe abortion in hospital being handcuffed to their beds until they recover enough to be taken off to be charged and detained. In Peru, we have heard of police patrolling hospital wards looking for women who have had illegal abortions.

In most cases in the USA, women who have been targeted are black women as well as poor, so racism is centrally involved. Women using injection drugs who get pregnant are also targets.

There were a number of cases in Ireland and Northern Ireland in the past few years which we could supply information on if requested. CEDAW did a thorough investigation and report, as did Amnesty International in Northern Ireland.

Prosecution for self-use of medical abortion pills is thought to be increasing. We have reported several cases, and several have occurred in the USA.

**Conclusions**

In almost every case reported here, it has been very difficult for those doing the research to find information. Moreover, many reports come from the media and news reports rather than rigorous research. Records in the justice system are not public in most countries. In the cases we report in the Campaign newsletter, we try to get confirmation of facts from local NGOs and Campaign supporters and from more than one media report to confirm the information. Our trials and imprisonment reports are well referenced, however, and the information has been checked by Campaign members in the countries concerned.

Cases exist in more countries than we have named here, but the patterns are the same. In most countries, even where the law is highly restricted, no one has attempted to do research on whether there are cases. This is not an exhaustive listing of all the cases we have reported since the Campaign began, it is a substantial amount of what we have published or reported.

We would be happy to provide further information at your request.

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