Updates from the Regional Human Rights Systems

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Inter-American System

IACHR Presents Report Demonstrating Its Preoccupation with Women’s Lack of Access to Maternal Health Services during Visit to El Salvador

In November 2010, Commissioner Luz Patricia Mejía, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights (Commission) presented a report addressing the link between women’s human rights and access to pre-natal, childbirth, and post-partum health care services. Commissioner Mejía presented the thematic report to a group of government officials and civil society organizations in El Salvador. The report stresses states’ obligations to provide equal access to maternal health services and reproductive health information in accordance with the right to humane treatment as protected by Article 5 of the American Convention on Human Rights (American Convention). The report also stresses that many maternal and infant mortalities could be prevented through better information and medical care, and that poor, indigenous, and Afro-descendant women are disproportionately affected. During its October 2010 hearings, the Commission emphasized the need to improve marginalized populations’ access to health services and information.

The report cites several Inter-American Court of Human Rights (Inter-American Court) decisions in which adequate health care was deemed a key factor in preserving the right to humane treatment under the American Convention. In its 2006 Ximenes-Lopes v. Brazil decision, the Court linked the right to health care to the basic respect for dignity that all people deserve. Similarly, the Court linked health care with the rights to life and humane treatment in its 2007 decision on Albín-Cornejo et al. v. Ecuador. The Commission relies heavily upon a 2007 report by the Pan American Health Organization (PAHO) for data on maternal health. PAHO’s report highlights the region’s challenges of providing adequate, universal, and culturally-appropriate health care services. It cites World Health Organization (WHO) estimates of 22,680 maternal deaths in the Americas in 2003 and emphasizes that the risk of maternal death is 21 times higher in Latin America and the Caribbean than in Canada. Moreover, the maternal mortality rate of indigenous Guatemalan women is three times higher than that of non-indigenous Guatemalans.

The Commission is especially concerned with structural and cultural barriers to maternal health, especially for indigenous and Afro-descendant women. High health care fees, lack of information, adequate equipment, supplies, and properly trained personnel, and limited clinic access prevent women from getting appropriate care. Barriers also include a lack of interpretation services, a dearth of culturally-sensitive medical personnel, and the denial of care due to gender, marital status, or education level. Regional examples of such barriers include cases of forced sterilization due to ethnic and economic status, and refusal to provide abortion services to a victim of sexual violence.

The thematic report recommends that states strengthen their institutional capacities to guarantee adequate maternal health care and training of providers, establish referral mechanisms to deal with obstetrical emergencies, revise legislation to ensure conformity with regional and international standards, and eliminate obstacles to health services, in particular for marginalized populations. The Commission also commend countries that have already initiated health care reform by expanding services to vulnerable groups.

The Commission’s report demonstrates concern regarding the disproportionate access that poor women, particularly indigenous or Afro-descendant women, have to adequate, affordable, and timely health care. It also indicates the commitment of the Inter-American system to complying with the Millennium Development Goal of improving maternal health. Finally, it further entrenches the right to health as a fundamental right that goes hand in hand with the right to life, humane treatment, and respect of human dignity.

Inter-American Court Invalidates Amnesty Law Enacted during Brazil’s Military Dictatorship

In its November 2010 landmark decision, the Inter-American Court of Human Rights (Inter-American Court) invalidated Brazil’s 1979 Amnesty Law (Law No. 6683/79) protecting those who committed atrocities during the country’s military dictatorship from 1964 to 1985. In Gomes Lund v. Brazil, the Inter-American Court found that by impeding the investigation of grave human rights violations, the 1979 Amnesty Law contravenes the American Convention on Human Rights (American Convention), to which Brazil is a party.

In 1964, a military coup overthrew Brazil’s existing constitutional government. Under the ensuing military dictatorship, murders, torture, arbitrary detention, forced exile, and disappearances transpired regularly. For example, in the early 1970s, the Brazilian army arrested, tortured, and killed members of a small guerrilla uprising in the Araguaia River region (Guerrilha do Araguaia). The fate of many of the guerrilla members still remains unknown. In 1982, family members of 22 individuals disappeared during the Guerrilha do Araguaia uprising initiated legal proceedings in an attempt to discover what happened to their relatives. The lower court dismissed the case, but the court of appeals reversed the dismissal. In 2003, more than 20 years after the families initiated their suit, the First Federal Court ordered the Brazilian government to release information about the disappeared guerrilla members. Appeals ensued over the course of the next six years. In 2009, the same year the Inter-American Commission on Human Rights (Commission) submitted the case to the Inter-American Court, the Brazilian Supreme Court affirmed the federal court’s ruling and the government began releasing thousands of pages of records regarding the Guerrilha do Araguaia.

In Gomes Lund v. Brazil, the Inter-American Court found that Brazil breached its obligations under the American Convention, including the rights to life, liberty, and personal security (Articles 1, 4, and 7), juridical personality (Article
of human rights violations. The fund is designed to compensate unspecified victims of past human rights violations. The creation of the reparations fund follows six Court judgments against Mexico since it formally accepted the Court’s competence in 1998.

Civil society organizations have responded to the creation of the fund with mixed reactions. Some are optimistic that the fund signals progress by the Mexican government to fulfill its obligations, while others are concerned that it is merely a means of temporary appeasement through payment of monetary reparations and that the government will not tackle larger institutional reforms ordered by the Court. The Court ordered Mexico to investigate the kidnapping and murder of three young women in a cotton field near Ciudad Juarez in its 2009 judgment in the case of González (Cotton Field) v. Mexico. The judgment additionally required Mexico to improve its investigatory procedures related to disappeared persons, especially women, and to ensure that they meet international standards. In its 2009 and 2010 judgments in Radilla Pacheco v. Mexico, Rosendo Cantú v. Mexico, and Fernandez Ortega v. Mexico, the Court ordered Mexico to remove offenses committed by military members against civilians from the jurisdiction of its military justice system, in keeping with prior Inter-American system precedent. The Court’s most recent ruling in Cabrera García and Montiel Flores v. Mexico reiterates this order. In all four of those judgments, Mexico is required to complete reform within a “reasonable” time-period.

While Mexico’s Suprema Corte de Justicia de la Nación (Supreme Court) acknowledges its international obligations in the area of human rights in its 2010 Annual Report, Mexico’s actions to comply with the Court judgments appear to be nascent. Despite 2010 deadlines for compliance with the 2009 Cotton Field and Radilla Pacheco judgments, Mexico has only reported compliance with the monetary reparation measures in Castañeda Gutman v. Mexico, the first of the six cases adjudicated by the Court. In November 2010, Mexico reported on its initial actions to comply with the Rosendo Cantú and Fernandez Ortega judgments, but those efforts did not include monetary reparation.

Similarly, Mexico has reported efforts to comply with some, but not all, non-monetary measures ordered in the six judgments. The Supreme Court’s 2010 Annual Report mentions its investigation into compliance with the Radilla Pacheco judgment. It also references publication of the judgment and coordination of a roundtable and conference on gender stereotypes and access to justice per the 2009 Cotton Field judgment. Although there is evidence of Mexico’s attention to its criminal justice system through constitutional reform, there is no indication that Mexico is altering the jurisdiction of the military justice system, as required by the latest four judgments.

As compared to reports from prior years, the Mexican Supreme Court’s 2010 Annual Report demonstrates progress in the form of increased attention to compliance with the recent Court judgments. Given that the Mexican Supreme Court fielded 21 requests for information in 2010 from the Ministry of Foreign Affairs related to eight petitions and other complaints received by the Inter-American Commission on Human Rights, there are likely to be more cases against Mexico in 2011. The reparations fund, along with other compensatory measures required by the Court, will be crucial in providing Mexican victims of human rights violations the justice they have been denied for so long.

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**Timely and Complete Compliance by Panama in Tristán Donoso Suggests Promising Direction**

On September 30, 2010, Panama, a state that only seven years ago challenged the competence of the Inter-American Court of Human Rights (Inter-American Court) to monitor compliance with court-ordered reparations, complied with reparations ordered in the 2009 decision in Tristán Donoso v. Panama within the allotted timeframe. Although Panama is subject to two judgments in which its full compliance is pending, the State’s immediate action may indicate a policy shift towards greater compliance with Inter-American Court judgments.

Santander Tristán Donoso was a lawyer whose privileged conversation with
In 2003, Panama brought the first challenge to the Inter-American Court’s competence to monitor compliance following the judgment in *Baena-Ricardo*. The State argued that post-judgment monitoring should be a political function, supervised by the General Assembly of the Organization of American States (OAS). While the Inter-American Court heard Panama’s arguments, it concluded that the Court’s competence to oversee fulfillment of states’ commitments under Article 33 of the ACHR, the states’ recognition of the Court’s jurisdiction and function enshrined in Articles 62(1) and 62(3) of the ACHR, in conjunction with the General Assembly’s oversight as mandated in Article 65 of the ACHR and Article 30 of the Statute of the Inter-American Court of Human Rights, conferred competence to the Inter-American Court to continue to monitor compliance.

Panama’s compliance with the reparations in *Tristán Donoso* is a small but exciting step in the direction of consistent and timely compliance with Inter-American Court judgments. “[T]his likely signals that we can expect . . . something substantively similar from Panama in future cases involving similar issues,” Baluarte said. With two decisions still in the supervisory stage, both with issues quite unlike those in *Tristán Donoso* and reparations that are larger in scale, Panama’s full compliance with all Inter-American Court decisions may still be elusive. However, the compliance in *Tristán Donoso* remains an encouraging move toward positive compliance practices from a state that previously refused to recognize the Inter-American Court’s competence to monitor compliance.

**U.S. Death Row Inmate Executed in Defiance of Commission’s Recommendations**

On October 26, 2010, the United States executed Jeffery Timothy Landrigan in violation of the 2004 precautionary measures issued by the Inter-American Commission on Human Rights for his benefit. The precautionary measures requested the stay of Landrigan’s execution while the Commission examined the sentencing procedure by which he was condemned to death. During the days leading up to his execution, the Commission urged the United States to honor the precautionary measures and ultimately issued a merits report recommending review of Landrigan’s trial, but to no avail.

In 1990, Landrigan was sentenced to death by a trial judge, as mandated by an Arizona statute, instead of a jury. In the 2002 *Ring v. Arizona* case, the United States Supreme Court ruled that type of sentencing statute unconstitutional, but the ruling did not mandate new sentencing hearings for inmates whose appeals were final on direct review. Since the Supreme Court had denied Landrigan’s federal *habeas* petition, he was not permitted a new sentencing hearing.

Landrigan was one of nine inmates represented in the original petition to the Commission in 2004. Before the Commission, the petitioners alleged that the United States had violated Landrigan’s rights enshrined in Articles 1 (life, liberty and personal security), 2 (equality before the law), 18 (fair trial), and 26 (due process of law) of the American Declaration of the Rights and Duties of Man by denying him the same opportunity as other prisoners to a new sentencing hearing. The Commission, upon hearing the allegations, awarded precautionary measures in 2004 that requested the United States to refrain from executing Landrigan until the Commission had an opportunity to investigate his complaint.

On October 22, 2010, four days before Landrigan was scheduled to be executed, the Commission sent the United States a merits report on his case recommending a review of his trial in accordance with the guarantees of the American Declaration. The Commission also ordered the United States to make its laws, procedures, and practices around capital crimes compatible with the American Declaration’s protection of the rights to a fair trial, due process, and equality before the law. The United States nevertheless executed Landrigan on October 26.

The United States frequently disregards the Commission’s precautionary measures. In 2010 alone, two prisoners benefitting from precautionary measures were executed before the Commission had an opportunity to issue a decision on their petitions. In the 2000 case concerning Juan Raul Garza, the first federal death row inmate to be executed by the United States in 35 years, the United States argued that it did not consider the precautionary measures administered by the Commission to be binding.

Additionally, in Garza’s case, the United States argued that the Commission’s
conclusion that the United States violated Articles 18 and 26 of the American Declaration conflicted with “jurisprudence based on the Eighth Amendment of the U.S. Constitution.” In Landrigan’s case, the United States did not rely on the U.S. Constitution, instead arguing that the sentencing procedure in fact complied with its obligations under the American Declaration. The United States further claimed that since the Supreme Court’s decision on the unconstitutionality of judge-only sentencing did not mandate retroactive application to cases like Landrigan’s related to procedural rather than substantive law, it was not prejudicial. Ultimately, the United States executed Landrigan despite the fact that the procedure used to sentence him was declared unconstitutional. The discord between the Commission’s insistence that United States’ laws and procedures must comply with the American Declaration and the United States’ assertion that either the Declaration is not binding or that United States domestic law is in compliance will likely be a continuing source of dispute. The United States has appeared more responsive in the last decade by addressing alleged violations of the American Declaration in its pleadings before the Commission. Still, history indicates that the United States will likely continue to assert the legitimacy of domestic decisions and execute death row inmates in defiance of precautionary measures and merits reports that find law and procedure in the United States in violation of the American Declaration.

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African Regional and Sub-Regional Human Rights Systems

ECOWAS COMMUNITY COURT OF JUSTICE RULING HOLDS THE GOVERNMENT OF NIGERIA ACCOUNTABLE FOR FulfILLING THE RIGHT TO EDUCATION DESPITE CORRUPTION

The Court of Justice of the Economic Community of West African States (ECOWAS) has ordered the government of Nigeria to replenish a shortage of funds in its education sector so that it may fulfill its obligation under the African Charter on Human and Peoples’ Rights (Banjul Charter) to provide free and compulsory basic education to every Nigerian child. As one of fifteen member states, Nigeria is bound to comply with the Court’s judgment, considered by human rights lawyers to have permanently redefined human rights-related jurisprudence on the continent.

The November 2010 judgment resulted from a suit by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) against the Federal Republic of Nigeria and the Universal Basic Education Commission (UBEC). The complainant alleged that Nigeria had violated its obligations under the Banjul Charter regarding the right to education (Article 17), the right to dignity (Article 5), the right of peoples to freely dispose of their wealth and natural resources (Article 21), and the right of peoples to economic and social development (Article 20). Specifically, SERAP contended that rampant corruption among high-level officials and theft within the ranks of UBEC had left the education sector woefully underfinanced and unable to provide free and compulsory education to all Nigerian children. The Nigerian government was complicit by its failure to investigate allegations of corruption or confront the culture of free license. SERAP also contended that Nigeria has in effect denied its citizens the right to freely dispose of their natural wealth and resources, which are the bases for realizing the right to education and other economic and social rights.

SERAP’s allegations are based on a report submitted to the Nigerian Presidency in April 2006 that details the mismanagement of funds allocated for basic education in ten Nigerian states and an October 2007 Independent Corrupt Practices Commission (ICPC) report detailing repeated instances of theft by UBEC’s highest officials. SERAP estimates that, as a direct consequence, over five million Nigerian children lack access to primary education. In filing suit, SERAP sought, *inter alia*, a declaration that every Nigerian child is entitled to free and compulsory education pursuant to Nigeria’s own domestic legislation and an order compelling the government to replenish the funds available to the education sector, prosecute those responsible for theft or corruption, and monitor the recovery of stolen funds.

A judgment on the merits would not have been possible had the defendants prevailed on any of their preliminary objections, which challenged the Court’s jurisdiction, the justiciability of the right to education, and SERAP’s standing as an NGO. The Court rejected these objections in a separate October 2009 ruling that is celebrated for affirming the Court’s jurisdiction over States Parties’ human rights obligations and NGOs’ standing as representatives of the public interest. Both procedural holdings are positive developments in the sub-regional human rights system and, as the Court observed, reflect the international trend to lower procedural impediments to adjudication of human rights issues.

On the merits, the Court began with the corruption allegations, finding that the ICPC report provided only *prima facie* evidence of isolated incidents and, even if true, did not prove the degree of negative impact alleged by SERAP. The Court further clarified that corruption is a criminal matter reserved to Nigeria’s domestic judicial institutions. Nonetheless it concluded that there were insufficient funds in the education sector for the Nigerian government to fulfill its obligations to realize children’s right to education. The Court declared that the government must cover this shortfall regardless of its origins and even while it investigates alleged corruption or theft.

The decision marks a victory for education advocates and represents a noteworthy development for socioeconomic rights jurisprudence in the region. By requiring the government of Nigeria to sufficiently fund its education sector, the Court reallocates the harsh consequences of corruption and general neglect, forcing the government to root out corruption or compensate out of its budget. The Court’s position is interesting given international human rights jurisprudence that generally requires states to work only within or to the maximum of available resources to fulfill. In this case, however, the ECOWAS Community Court has effectively imposed a core minimum requirement despite evidence that Nigeria’s education sector is in financial distress. Its decision makes clear that corruption and chronic mismanagement of funds do not excuse Nigeria from reaching a baseline standard in accordance with its obligations.
With the question of enforcement looming, SERAP issued an open letter urging the eighteen current presidential candidates to make full and effective implementation of the judgment central to their campaigns. Regardless of whether such political will can be garnered within Nigeria, the Court’s judgment advances regional jurisprudence on states’ obligations to devote sufficient resources to realizing social and economic rights and, in the present case, champions the position that children should not bear the costs of corruption.

**The Prohibition of Female Genital Mutilation in Africa: A Test for Africa’s Regional Human Rights System**

In 2008, the World Health Organization with several partner UN agencies published an interagency statement that detailed efforts to reduce the practice of female genital mutilation (FGM). The practice continues on a staggering scale, most notably in Africa, where the statement estimated over 91 million women and girls had been subjected to FGM, often with mental and physical health-related consequences. A further 3 million girls on the continent face the risk of FGM every year.

Opposition to FGM in Africa can be inferred from the Banjul Charter, its Protocol on the Rights of Women (Maputo Protocol), as well as the Charter on the Rights and Welfare of the Child (Children’s Charter). The most explicit language is found in Article 5 of the Maputo Protocol, which calls upon its 28 States Parties to prohibit “all forms of FGM” through legislative measures and supportive sanctions. Although the meaning of “sanctions” may be open to interpretation, Article 5 makes fairly clear what practical steps are required of States Parties. But, it raises critical questions about both the capacity of States Parties to pass and enforce human rights legislation that may run counter to customary practice and the effectiveness of Africa’s human rights institutions in confronting and sanctioning noncompliance.

Of the 28 States Parties to the Maputo Protocol, twelve either had criminalized FGM prior to ratification or did so afterward. Yet, in several of these states, legal prohibition has had a negligible effect on actual practice, as implementation has stalled in local communities where FGM is still considered part of tradition, community identity, and womanhood. Other states seemingly pass legislation to please the global community and comply with international human rights instruments, but have no genuine intention to implement provisions on FGM. Compliance is thus dependent not only on passing laws, but on states’ ability — and political will — to enforce laws and devise ways of furthering even those regional human rights objectives that threaten deeply entrenched social conventions held by local communities.

When other States Parties lack sufficient political will to pass legislation, responsibility falls on Africa’s human rights institutions to use their authority to enforce Article 5 obligations. In 1999, the African Commission on Human and Peoples’ Rights appointed its first Special Rapporteur on the Rights of Women in Africa, tasked, *inter alia*, with overseeing State Party efforts to implement the Banjul Charter and the Maputo Protocol. However, while the Special Rapporteur’s office is authorized to expose noncompliance and propose recommendations to the Commission, it has no means of sanctioning noncompliant States Parties. Worse, the Commission’s recommendations following consideration of individual or NGO complaints are not generally considered legally binding.

The African Court on Human and Peoples’ Rights is also charged under Article 27 of the Maputo Protocol with “all matters of interpretation arising from [the Protocol’s] application or implementation.” However, while a complaint concerning alleged violations of Article 5 could theoretically reach the Court, it would have to be based not on an instance of FGM within a given State Party, but rather on the failure of that state’s government to pass legislation prohibiting the practice. It is not clear who would have standing to bring such a case, based on direct harm from a State Party’s failure to pass legislation. Nor is it clear under the Court’s Protocol what steps might be taken to enforce compliance with a Court decision even though it would be legally binding.

As with many other pressing human rights issues in Africa, eliminating the practice of FGM requires efforts on two fronts. First, compliant states must communicate regional human rights standards to communities with opposing core beliefs. Article 5 requires that States Parties under-

**European Court of Human Rights**

**European Court Institutes Priority Policy for Hearing Claims**

In accordance with an amendment to its Rules of Court, the European Court of Human Rights (Court) will now hear cases based on the urgency of the violation, as opposed to the chronological order of receipt. The change will ensure urgent claims are not lost in the Court’s massive caseload, but such expediency may come at the expense of lesser violations, which may never be heard.

As part of its new Priority Policy, the Court will place each pending claim into a category – numbered I through VII – based on the level of importance. Claims that detail particular risk to life or health of the applicants will be given highest priority. Claims that deal with matters of admissibility receive the lowest priority. While the Priority Policy actually went into effect in July 2009, the Court only recently made public its grading criteria. The Court sometimes gave priority to particularly urgent cases prior to 2009, but the new policy establishes a clear order of adjudication at a time when the Court’s pending caseload exceeds 130,000 applications, a number which rose by 17 percent in 2010.

The categories are as follows:

I – Urgent applications that show a particular risk to life or health of the applicant; other circum-

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stances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue.

II – Applications capable of having an impact on the effectiveness of the European Convention on Human Rights

III – Applications that raise complaints under Article 2 (right to life), 3 (protection from torture), 4 (protection from slavery) and 5 § 1 (right to liberty and security)

IV – Potentially well-founded applications based on other Articles

V – Applications raising issues already dealt with

VI – Applications identified as giving rise to a problem of admissibility

VII – Applications which are manifestly inadmissible

According to a press release issued by the Court, the Priority Policy’s “aim is clearly to ensure the most serious cases and the cases which disclose the existence of widespread problems capable of generating large numbers of additional cases are dealt with more rapidly.” However, while the policy should ensure the most important cases are heard without delay, it could have a fatal effect on claims of lower priority. The Court will admittedly hear fewer cases because its most urgent claims often are its most time consuming, requiring complex analysis of the nuances within the Convention’s articles to be applied to the facts at hand. This creates the potential that applications without priority may, as human rights professor Dr. Antoine Buyse wrote on his ECHR Blog, “remain on the docket virtually eternally.”

The policy is yet another stab at efficiency for the Court, which has been under pressure to reduce its caseload by narrowing its scope. While human rights advocate Christos Pourgourides stressed the need for subsidiarity as a reduction tactic, the Priority Policy may be a more feasible solution. When it becomes clear that the Court refuses to address certain topics due to their level of priority, the submission of those claims will eventually cease. Repetitive cases and applications that give rise to the problem of admissibility will be heard only when cases in priority levels I-IV have been adjudicated, allowing the Court to focus on only the most serious violations.

However, the subjective nature of labeling priorities raises concerns regarding the introduction of bias into the process, and could possibly encourage violators to commit low-priority offenses with no fear of punishment. A number of serious questions must be asked and continually monitored as the Court transitions to its Priority Policy. Should a petitioner who was deprived of a fair and public hearing be any less aggrieved because his claim falls fourth on the spectrum? What about those who have been denied their rights to free speech and religion, who now may wait years or decades behind those whose claims are deemed “more urgent?” The Court reserved an important right by granting the Chamber or its President the opportunity to decide that an individual case should be treated outside the parameters of the Policy, but it is uncertain how often that right will be invoked.

How the Court applies its new Priority Policy will determine the Court’s efficacy for years to come. As such, a Working Party will monitor the policy’s implementation and address any inequalities that arise. Should such issues emerge, the policy may need modification. In the meantime, it appears to be a much-needed remedy to an increasingly outmatched Court system and its implementation is certain to be watched closely by other regional human rights systems, such as the Inter-American Commission on Human Rights, as a possible solution to their own crushing backlog of cases.

**COURT RULES ON IRELAND ABORTION RIGHTS CASES**

A long-awaited decision by the European Court of Human Rights regarding abortion rights in Ireland inspired claims of victory from both sides of the debate, but plenty of questions still remain regarding implementation of the decision. On Dec. 16, 2010, the Grand Chamber ruled that Ireland breached the right to private and family life (Article 8) of a woman whose access to legal abortion in Ireland was infringed upon by the government. The Court found no violation, however, with respect to the other two applicants in the case – A, B, and C v. Ireland.

Critics of Ireland’s strict abortion laws instantly lauded the decision as a crack in the established policies. Anti-abortion proponents countered that the Court’s judgment does nothing more than reinforce laws already in Ireland’s constitution. The true effect on Ireland’s abortion laws – considered some of the strictest among States Parties to the European Convention on Human Rights – likely lies somewhere in the middle.

Currently, abortion in Ireland is only legal when a woman’s life is at stake due to pregnancy. As such, thousands of women travel from Ireland to England and Wales each year seeking legal abortions. The applicants to the complaint – two Irish nationals and one Lithuanian – all traveled to the United Kingdom in 2005 for abortions. The first applicant, a poor, unmarried, and unemployed woman living in poverty, chose to have an abortion to avoid “jeopardizing her chances of reuniting her family.” The second applicant chose to have an abortion because she did not want to become a single parent. The third applicant, from Lithuania, was in remission from cancer and chose an abortion out of fear the cancer would return. As reported in the Court’s press release, “[t]he third applicant submitted that, although she believed her pregnancy put her life at risk, there was no law or procedure through which she could have that, and, as a result, her right to an abortion in Ireland, established.”

Essentially, as *New York Times* reporter and Yale Law School professor Linda Greenhouse pointed out, the Court “made clear that it was not recognizing a right to abortion. On behalf of Plaintiff C, who could not find an Irish doctor willing to help her even assess her risks, it was simply telling Ireland that if the country chose to offer a life-saving exception to its abortion ban, it had to give women ‘an accessible and effective procedure’ to demonstrate that they qualified.”

What the decision means for Ireland’s future depends on the implementation of the ruling. As a State Party to the European Convention on Human Rights, Ireland must somehow ensure similar violations do not occur in the future. One way the Republic may do this is by softening abortion legislation and joining many of its European peers in a pro-choice stance. A more likely solution for this conservative country is to
better legislate the anti-abortion exception, or, perhaps, to eliminate it entirely.

Abortion rights in Ireland are still new enough that some envision a possible swift return to abolition. The anti-abortion stance is rooted in an 1861 law that made abortion a criminal act. It was only in 1992 that the Irish Supreme Court allowed abortion and, in that case, only if the situation presented a “substantial risk to a mother’s life.”

While several government officials have said the Court’s ruling mandates further legislation, the Archbishop of Armagh, Sean Brady, said there was no obligation to change Irish law, and further reiterated the Catholic Church’s stance that neither the unborn child nor the mother may be killed under any circumstance. “The Irish Constitution clearly says that the right to life of the unborn child is equal to that of his or her mother,” Cardinal Brady said. “These are the fundamental human rights at stake.”

The world will watch with interest how Ireland chooses to apply the Court’s ruling. The United States, for example, may encounter similar debates when the conservative-led House of Representatives convenes for the next Congress and newly elected conservative state legislators take office. In Nebraska, a conservative legislature passed a ban on abortion after 20 weeks, even though most states’ bans on abortions begin at 22 or 24 weeks. If more states are successful in passing similar legislation, the country’s landmark 1973 abortion decision, Roe v. Wade, could be challenged and potentially weakened.

Even the three European countries whose abortion laws have been described as equal to, or more restrictive than, Ireland’s – Andorra, Malta, and San Marino – may feel emboldened that the Court did not establish a minimum degree of protection for women seeking abortion. While not beholden to Ireland’s implementation of the Court’s ruling, anti-abortionists could look to the Republic for cues.

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