



CHALLENGING ONE-SIDED CRIMINAL PROSECUTION IN PREGNANCY-RELATED CASES

LEGAL AND CASE-ASSESSMENT PLANNING BRIEF

Abortion | Infant Abandonment | Child Neglect

CORE MESSAGE: The project is about stopping one-sided criminal prosecution. A woman or girl should not carry the whole criminal case simply because she is the person who was pregnant, gave birth, or was found with the child. The alleged offence must be investigated, but the justice system should also investigate the man who caused the pregnancy, possible sexual offences, paternity, support and maintenance, care responsibilities, other people who may have helped or pressured the offence, and the social conditions surrounding the case. Responsibility should then be placed on each person according to the law and the evidence.

Why this matters

Pregnancy involves at least two people, but when a pregnancy later ends in a criminal case, the woman or girl is usually the person who is easiest for the justice system to see. She carried the pregnancy, gave birth, may have been found with the baby, or may be the person who sought an abortion. Because of this, the investigation can quickly become about her conduct alone. The man who caused the pregnancy may disappear from the case, even where his conduct, age, support, abandonment, pressure or legal duties are important to understanding what happened.

A fair criminal investigation must still ask whether the woman or girl committed the alleged offence. But it should not stop there. It should also ask what happened before the offence: how the pregnancy happened; whether the sexual relationship was lawful; whether there was force, pressure, exploitation or abuse; whether the man knew about the pregnancy; whether he supported or abandoned the woman; whether he had duties to maintain or care for the child; whether anyone helped, encouraged or pressured the alleged offence; and whether poverty, disability, age, family rejection, violence or lack of services made the situation worse. These facts do not automatically remove criminal responsibility, but they can show that responsibility may not belong to the woman alone.

What we mean by “one-sided criminal prosecution”

For this project, one-sided criminal prosecution means that the woman or girl becomes the main or only person investigated, arrested or prosecuted, while the justice system does not properly examine the conduct and possible responsibility of the man who caused the pregnancy or of other people connected to the case. It can also happen when the law already provides a way to investigate paternity, maintenance, sexual offences, care duties or participation in an offence, but those legal routes are not used.

This does not mean that the man must automatically be charged simply because he is the father, and it does not mean that he must face the same offence as the woman. His own conduct must be investigated. Depending on the facts, he may have committed a sexual offence, taken part in an abortion, failed in a maintenance or care duty, pressured or threatened the woman, or committed no offence at all. The important point is that the justice system should find out instead of assuming that the whole case begins and ends with the woman.

The gender and social inclusion lens supports this analysis, but it is not the end goal

Gender and social inclusion analysis helps us notice things that a normal criminal file may leave out. It asks whether women and men are treated equally by the law and by institutions; who has money and control over resources; who makes decisions in the relationship or household; who is expected to carry pregnancy and childcare responsibilities; whether the woman depends on the man financially; and whether age, disability, poverty, schooling, family rejection, violence or location made her more vulnerable. We use this lens to understand why one-sided prosecution may happen. The main purpose of the project is still to challenge unfair, one-sided criminal prosecution and improve the way responsibility is investigated.

WHAT LESOTHO LAW ALREADY MAKES POSSIBLE

Lesotho law already gives police, prosecutors, courts, social workers and other justice actors several ways to examine responsibility beyond the woman or girl alone. The law can be used to investigate sexual offences, determine who the father is, enforce maintenance, examine who had care of a child, and identify other people who took part in an abortion or other alleged offence. This is important because the problem may not always be that there is no law. In some cases, the problem may be that the existing laws are not being used together.

LAW	KEY PROVISIONS	WHAT THE LAW SAYS IN SIMPLE TERMS	WHY THIS MATTERS FOR ONE-SIDED PROSECUTION
Constitution of Lesotho, 1993	ss.18–19	The Constitution says people must be treated equally before the law and public authorities must not discriminate because of sex.	The fact that the woman carried the pregnancy should not make her the automatic or only person blamed. Police and courts should apply the law to everyone whose conduct may be relevant.
Children’s Protection and Welfare Act, 2011	s.20; s.22	Parents and guardians have duties to protect, care for and maintain a child. The Act recognises that raising a child is not the responsibility of one parent only.	In neglect or abandonment cases, police should ask who else had a duty to support or care for the child. The case should not automatically treat care as the mother’s duty alone.
Children’s Protection and Welfare Act, 2011	s.44	A person who has care of a child can commit an offence by neglecting, abandoning, abusing or exposing that child. A parent or other person who is legally required to maintain the child can also be at fault if they have the means but fail to provide basic needs.	This is important because the law does not say that only a mother can neglect or abandon a child. Investigators should identify every person who had care or maintenance duties and examine what each one did or failed to do.
Children’s Protection and Welfare Act, 2011	ss.197–199	The Children’s Court can decide who the parent of a child is. A parent, guardian, social worker, probation officer or another accepted person can ask the court to determine parentage. The court can also order a medical test.	If a man denies paternity, the inquiry does not have to stop. The woman should not have to carry the whole burden alone. The legal system can help establish parentage where it matters to responsibility, maintenance or care.
Children’s Protection and Welfare Act, 2011	ss.212–216; s.223	A parent or other person who is legally responsible must maintain the child. The court can order maintenance, look at the resources of both parents, recover unpaid maintenance and use other enforcement measures.	If the woman had no money or support, the case should ask whether the father had a legal duty to support the child, whether he refused or stopped support, and whether maintenance procedures were used.
Penal Code Act, 2012	s.45	The abortion offence is written against “a person” who carries out an act intended to end a pregnancy early. The law also allows some medically justified terminations.	The investigation should not assume that only the pregnant woman can be responsible. It should ask who supplied medicine, performed the procedure, paid, assisted, pressured, encouraged or otherwise took part.
Penal Code Act, 2012	ss.49 and 52	The law can criminalise sex between an adult and a child and can also treat sex as unlawful where there was force, threats, pressure, extortion, humiliation or other forms of coercion.	If the girl is under 18, or says she was forced or pressured, police should also investigate the person who caused the pregnancy. She can be accused in one matter and still be a victim in another.
Penal Code Act, 2012	ss.43–44	The Penal Code treats infanticide and concealment of childbirth as separate offences with different legal requirements.	Police and prosecutors should first identify exactly what offence the facts may show. Pregnancy-related cases should not all be treated as if they are the same offence or have the same circumstances.

What these laws mean when used together

Together, these laws show that the justice system already has several different doors it can use. One law may deal with the woman's alleged offence, another may deal with a sexual offence against her, another can establish paternity, and another can deal with maintenance or care duties. A fair case should use the doors that fit the facts instead of using only the law that is easiest to apply to the woman.

HOW ONE-SIDED PROSECUTION CAN HAPPEN IN A REAL CASE

Looking at the full story is not the same as excusing an offence. It is about making sure the justice system sees more than the last event. If a woman is accused of abandoning a baby, for example, the investigation should still establish whether abandonment happened. But it should also establish who the father is, whether he knew about the pregnancy, whether he gave or withdrew support, whether the woman had somewhere safe to live, whether she had been abused or rejected, and whether any institution could have helped before the crisis reached that point.

Key factors that investigators and justice actors should examine

1

The pregnancy may itself raise a legal issue



The first question should be how the pregnancy happened. If the girl was under 18, the age of the man matters. If there was force, threats, pressure, exploitation or abuse of power, the pregnancy may itself be linked to a sexual offence. This is important because the same girl can be accused of one offence and still be a victim of another offence. If the justice system looks only at what she did later, it may completely miss a crime that was committed against her.

2

The male counterpart may deny paternity



A man may respond by saying that the pregnancy or child is not his. That denial should not automatically remove him from the case where paternity is important. Lesotho law already gives the Children's Court power to determine parentage and, where necessary, order a medical test. The process can also be supported by people such as social workers and probation officers. This means the woman should not be left alone to prove paternity while the man simply denies it and walks away from the inquiry.

3

The woman may have had little access to money, support or services



The woman or girl may have had very little money or control over resources. She may have depended on the man or on her family for food, transport, housing, health care or school fees. She may have been rejected after the pregnancy, living with disability, unemployed, still in school, experiencing violence, or unable to reach social welfare, maintenance services or health care. These facts do not automatically cancel an offence. They help the justice system understand the pressure around the case and whether other people or institutions also had duties that were not fulfilled.

4

Care responsibilities may be treated as if they belong only to the mother



In everyday life, pregnancy and childcare are often treated as the woman's responsibility. This can influence how police, families and communities see the case. But the law can place duties on both parents and on other people who have care or maintenance responsibilities. So when a woman is accused of neglecting or abandoning a child, the investigation should not automatically assume that she alone had the duty to provide food, care, housing, protection or money. It should identify who else had a legal duty and what that person did or failed to do.

5

The alleged offence may involve more than one person



An abortion case may involve more than the pregnant woman. Another person may have bought or supplied medication, performed a procedure, paid for it, arranged transport, pressured the woman, threatened her, encouraged the act or helped hide what happened. The law should be applied to each person according to what that person actually did. The same principle applies in abandonment and neglect cases: another person may have had a duty to maintain or care for the child, or may have contributed directly to the crisis.

6

The justice response itself may create the imbalance



A law may look equal on paper but still be applied in an unequal way. Police may arrest the woman because she is easy to identify while making little effort to find the man. A denial of paternity may be accepted without using the legal process to determine parentage. A case may be treated only as neglect without checking maintenance duties, or only as abortion without checking who supplied, performed or pressured the act. Social welfare, maintenance, child protection and prosecution systems may also fail to share information. The project therefore needs to examine not only what the law says, but what actually happens in real cases.

PATERNITY, RESPONSIBILITY AND FAIR INVESTIGATION

IMPORTANT: A man should not be treated as the father simply because he is named, but a denial of paternity should also not end the inquiry where parentage matters. The fair approach is to use the legal process that already exists. The Children's Court can determine parentage and can order a medical test. Social workers, probation officers and other authorised people can help bring the matter before the court. This reduces the burden on the woman and gives the justice system a proper way to establish the facts.

Fair Case Review, Paternity Disputes and Planning Outputs

Key questions and outputs for reviewing pregnancy-related criminal cases fairly



1 What should happen when paternity is disputed

If paternity is disputed, the case record should show: who was named; what the man said; what evidence was available; whether the parentage process was explained or used; whether a social worker or probation officer was involved; and what happened after the dispute was raised.

The purpose is not to assume that the named man is the father. The purpose is to make sure that a denial is tested through a lawful process when paternity matters to the case.

What a fair case review should establish

The case review should not only ask whether the charge against the woman was legally possible. It should check whether the file tells the whole story and whether every important responsibility was followed up. At minimum, the review should record the following:



1 Who the girl or woman is: her age, disability status where relevant, schooling, income, housing, dependence, family support and safety situation.



2 How the pregnancy happened: the age and identity of the male counterpart, consent, coercion, exploitation, violence, threats or possible sexual offence.



3 Whether paternity is admitted or denied and, if disputed, whether the legal parentage process was used.



4 What support was available during pregnancy and after birth, including financial support, maintenance, housing, health care, family support and social welfare.



5 What the male counterpart did or failed to do, and whether his conduct created a separate criminal, maintenance, care or other legal issue.



6 What exactly the woman or girl is alleged to have done and what evidence supports the charge.



7 Whether another person performed, assisted, encouraged, pressured or facilitated the alleged conduct.



8 What police, prosecution, social welfare, health, maintenance and child-protection institutions did before and after the alleged offence.



9 Whether the final justice decision considered the whole case or only the conduct of the woman or girl.



The questions are not excuses; they are part of fair criminal investigation

A fair review can still end with the finding that the woman committed an offence and should be held responsible. It may also show that another person committed a different offence, failed to maintain or care for a child, took part in the same events, or should be investigated for sexual violence. It may show that the woman was also a victim. Or it may show that no other person has legal responsibility. These questions are therefore not excuses. They are part of making sure that the final decision is based on the whole case and not only on the most visible person.

What this planning workstream should produce



1 A clear method for reviewing a small number of real pregnancy-related criminal cases.



2 A legal map showing which existing laws can be used to examine responsibility beyond the woman or girl alone.



3 Evidence on where police, prosecution, courts, maintenance, social welfare and child-protection systems are not connecting properly.



4 A clear distinction between problems caused by the law itself and problems caused by how the law is applied.



5 A well-supported basis for the later Parliamentary position paper and proposed reforms.



6 A simple list of recurring points where the male counterpart or other responsible persons disappear from the investigation.



7 A clear record of what happens when paternity is denied and whether the legal parentage process is actually used.



8 Practical recommendations that can be acted on by police, prosecutors, social welfare, maintenance services and Parliament.

WHAT THE EVENTUAL REFORM ARGUMENT SHOULD BE BASED ON

The later Parliamentary position paper should be based on evidence, not assumptions. It should not say that every pregnancy-related prosecution is unfair, and it should not say that every man connected to a pregnancy must be charged. Instead, it should show whether there is a repeated pattern in which women and girls are prosecuted while important questions about the male counterpart, paternity, sexual offences, maintenance, care duties, participation in the offence and social circumstances are not properly investigated.

Five Questions the Evidence Should Help Answer

Key evidence questions and possible reform routes for reviewing one-sided criminal prosecution in pregnancy-related cases

1



What does the law already require or allow?

We need to show clearly what the law already allows: which pregnancy-related offences exist; how parentage can be determined; what maintenance and care duties exist; what sexual offences may apply; and what equality protections require. This helps us separate a real gap in the law from a failure to use the law that already exists.

2



What do police and prosecutors actually do?

We need to understand what actually happens after a complaint, arrest or discovery of the alleged offence. Do police ask how the pregnancy happened? Do they identify and interview the male counterpart? Do they check his age? Do they ask about support, threats, coercion, maintenance or participation in the alleged offence? Or does the investigation stop once there is enough evidence to charge the woman?

3



What happens when the male counterpart is identified?

If the man is known, we need to see whether he is interviewed and whether his role is recorded. If paternity is denied, we need to see whether the lawful parentage process is used. If the girl is under 18, we need to see whether a possible sexual offence is investigated. If support was withdrawn, we need to see whether maintenance or care duties are considered. If he helped or pressured the alleged offence, we need to see whether that conduct is investigated.

4



What gender and social factors shape the case?

We need to see whether case files record the conditions that shaped the woman's situation: poverty, age, disability, school status, dependence on the man or family, violence, family rejection, unequal decision-making, care burdens, housing, health care and access to social welfare or maintenance. These facts help explain the full case and can show where the justice system or other institutions failed before the alleged offence happened.

5



What reform is actually needed?

Not every problem needs a new law. Some problems may be fixed through clearer police and prosecution guidance, better use of parentage and maintenance procedures, stronger referral between CGPU, social welfare and other services, or better training. If the evidence shows that the law itself prevents fair investigation or creates unequal responsibility, then the position paper can recommend an amendment to Parliament.



Possible reform routes



Clearer police investigation steps



A requirement to screen for sexual offences where the accused is a girl



Stronger use of parentage and maintenance procedures



Better referral between police and social welfare



Prosecution guidance on cases involving more than one responsible person



Where the evidence shows a true gap in the law, an amendment for Parliament to consider

The final recommendation should match the problem found

BOTTOM LINE: The project is against one-sided criminal prosecution. The woman or girl must answer for what the evidence shows she did, but the justice system should not stop with her. It should also examine how the pregnancy happened, whether she was abused or exploited, who the father is, whether he supported or abandoned her, what care and maintenance duties existed, whether another person helped or pressured the alleged offence, and what poverty, disability, age, dependence, violence or lack of services contributed to the situation. After all of this is investigated, responsibility should be placed on each person according to their own conduct and the law.