

## ANNEX I

### Summaries of relevant case law from treaty bodies

#### *Human Rights Committee, K.L. v. Peru*<sup>1</sup>

KL was a 17 year old girl who became pregnant in March 2001. On 27 June 2001, a scan revealed that she was carrying an anencephalic fetus,<sup>2</sup> and on 3 July 2001, following the advice of the doctor with whom she met, KL decided to terminate her pregnancy. The law in Peru provided that abortion was a crime in cases of fetal impairment, but that abortion was permitted if it was the only way to save the life of the woman or to avoid serious and permanent damage to her health. The hospital refused to carry out the abortion. Subsequent examinations confirmed serious consequences for KL's mental health if the pregnancy were to continue, but the abortion was not allowed.

In January 2002, KL delivered an anencephalic baby girl, who survived for four days, during which time KL had to breastfeed her. Following the death of her daughter, KL fell into a deep depression.

K.L. claimed that the denial of a therapeutic abortion amounted to CIDT and called particular attention to her status as a minor.

In considering the case, the Human Rights Committee found a violation of article 7 (prohibition of torture or other cruel, inhuman or degrading treatment or punishment) in subjecting her to a life threatening situation, and serious mental suffering at being forced to continue with the pregnancy and to see her daughter's marked deformities knowing that she would die. The Committee also found a violation of article 17 (arbitrary interference with private life) in the State Party's refusal to allow the victim access to a legal abortion. Violations were also found of article 24 (special protection of minors) and article 2 (access to an effective remedy).

#### *Human Rights Committee: VDA, on behalf of her daughter LMR, v. Argentina*<sup>3</sup>

LMR is a girl with an intellectual disability. She was raped by her uncle, and became pregnant as a result. The first hospital, where her pregnancy was identified, refused her mother's request for a termination of the pregnancy. She was referred to another hospital where the Bioethics Committee was solicited for an opinion as to whether this abortion could proceed. Since it was determined that this case fell within the definition of a non-punishable abortion in the Criminal Code,<sup>4</sup> the hospital began steps for carrying out the abortion. Despite the fact that the Criminal Code does not require judicial authorization in these cases, an injunction was ordered by a juvenile court judge, who subsequently ruled that "a termination should be prohibited because she did not find it acceptable

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<sup>1</sup> Communication No. 1153/2003, Human Rights Committee, UN Doc. CCPR/C/85/D/1153/2003 (2005).

<sup>2</sup> Anencephaly is a condition which is fatal to the fetus in all cases with death following birth in most cases. The condition also threatens the mother's life.

<sup>3</sup> Communication 1608/2007, Human Rights Committee, UN Doc. CCPR/C/101/D/1608/2007 (2011)

<sup>4</sup> This provision establishes the following: "Abortion performed by a licensed physician with the consent of the pregnant woman is not punishable: (1) if performed to avoid endangering the mother's life or health and if this danger cannot be prevented by other means; and (2) if the pregnancy results from the rape or indecent assault of a woman with a mental disability. In such cases, the consent of her legal representative must be obtained for the termination." (emphasis added)

to repair a wrongful assault (sexual abuse) 'with another wrongful assault against a new innocent victim, i.e. the unborn child'. This decision was upheld on appeal at the Civil Court. A further appeal was filed with the Supreme Court of the province, which overturned the Civil Court ruling and found that no judicial ruling was required for the hospital to perform the procedure in this case.

Despite this ruling, the hospital and the family were under considerable pressure not to perform the abortion, and the hospital ultimately refused to perform the procedure on the grounds that the pregnancy was too advanced. The family sought assistance from other hospitals and clinics, but all refused. On 26 August 2006, two months after the rape was reported and the pregnancy identified, the girl underwent an illegal abortion.

VDA argued "forcing her daughter to continue with her pregnancy constituted cruel and degrading treatment and, consequently, a violation of her personal well-being under article 7 of the Covenant. The refusal to terminate the pregnancy inflicted many days of mental and physical anguish and suffering on L.M.R. and her family, forcing them to resort to an illegal abortion that endangered her life and health while enduring opprobrium from numerous sources. The pressure to continue the pregnancy and give the baby up for adoption exposed the family to some very painful dilemmas. For the author this amounted to cruel and degrading treatment. She felt that people dared to make such offers only because she was poor, and found this deeply humiliating."

The Human Rights Committee found a violation of article 7 (prohibition of torture or other cruel, inhuman or degrading treatment or punishment) by the State party's omission "in failing to guarantee L.M.R.'s right to a termination of pregnancy, as provided under article 86.2 of the Criminal Code, when her family so requested" as this "caused L.M.R. physical and mental suffering [which] was made especially serious by the victim's status as a young girl with a disability. In this connection the Committee recalls its general comment No. 20 in which it states that the right protected in article 7 of the Covenant relates not only to acts that cause physical pain but also to acts that cause mental suffering."

#### *Human Rights Committee, Amanda Jane Mellet v. Ireland<sup>5</sup>*

Ms. Mellet became pregnant in 2011. Shortly after, in November 2011, she was informed by doctors at an Irish hospital that the foetus had congenital heart defects and trisomy 18, and would die in utero or shortly after birth. However, she was told that she could not have a termination of her pregnancy in Ireland and if she wished to pursue an abortion she would have to "travel." Health care providers in Ireland are forbidden to make appointments on behalf of their patients for pregnancy terminations overseas. Therefore, after consulting with a family planning organization, she made an appointment at Liverpool Women's Hospital in the United Kingdom for ten days later. Before travelling to Liverpool, Ms. Mellet saw her general practitioner to determine if the foetus had died, which would allow her to continue her treatment at her hospital in Ireland. Her doctor attempted to dissuade Ms. Mellet from obtaining an abortion after detecting a heartbeat.

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<sup>5</sup> Communication No. 2324/2013, Human Rights Committee, UN Doc. CCPR/C/116/D/2324/2013 (2016).

Ms. Mellet and her husband travelled to Liverpool and began the abortion process on 29 November 2011. Labour was induced on 1 December, and 36 hours later she gave birth to a stillborn baby girl. Unable to afford a longer stay in England, Ms. Mellet flew back to Ireland 12 hours after giving birth. She was unable to receive post-abortion care in Ireland, including bereavement services, to which Ms. Mellet felt entitled because the hospital offers bereavement care and services to women who carry non-viable pregnancies to term. According to the complaint, she “still suffers from complicated grief and unresolved trauma, and says she would have been able to better accept her loss if she had not had to endure the pain and shame of travelling abroad.”

Ms. Mellet claimed that the Irish abortion law had subjected her to cruel, inhuman and degrading treatment by “1) Denying her the reproductive care and bereavement support she needed; 2) forcing her to continue carrying a dying foetus; 3) compelling her to terminate her pregnancy abroad; and 4) subjecting her to intense stigma.” She indicated that she had suffered intense anxiety and attacks on her physical and mental integrity and dignity because she was forced to travel abroad to obtain her abortion.

The Committee found that the facts in this case constituted a violation of article 7 of the ICCPR and that “[b]y virtue of the existing legislative framework, the State party subjected the author to conditions of intense physical and mental suffering.” The Committee considered that although the prohibition on abortion is enshrined in Irish national law, “the fact that a particular conduct or action is legal under domestic law does not mean that it cannot infringe upon article 7 of the Covenant.” It further stressed that “no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons.” The Committee noted the acute suffering and distress experienced by Ms. Mellet as she attempted to seek medical care, and particularly noted the discontinuation of medical care and health insurance from the Irish health care system, being forced to choose between continuing an non-viable pregnancy and travelling to another country with family support and at her own cost, having to travel back to Ireland before she recovered, being subjected to shame and stigma associated with abortion in Ireland, having the remains of her stillborn baby delivered to her unexpectedly at her home, the refusal of the State to provide post-abortion and bereavement care, and the refusal of health professionals to convey accurate information about her medical options.

Ultimately, taking these factors together, the Committee considered that Ms. Mellet’s case “amounted to cruel, inhuman or degrading treatment in violation of article 7 of the Covenant). It further called on Ireland to “amend its law on voluntary termination of pregnancy, including if necessary the constitution, to ensure compliance with the Covenant, including ensuring effective, timely and accessible procedures for pregnancy termination in Ireland, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions.”

#### *Committee on the Elimination of Discrimination against Women, L.C. v. Peru*<sup>6</sup>

In *L.C. v. Peru*, L.C. is a girl who was sexually abused from the age of 13 in 2006 and who became pregnant as a result. In a state of depression upon discovering the pregnancy, she attempted suicide

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<sup>6</sup> Communication number

Communication No. 22/2009, Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/50/D/22/2009 (2011)

by jumping from a building on 31 March 2007. She survived the suicide attempt but endured extensive injuries including damage to her spinal column causing “paraplegia of the lower and upper limbs requiring emergency surgery.” The surgery was deemed necessary to prevent her injuries from worsening and resulting in permanent disability. The surgery was scheduled for 12 April 2007, but then postponed because of the risk to the pregnancy. Subsequently, the author and her mother requested a legal termination of the pregnancy<sup>7</sup> in order to allow the spinal surgery to proceed.

The hospital authorities responded negatively to the request 42 days later considering that the patient’s life was not in danger. The Deputy Defender for Women’s Rights, having been informed of the case during the period when the hospital was deciding whether to allow the termination, issued a report finding that in these circumstances a therapeutic abortion would be justified. The decision of the medical board was appealed on 7 June 2007. On 16 June 2007, the author suffered a miscarriage. On 27 June 2007, the director of the hospital informed the author that the decision of the board was not subject to appeal. The author underwent spinal surgery on 11 July 2007, about 3.5 months after the injuries were sustained. She is currently paralyzed from the neck down and has only regained partial movement in her hands.

L.C. claimed “the process of requesting an abortion constituted a discretionary and arbitrary barrier to access to a legal service that had irreparable consequences for her life and health and in turn constituted suffering equivalent to torture” and that “forcing her to continue the pregnancy also constituted cruel and inhuman treatment and therefore a violation of her right to physical, psychological and moral integrity.”

The Committee held:

Owing to her condition as a pregnant woman, L. C. did not have access to an effective and accessible procedure allowing her to establish her entitlement to the medical services that her physical and mental condition required. Those services included both the spinal surgery and the therapeutic abortion. This is even more serious considering that she was a minor and a victim of sexual abuse, as a result of which she attempted suicide. The suicide attempt is a demonstration of the amount of mental suffering she had experienced. The Committee therefore considers that the facts as described constitute a violation of the rights of L. C. under article 12 of the Convention. The Committee also considers that the facts reveal a violation of article 5 of the Convention, as the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother

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<sup>7</sup> The law provides that “abortion shall not be punishable if performed by a doctor with the consent of the pregnant woman or her legal representative, if any, when it is the only way to save the life of the mother or to avoid serious and permanent harm to her health”.

## ANNEX II

### Relevant Concluding observations: Committee Against Torture

#### **Concern about restrictive abortion laws that prohibit abortion in the case of rape**

- CAT/C/PER/CO/4 (25 July 2006): Peru
- CAT/C/SLE/CO/1 (20 June 2014): Sierra Leone
- CAT/C/NIC/CO/1 (10 June 2009): Nicaragua
- CAT/C/PER/CO/5-6 (21 January 2013): Peru
- CAT/C/KEN/CO/2 (19 June 2013): Kenya
- CAT/C/POL/CO/5-6 (23 December 2013): Poland
- CAT/C/BOL/CO/2 (14 June 2013): Bolivia—not an outright prohibition, but must obtain permission from a judge in order to receive abortion

#### **Connection between restrictive laws, illegal abortions, and motherhood mortality**

- CAT/C/PER/CO/4 (25 July 2006): Peru
- CAT/C/SLE/CO/1 (20 June 2014): Sierra Leone
- CAT/C/POL/CO/5-6 (23 December 2013): Poland
- CAT/C/PER/CO/5-6 (21 January 2013): Peru
- CAT/C/PRY/CO/4-6 (14 December 2011): Paraguay

#### **Concern about laws that restrict therapeutic abortion**

- CAT/C/SLE/CO/1 (20 June 2014): Sierra Leone
- CAT/C/PER/CO/5-6 (21 January 2013): Peru
- CAT/C/PRY/CO/4-6 (14 December 2011): Paraguay

#### **Calls for more clarity with regards to abortion law**

- CAT/C/PER/CO/4 (17 June 2011): Ireland
- CAT/C/PER/CO/5-6 (21 January 2013): Peru
- CAT/C/KEN/CO/2 (19 June 2013): Kenya

#### **Concern about laws that criminalize abortions in cases of life-threatening pregnancies**

- CAT/C/NIC/CO/1 (10 June 2009): Nicaragua
- CAT/C/PRY/CO/4-6 (14 December 2011): Paraguay

#### **Calls to guarantee unconditional emergency post-abortion treatment**

- CAT/C/NIC/CO/1 (10 June 2009): Nicaragua
- CAT/C/PER/CO/5-6 (21 January 2013): Peru
- CAT/C/PRY/CO/4-6 (14 December 2011): Paraguay
- CAT/C/CR/32/5 (14 June 2004): Chile