



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

**TREATY BODIES**

**JURISPRUDENCE**

**HIGHLIGHTS**

Petitions and Urgent Actions Section

**CRC 93<sup>rd</sup> & 94<sup>th</sup> sessions, CRPD 29<sup>th</sup> session,  
CEDAW 85<sup>th</sup> session**

**Access to abortion services by 13-year-old girl victim of rape and incest and prosecution for self-abortion (CRC communication 136/2021, Camila v Peru)**

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**Discrimination against rural women human rights defender in land dispute (Communication No. 146/2019, X. v Cambodia)**

## CRC 93<sup>rd</sup> session

### ACCESS TO ABORTION SERVICES BY 13-YEAR-OLD GIRL VICTIM OF RAPE AND INCEST AND PROSECUTION FOR SELF-ABORTION

#### Communication No. 136/2021 Camila v Peru

##### Facts

The communication was submitted by a Peruvian indigenous 13-year-old victim of rape and incest. She requested access to legal therapeutic abortion but received no final response to her request. Thereafter she had a spontaneous abortion and was prosecuted and convicted for self-abortion, and later acquitted on appeal.

##### Committee's decision

The Committee considered that, in the case of pregnant girls, the special and differentiated impact of pregnancy on the physical and mental health of children should be considered, as well as the particularly significant risk to the lives of young girls (arising from possible complications in pregnancy and childbirth) and the impact on their development and life plans. The Committee considered that, in the author's case, the lack of information on voluntary termination of pregnancy services and the lack of effective access to such services exposed her to a real, personal and foreseeable risk of mortality, forcing her to carry the pregnancy to term, with clear and foreseeable risks to her life, development and health, in violation of article 6 and 24 of the Convention (right to life and health, respectively). This was compounded by the author's status as a victim of rape by her father, which further aggravated the consequences of the pregnancy on her mental health.

The Committee noted that the author's lack of access to abortion services and her re-victimization by medical, police and judicial personnel caused her severe physical and psychological harm. It noted the particular gravity of the author's criminalization and conviction for self-abortion, which exacerbated and prolonged her re-victimization, in violation of article 37a) of the

Convention (prohibition of torture and ill treatment).

It further found that both the lack of access to therapeutic abortion and the harassment by health and police personnel constituted arbitrary interference with the complainant's privacy, in violation of article 16 (1) of the Convention.

The Committee noted the author's lack of access to safe abortion and her subsequent criminalization for self-abortion constituted differential treatment based on her gender, denying her access to a service essential to her health and punishing her for not complying with gender stereotypes about her reproductive role. It also noted that the author, an indigenous and rural child victim of rape, was also repeatedly ignored and revictimized by the judiciary who prosecuted her for self-abortion and by health and police establishments, as her request for an abortion was repeatedly ignored, and raids were made on her home and school, which in turn led to family and community harassment of the author. The Committee concluded that all the above amounted to intersectional discrimination against the author on the basis of her gender, age, ethnic origin, and social status, in violation of article 2 of the Convention.

##### Remedies

The Committee requested the State party to provide effective reparation to the author, including adequate compensation for the harm suffered and support to enable her to rebuild her life, including to pursue her studies. As guarantees of non-recurrence, the State party should: (a) decriminalise abortion in all cases of child pregnancies; (b) ensure access to legal and safe abortion services for pregnant girls, in particular in cases of risk to the life and health of the mother, rape, incest, or serious foetal impairment; (c) ensure that post-abortion services are available, secure and accessible; (d) amend the regulations governing access to therapeutic abortion (Technical Guide) to provide for its specific application to girls and ensure, in particular, that the special risk to the health and life of the pregnancy in childhood is duly considered, and include differentiated provisions to respond to the needs of indigenous girls; (e) establish a clear and

expeditious remedy in case of non-compliance with the procedure in the Technical Guide regarding access to voluntary termination of pregnancy, and ensure accountability for such non-compliance; (f) provide clear instructions and training to health and judicial personnel -including prosecutors- on the application and interpretation of legislation on therapeutic abortion in line with the Convention and the present Views; (g) ensure the availability and effective access of children to sexual and reproductive health information and services, including information and access to contraceptive methods, and (h) put in place a child-friendly and intersectoral mechanism to respond to child sexual abuse with the aim of avoiding re-traumatisation of the child and ensure appropriate therapeutic interventions without delay.

### **CRC 94<sup>th</sup> session jurisprudence highlights**

#### **CRIMINAL CONVICTION WITHOUT TAKING INTO ACCOUNT THAT THE PERSON CONVICTED WAS A CHILD WHEN ESTABLISHING THE LENGTH OF THE SENTENCE, WITHOUT PROMOTING HIS RESOCIALIZATION AND WITHOUT GUARANTEEING THE REQUIRED DIFFERENTIATED TREATMENT DURING THE SENTENCE'S EXECUTION**

#### **Communication No. 89/2019, D.E.P. v. Argentina**

##### **Facts**

The communication was submitted by an Argentine national serving a 15-year prison sentence for a crime committed when he was a child. He alleged that both the sentence imposed, the lack of periodic review thereof and the lack of an appropriate juvenile justice system violated his rights under articles 3, 4, 37 (b) and 40 of the Convention.

##### **Committee's decision**

The Committee noted that, under the Convention, the juvenile justice system should be differentiated from the adult criminal justice system, and the deprivation of liberty should be used only as a measure of last resort for the shortest period of time. The Committee considered that, under article 37 (b) (prohibition of unlawful and arbitrary detention) and 40 (1) (treatment of children in

conflict with the penal law), a State party has the duty to demonstrate two separate aspects when a deprivation of liberty sentence is handed. First, it must show that the deprivation of liberty is being used as a last resort, considering other non-custodial measures. Second, that the duration of the sentence does not extend beyond what is necessary to fulfil the aims on which the need for the sentence is based. The Committee highlighted that this included a right to regular review of the sentence.

In the author's case, the Committee noted that neither in the sentence nor in its respective appeals, did the courts justify the necessity of the imprisonment in the terms described previously, beyond the gravity of the crime committed. The Committee also considered that in neither of the decisions there was an express assessment of the application of alternative non-custodial measures that justified imposing the sentence as a last resort and for the shortest appropriate period of time, in violation of articles 37 (b) and 40 (1) of the Convention.

The Committee also noted that the juvenile justice system applicable in Argentina pursuant to a Decree-Law issued in 1980 was not aligned with the provisions of the Convention, as had been recognized by the Argentine Supreme Court in 2008, the Committee itself in its concluding observations of 2010, and by the Inter-American Court in 2011. The Committee considered that Argentina's failure to align the juvenile justice regime with the standards set out in the Convention violated article 4 (obligation to undertake all appropriate measures for the implementation of the Convention rights), read in conjunction with articles 37 (b) and 40 (1) of the Convention, which requires that State parties adopt provisions in domestic law to give effect to the rights under the Convention.

##### **Remedies**

The Committee requested that Argentina grant the author effective reparation for the violations suffered and prevent similar violations in the future, by a) derogating Decree-Law No. 22.278 on juvenile justice and adopting a new juvenile justice system in line with the Convention; b) ensuring a juvenile justice regime that extends protection to children who were under the age of 18 at the time when they committed the offence but who reached that age during the trial or sentencing process, and guarantee a regular review of the sentence while it is being served to assess its necessity; and c) taking all necessary measures, including strengthening the

policy of non-custodial measures and reintegration measures for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short as possible.

### **DEPORTATION OF FATHER OF THREE CHILDREN TO NIGERIA AFTER HAVING BEEN CONVICTED OF DRUG POSSESSION, THEREBY SEPARATING HIM FROM HIS CHILDREN**

**Communication No. 145/2021, C.C.O.U. et al v. Denmark**

#### **Facts**

The communication was submitted by a Nigerian citizen, whose requests for international protection and residence status in Denmark were refused. He alleged that his deportation to Nigeria would violate the rights of his children, as the impact of the separation of the children from their father/stepfather was not considered during the different proceedings and their best interests was not taken into account as a primary consideration.

#### **Committee's decision**

The Committee noted that Denmark had failed to consider the impact of the separation on the children in the particular circumstances of the case, including the children's young age and the mother's chronic health condition. The Committee noted that contact through social media platforms does not ensure that the children can maintain adequate and meaningful personal relations and direct contact with the complainant.

The Committee acknowledged the State party's legitimate interest in enforcing its criminal and migration laws and decisions but considered that this interest needs to be balanced against the children's right not to be separated from their parents. It noted that particular weight should be given to the necessity and proportionality of the return order, as well as to the particular impact that the separation would have on the children, taking into account their views. The Committee noted that a detailed assessment of the best interests of the children would have been paramount in this case and considered that the authorities' failure to assess the impact of the decisions on the children and to enable continued contact with their father violated their rights under articles 3 (best interests of the child) and 9 (1) of the Convention (right not to be separated from their parents).

#### **Remedies**

The Committee decided that Denmark is under the obligation to refrain from returning the author to Nigeria, and to ensure a reassessment of his claim, taking the best interests of the children as a primary consideration. The state party is also requested to ensure that asylum or other proceedings directly or indirectly affecting children ensure an assessment of the best interests of the child as a primary consideration and to guarantee that decisions involving the separation of children from one of their parents or caregivers should particularly ensure a careful consideration of the separation on the children in light of their specific circumstances, and consider all possible alternatives to such separation.

### **CRPD 29th session jurisprudence highlights**

#### **FORCED EARLY RETIREMENT OF A POLICE OFFICER FOLLOWING AN ACCIDENT**

**Communication No. 47/2018, J.M.V.A. v. Spain**

#### **Facts**

The author worked as an officer in the municipal police of L'Hospitalitet de Llobregat in Catalonia. In 2008, he acquired a disability due to a traffic accident. As a result, the Ministry of Labour and Immigration declared that his status was one of "total permanent disability for the performance of his occupation". The author then requested to be assigned for modified duty. However, the Municipal Council rejected his request. The author's appeals against this decision and his petition for *amparo* were also rejected.

#### **Committee's decision**

The Committee recalled that article 27 (1) of the Convention required States parties to recognize the right of persons with disabilities to retain their employment, on an equal basis with others; to take all appropriate steps, including through legislation, to prohibit discrimination on the basis of disability with regard to the continuance of employment; and to ensure that reasonable accommodation was provided to persons who acquired a disability during the course of employment. The Committee also recalled that the process of seeking reasonable accommodation should be cooperative and interactive and aim to strike the best possible

balance between the needs of the employee and the employer. The Committee noted that the authorities' failure to enact local modified-duty regulations had ruled out the possibility of evaluating the barriers to the author's retention within the police force as he had been deprived of his status as a public official upon his mandatory retirement and had no possibility to request reasonable accommodation that would have enabled him to perform modified duty. The Committee therefore concluded that the author's mandatory retirement constituted a violation of article 27 (1) (a), (b), (e), (g), (i) and (k), read alone and in conjunction with article 3 (a), (b), (c), (d) and (e); article 4 (1) (a), (b), (d) and (5) and article 5 (1), (2) and (3) of the Convention.

This decision follows the Committee's previous jurisprudence on the same issue (*V.F.C. v Spain* (CRPD/C/21/D/34/2015); *M. R. I V. v Spain* (CRPD/C/26/D/48/2018); and *J.M. v Spain* (CRPD/C/23/D/37/2016).

### Remedies

The State party was requested to: a) afford the author the right to compensation for any legal costs incurred in filing the communication; b) take appropriate measures to ensure that the author was given the opportunity to undergo an assessment of fitness for alternative duties for the purpose of evaluating his potential to undertake modified duties or other complementary activities, including any reasonable accommodation that might be required; c) take all necessary measures to align the modified-duty regulations of L'Hospitalitet de Llobregat municipal police with the principles enshrined in the Convention and the recommendations contained in the Committee's decision; and d) harmonize the variety of local and regional regulations governing the assignment of public servants to modified duty in accordance with the principles enshrined in the Convention and the recommendations contained in the decision.

## FORCED PSYCHIATRIC TREATMENT OF PERSON WITH DISABILITY

### Communication No. 61/2019, S.M. v. Denmark

#### Facts

The communication was submitted by a Danish national, who in 2012 started sending threatening

emails to doctors and public officials. The author was charged under the Penal Code. A psychiatric examination found him to have been "of unsound mind" when sending the emails. The author was then convicted and sentenced to psychiatric treatment, pursuant to which he underwent forced psychiatric treatment, including medication.

### Committee's decision

The Committee reaffirmed that all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, are entitled to liberty pursuant to article 14 of the Convention. The Committee recalled that treatment is a social control sanction and should be replaced by formal criminal sanctions for offenders whose involvement in crime has been determined. The Committee also recalled that sentencing a person to treatment is incompatible with article 14 of the Convention. The Committee noted that the decision not to establish a maximum time exposed the author to the possibility of a much lengthier sanction than would be imposed on an offender not found to be "of unsound mind". The Committee therefore found that the imposition of forced psychiatric treatment on the author breached his rights under article 14. The Committee also found that the forced administration of medication on the author violated his right to personal integrity under article 17, read in conjunction with article 25 of the Convention (right to health).

### Remedies

The State party was requested to: a) provide the author with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation; b) make a public acknowledgement of the violation of the author's rights and to adopt any other appropriate measure of satisfaction; and publish the Committee's decision and circulate it widely in accessible formats; and c) take measures to prevent similar violations in the future and to ensure effective access to justice for persons with disabilities on an equal basis with others. In this regard, the Committee referred to the recommendations contained in its concluding observations on the initial report of Denmark and its Guidelines on the right to liberty and security of persons with disabilities.



## **CEDAW 85th session jurisprudence highlights**

### **DISCRIMINATION AGAINST RURAL WOMAN HUMAN RIGHTS DEFENDER IN A LAND DISPUTE**

#### Communication No. 146/2019, X. v Cambodia

##### **Facts**

The communication was submitted by a Cambodian national from La Peang village, a community that has been involved for a decade in a land dispute with a development company. The author claimed that she suffered judicial harassment, loss of property, relocation to inadequate housing and death threats as a result of being at the forefront of the community's efforts to stop the acquisition of land by the company. The author submitted that the State party failed to remedy the discrimination she faced as a rural woman human rights defender in the context of land-related human rights violations. She further claimed the judiciary took active steps to impair her work as a human rights defender.

##### **Committee's decision**

The Committee recognized that forced eviction is not a gender-neutral phenomenon, but that it disproportionately affects women. In this regard, it noted the author's submission that she was adversely affected by the inaction of the State party's authorities as a rural woman, a human rights defender and a mother, given that she lost her property and the home for her children, was unable to continue working and was forcibly relocated to inadequate housing. The Committee found a violation of articles 2 (c) and (e) and 3 for lack of measures undertaken by the State party to protect the author from discrimination against her by the company.

The Committee recalled that involuntary displacement negatively affects rural women in multiple ways, and they often suffer gender-based violence in that context. The Committee found a violation of articles 14 (1) and (2) (a), (g) and (h) for lack of measures undertaken by the State party's authorities to ensure the author's adequate living standards and her participation in the

elaboration, implementation and planning of KDC International's project.

The Committee also found a violation of articles 2 (c) and (d) and 15 (1) as it considered that the criminal proceedings against the author constituted reprisals against her for her activism, which prevented her from continuing to defend the interests of her community in the land dispute in a context of intimidation and harassment of female human rights defenders who advocate for women's land rights. The Committee noted that the failure of the State party's authorities to respond to the author's petitions resulted in the lack of equal protection of the law and lack of remedy for the breaches of her rights, in violation of articles 2 (e) and 15 (1) of the Convention.

##### **Remedies**

The State party was requested to: a) provide full reparation to the author, including adequate compensation, commensurate with the gravity and the ongoing consequences of the violations of her rights; b) take effective measures to ensure that the author can enjoy her rightful access to land; c) take all appropriate measures to ensure that the author can defend the interests of her community safely and freely; d) take legislative and policy measures to ensure the effective enjoyment by rural women of their right to access to land and tenure security and eliminate discrimination against rural women in this context; e) ensure that acquisitions of land for economic and other concessions follow due process, including free, prior and informed consent and thorough and impartial reviews of any claims of ownership made by women following sufficient consultative processes, taking into account that, depending on the circumstances, furnishing documents relating to title to property may be impossible, and that adequate compensation is provided; f) ensure that claims concerning discrimination against women in the context of forced evictions, as well as claims of intimidation of or discrimination against rural women and human rights defenders, are addressed and investigated promptly and thoroughly and that, wherever appropriate, perpetrators are investigated, prosecuted and sanctioned; g) ensure that evicted communities are relocated to sites that enable women to have access to their places of employment, schools, health-care centres (including sexual and reproductive care), community centres, and other services and amenities necessary to ensure the realization of their rights under the Convention; h) take specific and effective measures to ensure a safe and

enabling environment for rural women and human rights defenders; and h) provide training to judicial institutions on the Convention, the Optional Protocol thereto and the Committee’s general recommendations, in particular general recommendations No. 28 (2010), No. 33 (2015), No. 34 (2016) and No. 35 (2017), to apply a gender lens and raise awareness of the human rights of rural women and women human rights defenders.

## **GENDER-BASED PERSECUTION AS A GROUND FOR ASYLUM**

### Communication No. 173/2021, Tahereh Mohammadi Bandboni et al v Switzerland

#### **Facts**

The communication was submitted by a national of the Islamic Republic of Iran. The author claimed that by returning her and her family to the Islamic Republic of Iran, the State party would expose her to the imminent risk of gender-based persecution and other forms of violence by her father and brothers, and that the Iranian authorities would not be in a position to provide her protection.

#### **Committee’s decision**

The Committee considered that it was incumbent upon the State party to undertake an individualized assessment of the real, personal and foreseeable risk of gender-related persecution and honour-related violence that the author would face if she were to be returned to the Islamic Republic of Iran. It noted that the Federal Administrative Court acknowledged the author’s vulnerability, as a Persian Shiite Muslim woman who had disobeyed her father’s will, “dishonoured” her family by becoming pregnant out of wedlock, been beaten during pregnancy, been threatened with death and pressured to undergo an abortion, and had married religiously the father of her child (a Kurdish Sunni Muslim from Iraq, not accepted by her family owing to his ethnicity and religious denomination). In this regard, the Committee noted the persistent institutionalized discrimination against women and girls in public and private life enshrined within civil and penal law and practice in the Islamic Republic of Iran, the patriarchal values and misogynist behaviours that permeate many segments of Iranian family life, and the law enforcement agencies’ reluctance to intervene in domestic violence and honour crime cases were not sufficiently addressed by the State party in the context of the case at stake. For this reason, the

Committee concluded that the State party failed to fulfil its obligations and that the deportation of the author would amount to a breach of articles 1-3, 15 and 16 of the Convention.

#### **Remedies**

The State party was requested to: a) reopen the author and her family’s asylum case, taking into account the Committee’s views; b) refrain from forcibly returning the author and her family to the Islamic Republic of Iran, where the author would be exposed to a real, personal and foreseeable risk of severe forms of gender-based violence, while the case is under re-examination; c) take all measures necessary to ensure that victims of gender-based forms of persecution who are in need of protection are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to gender-based violence or to torture or ill treatment; d) ensure that the threshold for accepting asylum applications is measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of gender-based persecution or that she would be exposed to gender-based persecution upon her return; e) ensure that, whenever necessary, examiners use all the means at their disposal to produce and/or verify the necessary evidence in support of the application, including by seeking and gathering information from reliable governmental and non-governmental sources on human rights in the country of origin, in particular relating to the situation of women and girls, and taking all necessary measures in that regard; and f) ensure, when interpreting all legally recognized grounds for asylum, the classification of claims for asylum on the basis of gender on the grounds of membership of a particular social group, where necessary, and consider adding sex and/or gender and other status to the list of grounds for refugee status in national asylum legislation.