



Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 136/2021*,** **

<i>Communication presented by:</i>	Camila ¹ (represented by Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos, PROMSEX)
<i>Alleged victim:</i>	Camila
<i>State party:</i>	Peru
<i>Date of communication:</i>	8 October 2020
<i>Date of adoption of the opinion:</i>	15 May 2023
<i>Subject:</i>	Lack of access to therapeutic abortion for girl victim of sexual violence by father
<i>Procedural issues:</i>	Exhaustion of internal resources
<i>Substantive issues</i>	Discrimination; right to life; arbitrary/illegal interference with privacy; right to health; torture; right to life.
<i>Articles of the Convention:</i>	2; 6; 12; 13; 16; 17; 24; 37a, 39, 40
<i>Articles of the Optional Protocol:</i>	7e)

* Adopted during the 93rd session (8-26 May 2023).

** The following members of the Committee participated in the examination of this communication: Suzanne Aho, Aïssatou Alassane Moulaye, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Sopi Kiladze, Faith Marshall-Harris, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

¹ Pseudonym used by the author.

1 The author of the communication is Camila, a Peruvian national born on 13 May 2004. She claims to be a victim of a violation by the State party of her rights under articles 2, 6, 12, 16, 17, 24, 37, 39 and 40 of the Convention. The Optional Protocol entered into force for the State party on 6 April 2016. Camila is legally represented.

The facts according to the author

2.1 Camila was born in Huanipaca, department of Apurímac, a rural area of the Peruvian highlands, in a Quechua-speaking indigenous community. She grew up in a mud house without access to electricity and running water, accessed by an unpaved path. Her mother is illiterate and has a physical disability (paralysis of the spine and legs). The family has a very low level of income, coming mainly from Camila's father's work as a day labourer.

2.2 Camila was a victim of sexual violence by her father on several occasions from the age of nine. In September 2017, when Camila was 13 years old, she was subjected to rape by her father and became pregnant as a result.

2.3 In early November 2017, teachers at Camila's school told her mother that she had been absent from school and had reported nausea and headaches, that her performance had dropped and that she was sad and isolated. When Camila told her mother that she had not been menstruating for two months, her mother asked Camila's cousin how they could check if she was pregnant, as they did not have any information. The cousin informed them about the existence of rapid tests, sent them one and helped them read the result, which was positive.

2.4 On 9 November 2017, Camila went to a private laboratory in Abancay, a city two and a half hours away by bus, where she took a blood test and received a positive result for pregnancy. Camila revealed to her mother and godmother that she had been raped by her father.

2.5 On 11 November 2017, the godmother accompanied Camila to the Huanipaca health centre, where she was attended to by a nurse. After being asked about the co-offender, Camila stated that she had been a victim of rape by her father. That same day, Camila went to the Guillermo Díaz de la Vega (hereinafter, G.D.V.) hospital in Abancay, where she was confirmed to be 13.6 weeks pregnant. Camila burst into tears and announced to the hospital staff that she did not want to be pregnant or to have her father's child. However, she was not informed of her right to a therapeutic abortion.

2.6 On 16 November 2017, Camila went to the Huanipaca health centre for a check-up. Once there, she again told the medical staff that she did not want to be pregnant. Camila was crying incessantly and uncontrollably and did not feel like eating or drinking water. However, the medical staff continued with the prenatal care programme and ordered her to undergo an ultrasound scan in Abancay.

2.7 On 6 December 2017, Camila went to the health centre because she was very weak and crying uncontrollably. At the consultation, she reiterated that she did not want to continue the pregnancy. However, the hospital staff limited themselves to informing her about the importance of an adequate diet to cope with the pregnancy.

2.8 On 9 December 2017, a team from the health centre went to Camila's home for a check-up. Without listening to her wishes, they gave her prenatal care, proposed a birth plan and insisted that she should go to Abancay for an ultrasound scan. This visit caused her great anguish and aggravated her state of health. From that moment on, Camila began to say repeatedly that she wanted to die and that she would take her own life if she did not terminate the pregnancy.

2.9 On 13 December 2017, Camila and her mother, with the advice of the APRODEH Association, requested the legal termination of pregnancy in accordance with Resolution 486/2014 of the Ministry of Health, which establishes the "National Technical Guide for the Standardisation of the Procedure for the Comprehensive Care of the Pregnant Woman in the Voluntary Interruption for Therapeutic Indication of pregnancy under 22 weeks with informed consent in the framework of the provisions of Article 119 of the Criminal Code."

(hereinafter referred to as the "Technical Guide").² According to the Technical Guide, the hospital was required to convene a medical board to resolve the request within a maximum of 6 days. However, the hospital director referred the request to the legal department, and subsequently to the head of the obstetrics department, who issued an opinion on 20 January 2018 - more than a month later - requesting a medical report certifying the risk to the health and life of the pregnant woman and an ultrasound scan showing the gestational age. Camila notes that she never received a final response to her request, nor was she notified of the medical opinion referred to, despite the hospital having her contact details.

2.10 On 14 December 2017, Camila and her mother submitted the request for voluntary termination of pregnancy to the prosecutor in charge of the criminal investigation for rape so that a health centre could be designated to assess whether the conditions established in the Criminal Code for such termination were met. However, they did not receive a response to their request.

2.11 On 19 December 2017, Camila went to the G.D.V. hospital at 4 a.m. when she had severe abdominal pain. She was kept there on standby until 9 a.m., when she was admitted for threatened miscarriage. She was given medication to prevent the loss of the pregnancy. Five hours later, she was diagnosed with "spontaneous rupture of ovarian membranes with elimination of abundant amniotic fluid and transvaginal bleeding". As it was an "incomplete abortion", she had to undergo an emergency uterine curettage and was discharged two days later. In the absence of a protocol regulating the disposal of the remains of an abortion, the remains were given to Camila's godmother, who buried them in the courtyard of her home.

2.12 That same day, a team from the Huanipaca health centre - not informed of the miscarriage - again went to Camila's home to carry out prenatal checks. Since she refused to be visited, the team went to her home again the next day accompanied by police personnel. When she again refused to be examined, a report was drawn up stating that she had to report to the medical centre the following day. On 24 December 2017, a team from the health centre again went to Camila's home, recording that she had been seen on 19 December at the G.D.V. hospital for a pregnancy loss.

2.13 As a result of repeated visits by the health team and police personnel to Camila's home, community pressure on her intensified and she was blamed for the pregnancy loss and sexual violence. Community members began to make humiliating comments about Camila's behaviour and the reasons why she was wanted by the police. As a result, Camila felt stigmatised and stopped attending school.

2.14 On 31 December 2017, Camila went to the health centre for abdominal pain and was diagnosed with possible retained foetal remains. In January 2018, Camila went to the G.D.V. hospital for psychological consultation, where it was found that she was being persecuted and harassed by the Huanipaca health centre and mistreated by her mother and brother as a result of the rape. Childhood depression, signs of psychological abuse, unstable family situation and post-traumatic stress disorder were found. Psychotherapy sessions were started, but were discontinued after 3 sessions, although the treatment was incomplete.

Administrative procedure for irregularities in medical care

2.15 On 28 March 2018, Camila filed an administrative complaint with the Intendencia de Protección de Derechos de Salud of the Ministry of Health, alleging non-compliance with health regulations by the Huanipaca health centre and the G.D.V. hospital during the care and loss of her pregnancy. In particular, she pointed out that, according to the Technical Health Standard on Comprehensive and Differentiated Care for Adolescent Pregnant Women during Pregnancy, Childbirth and Puerperium, of the Ministry of Health (NTS N.130/2017/MINSA), pregnant adolescents must be attended exclusively in a hospital by specialists in gynaecology, obstetrics or paediatrics because they are high-risk pregnancies for the life and health of the pregnant women. However, Camila, who had just turned 13, had

² Article 119 of the Penal Code of the State party (Legislative Decree No. 635) provides that "Abortion performed by a physician with the consent of the pregnant woman or her legal representative, if she has one, is not punishable when it is the only means to save the life of the pregnant woman or to prevent serious and permanent damage to her health.

nine check-ups at the Huanipaca health centre, a health post with no equipment or specialised medical staff. Likewise, in none of the check-ups was she informed about her right to therapeutic abortion, in accordance with the Penal Code and the Technical Guide. Camila also denounced the hospital's failure to comply with the procedure for the voluntary termination of pregnancy, by imposing obstacles and failing to comply with the deadlines for responding to her request, as well as the lack of response to her request. The complaint was admitted on 9 May 2018. On 16 July 2018, Camila requested that her complaint be resolved as the maximum legal deadline for such resolution had passed. On 5 September 2018, Camila filed an extension of the complaint, including the nurse from the health centre who brought the local police to her home to pressure her to continue with the pregnancy, stating that this appearance was illegal and had the sole purpose of intimidating her, being revictimising and violating her right to privacy. The complaint was also extended to the inadequacy of the Technical Guide to guarantee access to abortion for girls and adolescents, and for indigenous people, as it did not contain differentiated indications to respond to their particular needs. On 5 March 2019, Camila again requested a final ruling on her administrative complaint.

2.16 On 8 March 2019, the Intendencia de Protección de Derechos de Salud issued a final report on Camila's complaint, in which it found: 1. that the G.D.V. hospital failed to comply with the Technical Guide because it did not convene a medical board to evaluate the request for termination of pregnancy or notify the decision, 2. that the Huanipaca health centre failed to comply with the rules for the care of high-risk pregnancies of girls and adolescents because she was not referred to a hospital to be attended by a specialist, 3. that the health centre did not comply with the rules for the care of high-risk pregnancies of girls and adolescents because it did not refer her to a hospital to be attended by a specialist, 4. that the health centre was not found to be responsible for not informing her about the right to termination of pregnancy because it did not inform her about the right to termination of pregnancy. That the responsibility of the health centre for not having provided information on the right to termination of pregnancy was not proven, given that the Technical Guide is not applicable to such centres, and 4. The centre was not found responsible for the violation of Camila's privacy due to the police intervention, given that the police were already aware of the facts due to the existence of a complaint against the aggressor. On 8 April 2019, Camila appealed the report to the Deputy Superintendence of Regulation and Oversight of the Ministry of Health. On 22 May 2019, the Superintendence resolved the appeal, confirming the findings of the report of 8 March 2019.

2.17 On 27 November 2019, the resolution initiating the disciplinary proceedings against the G.D.V. hospital and the Huanipaca health centre was notified. However, to date, it has not been notified of any decision or of the imposition of any sanction on the establishments subject to the sanctioning procedure.

Criminal proceedings for rape

2.18 On 11 November 2017, Camila's godmother and nurses from the health centre filed a complaint of rape at the Huanipaca police station. The following day, the prosecutor assigned to the case ordered a medical examination of Camila, confirming her gestational age of 13.6 weeks. Camila testified to the father's rape and her desire not to continue with the pregnancy. On the same day, Camila's mother reiterated her account of sexual violence and her daughter's rejection of the pregnancy. On 22 November 2017, preliminary proceedings were initiated for the alleged crime of rape, summoning Camila and her father to testify jointly on 30 November 2017, without the Prosecutor's Office taking measures to protect Camila. When the accused failed to appear to testify on the scheduled date, he was remanded in custody. For her part, Camila appeared to testify, recounting the sexual abuse and her desire not to continue the pregnancy. On 1 December 2017, the prosecutor's investigation took place at the scene of the crime, with Camila's father appearing, along with his defence, the forensic team and the prosecutor in charge. The accused accepted the charges and indicated the exact location of the rape. The accused was arrested and the opening of the preparatory investigation against him was formalised.

2.19 Despite Camila's statement, the confession of the accused and the medical results, the prosecutor declared the case "complicated" and indicated that the investigation would be delayed because it would be necessary to wait until the birth of the baby so as not to put her

life at risk by carrying out additional "technical expertise" necessary for the investigation, setting a time limit of 8 months for the preliminary investigation. Camila states that she was also not informed by the prosecutor's office or the police of her right to terminate her pregnancy.

2.20 On 20 December 2017, two members of the UDAVIT team conducted a home visit to Camila. When they did not find her at home, the team went to the school and interviewed the headmaster.

2.21 On the prosecutor's orders, a social worker went to the G.D.V. hospital on 27 December 2017 and interviewed medical staff, conducting an "investigation with the staff" into Camila's pregnancy loss. On 29 December 2017, the prosecutor sent copies of the file with all the proceedings to initiate an investigation for the crime of self-abortion³, based on Camila's statements that she did not want the pregnancy. Despite the fact that a criminal investigation had already been initiated against Camila in the family courts, and exceeding the scope of her investigation, the prosecutor continued to conduct proceedings between January and April 2018 to determine the existence of self-abortion, including: request for the results of the gynaecological evaluation, request for a statement from Camila's godmother about the fate of the foetal remains, three requests for a witness statement from the gynaecologist who attended Camila during the miscarriage, request for a new inspection of the scene of the events, a new summons for Camila to appear "under threat of contempt"⁴, request for an exhumation and autopsy of the foetal remains, and new DNA samples to be taken from Camila.

2.22 On 16 April 2018, a psychological report was submitted to the prosecutor based on a telephone communication with Camila, indicating that she moved to Abancay to live with her aunt due to community pressure.

2.23 The first action on the accused did not take place until 27 April 2018, when his psychosexual profile was requested. The report reflects that he accepted that he had sexual relations with Camila, but stated that they were by mutual agreement and that she was not his daughter.

2.24 On 1 August 2018, Camila requested the exclusion of the prosecutor from the case, pointing out the repeated illegal actions, a request that was declared inadmissible.

2.25 On 10 August 2018, a 4-month extension of the investigation was ordered, and Camila's objection was rejected. On 29 October 2018, the aggressor was charged as allegedly responsible for the crime of rape of a minor, and sentenced by judgment of 7 May 2019 to life imprisonment and payment of 50,000 soles (about 14,000 USD) as compensation to Camila. Camila's appeal for 500,000 soles in reparation was dismissed on 27 September 2019.

Criminal proceedings for self-abortion

2.26 On 1 March 2018, the provincial prosecutor applied to the specialised family court for Camila's conviction as a perpetrator of the crime of self-abortion, which carries a sentence of up to two years' imprisonment. On 19 March 2018, the judge in charge charged Camila, summoning her to appear and ordering her to undergo a psychological personality test. Camila's defence objected to the test on the grounds that it was not useful for the case and that it was not in Camila's best interests. On 30 May 2018, Camila requested the change of the criminal offence to sentimental abortion⁵, as it was an abortion resulting from rape. The

³ The crime of self-abortion was regulated by Article 199 of the Peruvian Penal Code at the time of the facts (current Article 114): *The woman who causes her abortion, or consents to another to perform it, shall be punished with imprisonment of no more than two years or with community service of fifty-two to one hundred and four days.*

⁴ The author points out that this summons contravenes the provisions of the Single Interview Guide, as well as article 25 of Law 30364 on protection against violence, which prohibits the reconstruction of the facts with the presence of the victim under 14 years of age.

⁵ Article 120 of the Peruvian Penal Code criminalises sentimental abortion in the following terms: *When the pregnancy is the result of rape outside marriage or non-consensual artificial insemination outside marriage, provided that the facts have been denounced or investigated, at least by the police; or 2.*

prosecutor's opinion of 20 May 2018 opposed the reclassification, stating that sentimental abortion would only apply "if Camila had accepted having committed abortive manoeuvres". On 14 June 2018, the defence submitted observations to the prosecutor's report, alleging that the prosecutor's decision was cruel to Camila by demanding her confession in order to modify the criminal offence, when this depends on objective elements such as the origin of the pregnancy and sexual violence.

2.27 On 10 July 2018, Camila filed an amparo action before the Second Family Court of Abancay for the unjustified delay of the procedure, for lack of confidentiality of her identity as legally required, and for violation of the child's rights. On 16 August 2018, the amparo was declared inadmissible.

2.28 On the same day, Camila was convicted of the crime of self-abortion. The only grounds for the conviction were Camila's claim of wanting to terminate the pregnancy and her medical records. On the same day, Camila appealed the conviction. On 5 March 2019, she filed a request for the appeal to be heard in view of the unjustified delay, which was reiterated on 5 April 2019. On 4 June 2019, Camila's mother filed a complaint with the Office for the Decentralised Control of the Judiciary against the judge in charge for undue delay in the proceedings. On 17 June 2019, the Mixed Chamber of Abancay of the Superior Court of Justice of Apurímac declared the appeal well-founded and revoked the conviction, ordering the definitive closure of the case.

The complaint

3.1 The author claims to be a victim of a violation of her right to health under article 24 of the Convention, read alone and in conjunction with her right to life (article 6). Both the poor quality of the medical care she received and the lack of access to therapeutic abortion, and the failure to provide her with information about the serious risk to her life and health posed by the pregnancy and about her right to legal termination of pregnancy constituted a violation of her right to health. She claims that the health professionals and authorities acted without considering her needs as a child or her best interests. She points out that the prenatal care she received did not comply with internal regulations, which require care by a specialist doctor, and that she was attended 9 times by a nurse. Likewise, she was not guaranteed access to information on reproductive health, violating her right to be heard and to participate meaningfully in decisions about her health. She points out that the medical staff also failed to comply with internal regulations, ignoring the procedure for the authorisation of therapeutic abortion and omitting to notify Camila of the decision, making inaccessible an essential and urgent service to protect her health and exposing her to an obstetric emergency such as spontaneous abortion, for which she was also prosecuted and re-victimised.

3.2 The author states that the forced pregnancy and the legalization of the miscarriage affected her mental and social health, suffering symptoms compatible with depression, anxiety and suicidal ideation during the pregnancy due to the rejection of the pregnancy and of a motherhood resulting from the sexual violence perpetrated by her biological father. She notes that she did not receive adequate treatment for her mental health, receiving only 3 sessions of psychological care despite needing long-term and specialised treatment given that the sexual violence, the forced pregnancy, the miscarriage and the judicialisation had long-lasting consequences in her life, requiring mental and physical rehabilitation. She notes that she had to leave her home and move to another city due to harassment and stigmatisation from the community and lack of adequate support from the health and education system. She adds that she currently resides with her aunt, who supported her to continue her studies, and that she is struggling to rebuild her relationship with her mother and brother, for which she has not received any help.

3.3 The author argues that the current regulations are inadequate to guarantee access to safe abortion for girls and adolescents as a special protection group. She points out that the Technical Guide, issued in 2014 to improve access to therapeutic abortion, which has been legal since 1924, does not consider the particular case of girls and adolescents in forced pregnancies, whose physical, mental and social health is at greater risk than that of adult

When it is probable that the child being formed will have serious physical or psychological defects at birth, provided that there is a medical diagnosis.

women. These guidelines state that "only when the medical diagnosis shows that the life of the pregnant woman is at risk, or to avoid serious and permanent damage to her health, will the possibility of voluntary termination for therapeutic indication of a pregnancy of less than 22 weeks be considered, with the informed consent of the pregnant woman". This provision has favoured a restricted interpretation of therapeutic abortion that has led to a high rate of maternal deaths in children under the age of 19, with girls between the ages of 10 and 14 having four times the risk of dying during childbirth.⁶ In Camila's case, this normative omission had devastating consequences, exposing her to greater risk to her health and life and favouring the judicialisation and re-victimisation and the alteration of her life project. Likewise, the lack of an intercultural perspective in the Technical Guide meant that the health personnel ignored her as an indigenous and rural girl and did not notify her of the risk situation or respond to her request for a therapeutic abortion.

3.4 The author claims that the State party violated her right to life, survival and development by exposing her, given her age, to a real, personal and foreseeable risk of mortality due to possible complications during pregnancy and childbirth, and of death by suicide. She notes that the authorities and health professionals did not take any measures to prevent this risk and to guarantee her right to life.

3.5 The author alleges that both the sexual violence to which she was subjected and the forced pregnancy without access to therapeutic abortion constituted forms of torture, in violation of article 37 of the Convention. She states that the sexual violence caused her intense physical and mental suffering, with serious and permanent consequences on her mental and social health, accentuated by her age (having been a victim since she was 9 years old), her vulnerability and dependence on the aggressor, and the resulting pregnancy. As a victim of incest, she suffered a particularly dehumanising form of abuse that destabilised her family relationships and created a situation of profound helplessness. Furthermore, the lack of information and obstruction of access to therapeutic abortion by the health and judicial authorities constituted a form of torture or cruel, inhuman or degrading treatment. The lack of a definitive response to her request for termination of pregnancy exposed her to a risky pregnancy and incrimination. She adds that the use of the police to pressure her to continue the pregnancy caused her great distress and fear, as well as humiliation by her community.

3.6 The author alleges a violation of her right to privacy (article 16 of the Convention), read alone and in conjunction with her right to special protection as a child (article 2) and her right to participate meaningfully in decisions concerning her life (article 12). She claims that she was not guaranteed access to sexual and reproductive health services, being forced to follow a forced pregnancy when it was a decision relating to her reproductive autonomy, a component of the right to privacy. She adds that she expressed that she did not want the pregnancy as soon as she knew about it and tried to exercise her right to an abortion. However, the authorities did not consider her opinion and denied her information about legal options to protect her health and life. In addition, medical and police personnel harassed her to continue with the pregnancy through home visits, violating her right to privacy by alerting the community about her situation, causing her to be blamed and socially rejected and forcing her to leave the community.

3.7 The author claims that the State party violated her right to access to information under article 17 of the Convention, and in particular to seek and receive information on sexual and reproductive health and on the health services available to her in order to be able to make informed decisions and claim her rights. She notes that she did not receive information on sexual and reproductive health both as part of her formal education and during pregnancy. She alleges that the absence of such information, and in particular the risks associated with pregnancy, constituted a failure by the State party to act with due diligence. Given her vulnerability as a child victim of sexual violence, such information should have been provided in an appropriate manner, taking into account her ethno-cultural background and age, respecting her wishes and seeking her consent.

⁶ Promsex. Report *Inadequate implementation of the therapeutic abortion protocol*: <http://incidencianacional.promsex.org/wp-content/uploads/ProtocoloAbortoTerapeutico.pdf>

3.8 Finally, the complainant claims that she is the victim of a violation of her right not to be discriminated against (article 2 of the Convention), read in conjunction with her right not to be revictimized during the judicial proceedings both as a victim of sexual violence (article 39) and as the alleged perpetrator of a crime (article 40). She claims that in the criminal proceedings for sexual violence, the measures for the reinforced protection of children were not adopted. The prosecutor in charge of the investigation harassed her because of her unfounded belief that she had caused the abortion, diverting the investigation to concentrate on gathering evidence on the possible commission of the crime of self-abortion despite the fact that this was not only not within the prosecutor's competence, but also violated her rights as a child victim of sexual violence. In this sense, the prosecutor ordered procedures such as the examination of the scene of the events with the obligatory presence of the victim, the repeated testimonies and expert opinions, or the use of Camila's statements to incriminate her. Likewise, the extension of the preliminary investigation for rape despite sufficient evidence of the father's criminal responsibility was aimed at the criminal prosecution of Camila, in contravention of her best interests and procedural guarantees. She points out that the judiciary became a "second aggressor", which even ended up charging her with the crime of self-abortion, causing her direct harm such as the loss of her place of residence, her social circle and the disruption of her life project. Likewise, her conviction at first instance, handed down without considering the exceptions relating to the atypical nature of the conduct or the inexistence of any evidence and without even making reference to the conduct that would have provoked the intentional abortion, must be considered discriminatory actions and an attack on her dignity and best interests, also violating the guarantee of the presumption of innocence.

3.9 The author states that she has exhausted judicial and administrative remedies, but that these cannot be considered effective remedies for redress. She notes the lack of effective remedies for the legal termination of pregnancy. The Technical Guide does not establish expeditious and timely remedies to challenge negative decisions on the appropriateness of the voluntary termination of pregnancy, nor remedies for violations of the standardised procedure, nor for the compensation of victims. In spite of this, the administrative procedure was exhausted, without the responsibility of the responsible institutions being fully recognised and without the sanctions imposed having been enforced to date.

3.10 The author requests as reparation measures: a) material compensation for the harm suffered and for the expenses incurred in the care and loss of the pregnancy, b) access to comprehensive health services, including mental health, c) assistance for access to secondary and higher education, d) revision of national legislation to ensure prevention of sexual violence and access to adequate health, education and social services for girl victims of sexual violence, including safe and legal abortion, and e) removal of barriers to access to therapeutic abortion such as lack of information about this right.

State party's observations on admissibility and merits

4.1 In its observations of 11 May 2021 and 13 September 2021, the State party argues that the communication is inadmissible for failure to exhaust available domestic remedies, since the author did not file an appeal in cassation against the decision rejecting the appeal against the father's conviction (para. 2.25).⁷ The State party maintains that the author is attempting to distort the individual complaints mechanism by seeking a review of domestic criminal proceedings in order to obtain international redress that will generate a greater financial benefit for her. In this regard, the remedy of cassation would have enabled her to challenge the amount of civil liability.

⁷ Article 427 of the Code of Criminal Procedure establishes that "1. An appeal in cassation is admissible against final judgments (...) issued on appeal by the Higher Criminal Chambers. (...) 3. If the challenge refers to civil liability, when the amount set in the first or second instance judgment is greater than fifty Procedural Reference Units or when the object of restitution cannot be valued economically. 4. Exceptionally, an appeal in cassation shall be admissible in cases other than those mentioned above when the Criminal Chamber, at its discretion, considers it necessary for the development of jurisprudential doctrine. "

4.2 On the merits, the State party notes the existence of policies and budget increases that have resulted in a 76 per cent decrease in child mortality between 1990 and 2012. The State party cites domestic legislation, in particular the General Health Act and the Code on Children and Adolescents, which guarantee children's right to health, life, development and survival, the right to defence and the right to privacy. It adds that the Political Constitution and the Law on Transparency and Access to Public Information recognise the right to public information in accordance with international standards.

4.3 The State party maintains that the aim of the Technical Guide is to guarantee that all Peruvians - including minors - can exercise their sexual and reproductive rights in a responsible manner, ensuring that health-care personnel are attentive to the objective of protecting the life of the pregnant woman and the foetus. Only when the medical diagnosis shows a risk to the life of the pregnant woman or a serious and permanent health condition will the possibility of voluntary termination of a pregnancy of less than 22 weeks be considered. The Guidelines have a general scope and are not only aimed at people with limited resources, the indigenous population, or victims of sexual violence, and are therefore not discriminatory. The Guide also establishes the procedure for obtaining the informed consent of the pregnant woman, as well as the possibility, in case of emergency, for the head of the emergency room to immediately convene a Medical Board and take the necessary actions to prevent the death of the pregnant woman or a serious and permanent illness.

4.4 The State party maintains that, owing to the spread of COVID-19, a state of emergency was declared between 15 March 2020 and 31 September 2021, suspending work and procedural and administrative deadlines and affecting the normal functioning of the entities concerned. On 16 March 2021, the State Attorney General's Office requested the Regional Health Directorate of the regional government of Apurímac to provide information on medical care and disciplinary procedures, and is still awaiting a response. It reports that, by resolution of 8 September 2021, the National Superintendence of Health imposed a fine on the G.D.V. hospital for "unjustifiably delaying access to health benefits", absolving the Huanipaca Health Centre of that charge, but imposing a written reprimand for failing to comply with the provisions in force on the content of medical records. The State party notes that the author's appeal against this administrative decision was allowed on 1 September 2021 and is still pending.

4.5 With regard to the investigation and criminal proceedings, the State party notes that Camila's father was sentenced to life imprisonment and fined as civil damages, and that the author's appeal for compensation for physical and psychological harm and consequential damages was dismissed. Since the author did not file an appeal in cassation, it is understood that the decision was consented to. Furthermore, the author and her mother were incorporated as beneficiaries of the Public Prosecutor's Office's victim and witness assistance programme. However, the assistance folder was closed due to the conclusion of the criminal proceedings.

4.6 The State party submits that the State authorities took Camila's views into account by respecting her privacy and the confidentiality of information during the criminal proceedings, by limiting her interventions during the trial and her exposure to the public, and by taking the necessary measures to prevent her suffering. The State party concludes that the criminal proceedings against Camila were in accordance with domestic law and the principles of legality, due process and the presumption of innocence.

4.7 Lastly, the State party reports that, by decision of 11 July 2019, administrative disciplinary proceedings were instituted against the judge of the Mixed Court of Abancay for failure to issue a hearing order within the legal time limit, and a fine was imposed on her by decision of 18 November 2020, which the author does not contest as a sign of her acquiescence.

Author's comments on admissibility and substance

51 In her comments of 4 October 2021, 27 January 2022 and 24 May 2022, the author insists that there is no effective remedy in the State party to ensure access to legal termination of pregnancy. She reiterates that she requested a legal termination of pregnancy in accordance with the Technical Guide, without receiving a reply. With regard to the remedy of cassation,

the author points out that it is not an effective remedy, since it only makes it possible to challenge the amount of civil reparation for the rape, but does not make it possible to punish the irregular actions of the judicial and police personnel or to provide her with full reparation for the alleged violations. Likewise, the lack of determination in the sentence of conviction of the form of payment of the civil reparation makes it difficult to enforce it.

5.2 The author states that, although she was acquitted on appeal of the crime of self-abortion, she has not received any reparation for the damages suffered during the revictimization proceedings or for the violations suffered during the criminal proceedings for rape, since the civil reparation included in the sentence was only for the sexual assault. Despite the complaints filed with the Ministry's Internal Control Office, these proceedings have not yet reached a final decision. On 15 September 2021, the Office issued a decision reprimanding the prosecutor for a minor offence of revictimisation and dismissing the other charges, but this decision was appealed. The author also filed an administrative complaint for irregularities in health care with the National Superintendence of Health, which resulted in an administrative sanction for the centres concerned, but did not grant reparation to the victim. Finally, the author filed an administrative complaint against the judge in the self-abortion proceedings for undue delay, which resulted in a fine, but did not result in reparation to the author.

5.3 The author adds that effective and comprehensive reparation cannot be limited to compensation, but must allow for the rehabilitation of their physical and mental health, as well as a real change in the public policies and regulations that allowed the violations suffered. She points out that the Constitutional Court is in the process of resolving the legal status of the provision of emergency contraception to rape victims, the vast majority of whom are girls and adolescents. Likewise, the termination of pregnancy is criminally punishable, with the exception of therapeutic abortion, the practical application of which is subject to constant obstruction, resulting in the criminalisation of girls and adolescents. In this regard, between 2018 and 2020, 2,223 police complaints were registered for the crime of abortion and 598 were judicially processed, demonstrating a context of strong criminal prosecution.

5.4 The author argues that the lack of specialised care for girls, victims of sexual violence, indigenous women or women with disabilities does not comply with the intercultural and gender approach provided for in the Guidelines.

Intervention by third parties

6 On 10 February 2022 and 22 August 2022, the Paris Centre for Human Rights and the International Law Clinic d'Assas, and the CLACAI Legal Network⁸ submitted interventions, the contents of which are summarised in Annex I. The parties' comments on these interventions are also included in the Annex.

Deliberations of the Committee

Consideration of admissibility

7.1 Before considering any complaint contained in a communication, the Committee must, in accordance with rule 20 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, decide whether or not it is admissible.

7.2 The Committee notes the State party's argument concerning the inadmissibility of the communication for failure to exhaust available domestic remedies. The Committee recalls that the purpose of the exhaustion rule is to enable the domestic authorities to rule on the

⁸ Supporting this intervention are: Equality NOW, Ipas Latin America and the Caribbean, Optio, UNASSE, A.C., Centro Ecuatoriano de la Promoción y Acción de la Mujer Cepam-Guayaquil, Bolena, Católicas por el Derecho a Decidir Argentina, Women's Link Worldwide, Mujeres x Mujeres, Ipas Bolivia, Líbera Abogacía Feminista, ELA, CLADEM, GIRE, Miles and Católicas por el Derecho a Decidir Bolivia.

claims of the authors of a communication.⁹ The Committee also recalls that the authors must avail themselves of all judicial or administrative avenues that offer them a reasonable expectation of redress.¹⁰ In the face of *prima facie* substantiated allegations that the exhaustion rule has been met, the State party should indicate which specific remedies were not pursued by the authors, which were available and effective to remedy the violations alleged before the Committee.¹¹

7.3 In the present case, the Committee notes the State party's argument that the author did not file an appeal in cassation against the decision of 27 September 2019, which dismissed the appeal against the conviction for sexual abuse (para. 4 *above*). According to the State party, such an appeal would have enabled the author to challenge the amount of civil liability, which was set at 50,000 soles and confirmed at second instance (para. 2.25 *above*). However, the Committee notes that, according to the information provided by the author and not refuted by the State party, the remedy of cassation would not have enabled the author to obtain effective redress for the violations alleged before the Committee, based on the lack of information and access to abortion services and her prosecution for self-abortion. The Committee also takes note of the author's claims, not refuted by the State party, that there were no other remedies available in the State party that would have enabled her to challenge the lack of access to therapeutic abortion and to obtain full reparation for the violations she had suffered.

7.4 With regard to administrative proceedings to determine the administrative responsibility of health and judicial operators, the Committee takes note of the State party's submission that, by decision of 8 September 2021, a fine was imposed on the G.D.V. hospital for delaying access to health services and the Huanipaca health centre was reprimanded for failure to comply with the provisions relating to the content of the medical records, while the author's appeal against that decision is still pending (para. 5.4 *above*). However, the Committee notes that the above-mentioned decision, which rejected the author's complaint concerning the lack of information and access to abortion services, was reportedly issued three and a half years after the author's administrative complaint had been lodged and after repeated requests for a ruling by the author (para. 2.15 *above*), and that the appeal is still pending, without the State party having provided any justification for these delays. Consequently, the Committee considers that the proceedings have been unduly prolonged. The Committee also takes note of the State party's statement that, by decision of 18 November 2020, a fine was imposed on the judge of the Mixed Court of Abancay for failure to issue a ruling within the legal time limit. However, the Committee takes note of the author's allegation that the fine was not enforced and that her appeal of the decision of the Internal Oversight Office against the prosecutor in charge of the criminal investigation into the rape case is still pending, and that the delay has not been justified, which means that it has also been unduly prolonged.

7.5 In the light of the foregoing, the Committee concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the present communication.

7.6 The Committee considers that the author has sufficiently substantiated the author's allegations under articles 2, 6, 12, 16, 17, 24, 37 (a), 39 and 40 of the Convention, relating to the lack of information and access to therapeutic abortion and the judicialization of miscarriage. The Committee also considers that the author's complaints also raise issues under articles 13 and 19 of the Convention. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

⁹ *E. H. et al. v. Belgium* (CRC/C/89/D/55/2018), para. 12.2; and *A.M.K. and S.K.* (CRC/C/89/D/73/2019), para. 9.3.

¹⁰ *D. C. v. Germany* (CRC/C/83/D/60/2018), para. 6.5; *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), para. 10.17; *W. W. and S. W. v. Ireland* (CRC/C/91/D/94/2019), para. 10.17.

¹¹ *L. H.A.N. v. Finland* (CRC/C/85/D/98/2019), para. 7.3; and *D.K.N. v. Spain* (CRC/C/80/D/15/2017), para. 11.4. *Spain* (CRC/C/80/D/15/2017), para. 11.4.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it, as provided for under article 10, paragraph 1, of the Optional Protocol.

8.2 The Committee notes that the main purpose of the present communication is to determine whether the author's lack of information and access to voluntary termination of pregnancy, and her prosecution for self-abortion, violated her rights under the Convention.

8.3 With regard to access to termination of pregnancy, the Committee notes that abortion is a criminal offence in the State party, with the exception of therapeutic abortion performed by a doctor with the consent of the pregnant woman when it is the "only means of saving the life of the pregnant woman or of avoiding serious and permanent harm to her health" (art. 119 of the Criminal Code). The Committee notes that the access to therapeutic abortion requested by the author was in practice denied to her in the absence of a definitive response to her request. The Committee also notes the parties' disagreement as to whether the author's situation fell within the legal definition of "therapeutic abortion". Irrespective of whether the interpretation of the health authorities was in accordance with domestic law, it is for the Committee to determine whether the denial of access to the termination of the author's pregnancy was in accordance with the State party's obligations under the Convention.

8.4 The Committee recalls that the right of children to the enjoyment of the highest attainable standard of health recognized by article 24 (1) of the Convention includes the right to control one's own health and body, including sexual and reproductive freedom to make responsible decisions.¹² It also recalls that, in view of the high global rates of adolescent pregnancy and the resulting risks of morbidity and mortality, States must ensure that health systems and services are able to meet the sexual and reproductive health needs of adolescents, including through family planning and safe abortion services.¹³ In this regard, it has urged States to decriminalise abortion so that girls can safely have an abortion and be cared for afterwards, as well as to review their legislation to ensure that the best interests of pregnant adolescents are addressed and that their views are always heard and respected in decisions related to abortion.¹⁴ Furthermore, as noted by the Human Rights Committee, States parties must provide safe, legal and effective access to abortion when the life and health of pregnant women are at risk, or when carrying the pregnancy to term would cause considerable pain or suffering to the pregnant woman, especially if the pregnancy is the result of rape or incest.¹⁵

8.5 The Committee considers that, in the case of pregnant girls, the special and differentiated impact of pregnancy on the physical and mental health of children should be assessed, as well as the particularly significant risk to the lives of girls (arising from possible complications during pregnancy and childbirth) and the potentially serious impact on their development and life plans. This impact on health and life will be determined by the age and physical and psychological maturity of the pregnant girl, her family and community support system, as well as other factors that may affect her mental health, including rape, incest, or socio-economic and cultural vulnerability factors.

8.6 In the present case, the Committee notes that the domestic legislation itself recognizes that pregnancies among girls and adolescents are high-risk pregnancies (para. 2.15 above). However, during the author's medical visits both to the Huanipaca health centre and to the G.D.V. hospital, the health personnel, although aware of the age and origin of the author's pregnancy, never informed her of that risk or of the possibility of access to therapeutic abortion and ignored her repeated requests to terminate her pregnancy, forcing her to follow a prescribed birth plan. Furthermore, the author's subsequent request to voluntarily terminate the pregnancy on the basis of the Technical Guide never received a

¹² General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (CRC/C/GC/15), para. 24.

¹³ Op. cit, para. 56.

¹⁴ General Comment No. 20 (2016) on implementing child rights during childhood (CRC/C/GC/20), para. 60.

¹⁵ General Comment No. 36 of the Human Rights Committee (CCPR/C/GC/36), para. 8.

definitive response, contrary to the requirements set out in the Guide, as confirmed by the Intendencia de Protección de Derechos de Salud (para. 2.16), and she was de facto denied access to abortion.

8.7 Taking into consideration the facts described above, and in particular the risk that the pregnancy posed to her life and health because of her age (13 years at the time of the events), the Committee considers that the lack of information on voluntary termination of pregnancy services and the author's 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, and triggering an obstetric emergency. This was compounded by her status as a victim of rape by her father, which further aggravated the consequences of the pregnancy on her mental health. The Committee concludes that the facts described reveal a violation of the author's rights under articles 6 and 24 of the Convention. Furthermore, the failure to consider the author's repeated requests to terminate the pregnancy violated her right to have her views given due weight in a matter so directly affecting her, namely pregnancy, in violation of article 12 (1) of the Convention, read in conjunction with articles 6 and 24.

8.8 The Committee notes the author's claim that the sexual violence, the forced pregnancy and the judicialization of the miscarriage had an impact on her mental health, as reflected in episodes of uncontrolled crying and suicidal ideation during her prenatal visits. Despite this, and a diagnosis of childhood depression and post-traumatic stress disorder, the author did not receive adequate psychological care and the psychotherapy sessions, which took place only after the miscarriage, were discontinued after 3 sessions, despite the fact that the author required ongoing treatment.

8.9 With regard to the lack of specialization of the medical personnel who attended her on nine occasions at the Huanipaca health post, the Committee notes that this reveals the lack of accessibility of sexual and reproductive health care, including qualified personnel and adequate equipment, with the nearest hospital being a two-and-a-half-hour bus ride away. In this regard, the Committee considers that health facilities, information and services related to sexual and reproductive health care should be accessible to all persons capable of bearing children, and include specialists in paediatrics or paediatric gynaecology for the treatment of girls and adolescents. This includes physical accessibility, especially to persons belonging to disadvantaged and marginalized groups, including persons who, like the author, live in rural and remote areas.¹⁶ The Committee notes that the lack of specialized care was also contrary to domestic regulations as confirmed by the report of the Intendencia de Protección de Derechos de Salud (para. 2.16).

8.10 In the light of the above, the Committee concludes that the lack of adequate psychological care and the lack of accessibility of specialized medical personnel and equipment, in turn, amount to a violation of the author's right to the enjoyment of the highest standard of health recognized by article 24 of the Convention.

8.11 The Committee notes the author's allegations that both the sexual violence suffered and the lack of access to therapeutic abortion constituted forms of torture or cruel, inhuman or degrading treatment. The Committee recalls that the treatment prohibited by article 37(a) of the Convention includes "acts of violence against a child to (...) extrajudicially punish the child for wrongful or unwanted conduct or compel the child to perform activities against his or her will, committed by (...) institutions and persons having authority over the child". The Committee also recalls that the victims of such acts "are often marginalised, disadvantaged and discriminated children who lack the protection of adults responsible for upholding their rights and best interests."¹⁷ In the area of sexual and reproductive rights, the Committee notes that other Treaty Bodies have established that denial of access to abortion by States are forms of gender-based violence against women¹⁸ and may constitute cruel, inhuman or degrading

¹⁶ See, in this regard, General Comment No. 22 (2016) of the Committee on Economic, Social and Cultural Rights, on the right to sexual and reproductive health (E/C.12/GC/22), paras. 15 and 16.

¹⁷ General Comment No. 13: The right of the child to be free from all forms of violence (CRC/C/GC/13), para. 26.

¹⁸ CEDAW Committee General Recommendation No. 35 on gender-based violence against women (CEDAW/C/GC/35), para. 18.

treatment.¹⁹ The Committee considers that, in analysing possible violations of the prohibition of torture or cruel, inhuman or degrading treatment, the particular impact of the denial of abortion on girls, as well as additional factors of vulnerability, such as being a victim of sexual violence, should again be taken into account.

8.12 In the present case, the Committee notes that, as has been established (para. 11.6 *above*), the author suffered severe physical and psychological harm as a result of not being able in practice to access the termination of the pregnancy resulting from rape by her father. This plunged her into a state of deep depression and suicidal ideation, especially as a victim of rape by her father. The Committee also notes that the author was re-victimized at different levels: (a) by medical personnel who ignored her request for therapeutic abortion and pressured her to continue with the pregnancy, (b) by police personnel, when police officers came to her home to intimidate her and pressured her to continue with the forced pregnancy, and (c) by judicial personnel, who prosecuted her for the loss of the pregnancy, exposing her to repeated acts of re-victimization, and convicted her of self-abortion. The Committee notes the particular gravity of the author's criminalization and conviction for self-abortion, which exacerbated and prolonged her suffering. The Committee also notes the particular impact of the events described on the author's mental health, taking into account her particular vulnerability as an indigenous, rural and poor child victim of sexual violence, with a disabled mother and an abusive father. This condition exacerbated the author's suffering caused by the impossibility of terminating the pregnancy and in the face of her prosecution. The Committee concludes that the facts described above reveal the existence of a series of acts and omissions attributable to the State party, which constituted treatment prohibited by article 37 (a) of the Convention.

8.13 Having concluded that the author's lack of access to safe abortion violated her rights under articles 6, 24 and 37 (a) of the Convention, the Committee does not consider it necessary to examine whether the same facts also constitute a violation of article 16 (1) of the Convention. However, the Committee takes note of the complainant's allegations that home visits by medical personnel, sometimes accompanied by police personnel, to force her to continue with the pregnancy, constituted arbitrary interference with her privacy, resulting in community stigmatization to the extent of forcing her to leave her school and, subsequently, her family and community, creating a situation of uprooting. In the absence of information from the State party on this point, the Committee gives due weight to the complainant's claims and concludes that the visits by health and police personnel constituted arbitrary interference with the complainant's privacy, in violation of article 16 (1) of the Convention.

8.14 With regard to the author's complaint concerning her right to information, especially information aimed at promoting her physical and mental health, the Committee recalls the need to ensure that children have access to age-appropriate information, including scientifically based information on sexual and reproductive health.²⁰ In the present case, the author alleges that she has not received any information on sexual and reproductive health to enable her to make informed decisions and claim her rights. The Committee notes, in particular, that the author lacked information on the existence of pregnancy tests (para. 2.2 *above*), that she did not receive any information from the medical staff both on the risks of pregnancy for her age and on the possibility of requesting a therapeutic abortion, that her request to the prosecutor's office was not answered either, all of which forced her into an obstetric emergency such as a miscarriage. In the absence of information from the State party on this point, the Committee gives due weight to the author's claims under article 17. However the Committee is of the view that these facts more directly reveal a violation of the right of the child to seek and receive information under article 13 (1) of the Convention, and thus finds that article 13(1) was violated.

¹⁹ *Op.cit.*, and the Human Rights Committee's Views in *K.L. v Peru*, para.6.3; *Mellet v Ireland*, paras. 7.4-7.6; and *Whelan v Ireland*, para. 7.7.

²⁰ Committee on the Elimination of Discrimination against Women General Recommendation No. 31 and Committee on the Rights of the Child General Comment No. 18 on harmful practices, jointly adopted (CEDAW/C/GC/31/CRC/C/GC/18), para. 68.

8.15 The Committee notes the author's allegations that she was discriminated against during the criminal investigation for rape. The Committee notes, in particular, the author's allegations that the prosecutor in charge of the investigation into her rape harassed her, diverting the investigation to concentrate on gathering incriminating evidence of an alleged crime of self-abortion, ordering actions outside her competence and revictimizing actions such as the examination of the scene of the crime with the mandatory presence of the victim and the accused, the repeated summoning of the author to testify, the repeated expert examinations such as DNA sampling, the use of Camila's statements to incriminate her, the unjustified extension of the preliminary investigation for rape despite the existence of sufficient evidence of the criminal responsibility of the accused, all of which were aimed at the criminal prosecution of the author. The Committee notes that the author, an indigenous and rural child victim of rape, was repeatedly ignored and revictimized in health and police establishments, as her request for an abortion was repeatedly ignored and her home and school were repeatedly raided, which in turn led to family and community harassment of the author. Finally, the Committee considers that the author's lack of access to safe abortion and her subsequent criminalization for self-abortion constituted in itself differential treatment based on the author's gender, denying her access to a service essential to her health²¹ and punishing her for not complying with gender stereotypes about her reproductive role²². In light of the above, the Committee concludes that the facts before it constituted discrimination against the complainant on the basis of her age, gender, ethnic origin, and social status, in violation of article 2 of the Convention.

8.16 Having reached this conclusion, and given that the author should never have been charged with an offence of self-abortion, the Committee does not consider it necessary to examine whether the prosecution of the author also constituted a violation of article 40 of the Convention.

8.17 Finally, the Committee notes the high vulnerability of the author as a child victim of rape by her father. In this regard, it notes that, far from receiving the required protection, the author was again subjected to revictimization and criminalization, which in itself constituted a form of violence and resulted in her conviction for self-harm. The Committee therefore concludes that the State party failed in its obligation to protect the complainant from violence and to promote her physical and psychological recovery and social reintegration as a victim of abuse, in violation of articles 19 and 39 of the Convention.

8.18 The Committee on the Rights of the Child, acting under article 10, paragraph 5, of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, finds that the facts before it disclose a violation of articles 2, 6, 13, 16, 19, 24, 37 (a), and 39 of the Convention.

9. As a consequence, the State party should provide effective remedies to the author for the violations suffered, including adequate compensation for the harm suffered and support to rebuild her life, including to continue her studies. The State party should also provide the author with access to mental health services. Finally, the State party is under an obligation to prevent similar violations in the future. In this regard, the State party should: a) decriminalise abortion in all cases of child pregnancy; b) ensure access to safe abortion services and post-abortion care for pregnant girls, particularly in cases of risk to the life and health of the mother, rape or incest; c) amend the regulations governing access to therapeutic abortion (Technical Guide) to provide for its specific application to girls and ensure, in particular, that due consideration is given to the special risk to the health and life of the child pregnancy; d) establish a clear and expeditious remedy for non-compliance with the procedure in the Technical Guide regarding access to voluntary termination of pregnancy, and ensure accountability for such non-compliance; e) provide clear instructions and training to health and judicial personnel, including prosecutors, on the Convention and on the application and interpretation of legislation on therapeutic abortion; f) ensure education and availability and

²¹ CEDAW Committee General Recommendation No. 24, paras. 11, 14 and 31; CEDAW Committee General Recommendation No. 35, paras. 28 and 29(c)(i); and Working Group on Discrimination against Women and Girls, Report of the UN Working Group on the issue of discrimination against women in law and in practice (2016) UN Doc. A/HRC/32/44, paras. 14 - 18.

²² *Mellet v. Ireland*, para. 7.11. *Ireland*, para. 7.11

effective access of children to sexual and reproductive health information and services, including information and access to contraceptive methods; and h) establish a cross-sectoral mechanism to prevent re-traumatization of child victims of child sexual abuse and to ensure prompt and appropriate therapeutic interventions.

Pursuant to article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible, and within 180 days, information about the measures taken to give effect to the Committee's Views. It also requests the State party to include information on these measures in its reports under article 44 of the Convention. Finally, the State party is requested to publish the Committee's Views, to translate them into Quechua and to disseminate them widely.

Annex I : Interventions by third parties and comments by the parties on these interventions

Intervention by third parties

1. In their intervention of 10 February 2022, the Paris Centre for Human Rights and the d'Assas International Law Clinic argue that criminalising, denying or limiting abortion for girls, regardless of the circumstances, is a violation of the rights recognised in the Convention and a form of discrimination and gender-based violence, as it prevents girls from exercising control over their own bodies and lives. Girls, particularly those from rural, indigenous or other ethnic minority communities, have interdependent factors of vulnerability that contribute to reproductive violence and prevent them from accessing reproductive health services. Restriction or denial of abortion services leads girls to forced pregnancies or unsafe abortions, both of which pose serious risks to their health and lives. Pregnancies in girls carry greater risks of complications and aggravated mental health consequences. Interveners invite the Committee to recognise that the denial of abortion services is a violation of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment of girls as a form of gender-based violence that causes physical and mental suffering. The intentionality in such treatment is always fulfilled as it is an act whose purpose is always to subordinate women and girls by controlling their bodies as reproductive instruments. The interveners argue that denial of access to abortion for girls constitutes a form of harmful practice. They argue that the denial of abortion services and the criminalisation of abortion meet the criteria of harmful practices set out by the Committee in its Joint General Comment No. 18 (para. 16b) as practices that are not guided by the best interests of the girl child but by socio-cultural values that reduce girls to reproductive roles, depriving them of their autonomy and freedom to control their own bodies and reinforcing gender roles and patriarchal systems of power relations.

2. In its intervention of 22 August 2022, the CLACAI Legal Network²³ recalls that various authoritative interpretations of international human rights standards establish that denying women and girls access to abortion constitutes a form of discrimination and violates several human rights.²⁴ Camila's case exemplifies the numerous obstacles for girls to access legal abortion, including the judicialisation of these cases, stigmatisation and mistreatment by health professionals and the restrictive interpretation of the grounds for therapeutic abortion, limited to the imminent risk to the physical health of the pregnant woman. The interveners point out that the risk for mothers under the age of 15 in low- and middle-income countries is twice that of adult women, and complications of pregnancy and childbirth are the leading cause of death among girls and young women aged 15 to 19.²⁵ The rate of unsafe abortion is four times higher in countries with restrictive abortion laws than in countries where it is legal.²⁶ When abortion is legally authorised, States must ensure unimpeded and timely access to this health service, train medical personnel and remove procedural obstacles, such as the requirement of approval by a committee, among other measures. The interveners point out that the Inter-American Court of Human Rights has determined that the embryo cannot be understood as a person for the purposes of the American Convention on Human Rights and that, therefore, the protection of life before birth should not prevail over the rights of the pregnant woman.²⁷ Likewise, the European Court of Human Rights established that if the

²³ Supporting the intervention are: Equality NOW, Ipas Latin America and the Caribbean, Optio, UNASSE, A.C., Centro Ecuatoriano de la Promoción y Acción de la Mujer Cepam-Guayaquil, Bolena, Católicas por el Derecho a Decidir Argentina, Women's Link Worldwide, Mujeres x Mujeres, Ipas Bolivia, Líbera Abogacía Feminista, ELA, CLADEM, GIRE, Miles and Católicas por el Derecho a Decidir Bolivia.

²⁴ United Nations Office of the High Commissioner for Human Rights, Sexual and Reproductive Health and Rights Information Series. <https://www.ohchr.org/en/women/information-series-sexual-and-reproductive-health-and-rights>

²⁵ WHO, *Maternal Mortality* <https://www.who.int/es/news/item/19-09-2019-more-women-and-children-survive-today-than-ever-before-un-report>.

²⁶ WHO <https://www.who.int/es/news/item/28-09-2017-worldwide-an-estimated-25-million-unsafe-abortions-occur-each-year>

²⁷ *Artavia Murillo v. Costa Rica*, Judgment of 28 November 2012, paras. 259 and 264.

unborn child has a right to life, this is implicitly limited by the rights and interests of the mother.²⁸ The interveners point out that the criminalisation of abortion in the State party in cases of sexual violence exposes the victims to obstetric and institutional violence. Furthermore, the absence of scientific and comprehensive programmes on sexuality and reproduction and sexual violence, together with the lack of institutional support networks at school, limited the possibility of identifying and preventing sexual violence and Camila's pregnancy.²⁹ The State party also fails to ensure the availability of confidential reproductive health services and information and psychological assistance for adolescent girls. Nor is there an intersectional approach in the health system, which did not take into account Camila's social context, her cultural reality, her language or her mother's disability. Finally, the interveners point out that the present case highlights the situation of discrimination and social exclusion of indigenous communities in the State party, who live in remote and impoverished areas and face cultural barriers.

Comments of the parties to the interventions of third parties

In its observations of 30 May 2022 on the third party intervention of 10 February 2022, the State party argues that the interveners have not provided any evidence that would lead to a finding of a violation of the provisions invoked in the present communication. The State party reiterates its arguments concerning the non-exhaustion and regulation of the rights invoked under domestic law.

4. The State party states that the author was in perfect health until her last prenatal check-up, so that in principle the requirements of the Technical Guide for Termination of Pregnancy had not been met.

5. In her comments of 23 August 2022, the author agrees with the intervener's submissions.

Annex I

[Original: English]

Joint concurring opinion of Committee members Ann Marie Skelton, Velina Todorova and Benoit van Keirsbilck

We fully support the views of the Committee in this matter. On one aspect, we would have gone further. The author raised a violation of article 40 of the Convention. The Committee decided that this claim was sufficiently substantiated for the purposes of admissibility. However, in paragraph 8.16, the Committee concluded that, as it had found that the prosecution for self-abortion amounted to discrimination, and given that the author should never have been charged with an offence of self-abortion, the Committee did not consider it necessary to examine whether the prosecution of the author also constituted a violation of article 40. We agree that the author should never have been charged for this allegation in the first place. Furthermore, we note that the State Party is criminalising an act that was allegedly committed by a person below the minimum age of criminal responsibility as recommended by our Committee in its General Comment 24 on children's rights in the child justice system. We also note that the prosecutor who initiated the proceedings did not give consideration to diversion or any other non-judicial measure, as envisaged by article 40(3)(b) of the Convention.

The factual reality, however, is that she was charged on 1 March 2018 – the process was delayed, causing Camila to file, on 10 July 2018, an amparo action before the Second Family Court of Abancay for the unjustified delay of the procedure, and also for lack of confidentiality of her identity as legally required. On 16 August 2018, the amparo was

²⁸ *Tysiac v. Poland*, judgment of 20 March 2007.

²⁹ They note that the National Sex Education Programme was not operational until 2008 and its 2021 update has not been implemented.

declared inadmissible. One the same day, Camila was convicted of the crime of self-abortion. She appealed this conviction on the day that it was handed down and, after further delay of almost a year, the Mixed Chamber of Abancay of the Superior Court of Justice of Apurímac declared the appeal well-founded and revoked the conviction on 17 June 2019.

In our view, therefore, Camila's rights under article 40 were violated on the following grounds: Firstly, Camila was treated as an offender and not first and foremost as a victim. She was not treated in a manner consistent with the promotion of her sense of dignity and worth, and the officials of the State party did not take into account the assumption of a constructive role for her in society, as required by article 40(1). Secondly, Camila's rights in terms of 40(2)(b)(iii) to have her matter determined without delay was breached by the fact that the appeal from her conviction took almost a year, a delay that we consider as too long in the context of this case that kept her in contact with the harmful effects of the criminal justice system. Thirdly, Camila's rights under art. 40(2)(b)(iv) have also been breached in view of the pressure exerted on her to plead guilty to the lesser crime of sentimental self-abortion.

Camila also complained about the fact that her privacy was not protected within the framework of the procedure, and this was one of claims that she complained of in the amparo brought on 16 August 2018. However, she did not provide sufficient information to substantiate this claim, and we are thus unable to find a breach of article 40(2)(b)(vii).