



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, concerning communication No. 136/2021* ** ***

<i>Communication submitted by:</i>	Camila ¹ (represented by Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX))
<i>Alleged victim:</i>	The author
<i>State party:</i>	Peru
<i>Date of communication:</i>	8 October 2020 (initial submission)
<i>Date of adoption of Views:</i>	15 May 2023
<i>Subject matter:</i>	Lack of access to therapeutic abortion for a girl who was sexually assaulted by her father
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Discrimination; right to life; arbitrary/unlawful interference with privacy; right to health; torture
<i>Articles of the Convention:</i>	2, 6, 12, 13, 16, 17, 24, 37 (a), 39 and 40
<i>Article of the Optional Protocol:</i>	7 (e)

1. The author of the communication is Camila, a national of Peru born on 13 May 2004. She claims that the State party has violated 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. The author is represented by counsel.

Facts as submitted by the author

2.1 Camila was born in a Quechua-speaking Indigenous community in Huanipaca, Department of Apurímac, a rural, mountainous area. She grew up in a house made of mud that has no electricity or running water and is reached by a dirt path. Her mother is illiterate

* Adopted at the ninety-third session (8–26 May 2023).

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

*** The annexes are being issued without formal editing and are being circulated in the language of submission only.

¹ Pseudonym used by the author.



and has a physical disability, with paralysis in her spinal cord and legs. The family has a meagre income, coming mainly from Camila's father's work as a day labourer.

2.2 Camila's father began sexually assaulting her when she was 9 years old. In September 2017, at the age of 13, she was raped by her father and became pregnant.

2.3 In early November 2017, teachers at Camila's school told her mother that Camila had missed class and reported feeling nauseous, her academic performance had declined and she appeared sad and alone. When Camila told her mother that she had not menstruated for two months, her mother asked one of Camila's cousins how they could find out whether Camila was pregnant, something they knew nothing about. The cousin told them that rapid tests were available, sent one to them and helped them read the result, which was positive.

2.4 On 9 November 2017, Camila went to a private testing facility in Abancay, a city a two-and-a-half-hour bus ride away, where she took a blood test that showed that she was pregnant. Camila then told her mother and godmother that her father had raped her.

2.5 On 11 November 2017, Camila went to the health centre in Huanipaca, where she was seen by a nurse. When she was asked about the baby's father, Camila said that her father had raped her. The same day, Camila went to Guillermo Díaz de la Vega Hospital in Abancay, where it was confirmed that she was 13.6 weeks pregnant. Camila burst into tears and told the hospital staff that she did not want to be pregnant or 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 health centre in Huanipaca for a check-up. Once there, she again told the medical staff that she did not want the pregnancy. She was sobbing uncontrollably and could not stop. However, the staff moved ahead with the antenatal care plan and ordered an ultrasound for her in Abancay.

2.7 On 6 December 2017, Camila went to the health centre because she was feeling very weak and was sobbing uncontrollably. While she was being seen, she repeated that she did not want to continue the pregnancy. However, the staff merely informed her of the importance of having a good diet in order to get through the pregnancy.

2.8 On 9 December 2017, a team from the health centre went to Camila's home to perform a check-up. Without heeding her wishes, they told her the steps she should take to have a healthy pregnancy, proposed a birth plan and stressed the importance of going to Abancay for an ultrasound. The visit was greatly distressing to Camila and caused her health to worsen. From then on, Camila began saying repeatedly that she wanted to die and that she would kill herself if the pregnancy did not come to an end.

2.9 On 13 December 2017, Camila and her mother, with advice from the Asociación pro Derechos Humanos, requested that the pregnancy be terminated legally, in accordance with Ministry of Health Decision No. 486/2014 on the national technical handbook on the standardization of comprehensive care procedures for persons who, with their informed consent and within the framework of article 119 of the Criminal Code, are undergoing a therapeutic abortion before the twenty-second week of pregnancy (hereinafter "the Technical Handbook").² According to the Technical Handbook, the hospital had to assemble a panel of doctors to decide on the request within no more than six days. However, the hospital director sent the request to the legal department and, subsequently, to the head of the obstetrics department, who issued an opinion on 20 January 2018 – that is, more than a month later – requesting a medical report certifying the risk to the health and life of the expectant mother and an ultrasound to show the gestational age. Camila notes that she never received a final answer to her request and was not notified of the opinion, even though the hospital had her contact information.

2.10 On 14 December 2017, Camila and her mother submitted the request for an induced abortion to the prosecutor handling the criminal investigation into the rape so that the prosecutor could designate a health centre to assess whether the conditions set forth in the

² Article 119 of the State party's Criminal Code (Legislative Decree No. 635) provides that: "There shall be no punishment for an abortion performed by a doctor with the consent of the pregnant woman or her legal representative, as appropriate, if it is the only way to save the life of the expectant mother or to prevent serious and lasting harm to her health."

Criminal Code for induced abortions were met. However, they received no response to the request.

2.11 At 4 a.m. on 19 December 2017, Camila went to Guillermo Díaz de la Vega Hospital with severe abdominal pain. She was kept waiting until 9 a.m., when she was admitted because she was at risk of miscarrying. She was given medication to prevent loss of the pregnancy. Five hours later, she was diagnosed with “spontaneous rupture of membranes with significant loss of amniotic fluid and transvaginal bleeding”. Because it was an “incomplete abortion”, she had to undergo emergency uterine curettage and was discharged two days later. As there is no protocol regarding the disposal of fetal remains following an abortion, the remains were given to Camila’s godmother, who buried them in her yard.

2.12 That same day, a team from the Huanipaca health centre, who had not been informed of the miscarriage, again went to Camila’s home to perform an antenatal check-up. Because Camila refused to see them, they returned to her home the next day accompanied by police personnel. When she again refused to be examined, a document was prepared requiring her 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 and it was recorded that she had been treated at Guillermo Díaz de la Vega Hospital on 19 December in connection with a pregnancy loss.

2.13 As a result of the repeated visits by the health team and police personnel to her home, Camila came under increasing pressure from the community and was blamed for the pregnancy loss and the sexual violence. Community members began making humiliating comments about her behaviour and the reasons why the police were looking for her. Under those circumstances, Camila felt stigmatized and stopped attending school.

2.14 On 31 December 2017, Camila went to the health centre with abdominal pain, and it was determined that retained fetal tissue could be present. In January 2018, she went to Guillermo Díaz de la Vega Hospital for psychological counselling, it being noted that she was being persecuted and harassed by the Huanipaca health centre and mistreated by her mother and brother because of the rape. She was found to have childhood depression, exhibit signs of psychological abuse, be in an unstable family situation and have post-traumatic stress disorder. She started psychotherapy, but it was discontinued after three sessions even though the treatment had not been completed.

Administrative procedure for irregularities in medical treatment

2.15 On 28 March 2018, Camila filed an administrative complaint with the Office for the Protection of Health-related Rights of the Ministry of Health, claiming that the Huanipaca health centre and Guillermo Díaz de la Vega Hospital had failed to comply with health regulations while providing care during her pregnancy and in connection with her pregnancy loss. In particular, she pointed out that, under the technical health regulations for the comprehensive and differentiated care of adolescents during pregnancy, childbirth and the postnatal period, issued by the Ministry of Health,³ care for pregnant adolescents must be provided only in hospitals and only by specialists in gynaecology, obstetrics or paediatrics, as pregnancy poses a significant risk to adolescents’ lives and health. However, Camila, who was only 13 years old, had had nine check-ups at the Huanipaca health centre, a health facility that lacked specialized medical staff and equipment. Moreover, she had not been informed during any of the check-ups of her right to a therapeutic abortion under the Criminal Code and the Technical Handbook. Camila also complained that the hospital had failed to act in accordance with the procedures for induced abortions, as it had created obstacles and not observed the deadline for responding to her request, and had failed to respond to the request. The complaint was accepted on 9 May 2018. On 16 July 2018, Camila asked for a decision on her complaint, as the legal time limit for reaching a decision had passed. On 5 September 2018, Camila filed a supplement to the complaint, in which she included the health centre nurse who had sent the local police to her house to pressure her to continue the pregnancy, noting that their presence at her house was unlawful, had the sole purpose of intimidating her, resulted in her revictimization and violated her right to privacy. The supplemental complaint also concerned the inadequacy of the Technical Handbook for purposes of guaranteeing

³ NTS N.130/2017/MINSA.

access to abortion for girls and adolescents and Indigenous persons, as the Handbook did not contain differentiated guidance to address their specific needs. On 5 March 2019, Camila again asked that a final ruling be made on her administrative complaint.

2.16 On 8 March 2019, the Office for the Protection of Health-related Rights issued a final report on Camila's complaint, in which it found that: (a) Guillermo Díaz de la Vega Hospital had failed to comply with the Technical Handbook, as it had not convened a panel of doctors to evaluate the request for an abortion or provided notification of the decision made on the request; (b) the Huanipaca health centre had failed to comply with the standards of care for high-risk pregnancy among girls and adolescents, as it had not referred Camila to a hospital to be seen by a specialist; (c) it had not been shown that the health centre had been at fault for not providing information on the right to an abortion, as the Technical Handbook does not apply to such centres; and (d) the centre was not at fault for a violation of Camila's privacy resulting from the police intervention, as the police had already been aware of the situation because of the report that had been filed against Camila's attacker. On 8 April 2019, Camila filed an appeal against the findings of the report with the Regulation and Oversight Section of the Ministry of Health. On 22 May 2019, the Section issued a decision on the appeal and affirmed the findings of the 8 March 2019 report.

2.17 On 27 November 2019, notice was given of the decision initiating penalty proceedings against Guillermo Díaz de la Vega Hospital and the Huanipaca health centre. However, to date, Camila has not been notified of any decision reached or any penalty imposed with respect to either facility.

Criminal proceedings for rape

2.18 On 11 November 2017, Camila's godmother and nurses from the health centre reported the rape at the Huanipaca police station. The next day, the prosecutor assigned to the case ordered that a medical examination be performed on Camila. The examination confirmed that Camila was 13.6 weeks pregnant. Camila gave a statement regarding the rape by her father and her desire not to continue the pregnancy. The same day, Camila's mother repeated the account of the sexual violence and her daughter's wish not to remain pregnant. The pretrial proceedings relating to the allegations of rape began on 22 November 2017, and Camila and her father were summoned jointly to give statements on 30 November 2017, with no steps being taken by the prosecutor's office to protect Camila. When the accused failed to appear and give a statement on the date indicated, he was ordered to be placed in pretrial detention. Camila did appear and gave a statement, once again describing the sexual abuse and expressing her desire not to continue the pregnancy. On 1 December 2017, the prosecutor handling the case carried out an on-site inspection at the crime scene, during which Camila's father and his defence attorney appeared before the prosecutor. The accused accepted the charges and indicated the exact location where the rape had occurred. He was arrested and a pretrial investigation against him was officially opened.

2.19 Although the prosecutor had Camila's statement, the accused's confession and the results of the medical examination, she said that the case was "complicated" and that the investigation would take time because the additional "scientific tests" needed for the investigation could not be performed until after the birth so as not to endanger the baby's life. A period of eight months was therefore allowed for the preliminary investigation. Camila states that she was not informed by the prosecutor or the police of her right to terminate her pregnancy.

2.20 On 20 December 2017, two members of a team from the Assistance Programme for Victims and Witnesses carried out a home visit. Since Camila was not at home, the team went to her school and interviewed the principal.

2.21 Acting on orders from the prosecutor, a social worker went to Guillermo Díaz de la Vega Hospital on 27 December 2017 and interviewed the medical staff, carrying out an "investigation with the staff" into Camila's pregnancy loss. On 29 December 2017, the prosecutor submitted copies of the records of all the measures taken in order to have an

investigation opened on suspicion of self-abortion⁴ on the basis of Camila's statements that she did not want the pregnancy. Even though a criminal investigation had already been opened against Camila in the family justice system, the prosecutor, exceeding the scope of her investigation, continued making inquiries between January and April 2018 to determine whether the abortion had been self-induced. For example, the prosecutor requested the results of the gynaecological examination, requested a statement from Camila's godmother about where the fetal remains had been taken, made three requests for a witness statement from the gynaecologist who had treated Camila when she had miscarried, requested a new inspection of the crime scene, summoned Camila to appear again "under penalty of contempt",⁵ requested that the fetal remains be exhumed and autopsied and had an additional DNA sample taken from Camila.

2.22 On 16 April 2018, a psychological report based on a telephone call with Camila was forwarded to the prosecutor. It stated that Camila had moved to Abancay to live with her aunt because of the community pressure she had suffered.

2.23 The first measures involving the accused did not take place until 27 April 2018, when a request was made for his psychosexual profile. The report shows that he admitted having had sexual relations with Camila but indicated that they had been consensual and that she was not his daughter.

2.24 On 1 August 2018, Camila moved to have the prosecutor taken off the case, noting her repeated unlawful actions, but the motion was held to be unfounded.

2.25 On 10 August 2018, a four-month extension of the investigation was ordered. Camila's objection to the extension was overruled. On 29 October 2018, the defendant was charged with the rape of a minor. He was convicted on 7 May 2019, sentenced to life in prison and ordered to pay Camila 50,000 soles (approximately US\$ 14,000) as compensation. Camila's appeal requesting 500,000 soles as reparation was dismissed on 27 September 2019.

Criminal proceedings for self-abortion

2.26 On 1 March 2018, the provincial prosecutor asked the Special Family Court for a conviction against Camila on a charge of self-abortion, an offence punishable by up to 2 years' imprisonment. On 19 March 2018, the judge hearing the case charged Camila, issued a summons for her to appear and ordered her to undergo psychological personality testing. Camila's defence counsel objected to the testing on the grounds that it was irrelevant to the case and went against Camila's best interests. On 30 May 2018, Camila moved to have the charge changed to sentimental abortion,⁶ since the abortion had resulted from a rape. In an opinion issued on 20 May 2018, the prosecutor objected to the change, noting that a charge of sentimental abortion would be appropriate only "if Camila admitted to having taken steps to bring about an abortion". On 14 June 2018, the defence filed a response, claiming that the prosecutor's opinion represented an attempt to deliberately increase Camila's suffering by requiring that she confess in order to have the charge changed, whereas the charge should be based on objective elements such as the cause of the pregnancy and the sexual violence.

⁴ At the time of the events, the offence of self-abortion was defined under article 199 (now article 114) of the Peruvian Criminal Code: "A woman who brings about her own abortion or consents to its being brought about by another person shall be sentenced to up to 2 years' imprisonment or to [52] to 104 days of community service."

⁵ The author notes that this summons was in violation both of the procedural guide for holding single interviews with persons who are victims under Act No. 30364 on the Prevention, Punishment and Eradication of Violence against Women and Family Members and with boys and male adolescents who are victims of violence, and of article 25 of Act No. 30364 on protection from violence, which prohibits crime re-enactments in the presence of victims under 14 years of age.

⁶ Article 120 of the Criminal Code defines the offence of sentimental abortion as follows: "Abortion shall be punishable by imprisonment of no more than three months: (1) When the pregnancy is the result of rape outside marriage or artificial insemination performed without consent and outside marriage, provided that these facts have been reported or investigated, at least by the police; or (2) When it is likely that the developing fetus will be born with serious physical or mental impairments, provided that a medical diagnosis is made."

2.27 On 10 July 2018, Camila petitioned the Second Family Court of Abancay for *amparo* because of the undue delay in the proceedings, the failure to withhold her identity as required by law and the violation of her rights as a child. On 16 August 2018, the remedy of *amparo* was held to be unavailable.

2.28 The same day, Camila was convicted on a count of self-abortion. The only grounds for the ruling were Camila's statement that she wanted to terminate her pregnancy and her medical record. Also on the same day, Camila appealed against the conviction. On 5 March 2019, she filed a motion to have action taken on the appeal, given the undue delay. She filed a motion to the same effect on 5 April 2019. On 4 June 2019, Camila's mother filed a complaint with the local judicial oversight office against the judge in question for unduly delaying the proceedings. On 17 June 2019, the Abancay Division of Mixed Jurisdiction of the High Court of Apurímac ruled in favour of the appeal, overturned the conviction and permanently dismissed the case.

Complaint

3.1 The author claims that her right to health under article 24 of the Convention, read alone and in conjunction with article 6, on the right to life, has been violated. The poor quality of the health care that she received, the lack of access to a therapeutic abortion and the failure to provide her with information about the serious risks that her pregnancy posed to her life and health and about her right to terminate the pregnancy legally all constituted violations of her right to health. She argues that the health workers and health authorities acted without considering either her needs as a child or her best interests. She points out that the antenatal care that she received did not comply with the requirement under domestic regulations that she be treated by a specialist, as her care was provided on nine occasions by a nurse. In addition, she was not guaranteed access to information on reproductive health, and her right to be heard and participate meaningfully in decisions about her health was infringed. She notes that the medical staff further breached domestic regulations by disregarding the procedure for the authorization of a therapeutic abortion and failing to notify her of any decision taken, thus depriving her of access to a service that was essential and urgently needed for the protection of her health and exposing her to an obstetric emergency – the miscarriage – for which she was, moreover, prosecuted and revictimized.

3.2 The author states that both having a pregnancy forced upon her and having her miscarriage made into a matter for the courts affected her mental and social health and caused her to experience symptoms of depression and anxiety and engage in suicidal ideation during her pregnancy because of her aversion to becoming a mother as the result of an act of sexual violence perpetrated by her biological father. She states that she received inadequate mental health care, having been given only three sessions of psychological counselling even though she required long-term, specialized treatment as a result of the sexual violence, forced pregnancy, miscarriage and judicial response, which had long-lasting effects on her life, necessitating mental and physical rehabilitation. She notes that she had to leave her home and move to another city because of harassment and stigmatization by the community and the lack of adequate support from the health and education systems. She adds that she is currently living with her aunt, who encouraged her to continue with her studies, and that she is fighting to rebuild her relationship with her mother and brother, for which she has received no assistance.

3.3 The author argues that the regulations in force are insufficient to guarantee access to safe abortion for girls and adolescents as a group requiring special protection. She points out that the Technical Handbook – issued in 2014 to improve access to therapeutic abortion, which has been legal since 1924 – does not cover the specific case of girls and adolescents whose pregnancies have been forced on them, who face greater risks to their physical, mental and social health than adult women. The Technical Handbook provides that “the possibility of a therapeutic abortion before the twenty-second week of pregnancy, with the informed consent of the expectant mother, will be considered only in cases where a medical diagnosis shows that the expectant mother's life is at risk or where required to prevent serious and lasting harm to her health”. This provision has resulted in a restrictive interpretation of therapeutic abortion that has led to a high rate of maternal deaths among persons under 19 years of age, with girls between 10 and 14 being four times more likely to die in

childbirth.⁷ In Camila's case, this regulatory gap had devastating consequences, increasing the risks to her health and life, encouraging the involvement of the courts and contributing to her revictimization and the disruption of her life plans. Furthermore, the Technical Handbook's lack of an intercultural approach made it more likely that health workers would be dismissive towards her, as an Indigenous girl from a rural area, and neglect to inform her of the risks that she faced or respond to her request for a therapeutic abortion.

3.4 The author argues that, given her age, the State party violated her right to life, survival and development by exposing her to a real, personal and foreseeable risk of death from the possible complications of pregnancy and childbirth or from suicide. She states that no steps were taken by the health authorities or health workers to prevent those risks and guarantee her right to life.

3.5 The author claims 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 notes that the sexual violence caused her intense physical and mental suffering and had serious and lasting effects on her mental and social health, which were exacerbated by her age, as she was 9 when the abuse began; her situation of vulnerability and dependence on her attacker; and the resulting pregnancy. As a victim of incest, she experienced a particularly dehumanizing form of sexual violence that destabilized her family relationships and placed her in a situation of profound helplessness. Moreover, both the failure of the health and judicial authorities to provide information on therapeutic abortion and their obstruction of her access to it constituted a form of torture or cruel, inhuman or degrading treatment. The lack of a final decision on her request for an abortion exposed her to a risky pregnancy and criminal accusations. She adds that the use of police intervention to pressure her to continue the pregnancy caused her great distress and fear and led to her humiliation by the community.

3.6 The author claims a violation of her right to privacy under article 16 of the Convention, read alone and in conjunction with article 2, on her right to special protection as a child, and article 12, on her right to participate meaningfully in decisions concerning her life. She claims that she was not guaranteed access to sexual and reproductive health services and was made to continue a pregnancy that had been forced on her even though the decision on whether to do so was a matter of reproductive autonomy, a component of her right to privacy. She adds that she began saying she did not want the pregnancy from the time she learned that she was pregnant and attempted to exercise her right to an abortion. However, the authorities did not take her views into account and denied her information on the legal options available for the protection of her health and life. In addition, medical and police personnel made home visits to pressure her into continuing the pregnancy and thereby violated her right to privacy by making the community aware of her situation, which led to blame and social rejection and forced her to leave the community.

3.7 The author argues that the State party violated her right to have access to information under article 17 of the Convention, particularly her right to seek and receive information on sexual and reproductive health and on the health services available to her, which would allow her to make informed decisions and assert her rights. She states that she received no information on sexual and reproductive health either during her formal schooling or during the pregnancy. She claims that the lack of such information, particularly on the risks associated with pregnancy, constituted a breach by the State party of its duty to exercise due diligence. Given her vulnerability as a child victim of sexual violence, such information should have been provided in an appropriate manner that took account of her ethnic and cultural background and age and was respectful of her wishes and contingent on her consent.

3.8 Lastly, the author claims a violation of her right not to be discriminated against under article 2 of the Convention, read in conjunction with articles 39 and 40 on her right not to be revictimized during judicial proceedings, either as a victim of sexual violence (article 39) or as a child accused of an offence (article 40). She claims that enhanced child protection measures were not taken during the criminal proceedings relating to the sexual violence. The prosecutor handling the investigation harassed the author because of an unfounded belief that

⁷ See http://incidenciainternacional.promsex.org/wp-content/uploads/ProtocoloAborto_Terapeutico.pdf.

the author had induced the abortion, diverting the investigation to focus on gathering evidence for a possible charge of self-abortion, even though that not only was not within her powers, but also violated the author's rights as a child victim of sexual violence. For example, the prosecutor ordered that the victim be present at the inspection of the crime scene, repeatedly requested witness statements and tests and used Camila's statements against her. In addition, the preliminary investigation into the rape was extended, even though there was sufficient evidence of the father's guilt, so that the prosecutor could prepare a criminal case against Camila, which was against her best interests and violated due process. She states that the judiciary turned into a "second attacker", going so far as to charge her with self-abortion, which caused her direct harm, including the loss of her home and social circle and the disruption of her life plans. Furthermore, her conviction at first instance, which was handed down without regard to the defence's arguments concerning the absence of constitutive elements of the offence and the complete lack of evidence, and without even specifying the acts that had allegedly caused an intentional abortion, constituted discrimination and an attack on her dignity and best interests, in addition to violating her right to be presumed innocent.

3.9 The author states that she has exhausted all judicial and administrative remedies, although they cannot be considered effective in terms of providing reparation for the harm. She notes the lack of effective remedies in connection with the legal termination of pregnancy. The Technical Handbook does not provide for expeditious and timely avenues for challenging negative decisions on whether an abortion should be allowed, remedies for violations of the standard procedure or compensation for victims. She nevertheless exhausted the administrative avenues, although the fault of the institutions responsible was not fully acknowledged and the penalties imposed have not yet been enforced.

3.10 The author requests, as measures of reparation: (a) material compensation for the harm suffered and for the medical expenses incurred in connection with the pregnancy and the miscarriage; (b) access to comprehensive health services, including mental health services; (c) support to enable her to access secondary and higher education; (d) the amendment of national laws to ensure that sexual violence is prevented and that child victims of sexual violence have access to appropriate social, health and educational services, including legal and safe abortion; and (e) the elimination of barriers that limit access to therapeutic abortion, including the lack of information on this right.

State party's observations on admissibility and the merits

4.1 In its observations dated 11 May and 13 September 2021, the State party submits that the communication is inadmissible for failure to exhaust available domestic remedies, since the author did not file an appeal in cassation against the dismissal of her appeal against the judgment sentencing her father (see para. 2.25).⁸ The State party argues that the author seeks to abuse the individual complaints mechanism by attempting to have domestic criminal proceedings reviewed for the purpose of obtaining international reparation that will yield greater financial gain. In this regard, an appeal in cassation would have allowed her to challenge the amount awarded as civil damages.

4.2 With respect to the merits, the State party notes that its policies and budgetary increases resulted in a 76 per cent decrease in child mortality between 1990 and 2012. The State party refers to domestic laws, in particular the General Health Act and the Code on Children and Adolescents, that guarantee children's right to health, life, development and survival, the right to a defence and the right to privacy. It adds that the Constitution and the Transparency and Access to Public Information Act recognize the right to public information, in accordance with international standards.

⁸ Article 427 of the Code of Criminal Procedure provides that: "(1) An appeal in cassation may be filed against a final judgment ... issued on appeal by a court's upper criminal division. ... (3) If the challenge relates to civil liability, when the damages amount set in the judgment at first or second instance is greater than 50 procedural reference units or when the object of restitution cannot be assessed in financial terms. (4) On an exceptional basis, appeals in cassation may be brought under circumstances other than those described above if the Criminal Division of the Supreme Court, at its discretion, deems it necessary for the development of its case law."

4.3 The State party argues that the purpose of the Technical Handbook is to ensure that all Peruvians, including minors, can exercise their sexual and reproductive rights in a responsible manner and that health workers fulfil the goal of protecting the lives of expectant mothers and of fetuses. The possibility of terminating a pregnancy before the twenty-second week will be considered only where a medical diagnosis shows that there is a risk to the life of the expectant mother or a risk of serious and lasting harm to her health. The Technical Handbook is general in scope and is not intended solely for people with limited resources, Indigenous persons or victims of sexual violence; it is therefore not discriminatory. In addition, the Handbook sets out the procedure for obtaining the informed consent of the expectant mother and, in cases of emergency, authorizes the chief emergency doctor on duty to immediately assemble a panel of doctors and take the necessary steps to prevent the death of the expectant mother or serious and lasting harm to her health.

4.4 The State party argues that, owing to the spread of the coronavirus disease (COVID-19), a state of emergency was decreed between 15 March 2020 and 31 September 2021, which entailed the suspension of judicial and administrative proceedings and deadlines and affected the normal functioning of the entities concerned. The Counsel General's Office asked the Regional Health Directorate of the regional government of Apurímac for information on the health-care and disciplinary procedures on 16 March 2021 and is still awaiting a response. It reports that, by a decision of 8 September 2021, the National Health Authority fined Guillermo Díaz de la Vega Hospital for "unduly delaying access to health-care services" and absolved the Huanipaca health centre of responsibility on the same charge, while giving it a written reprimand for not complying with the relevant legal provisions regarding the content of medical records. The State party notes that the author's appeal against this administrative decision was accepted for consideration on 1 September 2021 and is still pending.

4.5 With respect to the investigation and criminal proceedings, the State party points out that Camila's father was sentenced to life in prison and ordered to pay civil damages in the form of a fine, and that the author's appeal, which sought reparation covering physical and psychological harm and actual damages, was dismissed. Since the author did not file an appeal in cassation, she was understood to have accepted the decision. In addition, the author and her mother were registered with the Victim and Witness Assistance Programme of the Public Prosecution Service. However, the assistance file was closed when the criminal proceedings came to an end.

4.6 The State party maintains that the State authorities took Camila's views into account, respected her privacy and the confidentiality of information during the criminal proceedings, limited her statements in court and her exposure to the public and took the necessary steps to prevent her suffering. The State party concludes that the criminal proceedings against Camila were conducted in a manner consistent with domestic law, the principle of legality, due process and the presumption of innocence.

4.7 Lastly, the State party reports that, by a decision of 11 July 2019, administrative disciplinary proceedings were initiated against the judge of the Abancay Division of Mixed Jurisdiction for failing in her duty to issue a judgment within the time frame provided for by law, and a fine was imposed on her by a decision of 18 November 2020. The author's failure to challenge the decision demonstrates her acceptance of it.

Author's comments on the State party's observations on admissibility and the merits

5.1 In her comments of 4 October 2021 and 27 January and 24 May 2022, the author stresses that there is no effective remedy in the State party for ensuring access to legal abortion. She reiterates that she requested a legal abortion in accordance with the Technical Handbook but received no answer. With respect to the appeal in cassation, the author states that it is not an effective remedy because it would allow her only to contest the amount of the civil damages relating to the rape and would not allow her to ask for penalties to be imposed on judicial and police personnel for their irregular conduct or to claim full reparation for the alleged violations. Furthermore, the fact that the sentencing decision is silent as to how the civil damages are to be paid makes it difficult to enforce.

5.2 The author notes that although she was acquitted of the charge of self-abortion on appeal, she has received no reparation for the harm caused by her revictimization or for the

irregularities in the criminal proceedings for rape, since the civil damages included in the sentence relate only to the sexual assault. Although complaints have been filed with the Ministry's Internal Affairs Office, no final decision has yet been reached. On 15 September 2021, the Office issued a decision reprimanding the prosecutor for minor misconduct in relation to the revictimization and dismissing the other charges, but the decision has been appealed. The author also filed an administrative complaint with the National Health Authority for irregularities in the provision of health care, as a result of which an administrative sanction was imposed on the centres concerned but no reparation was awarded to the victim. Lastly, the author filed an administrative complaint against the judge in the self-abortion proceedings for undue delay, resulting in a fine for the judge but, again, no reparation for the author.

5.3 The author adds that, in order to be full and effective, reparation cannot be limited to compensation but must include measures for the rehabilitation of her physical and mental health and real changes to the regulations and public policies that had allowed the violations to occur. She points out that the Constitutional Court is in the process of deciding on the legality of providing emergency contraceptives to victims of rape, the large majority of whom are girls and adolescents. Moreover, with the exception of therapeutic abortion, access to which is hindered by numerous barriers, the termination of pregnancy is subject to criminal penalties, resulting in the criminalization of girls and adolescents. Between 2018 and 2020, 2,223 police reports of alleged abortions were filed, 598 of which resulted in judicial proceedings, demonstrating a high level of criminal prosecution.

5.4 The author argues that the failure to provide specialized care for girls, victims of sexual violence, Indigenous women and women with disabilities is inconsistent with the intercultural and gender-sensitive approach prescribed in the Handbook itself.

Third-party intervention

6. On 10 February and 22 August 2022, the Study Centre for Human Rights and Humanitarian Law of Panthéon-Assas University, together with the University's international law clinic, and the legal network of the Consorcio Latinoamericano Contra el Aborto Inseguro (Latin American Consortium Against Unsafe Abortion)⁹ submitted interventions, the content of which is summarized in annex I. The parties' comments on these interventions are also included in the annex.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of the rules of procedure under the Optional Protocol, whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes the State party's argument that the communication is inadmissible for failure to exhaust domestic remedies. The Committee recalls that the purpose of the rule on the exhaustion of domestic remedies is to allow national authorities to rule on authors' claims.¹⁰ The Committee also recalls that authors must make use of all judicial or administrative avenues that may offer them a reasonable prospect of redress.¹¹

⁹ The intervention was supported by: Equality Now, IPAS Latin America and the Caribbean, Optio, Unidad de Atención Sicológica, Sexológica y Educativa para el Crecimiento Personal, 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, Equipo Latinoamericano de Justicia y Género, Latin American and Caribbean Committee for the Defence of Women's Rights, Grupo de Información en Reproducción Elegida, AC, Corporación Miles and Católicas por el Derecho a Decidir (Plurinational State of Bolivia).

¹⁰ *E.H. et al. v. Belgium* (CRC/C/89/D/55/2018), para. 12.2; and *A.M.K. and S.K. v. Belgium* (CRC/C/89/D/73/2019), para. 9.3.

¹¹ *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; and *W.W. and S.W. v. Ireland* (CRC/C/91/D/94/2019), para. 11.4.

Where claims that the rule on the exhaustion of domestic remedies has been satisfied appear *prima facie* to have been substantiated, the State party should indicate the specific remedies that the authors failed to pursue and that would be available and effective to address the violations alleged before the Committee.¹²

7.3 In the case at hand, the Committee notes the State party's argument that the author did not file an appeal in cassation against the 27 September 2019 decision dismissing her appeal against the judgment of conviction for sexual abuse (see para. 4). According to the State party, this remedy would have allowed the author to challenge the amount of the civil damages, which had been set at 50,000 soles and affirmed at second instance (see para. 2.25). However, the Committee notes that, as pointed out by the author and not refuted by the State party, an appeal in cassation would not have provided the author with effective redress for the violations alleged before the Committee relating to the lack of information on 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 or to obtain full reparation for the violations suffered.

7.4 With respect to the administrative procedures for determining the administrative liability of actors in the health and judicial systems, the Committee takes note of the State party's assertions that, by a decision of 8 September 2021, a fine was imposed on Guillermo Díaz de la Vega Hospital for the delay in providing access to health-care services and the Huanipaca health centre was reprimanded for its failure to comply with legal provisions relating to the content of medical records, and that the author's appeal against that decision is still pending (see para. 5.4). However, the Committee notes that the decision rejecting the author's complaint regarding the lack of information on and access to abortion services was issued three and a half years after she had filed her administrative complaint and after she had made repeated requests for a ruling (see para. 2.15) and that the appeal is still pending, yet no explanation for the delays has been provided by the State party. The Committee therefore considers that the procedure in question has been unduly prolonged. The Committee also takes note of the State party's assertion that, by a decision of 18 November 2020, a fine was imposed on the judge of the Abancay Division of Mixed Jurisdiction for failing to issue a judgment within the time frame provided for by law. However, the Committee takes note of the author's assertions that the penalty has not been enforced, that her appeal against the decision of the Internal Affairs Office regarding the prosecutor who handled the criminal rape investigation is still pending and that, as the delay has also not been explained, this procedure as well has 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 communication.

7.6 The Committee considers that the author has sufficiently substantiated her claims under articles 2, 6, 12, 16, 17, 24, 37 (a), 39 and 40 of the Convention relating to the lack of information on and access to therapeutic abortion and the judicial response to her miscarriage. In addition, the Committee considers that the authors' complaints also raise issues under articles 13 and 19 of the Convention. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

8.2 The Committee notes that the present communication primarily seeks a determination as to whether the author's lack of information on and access to abortion and her prosecution for self-abortion violated her rights under the Convention.

8.3 With regard to access to abortion, the Committee notes that abortion constitutes an offence in the State party unless it is a therapeutic abortion performed by a doctor with the

¹² *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.

consent of the pregnant person and is the “only way to save the life of the expectant mother or to prevent serious and lasting harm to her health” (Criminal Code, art. 119). The Committee notes that the author was, de facto, denied access to the therapeutic abortion that she had requested because she received no final decision on her request. The Committee also notes the parties’ disagreement as to whether the author’s situation met the legal requirements for a therapeutic abortion. The Committee must nevertheless determine whether the State party acted in accordance with its obligations under the Convention in denying the author access to an abortion.

8.4 The Committee recalls that a child’s right to the enjoyment of the highest attainable standard of health under article 24 (1) of the Convention encompasses the right to control his or her health and body, including sexual and reproductive freedom to make responsible choices.¹³ It also recalls that, given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services.¹⁴ In this regard, the Committee has urged States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.¹⁵ In addition, the Committee notes that, as pointed out by the Human Rights Committee, States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest.¹⁶

8.5 The Committee is of the view that, in the case of pregnant girls, consideration should be given to the special and differential physical and mental health impacts of child pregnancy, the particularly significant risk that pregnancy poses to the lives of girls because of possible complications during pregnancy and childbirth, and the potentially serious impact that it can have on their development and their future. The impact that pregnancy will have on a girl’s health and life will depend on her age and physical and psychological maturity, her family and community support systems and other factors that can have a bearing on mental health, including a history of rape or incest and socioeconomic or cultural factors that increase vulnerability.

8.6 In the case at hand, the Committee notes that the State party’s own regulations recognize that child and adolescent pregnancies are high-risk (see para. 2.15). However, during the author’s health-care visits, workers at the Huanipaca health centre and Guillermo Díaz de la Vega Hospital, who knew how old the author was and how she had become pregnant, never informed her of the risk or of the availability of therapeutic abortion and ignored her repeated requests to terminate her pregnancy, instead forcing her to follow a pre-established birth plan. Furthermore, the request for an induced abortion that she later made under the Technical Handbook never resulted in a final decision, in violation of the provisions of the Handbook, as confirmed by the Office for the Protection of Health-related Rights (see para. 2.16); this amounted to a de facto denial of access to abortion.

8.7 Taking into account the facts set forth above, particularly the risk that the pregnancy posed to the author’s life and health in view of her age (she was 13 at the time of the events), the Committee considers that both the failure to provide her with information on abortion services and the failure to give her effective access to such services exposed her to a real, personal and foreseeable risk of death and forced her to carry the pregnancy to term, a situation that entailed clear and foreseeable risks to her life, development and health and triggered an obstetric emergency. Furthermore, the fact that she had been raped by her father made the mental health consequences of her pregnancy even worse. The Committee concludes that these facts disclose a violation of the author’s rights under articles 6 and 24 of the Convention. In addition, the failure to take account of the author’s repeated requests to

¹³ General comment No. 15 (2013), para. 24.

¹⁴ Ibid., para. 56.

¹⁵ General comment No. 20 (2016), para. 60.

¹⁶ Human Rights Committee, general comment No. 36 (2018), para. 8.

terminate her pregnancy violated the obligation to give her views due weight in a matter that affected her as directly as pregnancy, in violation of article 12 (1) of the Convention, read in conjunction with articles 6 and 24.

8.8 The Committee takes note of the author's statement about the effects that the sexual violence, forced pregnancy and judicial response to her miscarriage had on her mental health, as reflected in her episodes of uncontrollable sobbing and the suicidal thoughts that she had during her antenatal visits. In spite of this and the diagnosis of childhood depression and post-traumatic stress, the author did not receive adequate psychological care and the psychotherapy sessions, which began only after the miscarriage, were stopped after three sessions even though the author required sustained treatment.

8.9 With respect to the lack of specialists among the health workers who provided the author's care on nine occasions at the Huanipaca health centre, the Committee notes that this reveals a lack of accessibility of sexual and reproductive health care, including in terms of qualified staff and suitable equipment, since the nearest hospital is 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 must be accessible to all persons able to give birth, and paediatricians and paediatric gynaecologists must be available to provide care for 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.¹⁷ The Committee notes that the failure to provide the author with specialized care was also in violation of domestic regulations, as confirmed by the report of the Office for the Protection of Health-related Rights (see para. 2.16).

8.10 In light of the foregoing, the Committee concludes that the lack of adequate psychological care and the inaccessibility of specialized medical staff and equipment disclose a violation of the author's right to the enjoyment of the highest standard of health under article 24 of the Convention.

8.11 The Committee notes the author's claims that both the sexual violence to which she was subjected and her lack of access to therapeutic abortion constituted forms of torture or cruel, inhuman or degrading treatment. The Committee recalls that the treatment prohibited under article 37 (a) of the Convention includes acts of violence committed against children by institutions and persons who have power over them in order to extrajudicially punish them for unlawful or unwanted behaviours, or to force them to engage in activities against their will. The Committee also recalls that the victims of such acts are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests.¹⁸ With respect to sexual and reproductive rights, the Committee notes that other human rights treaty bodies have established that the denial of access to abortion by States parties is a form of gender-based violence against women¹⁹ and may amount to cruel, inhuman or degrading treatment.²⁰ The Committee considers that, when analysing potential violations of the prohibition of torture and cruel, inhuman or degrading treatment, the particular impact of the denial of abortion on girls and other factors that increase their vulnerability, such as a history of sexual violence, must again be taken into account.

8.12 In the case at hand, the Committee notes that, as has been demonstrated (see paras. 2.5–2.14), the author experienced serious physical and psychological harm because she did not, in practice, have access to abortion. This caused her to sink into a deep depression and engage in suicidal ideation, especially because of her rape by her father. The Committee also notes that the author was revictimized at various levels, namely: (a) by medical staff who disregarded her request for a therapeutic abortion and pressured her to continue the

¹⁷ Committee on Economic, Social and Cultural Rights, general comment No. 22 (2016), paras. 15 and 16.

¹⁸ General comment No. 13 (2011), para. 26.

¹⁹ Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017), para. 18.

²⁰ *Ibid.*, para. 16; and Human Rights Committee, *Llantoy Huamán v. Peru* (CCPR/C/85/D/1153/2003), para. 6.3; *Mellet v. Ireland* (CCPR/C/116/D/2324/2013), paras. 7.4–7.6; and *Whelan v. Ireland* (CCPR/C/119/D/2425/2014), para. 7.7.

pregnancy; (b) by police personnel, when police officers came to her home to intimidate her and pressure her to continue the forced pregnancy; and (c) by judicial personnel, who tried her for her pregnancy loss, subjecting her to repeated acts of revictimization, and convicted her of self-abortion. The Committee notes the particular gravity of the author's trial and conviction for self-abortion, which exacerbated and prolonged her suffering. The Committee also notes the specific impact that these events had on the author's mental health, taking into account her particular vulnerability as a poor rural Indigenous girl who was a victim of sexual violence and had a mother with a disability and a father who was an abuser. These circumstances heightened the suffering experienced by the author because of her inability to terminate her pregnancy and the fact that she was prosecuted. The Committee concludes that these facts reveal a series of acts and omissions attributable to the State party that constitute treatment prohibited by article 37 (a) of the Convention, in violation of that article.

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 notes the author's claims that the home visits carried out by medical staff, sometimes accompanied by police personnel, for the purpose of forcing her to continue the pregnancy constituted arbitrary interference with her privacy that resulted in her stigmatization by the community, to the point where she was forced to drop out of school and later leave her family and community, causing her to become uprooted. In the absence of information from the State party on this point, the Committee gives due weight to the author's statements and concludes that the visits by the health workers and police personnel amounted to arbitrary interference with the author's privacy, in violation of article 16 (1) of the Convention.

8.14 With respect to the author's claim relating to her right to information, especially information intended to promote her physical and mental health, the Committee recalls the need to ensure that children have access to age-appropriate information, including science-based information on sexual and reproductive health.²¹ In the case at hand, the author claims that she received no information on sexual and reproductive health that would have enabled her to make informed decisions and assert her rights. The Committee notes, in particular, that the author's lack of information on the availability of pregnancy tests (see para. 2.3), the failure on the part of health workers to provide her with any information on either the pregnancy-related risks for someone her age or the possibility of requesting a therapeutic abortion, and the lack of a response to her request to the prosecutor's office led to the obstetric emergency and 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 considers that these facts more directly disclose a violation of the author's right to seek and receive information under article 13 (1) of the Convention and concludes that there has been a violation of that article.

8.15 The Committee notes the author's claims that she was discriminated against during the criminal rape investigation. The Committee notes, in particular, the author's assertions that the prosecutor handling the investigation into her rape harassed her, diverted the investigation to focus on gathering evidence for a charge of self-abortion and ordered actions that were outside her powers and resulted in the author's revictimization, for the purpose of preparing a criminal case against the author. These actions included an inspection of the crime scene at which the victim and the accused were required to be present, the repeated summoning of the author to make statements, repeated testing procedures such as the taking of DNA, the use of the author's statements against her and the unwarranted extension of the preliminary investigation into the rape even though there was sufficient evidence of the guilt of the accused. The Committee notes that the author, an Indigenous girl living in a rural area who was the victim of rape, was repeatedly revictimized in both police and health-care contexts when her request for an abortion was repeatedly ignored and her privacy was invaded at both her home and her school, resulting in the harassment of the author by her family and community. Lastly, the Committee considers that the author's lack of access to

²¹ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019), para. 68.

safe abortion and her subsequent prosecution for self-abortion constituted in themselves differential treatment based on the author's gender, as she was denied access to a service that was essential for her health²² and was punished for not complying with gender-based stereotypes relating to her reproductive role.²³ In the light of the foregoing, the Committee concludes that the facts before it disclose discrimination against the author on the basis of age, gender, ethnic origin and social status, in violation of article 2 of the Convention.

8.16 Having reached the above conclusion, and given that the author should never have been charged with self-abortion, the Committee does not consider it necessary to examine whether the author's prosecution also violated article 40 of the Convention.

8.17 Lastly, the Committee notes the author's high degree of vulnerability as a girl who was the victim of rape committed by her father. In this regard, it notes that, far from receiving the protection she required, the author was revictimized and criminalized; this in itself constituted a form of violence and resulted in her conviction for self-abortion. The Committee therefore concludes that the State party failed in its duty to protect the author from violence and to promote her physical and psychological recovery and her social reintegration as a victim of abuse, in violation of articles 19 and 39 of the Convention.

8.18 The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, finds that the facts before it disclose a violation of articles 2, 6, 13 (1), 16 (1), 19, 24, 37 (a) and 39 of the Convention and of article 12 (1), read in conjunction with articles 6 and 24.

9. The State party should therefore provide the author with effective reparation for the violations suffered, including adequate compensation for the harm suffered and support to enable her to rebuild her life, including by pursuing her studies. The State party should also give the author access to mental health services. Lastly, the State party is under an obligation to prevent similar violations in the future. In this regard, the State party should: (a) decriminalize abortion in all cases involving child pregnancy; (b) ensure access to safe abortion services and post-abortion care for pregnant girls, particularly in cases where there is a risk to the life or health of the mother and cases involving rape or incest; (c) amend the regulations on access to therapeutic abortion (the Technical Handbook) to make it specifically applicable to girls and to ensure that due weight is given to the particular risks of mortality and morbidity involved in child pregnancies; (d) establish a clear and prompt remedy for failures to abide by the procedures set out in the Technical Handbook for access to induced abortion and ensure that those responsible for any such failures are held accountable; (e) provide clear instructions and training to health workers and judicial officials, including public prosecutors, on the rights protected under the Convention and on the application and interpretation of the laws on therapeutic abortion; (f) provide all children with appropriate and accessible education on sexual and reproductive health; (g) ensure that sexual and reproductive health information and services, including information on and access to contraceptives, are available to children and that children have effective access to them; and (h) establish an intersectoral mechanism to prevent the retraumatization of child victims of sexual abuse and ensure that they receive prompt and appropriate treatment.

10. In accordance with 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 it has taken to give effect to the Committee's Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views, to have them translated into Quechua and to disseminate them widely.

²² Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999), paras. 11, 14 and 31; general recommendation No. 35 (2017), paras. 28 and 29 (c) (i); and [A/HRC/32/44](#), paras. 14–18.

²³ *Mellet v. Ireland*, para. 7.11.

Annex I

Third-party intervention and parties' comments thereon

Third-party intervention

1. En su intervención de 10 de febrero de 2022, el Centro de Derechos Humanos de París y la Clínica de Derecho Internacional d'Assas sostienen que criminalizar, denegar o limitar el aborto para niñas, independientemente de las circunstancias, es una violación de los derechos reconocidos en la Convención y una forma de discriminación y violencia basada en el género, ya que impide que las niñas ejerzan control sobre sus propios cuerpos y vidas. Las niñas, y en particular las pertenecientes a comunidades rurales, indígenas u otras minorías étnicas, presentan factores interdependientes de vulnerabilidad que contribuyen a la violencia reproductiva y les impiden acceder a servicios de salud reproductiva. La restricción o denegación de servicios de aborto conducen a las niñas a embarazos forzados o a realizar abortos no seguros, ambos con graves riesgos para su salud y vida. Los embarazos en niñas conllevan mayores riesgos de complicaciones y consecuencias agravadas para su salud mental. Las intervinientes invitan al Comité a reconocer que la denegación de servicios de aborto es una violación de la prohibición de tortura u otros tratos o penas crueles, inhumanos o degradantes contra las niñas al tratarse de una forma de violencia basada en el género que causa sufrimiento físico y mental. La intencionalidad en dicho tratamiento se cumple siempre al ser un acto cuyo propósito es siempre subordinar a las mujeres y niñas al controlar sus cuerpos como instrumentos reproductivos. Las intervinientes sostienen que la denegación de acceso al aborto para niñas constituye una forma de práctica nociva. Sostienen que la denegación de servicios de aborto y la criminalización del aborto cumplen con los criterios de prácticas nocivas fijados por el Comité en su Comentario General conjunto Núm. 18 (párr. 16b) al ser prácticas no guiadas por el interés superior de la niña sino por valores socioculturales que reducen a las niñas a la función reproductiva, privándoles de su autonomía y libertad de controlar sus propios cuerpos y reforzando los roles de género y los sistemas patriarcales de relación de poder.

2. En su intervención de 22 de agosto de 2022, la Red Jurídica de CLACAI¹ recuerda que diversas interpretaciones autorizadas de las normas internacionales de derechos humanos establecen que negar a mujeres y niñas el acceso al aborto constituye una forma de discriminación y viola varios derechos humanos². El caso de Camila ejemplifica los numerosos obstáculos de niñas para acceder al aborto legal, incluida la judicialización de estos casos, estigmatización y maltrato por profesionales de salud y la interpretación restrictiva de la causal del aborto terapéutico, limitada al riesgo inminente para la salud física de la gestante. Las intervinientes señalan que el riesgo de madres menores de 15 años en países de ingresos bajos y medios es dos veces mayor al de las mujeres adultas y las complicaciones del embarazo y el parto son la principal causa de muerte entre niñas y jóvenes de 15 a 19 años³. La tasa de abortos inseguros es cuatro veces mayor en países con leyes sobre aborto restrictivas que en países donde está legalizado⁴. Cuando el aborto está autorizado legalmente, los Estados deben garantizar el acceso sin trabas y oportuno a ese servicio de salud, debiendo capacitar al personal médico y eliminar los obstáculos de procedimiento, como el requisito de aprobación por un comité, entre otras medidas. Las

¹ Adhieren a dicha intervención: Equality NOW, Ipas Latinoamérica y El Caribe, 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 y Católicas por el Derecho a Decidir Bolivia.

² Oficina del Alto Comisionado de Naciones Unidas, Serie de información sobre salud y derechos sexuales y reproductivos. <https://www.ohchr.org/en/women/information-series-sexual-and-reproductive-health-and-rights>.

³ OMS, *Mortalidad materna* <https://www.who.int/es/news/item/19-09-2019-more-women-and-children-survive-today-than-ever-before-un-report>.

⁴ OMS <https://www.who.int/es/news/item/28-09-2017-worldwide-an-estimated-25-million-unsafe-abortion-occur-each-year>.

intervinientes señalan que la Corte Interamericana de Derechos Humanos ha determinado que no puede entenderse al embrión como persona a los efectos de la Convención Americana de Derechos Humanos y que, por tanto, la protección de la vida antes del nacimiento no debe prevalecer sobre los derechos de la gestante⁵. Asimismo, el Tribunal Europeo de Derechos Humanos estableció que si el no nacido tiene un derecho a la vida, éste está implícitamente limitado por los derechos e intereses de la madre⁶. Las intervinientes señalan que la criminalización del aborto en el Estado parte en casos de violencia sexual expone a las víctimas a la violencia obstétrica e institucional. Asimismo, la ausencia de programas sobre sexualidad y reproducción científicos e integrales, y de violencia sexual, junto a la falta de redes de apoyo institucional en la escuela, limitaron la posibilidad de identificar y prevenir la violencia sexual y el embarazo de Camila⁷. El Estado parte tampoco garantiza la disponibilidad para las adolescentes de servicios e información confidenciales sobre la salud reproductiva y la asistencia psicológica. Tampoco existe un enfoque interseccional del sistema de salud, que no tomó en cuenta el contexto social de Camila, su realidad cultural, su idioma ni la condición de discapacidad de su madre. Por último, las intervinientes señalan que el presente caso visibiliza la situación de discriminación y exclusión social de las comunidades indígenas en el Estado parte, quienes viven en zonas apartadas y empobrecidas y se enfrentan a barreras culturales.

Parties' comments on the third-party intervention

3. En sus observaciones de 30 de mayo de 2022 sobre la intervención de terceros de 10 de febrero de 2022, el Estado parte argumenta que las intervinientes no han aportado elementos que permitan concluir a una violación de las disposiciones invocadas en la presente comunicación. El Estado parte reitera los argumentos relativos a la falta de agotamiento y a la regulación de los derechos invocados por la normativa nacional.

4. El Estado parte precisa que la autora se encontraba en perfecto estado de salud hasta su último control prenatal, por lo que en principio no se habría cumplido con los requisitos de la Guía técnica para la interrupción del embarazo.

5. En sus comentarios de 23 de agosto de 2022, la autora suscribe lo expuesto por las intervinientes.

⁵ *Artavia Murillo c. Costa Rica*, sentencia de 28 de noviembre de 2012, párr. 259 y 264.

⁶ *Tysiac c. Polonia*, sentencia de 20 de marzo de 2007.

⁷ Señalan que el Programa Nacional de Educación Sexual no fue operativo hasta 2008 y su actualización en 2021 no ha sido implementada.

Annex II

Joint opinion of Committee members Ann Skelton, Velina Todorova and Benoit Van Keirsbilck (concurring)

1. 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 criminalizing 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 No. 24 (2019) 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.

2. 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 declared inadmissible. On 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.

3. 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 article 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 article 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.

4. Camila also complained about the fact that her privacy was not protected within the framework of the procedure, and this was one of the 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).
