

**Expert Opinion by Professors J.N. Erdman and R.J. Cook to the Constitutional Court of Chile
Regarding the Review to the requirement of unconstitutionality presented by a group of Senators,
regarding rules of the bill that regulates the decriminalization of voluntary termination of
pregnancy in three grounds, corresponding to bulletin No. 9895-11.**

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I. Introduction

1. We, Professors Joanna N. Erdman and Rebecca J. Cook, respectfully submit this expert opinion to the Constitutional Court of Chile in the matter of the decriminalization of abortion in the three circumstances of ‘life-endangerment, sexual violence, and fatal fetal impairment.’
2. An *amicus curiae* report such as the present one has been defined by the doctrine as “a presentation to the court (...) of third parties outside that dispute who have a justified interest in the final resolution of the litigation, in order to offer opinions considered of transcendence for the substantiation of the process on the matter in dispute.” They found the legitimacy of the presentation in Article 19 No. 14 of the Political Constitution of the Republic of Chile, which enshrines the right to petition, Article 37 of the Organic Law Constitutional Court of the Supreme Court that establishes the measures to better resolve and states:

“The Court may order the measures it deems appropriate to the most appropriate substantiation and resolution of the matter before it. It may also require from any power, public organ or authority, organization and movement or political party, as the case may be, the antecedents it deems appropriate and they shall be obliged to provide them in due time”.

Finally, it is praiseworthy to point out that the practice of this Tribunal has been to accept opinions of experts who are raised in a respectful manner in complex cases, as it has done in STC 740, STC 1723, to name a few

3. Professor Joanna N. Erdman, B.A. (Toronto), LL.M. (Harvard) is Assistant Professor and the MacBain Chair in Health Law and Policy in the Schulich School of Law, Dalhousie University, and immediate past chair of the Gender and Rights Panel of the Department of Reproductive Health and Research of the World Health Organization (2012-17). Professor Rebecca J. Cook, A.B. (Barnard), M.P.A. (Harvard), J.D. (Georgetown), J.S.D. (Columbia) is Professor Emerita in the Faculty of Law, the Faculty of Medicine and the Joint Centre for Bioethics, University of Toronto and Co-Director of the International Reproductive and Sexual Health Law Program. Professors Erdman and Cook are internationally recognized experts in reproductive health and human rights, and have acted as third party experts in constitutional and human rights cases before domestic, regional and international tribunals. They have published widely on comparative and international abortion law, including a recent edited volume.¹
4. Chile has a strong commitment to international human rights law in its *Constitution*, a commitment supported by the interpretive practices of this Court.² This opinion addresses the consensus in international human rights law on the criminalization of abortion.³ This consensus includes the following basic propositions:
 - The criminalization of abortion contributes to unsafe abortion, adversely impacts vulnerable and marginalized women, and inherently limits the rights of women to physical and psychological integrity, and to dignity and worth as human beings.

International human rights law thus supports the repeal and reform of criminal abortion laws, favoring decriminalization over de-penalization to protect the lives and health of women and to improve their quality of life.

- Absolute criminal prohibitions are inconsistent with international human rights law. Given that any state action taken in relation to pregnancy impacts on the human rights of women, international law sets limits on the state power to criminalize abortion based on principles of non-arbitrariness and proportionality. Criminal abortion laws must be rationally designed to achieve legitimate ends, and cannot limit the rights of women in a manner disproportionate to ends they seek to achieve.
 - To ensure criminal abortion laws are non-arbitrary and proportionate, international human rights law requires the decriminalization of abortion, at a minimum, on grounds of risk to the life and health of the pregnant woman, risk of serious fetal malformation, and where pregnancy results from sexual crime (i.e. rape and incest). To ensure that criminal abortion laws are non-arbitrary and proportionate in application and effect, international human rights law requires states to enact procedural protections to ensure access to safe and respectful abortion services to the full extent of the law.
5. Supreme and constitutional courts in Latin America increasingly reference this consensus in the review of national abortion laws to uphold both the decriminalization and liberalization of abortion laws, and the enactment of procedural protections to ensure access to safe and legal abortion services.⁴
- In 2006, the Constitutional Court in Colombia affirmed that international human rights law recognizes women's sexual and reproductive rights as human rights, and as such, affirmed these rights under constitutional law.⁵ On this basis, the Court held that an absolute prohibition on abortion was unconstitutional, and recognized rights to legal abortion in cases where pregnancy threatens a woman's life and health, results from rape or incest, and involves fatal fetal malformation. The Court subsequently issued a series of decisions on the state's constitutional duty to guarantee access to legal abortion.⁶
 - In 2009, the Supreme Court of Justice of the Nation in Mexico constitutionally upheld a liberalized abortion law by reference to international human rights law.⁷
 - In 2012, the Supreme Court of Justice in Argentina cited international human rights law in an interpretation of the penal code that decriminalized abortion in all cases of rape, and affirmed government obligations to guarantee access.⁸
 - In 2014, the Constitutional Court of Bolivia referenced international human rights standards to invalidate provisions requiring women to obtain judicial authorization and rape victims to provide a criminal report in order to access legal abortion services.⁹
6. High courts in Europe and South Asia have also referenced this international consensus in reviews of national abortion laws:

- In 2007, the Constitutional Court of the Slovak Republic upheld a liberalized abortion law by reference to international human rights law, in particular, the rights of women to reproductive self-determination.¹⁰
 - In 2009, the Supreme Court of Nepal declared the country's criminal abortion law in violation of international and constitutional norms, and required the state to introduce a more permissive law with measures to ensure access.¹¹
 - In 2010, the Constitutional Court of Portugal upheld a liberalized law, referencing Portugal's obligations under the *Universal Declaration of Human Rights* and the *European Convention of Human Rights*.¹²
 - In 2015, the High Court of Northern Ireland declared the criminal prohibition of abortion in cases of fatal fetal malformation and pregnancies resulting from sexual crime incompatible with the *European Convention on Human Rights*.¹³
 - In 2017, the Constitutional Court of the Republic of Croatia affirmed the country's liberalized law on abortion by reference to women's constitutional rights as informed by international standards.¹⁴
7. The legislative measure to reform the Chilean abortion law to allow access to safe and legal abortion services in cases of 'life-endangerment, sexual violence, and fatal fetal impairment' is a progressive step towards the full realization of women's human rights under international law. This expert opinion elaborates the international human rights consensus on abortion law with respect to the following matters:
- Criminal Abortion Law Repeal and Reform
 - Guiding Principles of Non-Arbitrariness and Proportionality
 - Grounds and Procedural Protections for Legal Abortion

II. The International Consensus on Criminal Abortion Law Repeal and Reform

A. Abortion Decriminalization versus De-penalization

8. There is a strong consensus in international human rights law for the reform and repeal of criminal abortion laws (also referred to as abortion decriminalization and liberalization). An early consensus called for the de-penalization of abortion, the lowering or removal of criminal human rights penalties for women.¹⁵ The international consensus has since moved to abortion decriminalization and liberalization, the repeal and reform of criminal laws.¹⁶ The 2014 *Montevideo Consensus* calls on "states to consider amending their laws ... to protect the lives and health of women and adolescent girls, [and] to improve their quality of life."¹⁷

B. The Harms of Abortion Criminalization

9. The call for abortion decriminalization in international human rights law is based on the following recognized harms of criminalization, which cannot be addressed by the removal of criminal penalties alone.¹⁸

10. First, criminalization is as a key factor in the prevalence of clandestine and unsafe abortion, which carries risks for the lives, health and well-being of women.¹⁹ U.N. treaty bodies and UN working groups recognize that under criminal abortion laws women resort to unsafe abortion, and have therefore characterized such laws as violations of the rights to life and health,²⁰ and a gender-based form of discrimination.²¹ By retaining abortion as a crime, although excused or unpunished for women in select circumstances, de-penalization cannot eliminate the practice of unsafe abortion. The continued criminalization of providers and others who assist in abortion provision maintains the conditions for unsafe practice. Criminal abortion cannot be performed in public hospitals or state funded clinics, nor can legal information about services be provided.²² De-penalization, in other words, does not allow the state to positively regulate abortion and to ensure conditions for its safe provision.
11. Second, criminalization adversely impacts vulnerable and marginalized women, and girls and those women and girls who cannot travel to other jurisdictions to access legal services, nor safely circumvent prohibitions through professionalized illicit markets.²³ Moreover when subject to the law, marginalized women are disproportionately affected by arbitrary denials of legal services, as well as, higher prosecution and heavier penalties due to lack of competent legal representation.²⁴ International treaty bodies have acknowledged the discriminatory effects of criminal abortion laws on marginalized women and girls including poor, rural, less-educated women and girls and migrant women and girls unable to travel.²⁵ An essential element of the right to health is nondiscrimination, which requires that health services including those related to pregnancy, be accessible to all, especially the most vulnerable or marginalized sections of the population, without discrimination.²⁶ Human rights authorities thus support decriminalization to ensure equitable access to safe abortion for all women without discrimination.
12. Third, criminalization limits women's rights to decide whether and when to reproduce, a right which human rights authorities recognize as integral to women's physical and mental integrity, and to their dignity and worth as human beings.²⁷ In the criminalization of abortion, a state instrumentalizes a woman's body and her capacity to reproduce in service of state objectives to protect a public interest. The UN Working Group on the issue of discrimination against women in law and practice explains that "[c]riminalization of termination of pregnancy is one of the most damaging ways of instrumentalizing and politicizing women's bodies and lives ... depriving them of autonomy in decision-making about their own bodies."²⁸ To gestate and to birth a child is a profound human act, enlisting the whole of a person and the full faculties of mind and body. It is an act that carries serious consequences for a woman's person and life, reflecting and influencing the way she thinks about herself and her relationship to others and to society. Criminalization of abortion thus implicates not only a woman's physical and mental health, but also respect for her full and equal status as a person.

III. The International Consensus on the Guiding Principles of Non-Arbitrariness and Proportionality

13. Despite these harms, international human rights law recognizes legitimate state interests in the criminal regulation of abortion, including the protection of morals, of which the right to life of the unborn or the sanctity of life as a public interest may be one aspect. Given, however, that any state action taken in relation to respect for and protection of fetal life necessarily involves the pregnant woman and will impact upon her rights and freedoms, as

described above, international law sets limits on the state power to criminalize abortion.²⁹ These limits generally require states to strike a fair balance between state interests and the rights of women in the regulation of abortion. International human rights law thus requires no particular substantive law on abortion, but rather a fair balance marked by principles of non-arbitrariness and proportionality.

A. Absolute Criminal Abortion Bans

14. Criminal prohibitions on abortion are therefore neither required nor permitted by international law given their absolute negation of the human rights of women.³⁰ The state is obligated to give some form of respect and protection to the human rights of women in any criminal law or other state action on abortion. International treaty bodies thus explicitly require State Parties to repeal or reform laws that criminalize all forms of abortion.³¹ On the basis of this limitation, in Concluding Observations, these bodies have specifically called on Chile to repeal or reform its absolute prohibition.³² The most recent Concluding Observations, while noting the discussion on the proposed reform, recommended that Chile “ensure its compatibility with ... fundamental rights, such as women’s rights to health and life, by considering a broadening of permitted circumstances...”³³

B. Guiding Principles of Non-Arbitrariness and Proportionality

15. Beyond the limit on absolute abortion prohibitions, the principles of non-arbitrariness and proportionality guide human rights limits on the state power to criminalize abortion.³⁴ These limits recognize that criminal law represents the most onerous, intrusive and punitive power of the state, and should only be used as a last resort.³⁵ The state may therefore only rely upon the criminal law where it offers a rational and proportionate means to achieve a legitimate end with the onus on the state to demonstrate that both criteria are met. A recent report to the UN Human Rights Council explains that when “the death of a woman, where it can be medically linked to a deliberate denial of access to life-saving medical care because of an absolute ban on abortion, would not only constitute a violation of the right to life and an arbitrary deprivation of life [but] a gender-based arbitrary killing only suffered by women...”³⁶ The principle of non-arbitrariness requires a direct and rational connection between the purpose of the criminal prohibition (e.g. decrease in the number of abortions), and the objective of the law (e.g. protection of prenatal life). As a result, a criminal abortion law that limits the human rights of women in a way that bears no connection to, or that undermines, its objectives is arbitrary, inflicting harm without need or reason.³⁷ The World Health Organization, for example, has explained that criminal laws do not decrease the need for abortion, but make them unsafe.³⁸ The principle of proportionality requires that criminal abortion laws not deprive women of their human rights in a manner disproportionate to the objective of the law.³⁹ The connection between the impact of the law and its objective must be within the norms of a free and democratic society.

C. Grounds and Procedural Protections for Legal Abortion

16. One measure to ensure that criminal abortion laws are non-arbitrary and proportionate is to decriminalize abortion in prescribed circumstances, commonly referred to as “legal grounds.” International human rights law requires decriminalization of abortion, at a minimum, in circumstances of risk to life and health of the pregnant woman, risk of serious fetal malformation, and where pregnancy results from sexual crime (i.e. rape, incest).⁴⁰

Criminalization on these grounds is considered arbitrary and disproportionate because it fails to give due consideration to the hardships of women who end their pregnancies in these circumstances with risks to their physical and mental health, including their integrity and well-being.⁴¹ Under international law, any state action or law likely to result in bodily harm, unnecessary morbidity or preventable mortality constitutes a violation of the rights to life and health.⁴² State Parties are further obligated to abstain from imposing discriminatory practices relating to reproductive health, including laws that criminalize or otherwise restrict access to health care interventions, such as abortion, needed by women.⁴³

17. A second measure to ensure that criminal abortion laws are non-arbitrary and proportionate in their application and effect are procedural protections. These protections ensure that women can access safe and respectful abortion services under the legal grounds to the full extent of the law.⁴⁴ Commonly referred to as the “chilling effect”,⁴⁵ human rights authorities recognize that criminalization can result in providers refraining from offering or delivering services even when allowed by law,⁴⁶ and women foregoing services within the formal health sector for services outside it that are less safe.⁴⁷ International human rights law thus requires the state to take affirmative measures to ensure that legal grounds are clear and transparent, and that procedures to access legal abortion do not impose undue burdens.⁴⁸ In addition, obligations regarding transparency are especially important for individuals with particular vulnerabilities, such as those of pregnant adolescent girls,⁴⁹ and pregnant girls and women with disabilities.⁵⁰ The Committee on the Rights of the Child has urged states to “decriminalize abortion, ensure that girls have access to safe abortion, 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 decisions.”⁵¹ State Parties are obligated to ensure that women can access timely and accurate information on abortion grounds and procedures, as well as, evidence-based health information on the circumstances of their pregnancy and all legal options for care.⁵² Human rights standards require the state to provide legal and administrative mechanisms to redress unlawful denials of legal abortion.⁵³

IV. The International Consensus on Grounds and Procedural Protections for Legal Abortion

18. The following sections elaborate on the grounds and procedural protection for legal abortion in cases of:

- Risk to the Life and Health of the Pregnant Woman
- Serious Fetal Malformation
- Sexual Crime

A. Risk to the Life and Health of the Pregnant Woman

19. International human rights law requires decriminalization of abortion in circumstances where pregnancy and its continuation endanger a woman’s life and health. U.N. Treaty Bodies express strong support for a woman’s right to access legal abortion in these circumstances as an entitlement under human rights of equality and health care.⁵⁴ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has explained that where “States choose to impose an absolute ban on abortion and criminalise it, ... the death of a woman, where it can be medically linked to a deliberate denial of access to life-saving

medical care because of an absolute legal ban on abortion, would not only constitute a violation of the right to life and an arbitrary deprivation of life. It would also amount to a gender-based arbitrary killing, only suffered by women, as a result of discrimination enshrined in law.”⁵⁵ The Rapporteur on the Rights of Women of the Inter-American Commission recognizes that “therapeutic abortion has been internationally recognized as a ... health service for women, its ultimate purpose being to save the life of the mother when threatened during pregnancy.”⁵⁶ The denial of health services and the risk of death and ill-health are regarded as disproportionate harms to the achievement of any legitimate end in the criminal regulation of abortion.

20. This therapeutic ground for legal abortion is separate from circumstances where miscarriage results from other therapeutic interventions, which is exempted from criminal law in most jurisdictions. Risks to life and health moreover are not distinguished in international human rights law because the right to life protects more than “bare” life, i.e. “being alive”, including quality of life, i.e. physical and mental health and well-being.⁵⁷ International treaty bodies thus consistently interpret treaty-based health protections as connected to the right to life.⁵⁸

21. Criminal law or related regulations that require the exhaustion of all alternative interventions before an abortion can be legally provided to protect the life or health of the pregnant woman are contrary to international human rights law.⁵⁹ First, such an onerous standard creates unnecessary delay in and unreasonable withholding of care by interfering with the exercise of clinical judgment.⁶⁰ Second, to withhold care and require a woman to consent to an alternative intervention under threat to her life and health is coercive treatment and a violation of human rights.⁶¹ Based on this principle, a lawful abortion cannot be withheld on the basis of a woman’s unwillingness to consent to an alternative medical intervention (e.g. live delivery).

22. With respect to procedural protections, the state is required to establish standards and procedures to ensure the timely provision of abortion services where a woman’s life and health is endangered.⁶² This includes robust clinical governance and professional standards to ensure providers are secure in delivering time-critical care and women are aware of their entitlements in the health care system.⁶³

B. Risk of Serious Fetal Malformation

23. International human rights law requires decriminalization of abortion in circumstances where there is a risk of serious, including fatal fetal malformation,⁶⁴ and special protection of adolescent girls with such pregnancies.⁶⁵ Human rights authorities characterize abortion in these circumstances as a therapeutic intervention given foreseeable risks of mental distress and suffering for women and their families in the forced continuation of pregnancy, and therefore interpret criminal prohibitions on abortion in these circumstances as a violation of women’s right to health.⁶⁶

24. Human rights authorities have also interpreted criminal prohibitions on abortion that require women to continue a non-viable pregnancy to miscarriage or stillbirth, or to a gestational marker of viability, to violate of the right against inhuman and degrading treatment.⁶⁷ On diagnosis of a non-viable pregnancy, women and families may experience emotional distress and suffering, which criminalization prolongs by forcing a woman to endure a pregnancy with the knowledge that it will end in death rather than life. The infliction of suffering is arbitrary because no countervailing state interest justifies the harm.⁶⁸ The Human Rights Committee has further acknowledged that the criminalization

of abortion in this circumstance, with its associated dignitary harms, can result in denial of the respect, care and compassion the state accords to women with nonviable pregnancies who miscarry.⁶⁹

25. With respect to procedural protections, the right to health is an inclusive right that encompasses access not only to health care services, but also to the information and support necessary for free and informed decision-making about care.⁷⁰ The European Court of Human Rights has specifically affirmed the right of women to access timely prenatal screening and other health information necessary to diagnose fetal malformation and access legal abortion.⁷¹

C. Sexual Crime

26. International human rights law requires decriminalization of abortion in circumstances where pregnancy results from sexual crime. Human rights authorities characterize abortion in these circumstances as a therapeutic intervention, the scope of mental health including risks of mental distress and suffering associated with the circumstances of pregnancy.⁷² Legal abortion in this circumstance is thus considered necessary to protect women's rights to health.⁷³ Other authorities justify decriminalization as necessary to protect against cruel, inhuman or degrading treatment in requiring women to continue pregnancy.⁷⁴ The rationales for decriminalization based on rights to health and to be free from inhuman and degrading treatment are distinct from the use of sexual crime as a mitigating or exculpatory factor on grounds of a woman's sexual virtue or honor. Decriminalization recognizes that gender-based violence, including sexual violence, endangers the health and lives of women, and that legal abortion is a remedial measure to address this harm.⁷⁵ Human rights authorities also pay specific attention to the vulnerabilities of adolescent girls subjected to such crimes.⁷⁶
27. With respect to procedural protections, the Human Rights Committee has interpreted state failure to ensure access to legal abortion in cases of rape, including provision in public health facilities, as a violation of women's human rights.⁷⁷ Human rights authorities obligate states to address access barriers to legal abortion in cases of sexual crime, including misinformation and other acts of frustration by health authorities and public prosecutors, and to prevent and remedy them.⁷⁸ In a friendly settlement before the Inter-American Commission, a state conceded that the absence of clear regulation and procedures enabled public officials to act arbitrarily to deny legal abortion in violation of women's human rights.⁷⁹ The Inter-American Commission on Human Rights has ordered states to take precautionary measures to prevent and remedy the effects of sexual violence by, for example, providing adequate access to services, including abortion services.⁸⁰
28. Human rights authorities also recognize the critical importance of protecting the right to dignity and privacy in access to abortion and other care in cases of sexual violence.⁸¹ The Inter-American Court of Human Rights recommends that states revise criminal law provisions that require medical examination or forensic evidence, judicial authorization or criminal investigation, and criminal reporting or proceedings as a prerequisite to access legal abortion.⁸² Standards and guidelines for provision of abortion in such cases should be elaborated, and appropriate training given to health-care providers and police, ideally as part of comprehensive care standards and guidelines for sexual violence.⁸³

V. Conclusion

29. The consensus on abortion criminalization in international human rights law

- Supports repeal and reform of criminal abortion laws, favoring decriminalization over de-penalization to protect the lives and health of women and to improve their quality of life.
- Rejects absolute prohibitions on abortion, and sets limits on the state power to criminalize abortion based on principles of non-arbitrariness and proportionality.
- Requires the decriminalization of abortion, at a minimum, on grounds of risk to the life and health of the pregnant woman, risk of serious fetal malformation, and where pregnancy results from sexual crime.
- Requires states to enact procedural protections to ensure access to safe and respectful abortion services to the full extent of the law.

¹ R.J. Cook, J.N. Erdman and B.M. Dickens, eds., *Abortion Law in Transnational Perspective: Cases and Controversies* (Philadelphia: Univ. Pennsylvania Press, 2014), *El aborto en el derecho transnacional: Casos y controversias* (Mexico, D.F.: FCE/CIDE, 2016).

² CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] 2010, Art. 5(2): “The exercise of sovereignty is limited by the respect for essential rights originating from human nature. All agencies of government must respect and promote such rights, as guaranteed by this constitution as well as by international treaties ratified by Chile that have entered into force.”

International Covenant on Civil and Political Rights, adopted December 16 1966, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171 (entered into force March 23, 1976) (hereinafter **ICCPR**) (ratified by Chile 10 Feb 1972), and monitored by the Human Rights Committee (hereinafter **HRC**).

International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3 (entered into force January 3, 1976) (hereinafter **ICESCR**) (ratified by Chile 10 Feb 1972), and monitored by the Committee on Economic, Social and Cultural Rights (hereinafter **CESCR**).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, UN GAOR, 29th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (ratified by Chile 30 sep 1988), and monitored by the Committee against Torture (hereinafter **CAT**)

Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) adopted December 18, 1979, G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13 (entered into force September 3, 1981) (ratified by Chile 7 Dec 1989), and monitored by the Committee on the Elimination of Discrimination against Women (hereinafter **CEDAW Committee**.)

Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res.44/25, UN GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49, 1577 U.N.T.S. 3 (entered into force September 2, 1990) (ratified by Chile 13 Aug 1990), and monitored by Committee on the Rights of the Child (hereinafter **CRC**).

American Convention on Human Rights, signed 22 Nov. 1969, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), O.A.S.T.S. No. 36, 1144 U.N.T.S. 143 (entered into force 18 July 1978) (ratified by Chile 10 Aug 1990), and monitored by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, (adopted 9 June 1994) 33 ILM 1534 (entered into force 5 March 1995) (hereinafter **Convention Belém do Pará**) (ratified by Chile 24 Oct 1996), and monitored by Committee of Experts of the Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

³ This consensus is based on international and regional human rights treaties and their authoritative interpretation in General Comments and Recommendations, Concluding Observations and Individual Decisions in the U.N. system and their elaboration in reports to the U.N. Human Rights Council, as well as, individual decisions, friendly settlement agreements and provisional measures in the Inter-American and European human rights systems. This opinion concentrates on developments in the last ten years. For developments prior to that time see, C. Zampas and J. Gher, “Abortion as a Human Right - International and Regional Standards” (2008) 8:2 *Human Rights Law Review* 249.

⁴ P. Bergallo and A.R. Michel, “Constitutional developments in Latin American abortion law” (2016) 135 *Int J Gynecol Obstet.* 228. See also: P. Bergallo and A.R. Michel, “Shifting Frames and Latin American Constitutional Debate,” in Juan Gonzalez-Bertomeu and Roberto Gargarella, eds., *The Latin American Casebook: Courts, Constitutions and Rights*. (Farnham, UK: Ashgate, 2016), 36-59.

⁵ Sentencia C-355/06, Constitutional Court, Part VI, (2006) (Colom.). Section VI, 6, 7, 8.4, 10.1 [en línea en español](#).

⁶ Constitutional Court of Colombia Decisions: *T-988/07*, November 20, 2007; *T-209/08*, February 28, 2008; *T-946/08*, October 2, 2008; *T-388/09*, May 28, 2009; *T-585/10*, July 22, 2010; *T-636/11*, August 25, 2011; *T-841/11*, November 3, 2011.

⁷ Suprema Corte de Justicia de la Nación, Acción de Inconstitucionalidad 146/2007 y su acumulada 147/2007, 28 de agosto de 2008, sec. 8, 1, c, d. (Mexico).

⁸ Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/3/2012, *F. A. L. s/ Medida Autosatisfactiva*, Expediente Letra “F”, N° 259, Libro XLVI (13 March 2012) (Argentina) paras 3, 6, 7, 10-13, 15, 16, 24, 26. [Sentencia en línea](#)

⁹ Sentencia Constitucional Plurinacional 0206/2014, Constitutional Court, Part III, § 8.8 (2014) (Bol.), Section III, 8.8. [descargar PDF sentencia](#)

¹⁰ Ústavný Súd [Constitutional Court] December 4, 2007, *PL. ÚS 12/01-297*, Collection of Laws of the Slovak Republic. No. 14/2008, vol. 8 at II.A Pt (3,4) (Slovakia).

¹¹ *Lakshmi Dhikta & Others v. Government of Nepal*, Writ No. 0757, Jestha, 2066 (2009) (Supreme Court of Nepal) paras 28-31, 39, 94, 95. [descargar PDF sentencia y el resumen en Inglés.](#)

¹² Tribunal Constitucional [Constitutional Court of Portugal] 2010, *Acórdão No. 75/2010*, Diário da Republica vol. 60, Sections II, 11.2; 11.9.1, [Sentencia en portugués.](#)

¹³ *In the Matter of an Application for Judicial Review by the Northern Ireland Human Rights Commission in the Matter of the Law on the Termination of Pregnancy in Northern Ireland* [2015] NIQB 96 (paras 1 (vi) (ix), 59-71, 173-184), pending appeal to the Northern Ireland Court of Appeal. [Sentencia en línea.](#)

¹⁴ Constitutional Court of the Republic of Croatia, *Decision No. U-I-60/1991*, 20 March 2017. Section Vi, VII, VIII (3), (4) [Sentencia en línea - Croatian.](#)

¹⁵ United Nations. *Beijing Declaration and Platform for Action. Report of the Fourth World Conference on Women*, U.N. Doc. A/CONF.177/20/Rev.1, Annex I (1995), para. 106(k) (called on states to “consider reviewing laws containing punitive measures against women who have undergone illegal abortions”); CEDAW Committee, *General Recommendation No. 24: Women and Health*, U.N. Doc. A/54/38/Rev.1 (1999), para. 31(c) (“When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”) (hereinafter **CEDAW Committee GR 24**); See also *Women Behind Bars – Chile’s Abortion Laws - A Human Rights Analysis* (New York: Center for Reproductive Law and Policy [now Center for Reproductive Rights] and Santiago: The Open Forum for Reproductive Health and Rights, 1998).

¹⁶ Human Rights Committee, Concluding Observations: Honduras, CCPR/C/HND/CO/1 (2006), para. 8; Dominican Republic, CCPR/C/DOM/CO/5 (2012), para. 15; Guatemala, CCPR/C/GTM/CO/3 (2012), para. 20; Paraguay, CCPR/C/PRY/CO/3 (2013), para. 13; Peru, CCPR/C/PER/CO/5 (2013), para. 14; Chile, CCPR/C/CHL/CO/6 (2014), para. 15; Malta, CCPR/C/MLT/CO/2 (2014), para. 13; United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7 (2015), para. 17; Costa Rica, CCPR/C/CRI/CO/6 (2016), para. 18. Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/22, para. 28 (call on states to liberalize restrictive abortion laws) (hereinafter **CESCR GC 22**); Concluding Observations: Chile, E/C.12/1/Add.105 (2004), para. 53; Nicaragua, E/C.12/NIC/CO/4 (2008), para. 26; United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (2009), para. 25; Mauritius, E/C.12/MUS/CO/4 (2010), para. 25; Dominican Republic, E/C.12/DOM/CO/3 (2010), para. 29; Sri Lanka, E/C.12/LKA/CO/2-4 (2010), para. 34; Ecuador, E/C.12/EQU/CO/3 (2012), para. 29; Ecuador, E/C.12/EQU/CO/3 (2012), para. 29; Monaco, E/C.12/MCO/CO/2-3 (2014), para. 21; Guatemala, E/C.12/GTM/CO/3 (2014), para. 23; Chile, E/C.12/CHL/CO/4 (2015), para. 29; Uganda, E/C.12/UGA/CO/1 (2015), para. 35; Dominican Republic, E/C.12/DOM/CO/4 (2016), para. 60; Philippines, E/C.12/PHL/CO/5-6 (2016), para. 52. Committee Against Torture, Concluding Observations: Nicaragua, CAT/C/NIC/CO/1 (2009), para. 16; Paraguay, CAT/C/PRY/CO/4-6 (2011), para. 22; Peru, CAT/C/PER/CO/5-6 (2013), para. 15; Kenya, CAT/C/KEN/CO/2 (2013), para. 28; Sierra Leone, CAT/C/SLE/CO/1 (2014), para. 17; Philippines, CAT/C/PHL/CO/3 (2016), para. 40. CEDAW Committee, Concluding Observations: Lebanon, A/60/38(SUPP) (2005), para. 112; Jordan, CEDAW/C/JOR/CO/4 (2007), paras. 9-10; Honduras, CEDAW/C/HON/CO/6 (2007), paras. 24-25; Malta, CEDAW/C/MLT/CO/4 (2010), para. 35; Costa Rica, CEDAW/C/CRI/CO/5-6 (2011), para. 33; Côte d’Ivoire, CEDAW/C/CIV/CO/1-3 (2011), para. 41; Jordan, CEDAW/C/JOR/CO/5 (2012), para. 40; Angola, CEDAW/C/AGO/CO/6 (2013), para. 32; Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), para. 37; Andorra, CEDAW/C/AND/CO/2-3 (2013), para. 32; Pakistan, CEDAW/C/PAK/CO/4 (2013), para. 32; United Kingdom of Great Britain & Northern Ireland, CEDAW/C/GBR/CO/7 (2013), para. 51; Qatar, CEDAW/C/QAT/CO/1 (2014), para. 40; Bahrain, CEDAW/C/BHR/CO/3 (2014), para. 42; Honduras, CEDAW/C/HND/CO/7-8 (2016), para. 37; Ireland, CEDAW/C/IRL/6-7 (2017), para. 43; Rwanda, CEDAW/C/RWA/7-9 (2017), para. 39; Jordan, CEDAW/C/JOR/6 (2017), para. 48. Committee on the Rights of the Child, Concluding Observations: Chile, CRC/C/CHL/CO/3 (2007), para. 56; Nicaragua, CRC/C/NIC/CO/4 (2010), para. 59; Venezuela, CRC/C/VEN/CO/3-5 (2014), para. 57; Jordan, CRC/C/JOR/CO/4-5 (2014), para. 45; Morocco, CRC/C/MAR/CO/3-4 (2014), para. 57; Chile, CRC/C/CHL/CO/4-5 (2015), para. 61; Dominican Republic, CRC/C/DOM/CO/3-5 (2015), para. 52; Honduras, CRC/C/HND/CO/4-5 (2015), para. 65; Gambia, CRC/C/GMB/CO/2-3 (2015), para. 63; Kenya, CRC/C/KEN/CO/3-5 (2016), para. 50; Peru, CRC/C/PER/CO/4-5 (2016), para. 56; Haiti, CRC/C/HTI/CO/2-3 (2016), para. 51; Ireland, CRC/C/IRL/CO/3-4 (2016), para. 58.

¹⁷ Economic Commission for Latin America and the Caribbean and United Nations, *Montevideo Consensus on Population and Development, Priority Action 42*, 2013, [descargar PDF.](#)

¹⁸ UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, A/HRC/32/44, 8 April 2016, paras 79-82. [Disponible en Espanol](#)

¹⁹ World Health Organization (WHO), *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed. (Geneva: WHO, 2012) (hereinafter **WHO Safe Abortion Guidance**), [available online](#). (disponible en Español: Organización Mundial de la Salud (OMS), *Aborto sin riesgos: guía técnica y de políticas para sistemas de salud, Segunda edición* (Montevideo: OMS, 2012) at 90: (“Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality. ... Evidence increasingly shows that, where abortion is legal on broad socioeconomic grounds and on a woman’s request, and where safe services are accessible, both unsafe abortion and abortion-related mortality and morbidity are reduced”).

²⁰ Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 10 (“States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions”) (hereinafter **HRC GC 28**); *Concluding Observations: El Salvador*, CCPR/C/78/SLV (2003), para. 14; *Honduras*, CCPR/C/HND/CO/1 (2006), para. 8; *Argentina*, CCPR/C/ARG/CO/4 (2010), para. 13; *El Salvador*, CCPR/C/SLV/CO/6 (2010), para. 10; *Guatemala*, CCPR/C/GTM/CO/3 (2012), para. 20; *Dominican Republic*, CCPR/C/DOM/CO/5 (2012), para. 15; *Angola*, CCPR/C/AGO/CO/1 (2013), para. 13; *Paraguay*, CCPR/C/PRY/CO/3 (2013), para. 13; *Djibouti*, CCPR/C/DJI/CO/1 (2013), para. 9; *Chile*, CCPR/C/CHL/CO/6 (2014), para. 15; *Malta*, CCPR/C/MLT/CO/2 (2014), para. 13; *Sri Lanka*, CCPR/C/LKA/CO/5 (2014), para. 10; *Sierra Leone*, CCPR/C/SLE/CO/1 (2014), para. 14; *Malawi*, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; *Côte d’Ivoire*, CCPR/C/CIV/CO/1 (2015), para. 15; *Rwanda*, CCPR/C/RWA/CO/4 (2016), paras. 17-18; *Argentina*, CCPR/C/ARG/CO/5 (2016), paras. 11-12; *Costa Rica*, CCPR/C/CRI/CO/6 (2016), paras. 17-18. Committee on Economic, Social and Cultural Rights, *Concluding Observations: Chile*, E/C.12/1/Add.105 (2004), para. 26; *Brazil*, E/C.12/BRA/CO/2 (2009), para. 29; *Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; *Rwanda*, E/C.12/RWA/CO/2-4 (2013), para. 26; *El Salvador*, E/C.12/SLV/CO/3-5 (2014), para. 22; *Guatemala*, E/C.12/GTM/CO/3 (2014), para. 23.

²¹ CEDAW GR 24 *supra* note 15 at para 11; *L.C. v. Peru*, Communication No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011) (Physicians refused to operate on an adolescent girl who attempted suicide and injured her spine because she was pregnant. Although abortion is permissible where there is a serious and immediate risk to pregnant woman’s health, the hospital denied her request for a therapeutic abortion. The adolescent eventually miscarried, after which she received spinal surgery, but because of the delay, she remains paralyzed from the neck down. The CEDAW Committee found the state in violation of its human rights obligations to ensure women’s access to health care services and specifically recommended that it implement measures to ensure accessible abortion services). [Download PDF English; en línea Español](#); CESCR GC 22, *supra* note 16 at para 28; *Report of the Working Group on discrimination against women, supra* note 18: “Denying women access to services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, are inherently discriminatory and prevent women from exercising control over their own bodies and lives.” (para. 28). The Working Group on discrimination against women explains that “[e]quality in reproductive health requires access, without discrimination ... to safe termination of pregnancy...” (para. 23).

²² CEDAW Committee, *Concluding Observations on the combined sixth and seventh periodic reports of Ireland*, CEDAW/C/IRL/CO/6-7, 9 Mar 2017, para. 42, 43.

²³ *Concluding Observation on Ireland, ibid.* para. 42; *WHO Safe Abortion Guidance, supra* note 19 at pp. 18, 23, 90: (“In countries where abortion is legally highly restricted, unequal access to safe abortion may result. In such contexts, abortions that meet safety requirements can become the privilege of the rich, while poor women have little choice but to resort to unsafe providers ... Women [may] have access to safe or relatively safe abortion through seeking care from neighbouring countries, [and] through provision of safe, but illegal abortion care domestically ...”); see also, S. Singh, L. Remez, G. Sedgh and T. Onda, *Abortion Worldwide: Uneven Progress and Unequal Access*, New York: Guttmacher Institute, forthcoming 2017.

²⁴ *Women Behind Bars – Chile’s Abortion Laws, supra* note 15 at 43-83; A study on the application of criminal abortion laws in Argentina, Bolivia and Brazil between 2011 and 2013 revealed the selective application of the laws against poor, Afro-descendants, young people and indigenous peoples, who often have no recourse to competent legal defence: G. Kane, B. Galli, and P. Skuster. *Cuando el aborto es un crimen: La amenaza para mujeres vulnerables en América Latina* (Chapel Hill, Carolina del Norte: Ipas, 2013). [Download PDF](#). *WHO Safe Abortion Guidance, supra* note 19 at 68, 95 (“Protection of persons with special needs: Depending upon the context, unmarried women, adolescents, those living in extreme poverty, women from ethnic minorities, refugees and other displaced persons, women with disabilities, and those facing violence in the home, may be vulnerable to inequitable access to safe abortion services ... Negotiating authorization procedures disproportionately burdens poor women, adolescents, those with little education, and those subjected to, or at risk of, domestic conflict and violence, creating inequality in access”).

²⁵ Human Rights Committee, *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9 (women unable to travel abroad for accessing safe legal abortion). Committee on Economic, Social and Cultural Rights, *Concluding Observations: El Salvador*, E/C.12/SLV/CO/3-5 (2014), para. 22 (poor and less educated women); *Nepal*, E/C.12/NPL/CO/3 (2014), para. 26 (women living in rural areas and from disadvantaged and marginalized groups unable to access safe abortion); *Ireland*, E/C.12/IRL/CO/3

(2015), para. 30 (women unable to afford an abortion abroad or access the necessary information). CEDAW Committee, *Concluding Observations: Ireland*, A/54/38/REV.1 (SUPP) (1999), para. 185 (asylum seekers); Ireland, CEDAW/C/IRL/6-7 (2017), para. 42 (poor women, asylum seekers and migrant women and girls without means to travel outside to obtain abortion services); Jordan, CEDAW/C/JOR/6 (2017), para. 47 (rural women unable to access abortion services). Committee on the Rights of the Child, *Concluding Observations: Argentina*, CRC/CO/70/ARG (2000), para. 14 (poor and rural women).

²⁶ Committee on Economic, Cultural and Social Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4 (2000), para. 12(b) (hereinafter **CESCR GC 14**); CESCR GC 22, *supra* note 16 at paras 28, 34.

CEDAW Committee GR 24, *supra* note 15 at paras 2, 6, 9-17, 19-23, 31.

²⁷ *Artavia Murillo et al. (“in vitro fertilization”) v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (series C) No. 257 (November 28, 2012), para. 143 (“The scope of the protection of the right to private life has been interpreted in broad terms by the international human rights courts ... The protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own personality and aspirations, to determine his or her own identity and to define his or her own personal relationships. The concept of private life encompasses aspects of physical and social identity, including the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with the outside world ... the Court has indicated that motherhood is an essential part of the free development of a woman’s personality. Based on the foregoing, the Court considers that the decision of whether or not to become a parent is part of the right to private life.”); *Brüggemann and Scheuten v. Federal Republic of Germany*, Application No. 6959/75 (1981) 3 E.H.R.R. 244, Eur. Comm’n H.R., paras 54-55 (“[L]egislation regulating the interruption of pregnancy touches upon the sphere of private life ... The right to respect for private life is of such a scope as to secure to the individual a sphere within which he can freely pursue the development and fulfilment of his personality. To this effect, he must also have the possibility of establishing relationships of various kinds, including sexual, with other persons. In principle, therefore, whenever the State sets up rules for the behaviour of the individual within this sphere, it interferes with the respect for private life and such interference must be justified”).

²⁸ *Report of the Working Group on discrimination against women*, *supra* note 18 at para 79. See also, Trial of Ulrich Greifelt and Others, *Law Reports of Trials of War Criminals*, Vol XIII, 1, 13-14 (London: Published for the United Nations War Crimes Commission by His Majesty’s Stationery Office, 1949) (Greifelt and others were convicted and imprisoned, among other crimes, for forced abortion of mixed-race and other “impure pregnancies,” and forced continuation of “racially pure” pregnancy by prohibition of abortion as part of part of Nazi policies to promote racial purification, where the consent of pregnant women was irrelevant, since compelled abortion and forced pregnancy was an instrument of state policy.)

²⁹ CESCR GC 22, *supra* note 16 at para 5, 10-32, 34; *Vo v. France*, Application No. 53924/00, (2005) 40 E.H.R.R. 12, Eur. Ct. H.R. (2004), para. 80 (with respect to abortion law, “the unborn child is not regarded as a ‘person’ directly protected by Article 2 of the Convention [the right to life] and that if the unborn do have a ‘right’ to ‘life’, it is implicitly limited by the mother’s rights and interests.”) [Decision online](#); *A, B, and C v. Ireland*, [2010] E.C.H.R. 2032, Eur. Ct. H.R., para 229, 238: [T]he Court must examine whether there existed a pressing social need for the measure in question and, in particular, whether the interference was proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests ... A prohibition of abortion to protect unborn life is not therefore automatically justified under the Convention on the basis of unqualified deference to the protection of pre-natal life or on the basis that the expectant mother’s right to respect for her private life is of a lesser stature. Nor is the regulation of abortion rights solely a matter for the Contracting States ... the Court must decide on the compatibility with ... the [European] Convention of the Irish State’s prohibition of abortion on health and well-being grounds on the basis of the above-described fair balance test.” [Decision online](#).

³⁰ *White and Potter v. United States (Baby Boy)*, Case 2141, Report No. 23/81, OAS/Ser.L/V/II.54, doc. 9 rev. 1, Inter-Am. C.H.R. (1981), at para. 25, 30 [online in English](#) [en línea Español](#); *Vo v. France*, *ibid.* para. 80.

³¹ Human Rights Committee, *Concluding Observations: Malawi*, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9. Committee on Economic, Social and Cultural Rights, *Concluding Observations: Nicaragua*, E/C.12/NIC/CO/4 (2008), para. 26; Committee Against Torture, *Concluding Observations: Nicaragua*, CAT/C/NIC/CO/1 (2009), para. 16. Committee on the Rights of the Child, *Concluding Observations: Nicaragua*, CRC/C/NIC/CO/4 (2010), para. 59. CEDAW Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, A/54/38/REV.1 (SUPP) (1999), para. 310; Nigeria, CEDAW/C/NGA/CO/6 (2008), paras. 33-3; Ireland, CEDAW/C/IRL/6-7 (2017), para. 43.

³² Human Rights Committee, *Concluding Observations: Chile*, CCPR/C/CHL/CO/5 (2007), para. 8; Chile, CCPR/C/CHL/CO/6 (2014), para. 15. Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Chile*, E/C.12/1/Add.105 (2004), para. 53; Chile, E/C.12/CHL/CO/4 (2015), para. 29.

CEDAW Committee, *Concluding Observations: Chile*, A/54/38/REV.1(SUPP) (1999), para. 229; *Chile*, CEDAW/C/CHI/CO/4 (2006), para. 20.

Committee on the Rights of the Child, *Concluding Observations: Chile*, CRC/C/CHL/CO/3 (2007), para. 56; *Chile*, CRC/C/CHL/CO/4-5 (2015), para. 61.

³³ *Ibid.*, *Chile*, E/C.12/CHL/CO/4 (2015), para. 29.

³⁴ *Artavia Murillo et al. v. Costa Rica*, supra note 27 at para. 316 (“based itself on an absolute protection of the embryo that, by failing to weigh up or take account the other competing rights, involved an arbitrary or excessive interference in private and family life that makes this interference disproportionate.”). See for proportionality analysis in comparative constitutional law, V. Undurraga, “Proportionality in the Constitutional Review of Abortion Law,” in *Abortion Law in Transnational Perspective*, supra note 1 at 77-97. “El principio de proporcionalidad en el control de constitucionalidad de las normas sobre el aborto,” en *El aborto en el derecho transnacional: supra* note 1 at 107-130.

³⁵ Juan J. Bustos Ramírez and Hernán Hormazábal Malarée, eds., *Lecciones de derecho penal. Parte general*, (Madrid: Editorial Trotta, 2006): 94-99.

³⁶ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*, A/HRC/35/23, 15 May 2017, Advance Unedited Version, para. 24.

³⁷ *Mellet v. Ireland*, CCPR/C/116/D/2324/2013, U.N. Human Rights Committee (HRC), 9 June 2016, at para. 7.8: “[T]he balance that the State party has chosen to strike between protection of the foetus and the rights of the woman in this case cannot be justified. The Committee recalls its General Comment No. 16 on article 17, according to which the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee notes that the author’s wanted pregnancy was not viable ... The Committee considers that the interference in the author’s decision as to how best cope with her non-viable pregnancy was unreasonable and arbitrary in violation of article 17 [the right to privacy] of the Covenant”. Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy), *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, (1988), para. 4; *Whelan v. Ireland*, CCPR/C/119/D/2425/2014, U.N. Human Rights Committee (HRC), 12 June 2017, at para. 7.9: “The Committee considers that the balance that the State party has chosen to strike between protection of the fetus and the rights of the woman in the present case cannot be justified. The Committee refers in this regard to its Views in *Mellet v. Ireland*, which dealt with a similar refusal to allow for termination of pregnancy involving a fetus suffering from fatal impairment.²¹ The Committee notes that, like in *Mellet v. Ireland*, preventing the author from terminating her pregnancy in Ireland caused her mental anguish and constituted an intrusive interference in her decision as to how best to cope with her pregnancy, notwithstanding the non-viability of the fetus. On this basis, the Committee considers that the State party’s interference in the author’s decision is unreasonable and that it thus constitutes an arbitrary interference in the author’s right to privacy, in violation of article 17 of the Covenant.”

³⁸ *WHO Safe Abortion Guidance*, supra note 19 at 90: “Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates. Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle shift of [reforming and clarifying laws] is to shift previously clandestine, unsafe procedures to legal and safe ones. Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality. Legal restrictions also lead many women to seek services in other countries/states, which is costly, delays access and creates social inequities.”

³⁹ *A, B, and C v. Ireland*, supra note 29 para 229, (the case concerned “in particular, whether the interference was proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests”).

⁴⁰ See *Concluding Observations* of: Human Rights Committee, *Dominican Republic*, CCPR/C/DOM/CO/5 (2012), para. 15; *Angola*, CCPR/C/AGO/CO/1 (2013), para. 13; *Paraguay*, CCPR/C/PRY/CO/3 (2013), para. 13; *Peru*, CCPR/C/PER/CO/5 (2013), para. 14; *Djibouti*, CCPR/C/DJI/CO/1 (2013), para. 9; *Chile*, CCPR/C/CHL/CO/6 (2014), para. 15; *Malta*, CCPR/C/MLT/CO/2 (2014), para. 13; *Sri Lanka*, CCPR/C/LKA/CO/5 (2014), para. 10; *Sierra Leone*, CCPR/C/SLE/CO/1 (2014), para. 14; *Malawi*, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; *Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9; *United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7 (2015), para. 17; *Côte d’Ivoire*, CCPR/C/CIV/CO/1 (2015), para. 15; *Costa Rica*, CCPR/C/CRI/CO/6 (2016), para. 18; *Bangladesh*, CCPR/C/BGD/CO/1 (2017), para. 16.

Committee on Economic, Social and Cultural Rights, *Nicaragua*, E/C.12/NIC/CO/4 (2008), para. 26; *Philippines*, E/C.12/PHL/CO/4 (2008), para. 31; *United Kingdom of Great Britain and Northern Ireland*, E/C.12/GBR/CO/5 (2009), para. 25; *Dominican Republic*, E/C.12/DOM/CO/3 (2010), para. 29; *Mauritius*, E/C.12/MUS/CO/4 (2010), para. 25; *Sri Lanka*, E/C.12/LKA/CO/2-4 (2010), para. 34; *Ecuador*, E/C.12/ECU/CO/3 (2012), para. 29; *Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; *Guatemala*, E/C.12/GTM/CO/3 (2014), para. 23; *Chile*, E/C.12/CHL/CO/4 (2015), para. 29; *Dominican Republic*, E/C.12/DOM/CO/4 (2016), para. 60.

Committee Against Torture, Nicaragua, CAT/C/NIC/CO/1 (2009), para. 16; Paraguay, CAT/C/PRY/CO/4-6 (2011), para. 22; Peru, CAT/C/PER/CO/5-6 (2013), para. 15; Kenya, CAT/C/KEN/CO/2 (2013), para. 28; Sierra Leone, CAT/C/SLE/CO/1 (2014), para. 17; Philippines, CAT/C/PHL/CO/3 (2016), para. 40.

CEDAW Committee, Honduras, CEDAW/C/HON/CO/6 (2007), paras. 24-25; Argentina, CEDAW/C/ARG/CO/6 (2010), para. 38; Malta, CEDAW/C/MLT/CO/4 (2010), para. 35; Costa Rica, CEDAW/C/CRI/CO/5-6 (2011), para. 33; Côte d'Ivoire, CEDAW/C/CIV/CO/1-3 (2011), para. 41; Mauritius, CEDAW/C/MUS/CO/6-7 (2011), para. 33; Angola, CEDAW/C/AGO/CO/6 (2013), para. 32; Pakistan, CEDAW/C/PAK/CO/4 (2013), para. 32; United Kingdom of Great Britain and Northern Ireland, CEDAW/C/GBR/CO/7 (2013), para. 51; Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), para. 37; Andorra, CEDAW/C/AND/CO/2-3 (2013), para. 32; Qatar, CEDAW/C/QAT/CO/1 (2014), para. 40; Lebanon, CEDAW/C/LBN/CO/4-5 (2015), para. 42; Honduras, CEDAW/C/HND/CO/7-8 (2016), para. 37; Bangladesh, CEDAW/C/BGD/CO/8 (2016), para. 35; Ireland, CEDAW/C/IRL/6-7 (2017), para. 43; Rwanda, CEDAW/C/RWA/7-9 (2017), para. 39; Jordan, CEDAW/C/JOR/6 (2017), para. 48.

Committee on the Rights of the Child, Chile, CRC/C/CHL/CO/3 (2007), para. 56; El Salvador, CRC/C/SLV/CO/3-4 (2010), para. 61; Nicaragua, CRC/C/NIC/CO/4 (2010), para. 59; Venezuela, CRC/C/VEN/CO/3-5 (2014), para. 57; Kenya, CRC/C/KEN/CO/3-5 (2016), para. 50; Peru, CRC/C/PER/CO/4-5 (2016), para. 56; Haiti, CRC/C/HTI/CO/2-3, para. 51; Ireland, CRC/C/IRL/CO/3-4 (2016), para. 58.

⁴¹ The Human Rights Committee has expressed concern over many years relating to a number of countries regarding restrictions and access to safe abortion and has noted “the severe mental suffering caused by the denial of abortion services to women seeking abortions due to rape, incest, fatal foetal abnormality or serious risks to health (arts. 2, 3, 6, 7, 17, 19, 26 [of ICCPR])”, *Concluding Observations on the fourth periodic report of Ireland*, CCPR/C/IRL/CO/4 (2014), at para. 9. See also R.J. Cook et al. “Legal abortion for mental health indications” (2006) 95:2 *Int J Gynecol Obstet* 185, 187-188 [PDF en español](#). (Disponible en Español como “La salud mental de la mujer como indicación para el aborto legal,” en P. Bergallo ed., *Aborto y Derechos Humanos*, (Argentina: Puerto, 2011); *WHO Safe Abortion Guidance*, *supra* note 19 at 92 (“Physical health is widely understood to include conditions that aggravate pregnancy and those aggravated by pregnancy. The scope of mental health includes psychological distress or mental suffering caused by, for example, coerced or forced sexual acts and diagnosis of severe fetal impairment”).

⁴² HRC GC 28, *supra* note 20 at para.10; CESCR GC 14, *supra* note 26 at para. 50; CESCR GC 22, *supra* note 16 at paras 10 and 1.

⁴³ CEDAW Committee GR 24, *supra* note 15 at para. 11; CESCR GC 14, *supra* note 26 at para. 34; Committee on Economic, Cultural and Social Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, UN Doc. E/C.12/2005/4 (2005), para. 29 (noting that the right to equality in health “requires at a minimum the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on a basis of equality. This includes, inter alia, addressing ... the removal of legal restrictions on reproductive health provisions.”)

⁴⁴ *WHO Safe Abortion Guidance*, *supra* note 19 at 98 (“The respect, protection and fulfilment of human rights require that governments ensure abortion services that are allowable by law are accessible in practice. Institutional and administrative mechanisms should be in place and should protect against unduly restrictive interpretations of legal grounds”).

⁴⁵ *WHO Safe Abortion Guidance*, *supra* note 19 at 95 (“The fear of violating a law produces a chilling effect. Women are deterred from seeking services within the formal health sector. Health-care professionals tend to be overly cautious when deciding whether the legal grounds for abortion are met, thereby denying women services to which they are lawfully entitled”).

⁴⁶ Human Rights Committee, *Concluding Observations: Nicaragua*, CCPR/C/NIC/CO/3 (2008), para. 13; *El Salvador*, CCPR/C/SLV/CO/6 (2010), para. 10; *Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9.

Committee on the Rights of the Child, *Concluding Observations: Argentina*, CRC/C/ARG/CO/3-4 (2010), paras. 58-59; *Ireland*, CRC/C/IRL/CO/3-4 (2016), para. 57.

Committee on Economic, Social and Cultural Rights, *Concluding Observations: Nicaragua*, E/C.12/NIC/CO/4 (2008), para. 26.

Committee Against Torture, *Concluding Observations: Peru*, CAT/C/PER/CO/4 (2006), para. 23; *Paraguay*, CAT/C/PRY/CO/4-6 (2011), para. 22; *Ireland*, CAT/C/IRL/CO/1 (2011), para. 26; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15; *Kenya*, CAT/C/KEN/CO/2 (2013), para. 28.

CEDAW Committee, *Concluding Observations: Costa Rica*, CEDAW/C/CRI/CO/5-6 (2011), paras. 32-33.

European Court of Human Rights: *Tysiqc v. Poland*, no. 5410/03, 45 ECHR (2007), para. 116 (“[T]he legal prohibition on abortion, taken together with the risk of their incurring criminal responsibility ... can well have a chilling effect on doctors when deciding whether the requirements of legal abortion are met in an individual case. The provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate this effect. Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it”).

⁴⁷ Human Rights Committee, *Concluding Observations: Costa Rica*, CCPR/C/CRI/CO/6 (2016), para. 18; *Bangladesh*, CCPR/C/BGD/CO/1 (2017), para. 15.

Committee Against Torture, *Concluding Observations: Peru*, CAT/C/PER/CO/5-6 (2013), para. 15.
CEDAW Committee, *Concluding Observations: Chile*, CEDAW/C/CHI/CO/4 (2006), para. 19; *Chile*, CEDAW/C/NIC/CO/6 (2007), para. 17; *Pakistan*, CEDAW/C/PAK/CO/3 (2007), para. 40; *Kenya*, CEDAW/C/KEN/CO/7 (2011), para. 37; *Mauritius*, CEDAW/C/MUS/CO/6-7 (2011), para. 32; *Democratic Republic of Congo*, CEDAW/C/COG/CO/6 (2012), para. 35.
Committee on the Rights of the Child, *Concluding Observations: El Salvador*, CRC/C/SLV/CO/3-4 (2010), paras. 60; *Jordan*, CRC/C/JOR/CO/4-5 (2014), para. 44; *Morocco*, CRC/C/MAR/CO/3-4 (2014), para. 56.
UN Human Rights Council Human Rights Council, *Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality*. Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/21/22, July 2, 2012, [report online](#)) explained that where “abortion laws are overly restrictive, responses by providers, police and other actors can discourage care-seeking behavior,” leading some women to delay seeking life-saving care (para. 56).

⁴⁸ Human Rights Committee: *K.L. v. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) [Descargar PDF](#) [en línea español](#); *L.M.R. v. Argentina*, Communication No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011) (violation of L.M.R.’s right to freedom from cruel, inhuman or degrading treatment or punishment (paras 9.2, 10), right to privacy (paras 9.3, 10), right to an effective remedy (paras 9.4, 10) and the right to equal enjoyment of Covenant rights (para 10) in failing to adequately regulate access to abortion in cases of rape, thus forcing the applicant to seek an illegal abortion).

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Concluding Observations: Poland, CCPR/C/POL/CO/6 (2010), para. 12; *Macedonia*, CCPR/C/MKD/3 (2010), para. 11; *Peru*, CCPR/C/PER/CO/5 (2013), para. 14; *Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9; *Poland*, CCPR/C/POL/CO/7 (2016), para. 23; *Costa Rica*, CCPR/C/CRI/CO/6 (2016), paras. 18; *Bangladesh*, CCPR/C/BGD/CO/1 (2017), para. 16.

Committee on Economic, Social and Cultural Rights: *Concluding Observations: Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; *Ireland*, E/C.12/IRL/CO/3 (2015), para. 30; *Costa Rica*, E/C.12/CRI/CO/5 (2016), paras. 53-54; *Poland*, E/C.12/POL/CO/6 (2016), paras. 46-47.

Committee Against Torture: *Concluding Observations: Ireland*, CAT/C/IRL/CO/1 (2011), para. 26; *Bolivia*, CAT/C/BOL/CO/2 (2013), para. 23; *Poland*, CAT/C/POL/CO/5-6 (2013), para. 23; *Kenya*, CAT/C/KEN/CO/2 (2013), para. 28; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15.

CEDAW Committee: *L.C. v. Peru*, *supra* note 21; *Concluding Observations: Argentina*, CEDAW/C/ARG/CO/6 (2010), paras. 37-38; *Costa Rica*, CEDAW/C/CRI/CO/5-6 (2011), paras. 32-33; *Poland*, CEDAW/C/POL/CO/7-8 (2014), paras. 36-37; *Slovakia*, CEDAW/C/SVK/5-6 (2015), para. 31; *Ireland*, CEDAW/C/IRL/6-7 (2017), para. 42.

European Court of Human Rights: *Tysic v. Poland*, *ibid.*; *A, B, and C v. Ireland*, *supra* note 29; *R.R. v. Poland*, Application No. 27617/04, Eur. Ct. H.R. (2011) [Decision online](#); *P. and S. v. Poland*, Application No. 57375/08, Eur. Ct. H.R. (2012) (held that an unclear legal framework allowed medical staff to mislead on and delay access to abortion in an effort to frustrate the adolescent girl’s exercise of her legal right to abortion in case of rape violated her right to privacy (para 137), her right to liberty (para 149) and her the right to be free from inhuman or degrading treatment (para 168)); [Decision online](#).

WHO Safe Abortion Guidance, *supra* note 19 at 95 (“The provision of information about safe, legal abortion is crucial to protect women’s health and their human rights. States should decriminalize the provision of information related to legal abortion and should provide clear guidance on how legal grounds for abortion are to be interpreted and applied, as well as information on how and where to access lawful services”).

⁴⁹ *K.L. v. Peru*, *ibid.* at para 65; *L.C. v. Peru*, *ibid.* at paras 8.7 and 8.18;

Committee on the Rights of the Child: *Concluding Observations: Kenya*, CRC/C/KEN/CO/3-5 (2016), para. 50; *Peru*, CRC/C/PER/CO/4-5 (2016), para. 56.

Inter-American Commission on Human Rights: *Paulina Ramirez v. Mexico*, Case 161-02, Report No. 21/07, IACHR, Friendly Settlement (2007) [in English](#); [en línea Español](#) (case involved denial of legal abortion in case of rape to an adolescent girl. In a settlement agreement, the State agreed to promote legislative amendments and to conduct a national survey regarding the health care needs of women who have experienced sexual violence); *X and XX*, PM 270/09 (Colombia) IACHR, (21 September 2009) (ordered appropriate treatment for a pregnant adolescent rape victim); *Nia Mainumby*, MC 178/15 (Paraguay) IACHR, 8 June 2015 (ordered appropriate treatment for a pregnant adolescent rape victim). [Descargar PDF](#).

European Court of Human Rights: *P. and S. v. Poland*, *ibid.* at paras 161, 162, 166-168.

⁵⁰ *L.M.R. v. Argentina*, *supra* note 48 at para. 9.2. (recognition of vulnerability), 9.3 (finding a violation of the right to privacy in a case where an intellectually disabled girl became pregnant as a result of rape and was denied an abortion).

⁵¹ CRC, “Draft General Comment on the implementation of the rights of the child during adolescence,” Advance Unedited Version, UN Doc. CRC/C/GC/20 (2016), para. 65.

⁵² CESCR GC 14 *supra* note 26 at paras 12 (b), 21; CESCR GC paras 22 18, 19, 40, 41, 49(a); CEDAW GR 24 *supra* note 15 at para 28, 31(b); *R.R. v. Poland*, *supra* note 48 at para. 197, 200 (“[I]n the context of pregnancy, the effective access to relevant information on the mother’s and foetus’ health, where legislation allows for abortion in certain situations, is directly relevant for the exercise of personal autonomy ... the State is under a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion ... In other words, if the domestic law allows for abortion in cases of foetal malformation, there must be an adequate legal and

procedural framework to guarantee that relevant, full and reliable information on the foetus' health is available to pregnant women”).

⁵³ Human Rights Committee, *Concluding Observations: El Salvador*, CCPR/C/SLV/CO/6 (2010), para. 10; *Jamaica*, CCPR/C/JAM/CO/4 (2016), para. 26.

Committee on Economic, Social and Cultural Rights, *Concluding Observations: Nicaragua*, E/C.12/NIC/CO/4 (2008), para. 26; *Brazil*, E/C.12/BRA/CO/2 (2009), para. 29; *Poland*, E/C.12/POL/CO/6 (2016), para. 47.

Committee on the Rights of the Child, *Concluding Observations: Argentina*, CRC/C/ARG/CO/3-4 (2010), para. 59.

Committee Against Torture, *Concluding Observations: Chile*, CAT/C/CR/32/5 (2004), para. 7; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15.

European Court of Human Rights *Tysiqc v. Poland*, *supra* note 46 at paras 117-118 (“[T]he concepts of lawfulness and the rule of law in a democratic society command that measures affecting fundamental human rights be, in certain cases, subject to some form of procedure before an independent body competent to review the reasons for the measures and the relevant evidence ... such a procedure should guarantee to a pregnant woman at least the possibility to be heard in person and to have her views considered. The competent body should also issue written grounds for its decision. ... [Moreover] the very nature of the issues involved in decisions to terminate a pregnancy is such that the time factor is of critical importance. The procedures in place should therefore ensure that such decisions are timely so as to limit or prevent damage to a woman’s health ... Procedures in which decisions concerning the availability of lawful abortion are reviewed post factum cannot fulfil such a function”). *WHO Safe Abortion Guidance*, *supra* note 19 at 98 (“Procedural mechanisms should allow service provider and facility administrator decisions to be reviewed by an independent body, should take into consideration the views of the pregnant woman, and should provide timely resolution of review processes”).

⁵⁴ Human Rights Committee, *Concluding Observations: Guatemala*, CCPR/C/GTM/CO/3 (2012), para. 20; *Malta*, CCPR/C/MLT/CO/2 (2014), para. 13; *Sri Lanka*, CCPR/C/LKA/CO/5 (2014), para. 10; *Sierra Leone*, CCPR/C/SLE/CO/1 (2014), para. 14; *Malawi*, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; *Chile*, CCPR/C/CHL/CO/6 (2014), para. 15; *Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9.

Committee on Economic, Social and Cultural Rights, *Concluding Observations: Dominican Republic*, E/C.12/DOM/CO/3 (2010), para. 29; *Guatemala*, E/C.12/GTM/CO/3 (2014), para. 23; *Sri Lanka*, E/C.12/LKA/CO/2-4 (2010), para. 34; *Mauritius*, E/C.12/MUS/CO/4 (2010), para. 25; *Rwanda*, E/C.12/RWA/CO/2-4 (2013), para. 26; *Kenya*, E/C.12/KEN/CO/2-5 (2016), para. 54; *El Salvador*, E/C.12/SLV/CO/3-5 (2014), para. 22; *Dominican Republic*, E/C.12/DOM/CO/4 (2016), para. 60; *Kenya*, E/C.12/KEN/CO/2-5 (2016), para. 54; *Costa Rica*, E/C.12/CRI/CO/5 (2016), para. 54.

Committee Against Torture, *Concluding Observations: Nicaragua*, CAT/C/NIC/CO/1 (2009), para. 16; *Paraguay*, CAT/C/PRY/CO/4-6 (2011), para. 22; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15; *Sierra Leone*, CAT/C/SLE/CO/1 (2014), para. 17; *Philippines*, CAT/C/PHL/CO/3 (2016), para. 40.

CEDAW Committee, *Concluding Observations: Honduras*, CEDAW/C/HON/CO/6 (2007), paras. 24-25; *United Kingdom of Great Britain and Northern Ireland*, CEDAW/C/UK/CO/6 (2009), para. 289; *Japan*, CEDAW/C/JPN/CO/6 (2009), para. 50; *Rwanda*, CEDAW/C/RWA/CO/6 (2009), para. 36; *Haiti*, CEDAW/C/HTI/CO/7 (2009), para. 37; *Malta*, CEDAW/C/MLT/CO/4 (2010), para. 35; *New Zealand*, CEDAW/C/NZL/CO/7 (2012), para. 34; *Angola*, CEDAW/C/AGO/CO/6 (2013), para. 32; *Pakistan*, CEDAW/C/PAK/CO/4 (2013), para. 32; *United Kingdom of Great Britain and Northern Ireland*, CEDAW/C/GBR/CO/7 (2013), para. 51; *Dominican Republic*, CEDAW/C/DOM/CO/6-7 (2013), para. 37; *Andorra*, CEDAW/C/AND/CO/2-3 (2013), para. 32; *Qatar*, CEDAW/C/QAT/CO/1 (2014), para. 40; *Lebanon*, CEDAW/C/LBN/CO/4-5 (2015), para. 42; *Ecuador*, CEDAW/C/ECU/CO/8-9 (2015), para. 33; *Bolivia*, CEDAW/C/BOL/CO/5-6 (2015), para. 28; *Honduras*, CEDAW/C/HND/CO/7-8 (2016), para. 37; *Bangladesh*, CEDAW/C/BGD/CO/8 (2016), para. 35; *Japan*, CEDAW/C/JPN/7-8 (2016), paras. 38-39; *Ireland*, CEDAW/C/IRL/6-7 (2017), para. 43; *Jordan*, CEDAW/C/JOR/6 (2017), para. 48; *Rwanda*, CEDAW/C/RWA/7-9 (2017), para. 39.

Committee on the Rights of the Child, *Concluding Observations: Chile*, CRC/C/CHL/CO/3 (2007), para. 56; *El Salvador*, CRC/C/SLV/CO/3-4 (2010), para. 61; *Nicaragua*, CRC/C/NIC/CO/4 (2010), para. 59; *Kuwait*, CRC/C/KWT/CO/2 (2013), para. 59; *Venezuela*, CRC/C/VEN/CO/3-5 (2014), para. 57; *Poland*, CRC/C/POL/CO/3-4 (2015), para. 39; *Brazil*, CRC/C/BRA/CO/2-4 (2015), para. 59; *Zimbabwe*, CRC/C/ZWE/CO/2 (2016), para. 60; *Haiti*, CRC/C/HTI/CO/2-3, para. 51.

Inter-American Commission on Human Rights: Amelia, Precautionary Measure MC 43-10 (Nicaragua) IACHR (26 February 2010) (ordered appropriate treatment for a pregnant woman with cancer). [Summary in English](#). [Resumen en Español](#).

⁵⁵ UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings*, *supra* note 36 at para. 94.

⁵⁶ Organization of American States, Inter-American Commission on Human Rights, Letter to Nicaragua’s Minister of Foreign Affairs, HE Norman Calderas Cardenal, 10 November 2006.

⁵⁷ The Human Rights Committee emphasizes that the inherent right to life under international law should not be understood in a restrictive manner. Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)* (1982), para. 5.

⁵⁸ See Human Rights Committee, Concluding Observations: El Salvador, CCPR/CO/78/SLV (2003), para. 14; Argentina, CCPR/C/ARG/CO/4 (2010), para. 13; El Salvador, CCPR/C/SLV/CO/6 (2010), para. 10; Guatemala, CCPR/C/GTM/CO/3 (2012), para. 20; Dominican Republic, CCPR/C/DOM/CO/5 (2012), para. 15; Angola, CCPR/C/AGO/CO/1 (2013), para. 13; Malta, CCPR/C/MLT/CO/2 (2014), para. 13; Sri Lanka, CCPR/C/LKA/CO/5 (2014), para. 10; Sierra Leone, CCPR/C/SLE/CO/1 (2014), para. 14; Malawi, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; Ireland, CCPR/C/IRL/CO/4 (2014), para. 9; United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7 (2015), para. 17; Côte d'Ivoire, CCPR/C/CIV/CO/1 (2015), para. 15; Rwanda, CCPR/C/RWA/CO/4 (2016), paras. 17-18; Argentina, CCPR/C/ARG/CO/5 (2016), paras. 11-12; Costa Rica, CCPR/C/CRI/CO/6 (2016), paras. 17-18; Jamaica, CCPR/C/JAM/CO/4 (2016), paras. 25-26; Poland, CCPR/C/POL/CO/7 (2016), paras. 23-24; Bangladesh, CCPR/C/BGD/CO/1 (2017), paras.15-16.

⁵⁹ *L.C. v. Peru*, *supra* note 21.

⁶⁰ Sabaratnam Arulkumaran, The Final Report of the Health Services Executive investigation of Incident 50278 from the time of the patient's self referral to hospital on 21st of October 2012 to the patient's death on the 28th October 2012 (Health Services Executive, June 2013) (death of Savita Halappanavar) (Ireland), [available online](#) (Investigation into the death of Savita Halappanavar, who died after being refused an abortion in an Irish hospital on the belief that Irish law did not permit pregnancy termination before fetal death); *WHO Safe Abortion Guidance*, *supra* note 19 at 92 ("Even where protecting a woman's life is the only allowable reason for abortion, it is essential that there are trained providers of abortion services, that services are available and known ... Saving a woman's life might be necessary at any point in the pregnancy and, when required, abortion should be undertaken as promptly as possible to minimize risks to a woman's health").

⁶¹ CEDAW Committee, *General Recommendation No. 19: Women and Health*, UN Doc. A/47/38 (11th sess. 1992), para. 24(m) ("States parties should ensure that measures are taken to prevent coercion in regard to ... reproduction") (hereinafter **CEDAW GR 19**); Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc. A/64/272 (2009), paras 9, 54 ("Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision ... Gender inequalities reinforced by political, economic and social structures result in women being routinely coerced and denied information and autonomy in the health-care setting. Women's sexual and reproductive health rights demand special considerations; pregnant women are at times denied consent along an appropriate health-care continuum justified by the best interests of the unborn child."); *WHO Safe Abortion Guidance*, *supra* note 19 at 68 ("Informed and voluntary decision-making ... Coercion violates women's rights to informed consent and dignity, and should not be tolerated ... health-care providers have a human rights obligation to ensure that women are not subject to coercion and that they receive the necessary psychological, social and health services to support their choice").

⁶² *A, B, and C v. Ireland*, *supra* note 29 at para 264 (finding a violation of the state's positive obligations by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which a woman can establish her right to a lawful abortion on grounds of a relevant risk to life).

⁶³ See e.g. IPPF/WHR, *Legal Abortion: A Comparative Analysis of Health Regulations* (IPPF/WHR: New York, 2012), [PDF en Ingles](#); Disponible en Español como: *Aborto legal: un análisis comparativo de las regulaciones sanitarias* [Descargar PDF](#).

⁶⁴ Human Rights Committee: K.L. v. Peru, *supra* note 48; Mellet v. Ireland, *supra* note 37 at para 7.6 and Whelan v. Ireland, *supra* note 37 at paras 7.7 and 7.9 (cases involved a violation of the rights to be free from cruel, inhuman and degrading treatment, right of privacy and right to non-discrimination (*Mellet*) because of abortion prohibition in cases involving fatal fetal impairment); see also F. De Londras, "Fatal Foetal Abnormality, Irish Constitutional Law, and *Mellet v. Ireland*" (2016) 24 (4) *Medical Law Review* 591, 598-604. Inter-American Court of Human Rights, Matter of B, Provisional Measures with regard to El Salvador, May 29, 2013 (ordered appropriate treatment for a woman pregnant with an anencephalic fetus).

⁶⁵ *K.L. v. Peru*, *supra* note 48, "notes the special vulnerability of the author as a minor girl," and "that she did not receive, during and after her pregnancy, the medical and psychological support necessary in the specific circumstances of her case" (para. 6.5). Consequently the facts reveal a violation of article 24 (non-discrimination against children and right to measures of protection as are required by minor status) (para. 6.5), and (right to an adequate remedy) (para. 6.6).

⁶⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (2009), para. 25 (concluding observation recommending decriminalization under foetal abnormality); Dominican Republic, E/C.12/DOM/CO/4 (2016), para. 60 (concluding observation recommending decriminalization under fetal non-viability); CEDAW Committee, Concluding Observations: Andorra, CEDAW/C/AND/CO/2-3 (2013), para. 32; Lebanon, CEDAW/C/LBN/CO/4-5 (2015), para. 42; Honduras, CEDAW/C/HND/CO/7-8 (2016), para. 37; Bangladesh, CEDAW/C/BGD/CO/8 (2016), para. 35; Ireland, CEDAW/C/IRL/6-7 (2017), para. 43 (recommends decriminalization under severe fetal impairment); Bolivia, CEDAW/C/BOL/CO/5-6 (2015), para. 29; Japan, CEDAW/C/JPN/7-8 (2016), paras. 38-39 (concluding observation recommending decriminalization under serious impairment of the fetus);

Committee on the Rights of the Child, *Concluding Observations: Ireland*, CRC/C/IRL/CO/3-4 (2016), paras. 57-58; See also R.J. Cook et al, “Prenatal management of anencephaly,” (2008) 102 *Int J Gynecol Obstet.* 304, 306 [En línea en Ingles](#). [Descargar PDF en Español](#).

⁶⁷ Human Rights Committee: *K.L. v. Peru*, *supra* note 48 at para 6.3. (violation of the right to be free from torture and other forms of ill treatment in the state’s utter disregard for an adolescent girl’s mental health, despite the foreseeability of harm, in compelling her to deliver an anencephalic newborn); *Mellet v. Ireland*, *supra* note 37; *Concluding Observations: Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9; United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7 (2015), para. 17; *Jamaica*, CCPR/C/JAM/CO/4 (2016), paras. 25-26 (concluding observations recommending decriminalization under fatal fetal abnormality); *Bangladesh*, CCPR/C/BGD/CO/1 (2017), paras. 15-16; *Costa Rica*, CCPR/C/CRI/CO/6 (2016), paras. 17-18 (concluding observations recommending decriminalization under fatal fetal impairment);

Committee Against Torture, *Concluding Observations: Philippines*, CAT/C/PHL/CO/3 (2016), para. 40 (concluding observations recommending decriminalization for foetal impairment).

See also, R. Sifris, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture* (Routledge, 2014) at pp. 52, 69, 116, 151, 250.

⁶⁸ *Mellet v. Ireland*, *supra* note 37 at paras 7.7 and 7.8; *Whelan v. Ireland*, *supra* note 37 at paras 7.9.

⁶⁹ *Mellet v. Ireland*, *ibid.* at paras 7.10 – 7.11.

⁷⁰ CESCR GC 14, *supra* note 26 at para. 11; CESCR GC 22, *supra* note 16 at paras 18, 19. *WHO Safe Abortion Guidance*, *supra* note 19 at 93 (“Prenatal tests and other medical diagnostic services cannot legally be refused because the woman may decide to terminate her pregnancy. A woman is entitled to know the status of her pregnancy and to act on this information”).

⁷¹ *R.R. v. Poland*, *supra* note 48; *Mellet v. Ireland*, *supra* note 37.

⁷² R.J. Cook et al. “Legal abortion for mental health indications” *supra* note 41, at 187.

⁷³ Committee on Economic, Social and Cultural Rights: *Concluding Observations: Chile*, E/C.12/1/Add.105 (2004), para. 53; *Nicaragua*, E/C.12/NIC/CO/4 (2008), para. 26; *Philippines*, E/C.12/PHL/CO/4 (2008), para. 31; *United Kingdom of Great Britain and Northern Ireland*, E/C.12/GBR/CO/5 (2009), para. 25; *Mauritius*, E/C.12/MUS/CO/4 (2010), para. 25; *Dominican Republic*, E/C.12/DOM/CO/3 (2010), para. 29; *Sri Lanka*, E/C.12/LKA/CO/2-4 (2010), para. 34; *Ecuador*, E/C.12/ECU/CO/3 (2012), para. 29; *Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; *Guatemala*, E/C.12/GTM/CO/3 (2014), para. 23; *Ireland*, E/C.12/IRL/CO/3 (2015), para. 30; *Dominican Republic*, E/C.12/DOM/CO/4 (2016), para. 60.

CEDAW Committee: *Concluding Observations: Jordan*, CEDAW/C/JOR/CO/4 (2007), paras. 9-10; *Honduras*, CEDAW/C/HON/CO/6 (2007), paras. 24-25; *Malta*, CEDAW/C/MLT/CO/4 (2010), para. 35; *Costa Rica*, CEDAW/C/CRI/CO/5-6 (2011), para. 33; *Côte d’Ivoire*, CEDAW/C/CIV/CO/1-3 (2011), para. 41; *Mauritius*, CEDAW/C/MUS/CO/6-7 (2011), para. 33; *Jordan*, CEDAW/C/JOR/CO/5 (2012), para. 40; *Angola*, CEDAW/C/AGO/CO/6 (2013), para. 32; *Pakistan*, CEDAW/C/PAK/CO/4 (2013), para. 32; United Kingdom of Great Britain & Northern Ireland, CEDAW/C/GBR/CO/7 (2013), para. 51; *Dominican Republic*, CEDAW/C/DOM/CO/6-7 (2013), para. 37; *Democratic Republic of Congo*, CEDAW/C/COD/CO/6-7 (2013), paras. 31-32; *Andorra*, CEDAW/C/AND/CO/2-3 (2013), para. 32; *Qatar*, CEDAW/C/QAT/CO/1 (2014), para. 40; *Bahrain*, CEDAW/C/BHR/CO/3 (2014), para. 42; *Lebanon*, CEDAW/C/LBN/CO/4-5 (2015), para. 42; *Honduras*, CEDAW/C/HND/CO/7-8 (2016), paras. 36-37; *Bangladesh*, CEDAW/C/BGD/CO/8 (2016), para. 35; *Ireland*, CEDAW/C/IRL/6-7 (2017), para. 43; *Rwanda*, CEDAW/C/RWA/7-9 (2017), para. 39; *Jordan*, CEDAW/C/JOR/6 (2017), para. 48.

⁷⁴ HRC GC 28, *supra* note 20 at para. 11 (States Parties are required to report on whether they provide safe access to abortion for women who become pregnant as a result of rape, to enable the HRC to assess their compliance with Art. 7). Human Rights Committee: *Concluding Observations: Nicaragua*, CCPR/C/NIC/CO/3 (2008), para. 12; *Malta*, CCPR/C/MLT/CO/2 (2014), para. 13; *Ireland*, CCPR/C/IRL/CO/4 (2014), para. 9; *United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7 (2015), para. 17; *Chile*, CCPR/C/CHL/CO/6 (2014), para. 15; *Malawi*, CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; *Côte d’Ivoire*, CCPR/C/CIV/CO/1 (2015), para. 15 *Costa Rica*, CCPR/C/CRI/CO/6 (2016), paras. 17-18; *Jamaica*, CCPR/C/JAM/CO/4 (2016), para. 25; *Bangladesh*, CCPR/C/BGD/CO/1 (2017), para. 16.

Committee Against Torture: *Concluding Observations: Nicaragua*, CAT/C/NIC/CO/1 (2009), para. 16; *Paraguay*, CAT/C/PRY/CO/4-6 (2011), para. 22; *Peru*, CAT/C/PER/CO/5-6 (2013), para. 15; *Sierra Leone*, CAT/C/SLE/CO/1 (2014), para. 17; *Honduras*, CAT/C/HND/CO/2 (2016), paras. 47-48; *Philippines*, CAT/C/PHL/CO/3 (2016), para. 40.

⁷⁵ CEDAW Committee GR 19 *supra* note 61 at paras 1, 19, 24(k), (“Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men ... States parties are required ... to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk ... States parties should establish or support services for victims of ... rape, sex assault and other forms of gender-based violence.”); UN Doc. HRI/GEN/1/Rev.9 (Vol. II)(2008). UN General Assembly, *Strengthening crime*

prevention and criminal justice responses to violence against women, Addendum: *Estrategias y Medidas Prácticas Modelo Actualizadas para la eliminación de la violencia contra la mujer en el campo de la prevención del delito y la justicia penal* [Strategies and Updated Model of Practical Measures for the elimination of violence against women in the area of crime prevention and criminal justice], A.G. Res. 65/228, 65th Ses., Issue 105 on the agenda, para. 2, UN Doc. A/RES/65/228 (2011). Convention Belém do Pará, *supra* note 2 at Arts. 7(e-h), 8(d).

⁷⁶ Human Rights Committee: *L.M.R. v. Argentina*, *supra* note 48, acknowledges special vulnerability of a young girl with a disability (para. 9.2), and orders redress commensurate with her vulnerability (paras 9.4, 10, 11). See also, *Reproductive Freedom, Torture and International Human Rights*, *supra* note 67 at pp. 69, 116, 152, 250. CEDAW Committee: *L.C. v. Peru*, *supra* note 21, acknowledges the special vulnerability of L.C.'s minor status (para. 8.15) and her disability (para. 8.18), and orders reparations "commensurate with the gravity of the violation of her rights and the condition of her health..." (para. 9). Committee on the Rights of the Child: *Concluding Observations: Chile*, CRC/C/CHL/CO/3 (2007), para. 56; *Namibia*, CRC/C/NAM/CO/2-3 (2012), paras. 57-58; *Nicaragua*, CRC/C/NIC/CO/4 (2010), paras. 59, 64; *Venezuela*, CRC/C/VEN/CO/3-5 (2014), para. 57; *Honduras*, CRC/C/HND/CO/4-5 (2015), para. 64; *Peru*, CRC/C/PER/CO/4-5 (2016), para. 56; *Ireland*, CRC/C/IRL/CO/3-4 (2016), para. 58.

Inter-American Commission of Women: Follow-up Mechanism to the Belém do Pará Convention/Mecanismo de Seguimiento de la Convención de Belém do Pará (MESECVI), *Hemispheric Report on Child Pregnancy in the States Party to the Belém do Pará Convention*, at pp. 45-50 [Descargar en Inglés](#). Disponible en Español como: *Informe hemisférico sobre violencia sexual y embarazo infantil en los Estados Parte de la Convención de Belém do Pará* (OAS. Documentos oficiales, OEA/Ser.L/II.7.10 MESECVI/CEVI/doc.234/16 Rev.1 OEA/Ser.L/II), 2016, pp. 47-53 [Descargar PDF en Español](#).

⁷⁷ *L.M.R. v. Argentina*, *supra* note 48 at paras 9.2–11.

⁷⁸ Human Rights Committee: *Concluding Observations: Ireland*, CCPR/C/IRL/CO/3 (2014), para. 9. Committee on Economic, Social and Cultural Rights: *Concluding Observations: Ecuador*, E/C.12/ECU/CO/3 (2012), para. 29; *Peru*, E/C.12/PER/CO/2-4 (2012), para. 21; *Monaco*, E/C.12/MCO/CO/2-3 (2014), para. 21; *Ireland*, E/C.12/IRL/CO/3 (2015), para. 30.

Committee Against Torture: *Concluding Observations: Peru*, CAT/C/PER/CO/4 (2006), para. 23; *Poland*, CAT/C/POL/CO/5-6 (2013), para. 23; *Bolivia*, CAT/C/BOL/CO/2 (2013), para. 23; *Kenya*, CAT/C/KEN/CO/2 (2013), para. 28; *Ecuador*, CAT/C/ECU/CO/7 (2017), paras. 45-46.

CEDAW Committee: *Concluding Observations: Argentina*, CEDAW/C/ARG/CO/6 (2010), paras. 37-38.

Committee on the Rights of the Child: *Concluding Observations: Argentina*, CRC/C/ARG/CO/3-4 (2010), paras. 58-59; *Peru*, CRC/C/PER/CO/4-5 (2016), paras. 55-56; *Ireland*, CRC/C/IRL/CO/3-4 (2016), para. 56-57.

European Court of Human Rights: *P. and S. v. Poland*, *supra* note 48; *WHO Safe Abortion Guidance*, *supra* note 19 at 97 ("Censoring, withholding or intentionally misrepresenting information about abortion services can result in a lack of access to services or delays, which increase health risks for women ... Information must be complete, accurate and easy to understand, and be given in a way that facilitates a woman being able to freely give her fully informed consent, respects her dignity, guarantees her privacy and confidentiality and is sensitive to her needs and perspectives").

⁷⁹ *Paulina Ramirez v. Mexico*, *supra* note 49.

⁸⁰ *X and XX*, *supra* note 49; *Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti*, PM 340/10 (Haiti) IACHR, 22 December 2010 (ordered adequate medical and mental health care for victims of sexual violence); *Niña Mainumby*, *supra* note 49.

⁸¹ CESCR GC 14, *supra* note 26 at para. 3; CESCR GC 22, *supra* note 16 at para 29; CEDAW Committee GR 24, *supra* note 15 at para. 22. IACHR, *Access to information on reproductive health from a human rights perspective*, OAS/Ser.L/V/II., doc. 61 (Nov. 22, 2011) para. 76; *WHO Safe Abortion Guidance*, *supra* note 19 at 69, 64 ("Special provisions for women who have suffered rape: Women who are pregnant as a result of rape have a special need for sensitive treatment ... Services should be delivered in a way that respects a woman's dignity, guarantees her right to privacy and is sensitive to her needs and perspectives. Attention should be given to the special needs of the poor, adolescents, and other vulnerable and marginalized women").

⁸² IACHR, *ibid.* para. 116(9); *WHO Safe Abortion Guidance*, *supra* note 19 at 92-93 ("Delays owing to such requirements can result in women being denied services ... In many contexts, women who have been victims of rape may fear being stigmatized further by the police and others and will therefore avoid reporting the rape at all, thus precluding access to legal abortion. Either situation can lead women to resort to clandestine, unsafe services to terminate their pregnancy. Prompt, safe abortion services should be provided on the basis of a woman's complaint rather than requiring forensic evidence or police examination. Administrative requirements should be minimized and clear protocols established for both police and health-care providers as this will facilitate referral and access to care").

⁸³ *WHO Safe Abortion Guidance*, *supra* note 19 at 69 ("Special provisions for women who have suffered rape ... Standards and guidelines for provision of abortion in such cases should be elaborated, and appropriate training given to health-care providers and police. Such standards should not impose unnecessary administrative or judicial

procedures ...The standards should ideally be part of comprehensive standards and guidelines for the overall management of survivors of rape”).