

Toronto, Canada
21 September 2018

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**President of The Constitutional Tribunal
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Republic of Poland**

Case Reference K 13/17

**Expert Opinion of Prof. Joanna N. Erdman (Dalhousie University, Canada), and Prof.
Rebecca Cook (University of Toronto, Canada)**

I. Introduction

1. We, Professors Joanna N. Erdman and Rebecca J. Cook respectfully submit this expert opinion to the Constitutional Tribunal of the Republic of Poland in the matter of K 13/17, *Ochrona płodu ludzkiego; warunki dopuszczalności przerywania ciąży; praktyki eugeniczne; planowanie rodziny (Protection of the human fetus; conditions of acceptability of termination of pregnancy; eugenic practices; family planning)*.
2. Professor Joanna N. Erdman, B.A. (Toronto), LL.M. (Harvard) is an Associate Professor and the MacBain Chair in Health Law and Policy in the Schulich School of Law, Dalhousie University. 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. We are internationally recognized experts in reproductive health and human rights, and we have acted as third party experts in constitutional and human rights cases before domestic, regional and international tribunals on comparative and international abortion law.

3. This opinion addresses the consensus in international human rights law on the decriminalization of abortion. 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 European and Inter-American human rights systems.¹
4. The international human rights consensus on abortion decriminalization includes the following 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, to dignity and worth as human beings and to be free from all forms of discrimination. International human rights law supports the progressive decriminalization of abortion to protect the lives and health of women and to improve their quality of life.
 - Given that any state action on abortion 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 on the ground of *risk of serious fetal malformation*, and procedural protections to ensure safe and respectful access to services under this ground to the full extent of the law.
5. High courts in Europe increasingly reference this international consensus in the review of national abortion laws to uphold both the decriminalization of abortion, and the enactment of procedural protections.
 - In 2007, the Constitutional Court of the Slovak Republic upheld a liberalized abortion law by reference to international human rights law, in particular to the right of women to reproductive self-determination.²

- 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*.³
 - 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*.⁴
 - 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 and regional standards.⁵
6. By treaty ratification, the Republic of Poland has accepted the obligations of international human rights law.⁶ The criminalization of abortion “where prenatal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening disease”, if s. 4a(1)(2) of the *Law on family planning (protection of the human foetus and conditions permitting pregnancy termination) and related statutes* (“Law on family planning”) is declared unconstitutional, would be a retrogressive measure in contradiction of the principle of progressive realization, and in violation of women’s human rights under international law.⁷ The principle of non-retrogression applies to the right to health.⁸ The repeal of law and policy protective of mental and physical health constitutes a regressive measure incompatible with core obligations under the right to health and constitutes a violation of the right to health.⁹ The criminalization of pregnancy termination in the case of serious fetal malformation is an arbitrary and disproportionate measure, and cannot be justified under international human rights law.
7. This expert opinion elaborates the international human rights consensus on abortion law with respect to the following matters:
- The progressive decriminalization of abortion (section II)
 - Guiding principles of non-arbitrariness and proportionality (section III)
 - The ground and procedural protection for lawful abortion in the case of serious fetal malformation (section IV)

II. The Progressive Decriminalization of Abortion

8. There is a strong consensus in international human rights law for the progressive decriminalization of abortion, that is, the repeal or liberalization of criminal abortion laws.¹⁰ This consensus is based on the following recognized harms of criminalization.¹¹

9. First, criminalization is a key factor in the prevalence of unsafe abortion, which carries risks for the lives, health and well-being of women.¹² U.N. human rights bodies 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,¹³ and a gender-based form of discrimination.¹⁴
10. Second, criminalization adversely impacts vulnerable and marginalized women, including those who cannot travel to other jurisdictions to access lawful services, or safely circumvent prohibitions.¹⁵ Moreover when subject to the law, marginalized women are disproportionately affected by arbitrary denials of lawful services, as well as, higher prosecution and heavier penalties due to lack of competent legal representation.¹⁶ International treaty bodies have acknowledged the discriminatory effects of criminal abortion laws on marginalized women.¹⁷ 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.¹⁸ International human rights law thus supports progressive decriminalization to ensure equitable access to lawful services for all women without discrimination.
11. 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.¹⁹ 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."²⁰ 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 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 implicates not only a woman's physical and mental health, but also respect for her full and equal status as a person.

III. Guiding Principles of Non-Arbitrariness and Proportionality

12. 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 on abortion necessarily impacts upon a women's rights and freedoms, international law sets limits on the state power to criminalize abortion.²¹

13. The principles of non-arbitrariness and proportionality guide human rights limits on the state power to criminalize abortion.²² 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. The state may 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 both criteria are met. 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.²³ The World Health Organization, for example, has shown that criminal laws do not decrease the need for abortion, but make them unsafe.²⁴ 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.²⁵ The connection between the impact of the law and its objective must be within the norms of a free and democratic society.

14. 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 the 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).²⁶ 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.²⁷ 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.²⁸ 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.²⁹

15. 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.³⁰ Commonly referred to as the “chilling effect”,³¹ human rights authorities recognize that criminalization can result in providers refraining from offering or delivering services even when allowed by law.³² International human rights law 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.³³ In addition, obligations regarding transparency are especially important for individuals with vulnerabilities, such as adolescents³⁴ and women with disabilities.³⁵ 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.³⁶ Human rights standards require the state to provide legal and administrative mechanisms to redress unlawful denials of legal abortion.³⁷

IV. The ground and procedural protection for lawful abortion in the case of serious fetal malformation

16. International human rights law requires the decriminalization of abortion in circumstances where there is a risk of serious, including fatal fetal malformation,³⁸ and special protection of adolescent girls with such pregnancies.³⁹ 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.⁴⁰
17. 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 the right against inhuman and degrading treatment.⁴¹ 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.⁴² 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.⁴³
18. In a joint statement, the *United Nations Committee on the Elimination of Discrimination against Women* and the *Committee on the Rights of Persons with Disabilities* have explicitly clarified that the use of disability rights in an effort to restrict or prohibit women's access to safe and legal abortion constitutes a misinterpretation of the *Convention on the Rights of Persons with Disabilities*.⁴⁴ Disability rights and gender equality are two components of the same human rights standard that cannot be construed as conflicting.

19. 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.⁴⁵ 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.⁴⁶
20. Section 4(a)(1)(2) of the *Law on family planning* lawfully allows for an abortion to be carried out where there is a high risk of a severe and fatal fetal malformation. Section 2(a) of the *Law on family planning*, which requires the state to ensure unimpeded access to prenatal information and testing, in particular in cases of an increased risk of fetal impairment, provides procedural protections under the legal ground. Both provisions reflect obligations of the Republic of Poland under international human rights law.

V. Conclusion

21. The consensus in international human rights law

- Supports the progressive decriminalization of abortion to protect the lives and health of women and to improve their quality of life;
- Sets limits on the state power to criminalize abortion based on principles of non-arbitrariness and proportionality;
- Requires the decriminalization of abortion where there is a risk of serious fetal malformation; and
- Requires states to enact procedural protections to ensure access to safe and respectful abortion services to the full extent of the law.

Signed

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References

¹ This opinion focuses on the consensus in international human rights law as developed over the last ten years. For prior developments see, C. Zampas and J. Gher, “Abortion as a Human Right - International and Regional Standards” (2008) 8:2 *Human Rights Law Review* 249.

² 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).

³ Tribunal Constitucional [Constitutional Court of Portugal] 2010, Acórdão No. 75/2010, *Diario da Republica* vol. 60, Sections II, 11.2; 11.9.1,

⁴ *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.

⁵ Constitutional Court of the Republic of Croatia, *Decision No. U-I-60/1991*, 20 March 2017. Section Vi, VII, VIII (3), (4).

⁶ The Republic of Poland is a State Party to the following regional and international human rights treaties: *International Covenant on Civil and Political Rights*, adopted December 16 1966, U.N. Doc. A/6316 (entered into force March 23, 1976) (hereinafter **ICCPR**) (ratified by Poland 1977), and monitored by the Human Rights Committee (hereinafter **HRC**).

International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, U.N. Doc. A/6316, (entered into force January 3, 1976) (hereinafter **ICESCR**) (ratified by Poland 1977), 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, U.N. Doc. A/39/51 (entered into force June 26, 1987) ratified by Poland 1989), 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, U.N. Doc. A/34/46 (entered into force September 3, 1981) (ratified by Poland 1980), 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, U.N. Doc. A/44/49 (entered into force September 2, 1990) (ratified by Poland 1991), and monitored by Committee on the Rights of the Child (hereinafter **CRC**).

European Convention on Human Rights, adopted November 5, 1950 213 U.N.T.S. 222, E.T.S. 5 (entered into force September 3, 1953) (ratified by Poland 1993), and monitored by the European Court of Human Rights (hereinafter **ECHR**).

⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990) on the Nature of States Parties Obligations (article 2, para 1 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/1991/23, para. 9.

⁸ 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. 38 (hereinafter **CESCR GC 22**)

⁹ *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4 (2000), para. 48, and see also para 32 (hereinafter **CESCR GC 14**)

¹⁰ 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, *CESCR GC 22, supra* note 8 at para 28 (call on states to liberalize restrictive abortion laws); *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/ECU/CO/3 (2012), para. 29; *Ecuador*, E/C.12/ECU/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.

¹¹ 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.

¹² World Health Organization (WHO), *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2nd ed. (Geneva: WHO, 2012) (hereinafter **WHO Safe Abortion Guidance**), 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”).

¹³ 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/CO/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.

¹⁴ CEDAW Committee, General Recommendation No. 24: Women and Health, U.N. Doc. A/54/38/Rev.1 (1999), para. 11 (hereinafter **CEDAW GR 24**); *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); Committee on Economic, Social and Cultural Rights, CESCRC GC 22, *supra* note 8 at para 28; *Report of the Working Group on discrimination against women*, *supra* note 11: “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).

¹⁵ 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; *WHO Safe Abortion Guidance*, *supra* note 12 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 (2018).

¹⁶ *WHO Safe Abortion Guidance*, *supra* note 12 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”).

¹⁷ 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).

¹⁸ Committee on Economic, Cultural and Social Rights, CESCR GC 14, *supra* note 9 at para. 12(b); CESCR GC 22, *supra* note 8 at paras 28, 34. CEDAW Committee, CEDAW GR 24, *supra* note 14 at paras 2, 6, 9-17, 19-23, 31.

¹⁹ Inter-American Court of Human Rights, *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.”); European Commission of Human Rights: *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”).

²⁰ *Report of the Working Group on discrimination against women*, *supra* note 11 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.)

²¹ Committee on Economic, Social and Cultural Rights, CESCR GC 22, *supra* note 8 at para 5, 10-32, 34; European Court of Human Rights, *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."); *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."

²² Inter-American Court of Human Rights, *Artavia Murillo et al. v. Costa Rica*, *supra* note 19 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 R.J. Cook, J.N. Erdman and B.M. Dickens, eds., *Abortion Law in Transnational Perspective: Cases and Controversies* (Philadelphia: Univ. Pennsylvania Press, 2014), 77-97.

²³ Human Rights Committee: *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."

²⁴ *WHO Safe Abortion Guidance*, *supra* note 12 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."

²⁵ European Court of Human Rights, *A, B, and C v. Ireland*, *supra* note 21 at 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").

²⁶ 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.

²⁷ 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; *WHO Safe Abortion Guidance*, *supra* note 12 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”).

²⁸ Human Rights Committee, HRC GC 28, *supra* note 13 at para.10; Committee on Economic, Cultural and Social Rights, CESCR GC 14, *supra* note 9 at para. 50; Committee on Economic, Social and Cultural Rights, CESCR GC 22, *supra* note 8 at paras. 10 and 1.

²⁹ CEDAW Committee, CEDAW GR 24, *supra* note 14 at para. 11; Committee on Economic, Cultural and Social Rights, CESCR GC 14, *supra* note 9 at para. 34; *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.”) 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....” 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.

³⁰ *WHO Safe Abortion Guidance*, *supra* note 12 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”).

³¹ *WHO Safe Abortion Guidance*, *supra* note 12 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”).

³² 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”).

³³ Human Rights Committee: *K.L. v. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *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); *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 14; *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: *Tysiqc v. Poland*, *ibid*; *A, B, and C v. Ireland*, *supra* note 21; *R.R. v. Poland*, Application No. 27617/04, Eur. Ct. H.R. (2011); *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)); *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”).

³⁴ *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) ; (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); *Niña Mainumby*, MC 178/15 (Paraguay) IACHR, 8 June 2015 (ordered appropriate treatment for a pregnant adolescent rape victim). European Court of Human Rights: *P. and S. v. Poland*, *ibid.* at paras 161, 162, 166-168.

³⁵ Human Rights Committee, *L.M.R. v. Argentina*, *supra* note 33 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).

³⁶ Committee on Economic, Cultural and Social Rights, CESCR GC 14, *supra* note 9 at paras 12 (b), 21; CESCR GC 22, *supra* note 8 at paras 18, 19, 40, 41, 49(a); CEDAW Committee, CEDAW GR 24, *supra* note 14 at paras. 28, 31(b); European Court of Human Rights, *R.R. v. Poland*, *supra* note 33 at paras. 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”).

³⁷ 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 *Tysic v. Poland*, *supra* note 32 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 12 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”).

³⁸ Human Rights Committee: *K.L. v. Peru*, *supra* note 33; *Mellet v. Ireland*, *supra* note 23 at para 7.6 and *Whelan v. Ireland*, *supra* note 23 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).

³⁹ Human Rights Committee: *K.L. v. Peru*, *supra* note 33, “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).

⁴⁰ 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 foetus); 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.

⁴¹ Human Rights Committee: *K.L. v. Peru*, *supra* note 33 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 23; *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.

⁴² Human Rights Committee: *Mellet v. Ireland*, *supra* note 23 at paras 7.7 and 7.8; *Whelan v. Ireland*, *supra* note 23 at paras 7.9.

⁴³ *Mellet v. Ireland*, *ibid.* at paras 7.10 – 7.11.

⁴⁴ United Nations Human Rights Office of the High Commissioner, *Stop regression on sexual and reproductive rights of women and girls, UN experts urge*. on 5 September 2018 (Geneva).

⁴⁵ Committee on Economic, Cultural and Social Rights, CESCR GC 14, *supra* note 9 at para. 11; CESCR GC 22, *supra* note 8 at paras 18, 19. *WHO Safe Abortion Guidance*, *supra* note 12 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”).

⁴⁶ European Court of Human Rights: *R.R. v. Poland*, *supra* note 33; Human Rights Committee: *Mellet v. Ireland*, *supra* note 23.