

CAT Committee Jurisprudence on Violations of Reproductive Rights

The Committee against Torture (CAT Committee) has found that several restrictions on access to reproductive health services and abuses that occur when seeking these services may constitute violations of the Convention against Torture (CAT) because they put women's health and lives at risk or may otherwise cause them severe physical or mental pain or suffering.

For instance, the CAT Committee has found that **complete bans on abortion**, which exist in only five countries in the world (Nicaragua, El Salvador, Chile, Malta, and the Dominican Republic) may constitute torture or ill-treatment on their face, because these laws place women at a risk of preventable maternal mortality.

- As the CAT Committee noted in its 2009 review of El Salvador, “the current Criminal Code of 1998 penalizes and punishes with imprisonment for periods ranging from 6 months to 12 years all forms of recourse to voluntary interruption of pregnancy, including in cases of rape or incest, which has resulted in serious harm to women, including death,” recommending that El Salvador take measure to prevent torture and ill-treatment by “providing the required medical treatment, by strengthening family planning programmes and by offering better access to information and reproductive health services, including for adolescents.”¹

The CAT Committee has also recommended that **abortion be legal in a variety of instances** where a pregnancy may cause a woman severe physical or mental suffering. To date, the CAT Committee has found that states have an obligation to ensure access to abortion for women whose health or life is at risk, who are the victims of sexual violence, or who are carrying non-viable fetuses.

- In its 2011 review of Paraguay, the CAT Committee expressed concern about a law that outlaws abortion in cases of rape, incest, or when the fetus is not viable. The Committee stated that under this law, “the women concerned are constantly reminded of the violation committed against them, which causes serious traumatic stress and carries a risk of long-lasting psychological problems.”²
- The CAT Committee made similar findings in its review of Nicaragua in 2009, stating that a law that denies access to abortion in cases of sexual violence leads to “constant exposure to the violation ... and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression,” recommending that the country liberalize its laws to allow for abortion in cases of sexual violence as a means of preventing such trauma.³

The CAT Committee has also found that **denial of access to and restrictions on abortion where it is otherwise legal** may constitute a violation of CAT.

- **Unclear laws:** In its 2011 concluding observations for Ireland, which at the time permitted abortions in cases where women's lives were at risk but without legal guidance, the CAT Committee emphasized that the lack of clear guidelines for when to allow abortion “leads to uncertainty facing women and their medical doctors, who are also at risk of criminal investigation or punishment if their advice or treatment is deemed illegal.” The CAT Committee urged Ireland to establish clear statutory guidelines for legal abortion and adequate service provision to ensure compliance with CAT.⁴
- **Third-Party Authorization:** In its 2013 concluding observations for Bolivia, the CAT Committee expressed concern about a law that required women who were victims of rape to obtain judicial authorization for obtaining an abortion, an often difficult task because many members of the judiciary conscientiously object to providing that authorization. The Committee was particularly concerned that women sought out clandestine and unsafe abortions in these circumstances and called on the state to ensure that women victims of rape have access to safe abortion without unnecessary impediments.⁵

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- **Unregulated Conscientious Objection:** In its 2013 concluding observations for Poland, the CAT Committee expressed concern about denial of access to legal abortion services for victims of rape due to “the refusal of some physicians and clinics to perform legal operations on the basis of conscientious objection.” In particular, the CAT Committee noted that conscientious objection may lead women to seek unsafe abortion, with attendant risks to their health. The CAT Committee recommended that Poland implement the World Health Organization guidance on abortion and ensure that conscientious objection does not limit women’s access to abortion.⁶

The CAT Committee has consistently found that **denial of access to post-abortion care** may constitute torture or ill-treatment. In its 2011 review of Paraguay, in the context of a law banning abortions in almost all circumstances, the CAT Committee expressed that it was “concerned about the denial of medical care to women who have decided to have an abortion, which could seriously jeopardize their physical and mental health and could constitute cruel and inhuman treatment.”⁷ In its recommendations to Chile on access to post-abortion care, the CAT Committee called upon the state to “ensure immediate and unconditional treatment of persons seeking emergency medical care,” in line with World Health Organization guidelines.⁸

The CAT Committee has also criticized **laws that require physicians to report women who seek post-abortion care**, because these laws have led to physicians eliciting confessions from women needing emergency services, with threats of prosecution for doctors who do not follow the guidelines. The CAT Committee recommended to Peru that it should “[e]liminat[e] the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion and penalizing medical personnel for the exercise of their professional responsibilities.”⁹

In its 2012 concluding observations for Peru, the CAT Committee for the first time raised the issue of **denial of access to emergency contraception** as a form of torture or ill-treatment, expressing concern about the lack of access to oral emergency contraception to victims of rape. The Committee then called on Peru to remove legal restrictions on the distribution of emergency contraception to rape victims.¹⁰ The CAT Committee has also consistently found that forms of forced contraception such as **forced sterilization** may constitute torture or ill-treatment, particularly when targeted at marginalized groups, such as indigenous women, women with disabilities, HIV-positive women, and women from other minority groups.¹¹

Finally, the CAT Committee has found that **abuses against women in reproductive health facilities** may constitute torture or ill-treatment. In its 2013 concluding observations for Kenya, the CAT Committee expressed concern about “the on-going practice of post-delivery detention of women unable to pay their medical bills, including in private health facilities.” The Committee then called on Kenya to strengthen its efforts to end this practice and to effectively monitor conditions in reproductive health facilities as a means of preventing torture or ill-treatment.¹²

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Areas for Further Development

The CAT Committee may consider expanding its jurisprudence on reproductive rights violations as forms of torture or ill-treatment, in line with the work of other human rights bodies as well as its own interpretation of state obligations under CAT.

Reproductive Rights Violations and Torture

Some reproductive rights violations may constitute torture, rather than ill-treatment, because they are manifestations of **systematic discrimination against women**. Article 1 of CAT states that an offense may be elevated to torture when it is performed for an impermissible purpose, including “discrimination of any kind.”¹³ This includes discrimination based on gender. For instance, the Special Rapporteur on Torture has found that the impermissible purpose element of torture is always fulfilled when it comes to gender-specific forms of violence against women, because such acts are “inherently discriminatory.”¹⁴ As a result, the CAT Committee has classified many forms of violence against women as torture under CAT.

When it comes to reproductive rights violations, the Special Rapporteur on Torture has noted that “[d]iscrimination plays a prominent role . . . because sex and gender bias commonly underlie such violations.”¹⁵ Because women have the biological capacity to become pregnant and, due to discriminatory traditional roles, are often expected to bear a disproportionate burden of childcare, access to reproductive health services is essential for women’s physical, mental and social health and well-being.

Jurisprudence from the CEDAW Committee reinforces the idea that many reproductive rights violations are manifestations of gender inequalities and discrimination against women. In its landmark decision in *L.C. v. Peru*, where a girl who became pregnant because of rape suffered severe physical and mental consequences when she was denied access to abortion, the CEDAW Committee noted that “exclusions and restrictions in access to health services [were] based on a gender stereotype that understands the exercise of a woman’s reproductive capacity as a duty rather than a right” and found that the denial of access to abortion followed from “discriminatory reasons arising from her status as a woman.”¹⁶

In its decision in *Alyne da Silva Pimentel v. Brazil*, in which a woman died from pregnancy complications after receiving insufficient health care, the CEDAW Committee additionally noted that “[t]he lack of appropriate maternal health services in the State party that clearly fails to meet the specific, distinctive health needs and interests of women” violated not only the rights to health and life for women but also the rights to equality and non-discrimination. In particular, the CEDAW Committee highlighted that the poor quality of care Alyne received was linked to inequalities based on her gender, her race and her socio-economic status.¹⁷

Denial of Access to all forms of Contraception

Following the CAT Committee’s observations to Peru regarding denial of access to emergency contraception, the CAT Committee could also begin to recognize the severe physical and mental impacts of denial of access to all forms of contraception on women and girls.

Women’s and adolescents’ right to contraceptive information and services is grounded in basic human rights protections. These human rights include not only the right to be free from torture or ill-treatment but also the rights to equality and non-discrimination, to privacy, to determine the number, timing, and spacing of children, to life and health, to education and information, and to benefit from scientific progress.¹⁸ Like restrictions on access to abortion, which the CAT Committee has acknowledged may constitute torture or ill-treatment, denial of access to contraception can cause women severe physical and mental suffering resulting from anxiety about becoming pregnant or physical complications that pregnancy could bring.

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For instance, in the Philippines, many women who were residents of Manila City were denied access to contraception because a Manila City Executive Order effectively banned contraception in public health facilities, including voluntary sterilization.¹⁹ In reports from 2007 and 2010 on the Philippines, the Center for Reproductive Rights and its partners documented that women, particularly poor women, in Manila City experienced physical and mental suffering because they could not afford unsubsidized contraception. Denial of access to contraception had myriad impacts on women's lives in Manila City. For instance, many women faced mental anguish, including fear and anxiety, at the thought of getting pregnant again, because they could not take care of another child in already large families. Other women experienced physical suffering that put their lives at risk: two women reported that even though doctors encouraged them to undergo sterilization after life-threatening pregnancy complications, they could not afford the procedure in a private clinic, and the public facilities could not offer it because of the contraception ban. Women who tried to avoid sex with their husbands because of fear of pregnancy and lack of adequate contraception reported that they were then subjected to physical and sexual violence or were abandoned.²⁰

Instigating, Inciting, and Encouraging Torture or Ill-Treatment

The CAT Committee's General Comment No. 2 requires that under Article 2, parties to CAT must refrain "from directly committing, *instigating, inciting, encouraging*, acquiescing in or otherwise participating or being complicit in acts of torture..."²¹ This requirement is particularly important for preventing reproductive rights violations, as these violations are often the result of rhetorical influence exercised through instigation, incitement, and encouragement. For instance, the Holy See, a party to CAT, has significant rhetorical influence over policymakers and individuals in countries around the world due to the large worldwide Catholic population. The Holy See uses this influence, however, to promote restrictive policies on access to abortion and contraception by encouraging states to limit or even ban these services, with grave consequences for women's health and lives. These actions violate the Holy See's obligations under Article 2 by instigating, inciting, or encouraging other states to violate CAT.²²

Endnotes

- ¹ Committee against Torture (CAT Committee), *Concluding Observations: El Salvador*, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009).
- ² CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).
- ³ CAT Committee, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).
- ⁴ CAT Committee, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO/1 (2011).
- ⁵ CAT Committee, *Concluding Observations: Bolivia*, para. 23, U.N. Doc. CAT/C/BOL/CO/2 (2013).
- ⁶ CAT Committee, *Concluding Observations: Poland*, para. 23 U.N. Doc. CAT/C/POL/CO/5-6 (2013).
- ⁷ CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011).
- ⁸ CAT Committee, *Concluding Observations: Chile*, para. 7(m), U.N. Doc. CAT/C/CR/32/5 (2004).
- ⁹ CAT Committee, *Concluding Observations: Peru*, para. 15(d), U.N. Doc. CAT/C/PER/CO/5-6 (2013).
- ¹⁰ *Id.* para. 15.
- ¹¹ CAT Committee, *Concluding Observations: Slovakia*, para. 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); *Peru*, paras. 15 & 19, U.N. Doc. CAT/C/PER/CO/5-6 (2013); *Kenya*, paras. 23 & 27, U.N. Doc. CAT/C/KEN/CO/2 (2013).
- ¹² CAT Committee, *Concluding Observations: Kenya*, para. 27, U.N. Doc. CAT/C/KEN/CO/2 (2013).
- ¹³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, art. 1, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987).
- ¹⁴ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment—Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, para. 68, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008) (by Manfred Nowak).
- ¹⁵ Special Rapporteur on torture and other cruel, inhuman or degrading punishment or treatment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading punishment or treatment*, para. 37, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan Méndez).
- ¹⁶ *L.C. v. Peru*, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Commc'n No. 22/2009, para. 7.7, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).
- ¹⁷ *Alyne da Silva Pimentel Teixeira v. Brazil*, CEDAW Committee, Commc'n No. 17/2008, paras. 7.6 & 7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).
- ¹⁸ CENTER FOR REPRODUCTIVE RIGHTS & UNITED NATIONS POPULATION FUND (UNFPA), BRIEFING PAPER: THE RIGHT TO CONTRACEPTIVE INFORMATION AND SERVICES FOR WOMEN AND ADOLESCENTS 12–14 (2010).
- ¹⁹ See CENTER FOR REPRODUCTIVE RIGHTS, IMPOSING MISERY: THE IMPACT OF MANILA'S CONTRACEPTION BAN ON WOMEN AND FAMILIES 17 (2007).
- ²⁰ *Id.* at 27–31.
- ²¹ CAT Committee, *General Comment No. 2: Implementation of article 2 by States parties*, (39th Sess., 2007), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 17, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) (emphasis added).
- ²² See Center for Reproductive Rights, *Submission to the CAT Committee for its Review of the Holy See* (April 11, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=890&Lang=en.