



INTERNATIONAL JURISPRUDENCE

DENYING ACCESS TO SAFE
AND LEGAL ABORTION
VIOLATES FUNDAMENTAL
HUMAN RIGHTS

INTERNATIONAL AND REGIONAL HUMAN RIGHTS BODIES HAVE RECOGNIZED THAT:

- Forcing a woman to carry a pregnancy to term that poses risks to her life or health is a violation of the right to be free from torture and cruel, inhuman, and degrading treatment or punishment. (United Nations Human Rights Committee)
- Denying access to a therapeutic abortion, required to preserve a woman's mental or physical health, constitutes discrimination. (United Nations CEDAW Committee)
- Carrying a pregnancy resulting from rape to term has serious mental health consequences for the woman and child, and bearing and raising a child has a significant financial and personal impact on a woman. (Inter-American Commission on Human Rights)
- States have obligations to ensure effective access to legal abortion and failing to institute procedural safeguards to ensure access to therapeutic abortion violates a woman's right to respect for her private life. (European Court of Human Rights)

Forcing women to turn to unsafe abortion or to carry an unwanted or dangerous pregnancy to term has been consistently recognized as a violation of women's fundamental human rights by international and regional human rights bodies, as illustrated by the following four groundbreaking cases.

Human Rights Committee: *K.L. v. Peru* (2005)

In *K.L. v. Peru*, the Human Rights Committee found that forcing a woman to continue a pregnancy that posed risks to her health and life was a violation of the right to be free from torture and cruel, inhuman, and degrading treatment or punishment.¹ In 2001, K.L., a 17-year-old Peruvian woman carrying a foetus with a fatal anomaly (anencephaly), was denied a therapeutic abortion by Peruvian health officials, despite the fact that Peruvian law allows pregnancy termination for health reasons, including mental health. K.L. was forced to carry the anencephalic foetus to term and gave birth to a baby who died, as was inevitable, several days later.²

The Committee noted that

*owing to the refusal of the medical authorities to carry out the therapeutic abortion, [K.L.] had to endure the distress of seeing her daughter's marked deformities and knowing that she would die very soon. This was an experience which added further pain and distress to that which she had already borne during the period when she was obliged to continue with the pregnancy. . . . The omission on the part of the State in not enabling [K.L.] to benefit from a therapeutic abortion was, in the Committee's view, the cause of the suffering she experienced. The Committee has pointed out [that] article 7 of the Covenant [the right to be free from torture or cruel, inhuman or degrading treatment] relates not only to physical pain but also to mental suffering. . . . Consequently, the Committee considers that the facts before it reveal a violation of article 7 of the Covenant.*³

CEDAW Committee: *L.C. v. Peru* (2011)

In *L.C. v. Peru*, the CEDAW Committee held that denial of access to a therapeutic abortion was discrimination and gender stereotyping. L.C. was 13 years old when she was raped and impregnated by a 34-year-old man. Upon discovering that she was pregnant, she became deeply depressed and attempted suicide by jumping off a roof. She survived and was rushed to the hospital. However, doctors refused to perform emergency surgery to repair damage to L.C.'s spinal column because the procedure could harm her pregnancy. The hospital then refused her request for a therapeutic abortion, even though she was entitled to one under Peruvian law. When L.C. tried to appeal the decision, she was told that the decision was final. Only after L.C. miscarried were the doctors willing to perform the spinal surgery that she needed—but the lengthy delay dramatically diminished the success of the intervention, leaving L.C. a quadriplegic.⁴

The CEDAW Committee found that the **failure to provide L.C. with a therapeutic abortion was discriminatory and a violation of article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), concerning equality and non-discrimination in access to health care.**⁵ In addition, the denial of both termination of pregnancy and spinal surgery violated article 5 of the CEDAW, on sex-role stereotyping and prejudice, as “the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother.”⁶

The Committee further stated that

*since [Peru] has legalized therapeutic abortion, it must establish an appropriate legal framework that allows women to exercise their right to it under conditions that guarantee the necessary legal security. . . . It is essential for this legal framework to include a mechanism for rapid decision-making, with a view to limiting to the extent possible risks to the health of the pregnant [woman], that her opinion be taken into account, that the decision be well-founded and that there be a right to appeal.*⁷

Since such a legal framework was not in place in Peru, the CEDAW Committee found that L.C.'s right to an effective remedy had been violated.⁸ **The Committee recommended that Peru “establish a mechanism for effective access to therapeutic abortion . . . and prevent further occurrences in the future of violations similar to the ones in the present case.”**⁹

Finally, the CEDAW Committee made clear that Peru's failure to enact specific legislation to recognize the right to legal abortion in cases of sexual abuse and rape “contributed to L.C.'s situation.”¹⁰ **The Committee recommended that Peru “review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse.”**¹¹

Inter-American Commission on Human Rights: *Paulina del Carmen Ramírez Jacinto v. Mexico* (2007)

Thirteen-year-old Paulina became pregnant after being raped by a burglar. State authorities in Mexico denied Paulina the legal abortion permitted in these circumstances. Her case went to the Inter-American Commission on Human Rights and was resolved through a formal settlement in which the Mexican Government recognized that it had violated Paulina's human rights by failing to ensure access to legal abortion.

The settlement provided for damages and compensation for Paulina and her son, including payment of the medical expenses incurred by Paulina as a result of the rape; support for

housing expenses; entitlement to state-run health services for Paulina and her son until he reaches adult age or concludes his higher education; state-sponsored psychological care for Paulina and her son; the payment of school fees and the provision of school supplies for her son up to the high-school level; start-up funding and technical support for Paulina to set up a microenterprise; and compensation for Paulina's suffering and anguish.¹² **These damages and compensation reflect the recognition that bearing and raising a child has a significant financial and personal impact on a woman, affecting access to education and employment opportunities and consequently limiting the ability to pay for health and housing costs.** The state's payment for psychological care **acknowledges the mental health consequences for women and children when women are forced to carry to term pregnancies resulting from rape.**

European Court of Human Rights: *Tysi c v. Poland* (2007)

The European Court of Human Rights has recognized that forcing a woman to carry a pregnancy to term can harm a woman's health and violate her rights. A Polish woman, Alicja Tysi c, was severely visually impaired. When she became pregnant with her third child, she consulted three ophthalmologists. Although all three concluded that carrying the pregnancy to term constituted a serious risk to her eyesight, they all refused to issue the referral legally required for an abortion in Poland. Even when Alicja finally secured a referral from a general practitioner, the head of the gynaecology and obstetrics department at a Warsaw clinic refused to terminate the pregnancy, on the premise that there were no medical grounds for a therapeutic abortion.¹³ Because of the lack of appeals procedures for decisions on abortion, Alicja was unable to access a timely abortion and was forced to carry her pregnancy to term. As predicted, after the delivery Alicja's eyesight seriously deteriorated, and an official panel declared Alicja to be a significantly disabled person.¹⁴

The European Court of Human Rights found that Poland had an obligation to ensure effective access to legal abortion and, by failing to institute procedural safeguards to ensure access to therapeutic abortion, had violated Alicja's right to respect for her private life—a right meant to “protect the individual against arbitrary interference by public authorities.”¹⁵ The Court stated, **“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.”**¹⁶ The Court noted that “measures affecting fundamental human rights [must] 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.”¹⁷ The Court held that such a procedure should “guarantee to a pregnant woman at least a possibility to be heard in person and to have her views considered,” and “[t]he procedures in place should . . . ensure that such decisions are timely so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion.”¹⁸

The Court awarded Alicja €25,000 (approximately USD 34,000) in damages for her “pain and suffering,” stating that Alicja **“must have experienced considerable anguish and suffering, including her fears about her physical capacity to take care of another child and to ensure its welfare and happiness,** which would not be satisfied by a mere finding of a violation of the [European Convention on Human Rights].”¹⁹

Endnotes

- ¹ K.L. v. Peru, Communication No. 1153/2003, Human Rights Committee, para. 6.3, U.N. Doc CCPR/C/85/D/1153/2003 (2005).
- ² *Id.* paras. 2.1, 2.3, 2.6.
- ³ *Id.* para. 6.3.
- ⁴ L.C. v. Peru, Communication No. 22/2009, Committee on the Elimination of Discrimination against Women, paras. 2.1–2.11, U.N. Doc. CEDAW/C/50/D/22/2009 (Nov. 25, 2011).
- ⁵ *Id.* para. 8.15.
- ⁶ *Id.*
- ⁷ *Id.* para. 8.17.
- ⁸ *Id.*
- ⁹ *Id.* para. 9.2(a).
- ¹⁰ *Id.* para. 8.18.
- ¹¹ *Id.* para. 9.2(c).
- ¹² Paulina del Carmen Ramírez Jacinto v. Mexico, Petition No. 161-02, Inter-American Commission on Human Rights, para. 16 (2007).
- ¹³ Tysiąc v. Poland, No. 5410/03, Eur. Ct. H.R., paras. 7–18 (2007).
- ¹⁴ *Id.* para.18.
- ¹⁵ *Id.* para. 109.
- ¹⁶ *Id.* para. 116.
- ¹⁷ *Id.* para. 117.
- ¹⁸ *Id.* paras. 117–18.
- ¹⁹ *Id.* paras. 148, 152.

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