

CONSTITUTIONAL COURT OF COLOMBIA

CITIZEN INTERVENTION

**File D-13956. Claim of unconstitutionality against Article 122 of Law 599 of 2000.
Substantiating Magistrate: Antonio José Lizarazo Ocampo**

CONCEPT OF APPLICABLE INTERNATIONAL STANDARDS

Presented by

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**JUDGES FULL CHAMBER
CONSTITUTIONAL COURT OF COLOMBIA
M.S. ANTONIO JOSÉ LIZARAZO OCAMPO
E.S.D**

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Respected Magistrates:

The Human Rights and Gender Justice Clinic (HRGJ) at the City University of New York (CUNY) School of Law (through Lisa Davis, Associate Professor of Law and Co-Director, Jaime Todd-Gher, Legal Consultant, Payal K. Shah, Legal Consultant, Hannah Kohn, Legal Intern), as well as the civil society organization MADRE (through JM Kirby, Human Rights Advocacy Director) and in collaboration with René Urueña (Director of International Law and Associate Professor at the Universidad de Los Andes School of Law), who is speaking on his own behalf, respectfully submit this paper in which we provide insight into the international standards applicable to the reference file.

Summary: International bodies have found that the continuing stigma, discrimination and suffering faced by women, girls and persons who may become pregnant under the framework of the partial criminalization of abortion is a human rights violation. Ultimately, abortion should not be regulated by criminal law. Treating abortion as a central component of reproductive health, rather than criminalizing it, is a necessary step towards destigmatizing it and thus reducing related gender discrimination. As recommended by the World Health Organization: “Abortion services should be integrated into the health system [...] to acknowledge their status as legitimate health services and to protect against stigmatisation and discrimination of women and health-care providers.”¹ Therefore, to align Colombia’s abortion legal framework with the country’s obligations to respect, protect and fulfill international human rights law, abortion should be removed from the Penal Code and instead regulated under the Health Code. **Consequently, the interveners² respectfully request that the Court declare Article 122 of Law 599 of 2000 unconstitutional.**

¹ World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems (Second Edition)*, 65 (2012).

² **The Intervenors:** Widely recognized for its expertise and contributions to gender jurisprudence and human rights practice, the Human Rights and Gender Justice Clinic (HRGJ) of the City University of New York School of Law advocates before international and regional human rights bodies and national and local courts and legal institutions. HRGJ directors participated in the first meeting of experts that drafted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”) and in the advisory group of the Commission’s first Special Rapporteur on Women.

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MADRE is an international feminist human rights organization that works to advance and uphold international law on human rights and gender equality. René Uruña is a professor of international law at the Universidad de los Andes. He is Doctor (eximia cum laude) from the University of Helsinki, has been a fellow at New York University and at the Max Planck Institute for Comparative and International Public Law, professor at the Institute for Global Law and Policy at Harvard, and visiting professor at the Universities of Tel-Aviv, Utah and Helsinki. He has been President of the Colombian Academy of International Law, and several times an expert witness before the Inter-American Court of Human Rights.

I. Introduction

In Decision C-355 of 2006, the Constitutional Court of Colombia recognized that criminalization of abortion in certain circumstances violates women’s fundamental rights by placing disproportionate burdens on women’s exercise of human rights protected by the 1991 Colombian Constitution and international human rights law. The decision recognizes “voluntary termination of pregnancy” as a fundamental right.

While Colombia has made strides towards protecting reproductive rights since 2006, significant barriers to accessing safe and legal abortion in the country remain, and are in violation of international human rights law. Partially decriminalizing abortion has done little to reduce abortion-related stigma and discrimination and continues to chill the provision of legal abortion services. As a result, many women and girls, and all people who can become pregnant, particularly those most marginalized,³ continue to lack access to safe abortion services in violation of a wide range of their human rights.⁴

By maintaining abortion in its Penal Code and continuing to criminalize abortion in certain circumstances, Colombia is violating its international legal obligations to respect, protect and fulfill the human rights of women and girls. Article 93 of the 1991 Colombia Constitution incorporates international human rights treaties into domestic legislation.⁵ Although Article 4 of the Constitution establishes the supremacy of the Colombian Constitution, the Colombian Constitutional Court has applied the doctrine of “bloque de constitucionalidad,” to incorporate human rights and humanitarian laws in international treaties into its constitutional fabric or framework.⁶ As such, the amicus curiae calls on the Colombian Constitutional Court to consider international human rights law and standards when determining the constitutionality of the country’s ongoing criminalization of abortion. For purposes of this brief, the amicus curiae directs the Court’s attention to two fundamental human rights violated by Colombia’s criminal legal approach to abortion—the rights to equality and non-discrimination and to be free from torture and cruel, inhuman or degrading treatment and other ill-treatment.

³ *E.g.*, Afro Colombian women and girls, indigenous persons, women living in rural and remote areas, low-income women, adolescent girls, women and girls living in situations of armed conflict, and victims of gender violence, including physical and sexual violence.

⁴ While this Amicus brief focuses on the ways that criminalization of abortion can violate fundamental rights by placing disproportionate and undue burdens on women and girls’ exercise of human rights protected by international human rights law, petitioners recognize that these violations impact the rights of all persons who can become pregnant and that the proposed remedies do and should include the protection of all persons’ rights. Laws should reflect this comprehension. *See, e.g.*, Proyecto de Ley: Interrupción Voluntaria del Embarazo, Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, <http://www.abortolegal.com.ar/proyecto-de-ley-presentado-por-la-campana/> (last visited Nov. 10, 2020).

⁵ Political Constitution of Colombia (1991), Article 93. *See also Id.* Article 53 (stating that labor law should take into account duly ratified international labor agreement as part of domestic legislation), Article 94 (stating that the enunciation of rights and guarantees contained in the Constitution and international agreements in effect should not be understood as a negation of others that, being inherent to the human being, are not expressly mentioned in them).

⁶ Constitutional Court, Judgment C-225 of 1995; *See* Alejandro Ramelli, *Sistema de Fuentes del Derecho Internacional Público y “Bloque de Constitucionalidad” en Colombia*, 11 Cuestiones Constitucionales 157-175 (Jul.–Dec. 2004).

This submission respectfully presents international and regional human rights standards regarding criminalization of abortion and case studies from around the world to illustrate the harm of retaining the overarching criminalization of abortion with exceptions on certain grounds (“criminalization with exceptions”).

II. Abortion Criminalization with Exceptions Continues to Harm Persons Who Can Become Pregnant

There is growing international recognition of the human rights harm caused by criminal abortion laws. While legislating certain exceptions to criminal abortion laws is a step towards the full realization of rights that flow from the decriminalization of abortion, evidence and findings from international and regional human rights bodies confirm that retaining a criminalized approach to abortion, while only carving out a few legal exceptions, continues to harm women, girls and people who can become pregnant. Human rights bodies and experts underscore that rather than making abortion safer, improving health or lives, or reducing the incidence of abortion, laws that criminalize abortion except in certain circumstances lead to less safe abortions and worse health outcomes.⁷ Such laws also harm women’s status in society by perpetuating gender stereotypes and abortion stigma.⁸ It excludes many pregnant people who need abortions beyond the few exceptions provided in law from protection, most often having a disproportionate impact on those most marginalized in society.⁹

A. Reinforcement of harmful gender stereotypes that impede abortion access

Criminal abortion laws frame abortion as a crime against society, reflecting the view that women who undergo abortions are failing to fulfil their “societal duty” to reproduce. The Office of the High Commissioner on Human Rights (“OHCHR”) finds that gender stereotypes, “particularly notions that women are unable to make their own decisions about reproduction, and their need to be controlled” underpin laws that criminalize abortion except in certain circumstances.¹⁰ OHCHR points to several gender stereotypes that relate to sexual and reproductive rights, including the assumptions that women’s primary role is motherhood, that women should be chaste, and that women are emotionally volatile and irrational.¹¹

⁷ World Health Organization (WHO), *Fact Sheet: Preventing Unsafe Abortion* (2020).

⁸ See UN Working Group on the Issue of Discrimination against Women and Girls (Formerly the UN Working Group on Discrimination against Women in Law and in Practice [WGDAW]), *Women’s Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends* (Oct. 2017), (hereinafter WGDAWG, Women’s Autonomy).

⁹ Office of the High Commissioner for Human Rights (OHCHR), *International Safe Abortion Day – Friday 28 September 2018* (Sept. 28, 2018) (hereinafter International Safe Abortion Day Statement); Inter-American Court of Human Rights, *I.V. v. Bolivia*, paras. 157, 187-188 (Nov. 30, 2016).

¹⁰ OHCHR, *Background Paper on the Role of the Judiciary in Addressing the Harmful Gender Stereotypes Related to Sexual and Reproductive Health and Rights: A Review of Case Law*, 8 (2018).

¹¹ *Id.* at 2-3.

Abortion criminalization with exceptions continues to reinforce the notion that women’s deviation from their presumed role as “mothers” is only permitted in exceptional circumstances. OHCHR also recognizes that abortion criminalization with exceptions “fuel(s) other harmful gender stereotypes, associating any woman who seeks or has received abortion services, or is suspected of having obtained an abortion, with criminal activity and stigmatizing them as ‘*bad girls*.’”¹²

Multiple international human rights bodies have acknowledged the negative impact of harmful gender stereotypes on women and girls’ ability to access sexual and reproductive health services.¹³ The UN Special Rapporteur on the right to the highest attainable standard of physical and mental health has found that gender stereotypes often curtail women’s sexual expression and reproductive freedom, which often results in bad health outcomes for women and violations of their right to health.¹⁴ The UN Working Group on the issue of discrimination against women and girls has noted that criminalization of abortion “is one of the most damaging ways of instrumentalising and politicising women’s bodies and lives.”¹⁵

B. Perpetuation of abortion-related stigma

State criminalization of abortion demarcates the procedure as “inherently wrong” and “harmful to society.”¹⁶ Criminal abortion laws legally enshrine and generate stigma, which can lead to discrimination and impede access to legal abortion. As the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) notes, while abortion-related stigma comes from many sources, criminalization of abortion plays a critical role in its perpetuation.¹⁷

When an overarching criminalized approach to abortion is retained with exceptions in only certain circumstances, the entire procedure remains stigmatized. Abortion criminalization with exceptions creates a regime where individuals seeking abortion services must “prove” they should be exempt

¹² *Id.* at 9.

¹³ See for example UN Committee on Economic, Social and Cultural Rights (CESCR Committee), *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)*, para. 29, UN Doc. E/C.12/2005/4 (Aug. 11, 2005); UN Committee on the Rights of the Child (CRC Committee), *General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*, para. 9, UN Doc. CRC/C/GC/15 (Apr. 17, 2013).

¹⁴ UN Special Rapporteur on the Right of Everyone to the Enjoyment of the highest Attainable Standard of Physical and Mental Health, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 16, UN Doc. A/66/254 (Aug. 3, 2011) (hereinafter UN Special Rapporteur on Mental Health Interim Report).

¹⁵ UN Human Rights Council, *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, para. 79, UN Doc. A/HRC/32/44 (Apr. 8, 2016).

¹⁶ International Safe Abortion Day Statement, *supra* note 9; Rebecca Cook, “Stigmatized Meanings of Criminal Abortion Law”, in Rebecca Cook, et al. (eds.), *Abortion Law in Transnational Perspective: Cases and Controversies*, 347, UNIV. OF PENNSYLVANIA PRESS (2014).

¹⁷ See, e.g., UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland Under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, paras. 59, 42, UN Doc. CEDAW/C/OP.8/GBR/1 (Feb. 23, 2018) (hereinafter CEDAW UK Inquiry).

from punishment. This regime continues to legitimize judgment and punishment of individuals who do not comply with restrictive gender norms and stereotypes around pregnancy, as well as those who provide care for such individuals. This poses serious consequences for the health and well-being of women, girls and all pregnant persons, and results in poor or outright denial of care.

International human rights bodies have analyzed the impact of abortion-related stigma on individual women seeking safe abortion services. In *Mellet v. Ireland*, the UN Human Rights Committee (“HRC”) found that Ireland’s criminal abortion law led the petitioner to face shame and stigma, and found her suffering was further aggravated by the obstacles she faced in getting information about her appropriate medical options.¹⁸ Along similar lines, the UN Working Group on discrimination against women and girls observed: “Ultimately, criminalization does grave harm to women’s health and human rights by stigmatising a safe and needed medical procedure.”¹⁹ By contrast, decriminalizing abortion actively counters this stigma, and implies that women and girls must not be judged, and consequently punished, for deciding to terminate a pregnancy because this is their decision to make.

C. “Chilling effect” on access to abortion and other reproductive healthcare

International human rights bodies have recognized the “chilling effect” of abortion criminalization on pregnant persons’ access to healthcare and the negative health outcomes that flow from this. Under legal frameworks that continue to criminalize abortion, providers and pregnant persons remain fearful of prosecution due to lack of clarity on the scope of the law. Providers in such contexts face real risks of prosecution, as well as fear that performing abortions will attract heightened scrutiny and investigation by law enforcement.²⁰ Medical providers may also report people suffering from pregnancy complications to authorities out of fear of being accused of “aiding and abetting” an illegal abortion.²¹ This is the case even where abortion is decriminalized in certain circumstances.²²

The UN Special Rapporteur on the right to health has confirmed that criminalization of sexual and reproductive health services generates “a chilling effect on the open exchange of information,” and “[w]here narrow exceptions to the criminalization of abortion exist, such as to save the life of a woman, criminalization may effectively block access to information about legal abortion services.”²³

¹⁸ See UN Human Rights Committee, *Mellet v Ireland*, Comm. No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (2016).

¹⁹ See WGIDAWG, Women’s Autonomy, *supra* note 8.

²⁰ See, e.g., CEDAW UK Inquiry, *supra* note 17, paras. 17-20.

²¹ See UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 75, UN Doc. A/HRC/38/36 (Apr. 10, 2018). See also CEDAW Committee, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of El Salvador*, paras. 37-38, UN Doc. CEDAW/C/SLV/CO/8-9 (Mar. 9, 2017).

²² European Court of Human Rights (ECHR), *Tysiack v Poland*, App. No. 5410/03, para. 116 (2007).

²³ UN Special Rapporteur on Mental Health Interim Report, *supra* note 14, paras. 19, 31.

Criminalizing abortion impedes pregnant women, girls and all pregnant persons' access to essential reproductive health services including post-abortion care due to the perceived and real risks they face of being reported, prosecuted and imprisoned for having miscarriages.²⁴ For example, in its 2000 Concluding Observations on Argentina, the HRC observed that “the criminalization of abortion deters medical professionals from providing this procedure without judicial order, even when they are permitted to do so by law.”²⁵

D. Severe suffering for women and girls who can become pregnant

The consequence of harmful gender stereotypes, ongoing abortion-related stigma and the “chilling effect” on access to abortion services due to abortion criminalization,²⁶ constitute significant barriers to women’s and girls’ access to safe and legal abortion care, leading to severe physical and mental suffering. This level of suffering is recognized as disproportionately impacting marginalized subgroups, including women in poverty.²⁷

i. Harm from forced continuation of pregnancy

International and regional human rights bodies and experts have recognized the forced continuation of pregnancy through denial of abortion (even where legal) can lead to significant psychological and physical harm, particularly in the case of rape and fatal fetal impairment.²⁸ For example, the UN Committee against Torture (“CAT Committee”) has recognized that denial of abortion access for rape survivors leads to severe trauma: “the women concerned are constantly reminded of the violation committed against them, which causes serious traumatic stress”²⁹ and “[carries] a risk of long-lasting psychological problems such as anxiety and depression.”³⁰

Abortion is one of the safest medical procedures when performed according to health standards,

²⁴ UN Human Rights Council, *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, para. 79, UN Doc. A/HRC/32/44 (Apr. 8, 2016). See also CEDAW Concluding Observations El Salvador, *supra* note 21, para. 36(a).

²⁵ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Argentina*, para. 14, UN Doc. CCPR/CO/70/ARG (Nov. 15, 2000). See also UN Human Rights Committee, *Concluding Observations by the Human Rights Committee: Venezuela*, para. 19, UN Doc. CCPR/CO/71/VEN (Apr. 26, 2001).

²⁶ See, e.g., UN Human Rights Committee, *General Comment No. 36 Article 6: Right to Life*, para. 8, UN Doc. CCPR/C/GC/36 (Sept. 3, 2019); UN Human Rights Council, *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, para. 29, UN Doc. A/HRC/32/44 (Apr. 8, 2016); UN General Assembly, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 46, UN Doc. A/71/304 (Aug. 5, 2016).

²⁷ International Safe Abortion Day Statement, *supra* note 9; CEDAW Committee, *General Recommendation No. 34 on the Rights of Rural Women*, para. 38, UN Doc. CEDAW/C/GC/34 (Mar. 4, 2016).

²⁸ See, e.g., UN Human Rights Committee, *K.L. v. Peru*, Comm. No. 1153/2003, para. 6.3, UN Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005).

²⁹ UN Committee Against Torture (CAT Committee), *Concluding Observations of the Committee Against Torture: Paraguay*, para. 22, UN Doc. CAT/C/PRY/CO/4-6 (Dec. 14, 2011).

³⁰ CAT Committee, *Concluding Observations of the Committee Against Torture: Nicaragua*, para. 16, UN Doc. CAT/C/NIC/CO/1 (Jun. 10, 2009).

yet real suffering and even death often result where individuals are forced to resort to less safe or unsafe abortion methods, or where individuals face delays or denials of post-abortion care. Further, the treatment of individuals seeking abortions or post-abortion care as criminals or as immoral can lead to serious trauma, including when it manifests in prolonged judicial or medical authorization processes; abuse, harassment, or denials of pain medication in health facilities; or threats of arrest, prosecutions, and incarceration.

Human rights bodies have recognized the insufficiency of abortion criminalization with exceptions to prevent forced pregnancy, as discussed above in Part III. A. For example, in *K.L. v. Peru*, the Peruvian law criminalized abortion but with an exception for therapeutic abortion; however, due to the ambiguity around this legal exception and the hospital administration's fear of punishment, the petitioner was denied an abortion and forced to deliver an anencephalic dying baby, leading to deep depression and a psychiatric finding that it severely affected her development and future mental health.³¹ The HRC in the *K.L.* case noted the pregnant adolescent petitioner's depression and emotional distress "could have been foreseen" and "not enabling her to benefit from a therapeutic abortion was ... the cause of the suffering she experienced[.]" and found the state in violation of International Covenant on Civil and Political Rights ("ICCPR") Article 7 (freedom from cruel, inhuman and degrading treatment), among other rights.³²

ii. Harm from delays and denials of safe and legal abortion

Even where individuals can access abortion services, abortion criminalization with exceptions may cause harm to pregnant women and girls where they are first forced to resort to courts or to jump through procedural hurdles to access abortion due to providers' fear of prosecution. Such delays can create significant physical and mental health harm due to ongoing pregnancy-related risks or psychological distress. For example, in *L.M.R. v. Argentina*, a young woman with an intellectual disability who was raped was denied an abortion despite an exception to the Argentinian penal prohibition on abortion that permitted the procedure in her circumstances.³³ The HRC recognized that such denial was linked to her physical and mental suffering.³⁴ This was exacerbated by the requirement that she seek judicial appeal before three separate courts.³⁵ Ultimately, *L.M.R.* obtained an illegal abortion.³⁶

The barriers to legal abortion services caused by criminalization with exceptions also leads to clandestine abortions, which often are less safe or unsafe and have higher risk of maternal mortality or morbidity. The CEDAW Committee has recognized that "criminal regulation of abortion serves no known deterrent value" and that when faced with restricted access women undertake unsafe

³¹ *K.L. v. Peru*, *supra* note 28, paras. 2.5, 6.3.

³² *Id.* paras. 6.3, 7.

³³ UN Human Rights Committee, *L.M.R. v. Argentina*, Comm. No. CCPR/C/101/D/1608/2007, UN Doc. CCPR/C/101/D/1608/2007 (Apr. 28, 2011).

³⁴ *Id.* para. 9.2.

³⁵ *Id.* para. 9.4.

³⁶ *Id.*

abortions to the risk of their health and lives.³⁷ The Special Rapporteur on the right to health has observed that “[c]riminal laws penalizing and restricting induced abortion ... consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health.”³⁸

Criminalization of abortion with exceptions also negatively impacts pregnant persons’ health-seeking behavior, which is especially risky when one seeks to self-induce abortion without accurate information and support. The World Health Organization (“WHO”) has emphasized the importance of access to information on effective protocols and follow-up healthcare if needed to ensure the safety of self-managed abortion,³⁹ yet criminalization with only limited exceptions deters this behavior. Notably, the CEDAW Committee found that Northern Ireland’s criminalization of abortion with certain exceptions “discourages women from seeking care for post-administration complications, for fear of criminal sanctions.”⁴⁰

iii. Harm from abuse, threats of arrest, and imprisonment

By marking women and girls who defy gender stereotypes around pregnancy as criminals, even with exceptions, abortion criminalization with exceptions continues to give legitimacy to the stigmatized treatment of individuals seeking abortion. This results in trauma by justifying mistreatment and abuse of individuals seeking abortion or post-abortion care, as well as creating internalized stigma and low self-worth that stymies accountability for such harassment.⁴¹ The stigma, fear, and health risks caused by such treatment can lead to physical and mental suffering.

The “punishment” of individuals seeking abortion often occurs extrajudicially, through delays and denials. As recognized in a joint statement by several UN special procedures, punitive legal frameworks that stigmatize abortion lead to physical and verbal mistreatment of women seeking post-abortion care and denial of emergency medical care for abortion-related complications.⁴² For example, research shows that while exceptions exist to the criminalization of abortion in Kenya, women seeking post-abortion care continue to be denied treatment until they “confess” to having induced an abortion, are extorted to pay money to avoid being reported to police by health workers, and face harassment.⁴³ Human rights bodies have repeatedly linked unsafe abortion and poor

³⁷ CEDAW UK Inquiry, *supra* note 17, paras. 59, 42.

³⁸ UN Special Rapporteur on Mental Health Interim Report, *supra* note 14, para. 21. The Rapporteur further explains that “[t]he rate of unsafe abortions and the ratio of unsafe to safe abortions both directly correlate to the degree to which abortion laws are restrictive and/or punitive.”

³⁹ WHO, *WHO Consolidated Guidelines on Self-Care Interventions for Health: Sexual and Reproductive Health and Rights* (2019).

⁴⁰ CEDAW UK Inquiry, *supra* note 17, para. 24.

⁴¹ Rebecca Cook, “Stigmatized Meanings of Criminal Abortion Law”, in *Rebecca Cook, et al. (eds), Abortion Law in Transnational Perspective: Cases and Controversies*, 358, UNIV. OF PENNSYLVANIA PRESS (2014).

⁴² International Safe Abortion Day Statement, *supra* note 9.

⁴³ Center for Reproductive Rights and Federation of Women Lawyers–Kenya, *Failure to Deliver: Violations of Women’s Human Rights in Kenyan Health Facilities*, 25 (2007).

treatment of women seeking abortion-related care on the restrictive and ambiguous nature of the law and have therefore called for full decriminalization of abortion.⁴⁴ Such treatment deters individuals from taking steps to protect their health, including by asking questions and sharing experiences, as well as by seeking treatment for complications.⁴⁵

Criminal abortion laws lead directly to the imprisonment of women.⁴⁶ As the UN Special Rapporteur on the right to health has recognized, “[w]here abortion is illegal, women may face imprisonment for seeking an abortion and emergency services for pregnancy-related complications, including those due to miscarriages. Fear of criminal punishment for ‘aiding or abetting’ abortions can lead health-care providers to report people suffering from pregnancy complications to authorities.”⁴⁷ Further, “the overarching threat of being investigated, prosecuted and punished within the criminal justice system has significant negative impacts on the emotional health and well-being of both those who seek abortions and those who do not.”⁴⁸ For example, following a Supreme Court of Nepal decision recognizing abortion as a fundamental right and calling for decriminalization of abortion, the legislature recognized broad exceptions to the penal code and adopted positive measures to ensure access.⁴⁹ However, abortion remains within the penal code. Despite reform, research shows that women and girls, particularly from marginalised communities, continue to be arrested and prosecuted for abortion-related crimes, leading to trauma and suffering.⁵⁰ The CEDAW Committee expressed concern in 2018 that “more than half of abortions in Nepal are conducted clandestinely”, and called on Nepal to fully decriminalise abortion.⁵¹

III. Abortion Criminalization with Exceptions Still Results in Human Rights Violations

The Colombian Constitutional Court identified a range of constitutional rights violations that occurred under the Country’s criminal abortion ban in 2006. Many of the constitutional and human rights harms posed by the country’s former criminal legal framework continue to occur under

⁴⁴ CRC Committee, *Concluding Observations on the Combined Third to Fifth Periodic Reports of Kenya*, para. 50(b), UN Doc. CRC/C/KEN/CO/3-5 (Mar. 21, 2016); CAT Committee, *Concluding Observations on the Second Periodic Report of Kenya, Adopted by the Committee at its Fiftieth Session (6 to 31 May 2013)*, para. 28, UN Doc. CAT/C/KEN/CO/2, (Jun. 19, 2013); CEDAW Committee, *Concluding Observations on the Eighth Periodic Report of Kenya*, para. 38, UN Doc. CEDAW/C/KEN/CO/8 (Nov. 22, 2017).

⁴⁵ Joanna Erdman and Rebecca Cook, *Decriminalization of Abortion: A Human Rights Imperative*, 62 *Best Practice & Research Clinical Obstetrics & Gynecology* 11 (Jan. 2020).

⁴⁶ See UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 75, UN Doc. A/HRC/38/36 (Apr. 10, 2018) (citing UN Docs A/66/254, A/68/340 and A/HRC/14/20); Amnesty International, *Amnesty International’s Policy on Abortion: Explanatory Note*, 17 (Sept. 28, 2020).

⁴⁷ See UN Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 75, UN Doc. A/HRC/38/36 (Apr. 10, 2018). See also CEDAW Concluding Observations El Salvador, *supra* note 21, paras. 37-38.

⁴⁸ UN Special Rapporteur on Mental Health Interim Report, *supra* note 14, para. 36.

⁴⁹ *Lakshmi and Others v. Government of Nepal*, Decision No. 8464, 9 N.K.P. 2067, at 1551 (2009).

⁵⁰ Center for Reproductive Rights, *Reforms Required in Laws related to Abortion and Its Enforcement: Facts Revealed from Review of Casefiles* (2019) (in Nepali) (research on file with the Center for Reproductive Rights).

⁵¹ CEDAW Committee, *Concluding Observations on the Sixth Periodic Report of Nepal*, paras. 38-39, UN Doc. CEDAW/C/NPL/CO/6 (Nov. 14, 2018).

Colombia's ongoing criminalized approach to abortion. Only permitting legal abortion in some circumstances continues to reinforce gender stereotypes, perpetuates abortion-related stigma, and has a "chilling effect" on safe access to services. "Criminalization with exceptions" thus violates the rights to equality and non-discrimination and to freedom from torture and other ill-treatment, among other rights.

A. The right to equality and non-discrimination

Criminalization of abortion violates the right to equality and the principle of non-discrimination,⁵² a fundamental right and principle found in nearly every international and regional human rights treaty.⁵³ Numerous human rights bodies and experts have recognized that criminalization of abortion constitutes gender-based discrimination.⁵⁴

The CEDAW Committee confirmed in its General Recommendation 33 (women's access to justice), that criminalization of abortion is a clear form of discrimination against women and called on states to repeal such criminal regulations.⁵⁵ UN and regional human rights rapporteurs also issued a joint statement stating that: "The criminalization of or other failure to provide services that only women require, such as abortion and emergency contraception, constitute discrimination based on sex, and is impermissible."⁵⁶ The Inter-American Commission on Human Rights also confirmed that barriers to health services that only women need, including therapeutic abortion, create inequalities between men and women with respect to the enjoyment of their rights.⁵⁷

⁵² See ICCPR, Article 2; ICESCR, Article 2; and American Convention, Articles 1 and 24; See also Charter of the United Nations, Articles 1(3) and 55; Universal Declaration of Human Rights, Article 2.

⁵³ See, e.g., ICCPR, Article 2; ICESCR, Article 2; and American Convention on Human Rights, Articles 1(1) and 24.

⁵⁴ See UN Human Rights Committee, *General Comment No. 28 (2008) on Article 3 of the International Covenant on Civil and Political Rights, on the Equality of Rights between Men and Women*, paras. 10, 11, and 20, UN Doc. HRI/GEN/1/Rev.9 (May 27, 2008); *L.M.R. v. Argentina*, supra note 33, paras. 6(9), 9.4. See, e.g., UN Human Rights Committee, *Concluding Observations by the Human Rights Committee: Colombia*, para. 24, UN Doc. CCPR/C/79/Add.76 (May 3, 1997); UN Human Rights Committee, *Concluding Observations by the Human Rights Committee: Argentina*, para. 14, UN Doc. CCPR/CO.70/ARG (Nov. 15, 2000); UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Philippines, Adopted by the Committee at its 106th Session (15 October - 2 November 2013)*, para. 13, UN Doc. CCPR/C/PHL/CO/4 (Nov. 13, 2012); UN Human Rights Committee, *Concluding Observations on the Third Periodic Report of Paraguay, Adopted by the Committee at its 107th Session (11-28 Mar. 2013)*, para. 13, UN Doc. CCPR/C/PRY/CO/3 (Apr. 29, 2013); UN Human Rights Committee, *Concluding Observations on the Fifth Periodic Report of Peru, Adopted by the Committee at its 107th Session (11-28 Mar. 2013)*, para. 14, UN Doc. CCPR/C/PER/CO/5 (Apr. 29, 2013); UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (Aug. 19, 2014). See also UN Human Rights Council, *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, para. 14, UN Doc. A/HRC/32/44 (Apr. 8, 2016); CRC, *Concluding Observations on the Consolidated Second and Third Periodic Reports of Namibia, Adopted by the Committee at its Sixty-First Session (17 September–5 October 2012)*, paras. 57 and 58, UN Doc. CRC/C/NAM/CO/2-3 (Oct. 16, 2012); OHCHR, *Joint Statement by UN Human Rights Experts, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples' Rights* (Sept. 24, 2015).

⁵⁵ CEDAW Committee, *General Recommendation No. 33 on Women's Access to Justice*, paras. 47(b), 49, 51(l), UN Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

⁵⁶ OHCHR, *Joint Statement by UN Human Rights Experts, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples' Rights* (Sept. 24, 2015).

⁵⁷ Inter-American Commission on Human Rights, *Access to Maternal Health Services from a Human Rights Perspective*, para. 53, OEA/Ser.L/V/II. Doc. 69, (Jun. 7, 2010). See also Inter-American Court of Human Rights, *Artavia Murillo et al. ("In Vitro*

Human rights law clearly recognizes the obligation on states to modify or abolish laws that constitute discrimination against women, including by decriminalizing abortion. Article 2(f) of CEDAW, in particular, requires that states “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,” including in healthcare service provision contexts.⁵⁸ The CEDAW Committee has called for states to legalize abortion in a wide range of circumstances and to halt punishment of women who undergo abortions, and confirmed that the failure to provide or the criminalization of services that only women require violates women’s reproductive rights and constitutes discrimination against them.⁵⁹

The UN Committee on Economic, Social and Cultural Rights (“CESCR Committee”), in its General Comment 22 (right to sexual and reproductive health), has confirmed that states must “repeal or reform laws and policies that nullify or impair certain individuals’ and group’s ability to realise their right to sexual and reproductive health.”⁶⁰ While human rights bodies initially called on states to increase the legal grounds under which women and girls could access abortion,⁶¹ they are increasingly calling for full decriminalization.⁶² See Part V for further discussion of the evolution of international human rights law.

i. States’ obligation to address abortion-related stigma and discrimination

Part of Colombia’s equality and non-discrimination obligations is to address abortion-related gender stigma and discrimination at the community level, as well as within the provision of

Fertilization”) v. Costa Rica, paras. 294, 299, Series C. No. 257 (Nov. 28, 2012); Inter-American Commission on Human Rights, *Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application Updates from 2011 to 2014*, OEA/Ser.L/V/II. Doc. 11 (Jan. 26, 2015) (citing Inter-American Commission on Human Rights, *Annex to the Press Release Issued at the Close of the 147th Session: Human rights and the Criminalization of Abortion in South America* (Mar. 15, 2013)).

⁵⁸ CEDAW, Article 2(f).

⁵⁹ CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, paras. 11, 31(c), UN Doc. A/54/38/Rev.1 (Aug. 20, 1999); CEDAW Committee, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, para. 29(c)(i), UN Doc. CEDAW/C/GC/35 (Jul. 26, 2017); CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: New Zealand*, paras 34, 35(a), UN Doc. CEDAW/C/NZL/CO/7 (Aug. 6, 2012).

⁶⁰ CESCR Committee, *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)*, para. 34, UN Doc. E/C.12/GC/22 (May 2, 2016).

⁶¹ See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Guatemala*, para. 19, UN Doc. CCPR/CO/72/GTM (Aug. 27, 2001); UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Gambia*, para. 17, UN Doc. CCPR/CO/75/GMB (Aug. 12, 2004). See also CEDAW Committee, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Indonesia*, paras. 41-42, UN Doc. CEDAW/C/IDN/CO/6-7 (Jul. 9-27, 2012).

⁶² CEDAW Committee, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Haiti*, para. 34(c), UN Doc. CEDAW/C/HTI/CO/8-9 (Mar. 8, 2016); CEDAW Committee, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Honduras*, para. 37(a), UN Doc. CEDAW/C/HND/CO/7-8 (Nov. 25, 2016). See also CRC Committee, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Mexico: Mexico*, para. 50(c), UN Doc. CRC/C/MEX/CO/4-5 (Jul. 3, 2015).

healthcare services. International human rights bodies increasingly draw attention to states' obligations to address gender stigma in the context of abortion regulation and service provision. For example, in 2013, the CEDAW Committee urged Hungary to "cease all negative interference with women's sexual and reproductive rights, including by ending campaigns that stigmatise abortion and seek to negatively influence the public view on abortion and contraception."⁶³ In addressing abortion in its General Comment 36 (right to life), the HRC called on states to prevent the stigmatization of women and girls seeking abortion.⁶⁴

Treating abortion as a core component of reproductive healthcare, as opposed to exceptionalizing it within a criminal legal framework, is necessary to destigmatize abortion and reduce abortion-related gender discrimination. Once abortion is treated as part of the continuum of sexual and reproductive healthcare, access barriers can be more clearly identified and eliminated. Notably, the WHO recommends that: "Abortion services should be integrated into the health system ... to acknowledge their status as legitimate health services and to protect against stigmatisation and discrimination of women and health-care providers."⁶⁵ To do otherwise, and to continue to criminalize abortion, stigmatizes women and girls seeking abortion, as well as healthcare providers who provide abortion services.

ii. States' obligation to eliminate harmful gender stereotypes

As discussed in Part III (A), gender stereotypes underlie criminal abortion laws which, in effect, punish individuals for transgressing social and gender norms by seeking to terminate their pregnancies. Human rights law recognizes that criminal laws and other restrictive laws and policies impacting sexual and reproductive health reinforce stereotypes framing women as solely mothers and reproductive instruments.⁶⁶

Article 5 of CEDAW requires states "to modify the social and cultural patterns of conduct of men and women, [...] which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."⁶⁷ The UN Committee on the Rights of the Child ("CRC Committee"), UN Committee on the Rights of Persons with Disabilities ("CRPD Committee"), the HRC and the CESCR and CEDAW Committees have urged states to address discrimination in law and in practice in the private and public spheres, adopt measures to eliminate harmful gender stereotypes and address practices that disproportionately impact women.⁶⁸

⁶³ CEDAW Committee, *Concluding Observations on the Combined Seventh & Eighth Periodic Reports of Hungary, Adopted by the Committee at its Fifty-Fourth Session (11 Feb.–1 Mar. 2013)*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (Mar. 26, 2013).

⁶⁴ Human Rights Committee General Comment No. 36, *supra* note 26, para. 8.

⁶⁵ WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems (Second Edition)*, 64 (2012).

⁶⁶ UN Special Rapporteur on Mental Health Interim Report, *supra* note 14, paras. 16-17, 24; *Mellet v. Ireland*, *supra* note 18.

⁶⁷ CEDAW, Article 5(a).

⁶⁸ See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Cape Verde*, para. 8, UN Doc. CCPR/C/CPV/CO/1 (Apr. 23, 2012); UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Jordan*, para. 7, UN Doc. CCPR/C/JOR/CO/4 (Nov. 18, 2010); UN Human Rights Committee, *Concluding Observations of the*

The HRC has specifically called on states to refrain from using references to traditional, historical, religious or cultural attitudes to justify violations of women’s equal enjoyment of all rights under the ICCPR.⁶⁹ After confirming that the petitioner in the *Mellet v. Ireland* case was subjected to the gender-based stereotype that women should continue their pregnancies regardless of the circumstances, and their needs and wishes, because their primary role is to be mothers and self-sacrificing caregivers, the HRC held that the Irish government must amend its criminal abortion law, and the constitution if necessary, to ensure compliance with the ICCPR, as well provide the petitioner with an effective remedy and prevent such violations in the future.⁷⁰

B. The right to freedom from torture and other ill-treatment

The prohibition of torture and other ill-treatment is one of the most firmly rooted principles of international human rights law.⁷¹ The Special Rapporteur on torture has expressly acknowledged that “[d]iscrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or other ill-treatment because sex and gender bias commonly underlie such violations.”⁷² The HRC, the CAT Committee and the European Court of Human Rights have assessed restrictive abortion laws and state denial of abortion-related services as a form of torture or other ill-treatment.⁷³ Human rights bodies have specifically found that denying abortion services

Human Rights Committee: Canada, para. 20, UN Doc. CCPR/C/79/Add.105 (Apr. 7, 1999). *See also* CEDAW Committee, *General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures)*, para. 10, UN Doc. CEDAW/GEC/3733 (2004); CRC General Comment No. 15, *supra* note 13, para. 10; *See also* CRPD Committee, *General Comment No. 3 (2016) Article 6: Women and Girls with Disabilities*, paras. 8, 30, 37-40, 47, UN Doc. CRPD/C/GC/3 (Sept. 2, 2016); CRPD Committee, *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CRPD/C/GBR/CO/1 (Oct. 3, 2017).

⁶⁹ *See* UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Cape Verde*, para. 8, UN Doc. CCPR/C/CPV/CO/1 (Apr. 23, 2012); UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Jordan*, para. 7, UN Doc. CCPR/C/JOR/CO/4 (Nov. 18, 2010); UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Canada*, para. 20, UN Doc. CCPR/C/79/Add.105 (Apr. 7, 1999). *See also* CEDAW Committee, *General Recommendation No. 25*, *supra* note 68, para. 10; CRC General Comment No. 15, *supra* note 13, para. 10; *See also* CRPD Committee, *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CRPD/C/GBR/CO/1 (Oct. 3, 2017).

⁷⁰ *Mellet v. Ireland*, *supra* note 18, paras. 7.11, 9.

⁷¹ The prohibition of torture is regarded as a jus cogens norm (norm of universal application). Under international law, jus cogens norms are peremptory and non-derogable. *See* Vienna Convention on the Law of Treaties, Article 53, (May 23, 1969); 1155 U.N.T.S. 331. Jurisprudence at the national and international levels has confirmed that acts of torture constitute jus cogens violations. *See, e.g.*, United States Ninth Circuit, *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, (1992); *See also* International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, (Dec. 10, 1998).

⁷² UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez*, para. 37, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (hereinafter Special Rapporteur on Torture 2013 Report). *See generally* Cynthia Soohoo & Farah Diaz-Tello, “Torture and Ill-Treatment: Forced Sterilization and Criminalization of Self-Induced Abortion”, in *Gender Perspectives on Torture: Law and Practice*, 279, AM. UNIV. CTR. FOR HUM. RTS. & HUMANITARIAN LAW (2018).

⁷³ *See for example* *K.L. v. Peru*, *supra* note 28, para. 6.3; *L.M.R. v. Argentina*, *supra* note 33, para. 10; CAT Committee, *Concluding Observations on the Initial Report of Sierra Leone*, para. 17, U.N. Doc. CAT/C/SLE/CO/1 (Jun. 20, 2014); CAT Committee, *Concluding Observations of the Committee Against Torture: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (Dec. 14, 2011); CAT Committee, *Conclusions and Recommendations of the Committee Against Torture: Peru*, para. 23, UN Doc. CAT/C/PER/CO/4 (Jul. 25, 2006); CAT Committee, *Concluding Observations of the Committee Against Torture: Nicaragua*, para. 16, UN Doc. CAT/C/NIC/CO/1 (Jun. 10, 2009); CAT Committee, *Conclusions and Recommendations of the Committee Against Torture: Chile*, para. 7, UN Doc. CAT/C/CR/32/5 (Jun. 14, 2004); ECHR, *P. and S. v. Poland*, App. No. 5735/08, paras. 168-169 (2008); ECHR *R.R. v. Poland*, App. No. 27617/04, paras. 161-162 (2011). *See also* Special Rapporteur on Torture 2013 Report, *supra* note 72, para. 46, 48-50, 90.

in a number of circumstances, including where their life or health is at risk, where pregnancy results from rape, and in cases of fatal fetal impairments, amounts to ill-treatment.⁷⁴ These findings have been reached repeatedly in cases where abortion on such grounds is legally permitted, but not accessible in practice due to stigma and the chilling effect on restrictive abortion laws.

The Special Rapporteur on torture and the European Court of Human Rights specifically notes how “subjecting women and girls to humiliating and judgmental attitudes in . . . contexts of extreme vulnerability and where timely health care is essential [such as access to safe abortion] amount to torture or ill-treatment.”⁷⁵ Pregnant women and girls seeking abortion care are particularly vulnerable to severe suffering because of their “powerlessness” related to their physical and emotional condition and their necessary reliance on healthcare providers, a key factor considered in assessing torture and other ill-treatment. The Special Rapporteur on torture has noted that “health-care providers tend to exercise considerable authority over clients, placing women in a position of powerlessness, while the lack of legal and policy frameworks that effectively enable women to assert their right to access reproductive health services enhances their vulnerability to torture and ill-treatment.”⁷⁶ The CAT Committee has also expressed that women are particularly vulnerable in situations relating to their reproductive decisions.⁷⁷

The state cannot absolve itself of the harmful impact of the stigma and chilling effect of abortion laws, even where denials, delay, and abuse occur in private facilities. The CAT Committee explains that states have obligations to exercise due diligence to prohibit, prevent and redress torture and ill-treatment, even by private actors. The Special Rapporteur on torture confirms that the prohibition on torture and other ill-treatment applies to both healthcare workers who are government employees at public hospitals, and to healthcare workers at private hospitals.⁷⁸ The CEDAW Committee similarly affirms state responsibility for the actions of private actors in healthcare settings, emphasizing the state’s “due diligence obligation to take measures to ensure that the activities of private actors in regard to health policies and practices are appropriate.”⁷⁹

Criminal laws, especially those that require provider approval for abortion, place pregnant women and girls in situations where they are reliant on the authority of healthcare providers, creating what the Special Rapporteur on torture has characterized as “a position of powerlessness.”⁸⁰ Even when

⁷⁴ See *K.L. v. Peru*, *supra* note 28, para. 6.3; ECHR, *P. and S. v. Poland*, App. No. 57375/08, paras. 158-159 (2008); *Mellet v. Ireland*, *supra* note 18, para. 7.6.

⁷⁵ UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, para. 44, UN Doc. A/HRC/31/57 (Jan. 5, 2016) (citing ECHR, *P. and S. v. Poland*, App. No. 5735/08 (2008)).

⁷⁶ *Id.* para. 42.

⁷⁷ CAT Committee, *General Comment No. 2: Implementation of Article 2 by State Parties*, para. 22, UN Doc. CAT/C/GC/2 (Jan. 24, 2008).

⁷⁸ Special Rapporteur on Torture 2013 Report, *supra* note 72, para. 39.

⁷⁹ CEDAW Committee, *Alyne da Silva Pimental Teixeira v. Brazil*, para. 7.5, UN Doc. CEDAW/C/49/D/17/2008 (Aug. 10, 2011).

⁸⁰ UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, para. 42, UN Doc. A/HRC/31/57 (Jan. 5, 2016).

a state provides some exceptions to its criminal abortion law, pregnant persons who face barriers and are denied access to safe and legal abortion services are at risk of torture and other ill-treatment. Research indicates that abortion in Colombia remains largely denied as a service to women, even where legal.⁸¹ Women continue to face barriers to accessing abortion, the provision of services is arbitrary and limited to particular places in the country, with those most marginalized disproportionately lacking access, and there are few willing abortion providers⁸²-- circumstances which in some cases may amount to torture and other ill-treatment.

IV. Evolution of International Human Rights Law Recognizes the Need to Fully Decriminalize Abortion

International human rights law has increasingly recognized that the state obligation to ensure access to abortion includes full decriminalization.⁸³ UN treaty bodies and experts' recommendations no longer only call for reform where states criminalize abortion without exceptions or in limited circumstances. Rather, such recommendations now explicitly urge full decriminalization as well as positive measures to guarantee access to abortion "at least" on specific grounds such as risk to life or health, for victims of rape and incest, and due to the existence of severe or fatal foetal impairment.⁸⁴

The obligation to completely remove the regulation of abortion services from the realms of the criminal legal framework is also clear and resounding. By 2020, the call to decriminalize abortion in all circumstances has come from, *inter alia*, the CRC Committee, the CRPD Committee, the CEDAW Committee, the Working Group on Discrimination against Women and Girls, the Special Rapporteur on the right to the highest attainable standard of physical and mental health, the Special Rapporteur on extrajudicial, summary, or arbitrary executions, and the Special Rapporteur on violence against women.⁸⁵ Regionally, in 2016, the African Commission on Human and Peoples' Rights has also expressed support for the decriminalization of abortion and initiated a regional campaign.⁸⁶

⁸¹ Elena Prada et. al, *Unintended Pregnancy and Induced Abortion in Colombia: Causes and Consequences* 26, (Guttmacher Institute, 2011).

⁸² Ana Cristina González-Vélez, Carolina Melo-Arévalo, and Juliana Martínez-Londoño, *Eliminating Abortion from Criminal Law in Colombia: A Just Cause*, HEALTH AND HUMAN RIGHTS JOURNAL (Dec. 9, 2019).

⁸³ See *Mellet v. Ireland*, *supra* note 18; Center for Reproductive Rights, *Breaking Ground 2020: Treaty Monitoring Bodies on Reproductive Rights*, (Jan. 28, 2020); J.B. Fine, K. Mayall and L. Sepúlveda, *The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally*, HEALTH AND HUMAN RIGHTS JOURNAL (Jun. 2, 2017).

⁸⁴ CEDAW Committee, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Haiti*, UN Doc. CEDAW/C/HTI/CO/8-9 (Mar. 8, 2016); CEDAW Committee, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Honduras*, UN Doc. CEDAW/C/HND/CO/7-8 (Nov. 25, 2016); CRC Committee, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Mexico: Mexico*, UN Doc. CRC/C/MEX/CO/4-5 (Jul. 3, 2015).

⁸⁵ International Safe Abortion Day Statement, *supra* note 9; OHCHR, *Guaranteeing Sexual and Reproductive Health and Rights for All Women, In Particular Women with Disabilities*, (Aug. 29, 2018); UN Special Rapporteur on Mental Health Interim Report, *supra* note 14, para. 65(h), (i); See also Center for Reproductive Rights, *Breaking Ground 2020: Treaty Monitoring Bodies on Reproductive Rights* (Jan. 28, 2020).

⁸⁶ African Commission on Human and Peoples' Rights, *Statement by Commissioner Lucy Asuagbor during launch of ACHPR Campaign for the Decriminalization of Abortion in Africa* (Jan. 18, 2016).

V. Conclusion

While the Colombian Constitutional Court took a bold step in 2006 to decriminalize abortion in some circumstances, the ongoing stigma, discrimination and suffering that women, girls and anyone who can become pregnant face under the partially criminalized legal framework mandate further law reform. Public health evidence and lived experiences confirm that abortion should not be regulated through the criminal law. Rather, as recommended by the WHO: “Abortion services should be integrated into the health system [...] to acknowledge their status as legitimate health services and to protect against stigmatisation and discrimination of women and health-care providers.”⁸⁷ Therefore, to align Colombia’s abortion legal framework with the country’s obligations to respect, protect and fulfill international human rights law, abortion should be removed from the Penal Code and instead regulated under the Health Code. **Consequently, the interveners respectfully request that the Court declare Article 122 of Law 599 of 2000 unconstitutional.**

To the Honorable Court,

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⁸⁷ WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems (Second Edition)*, 65 (2012).

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