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Written statement* submitted by European Centre for Law and Justice, The / Centre Européen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

* Issued as received, in the language(s) of submission only.

Torture Situations on Unborn and Newborn Children

As the 2020 Geneva Consensus Statement signed by 35 states recalled: “there is no international right to abortion, nor any international obligation on the part of States to finance or facilitate abortion, consistent with the long-standing international consensus[1]”. This absence of an international right to abortion is based, on the one hand, on the objective absence of any convention ratified by a significant number of States formally establishing such a right. On the other hand, several important conventions can be interpreted as opposing such a right to abortion. This is the case, in particular, of the Convention on the Rights of the Child, ratified to date by 196 States. This text states that the child “needs special safeguards and care, including appropriate legal protection, before as well as after birth.” In order to protect the life and health of the child before birth, States can therefore legitimately and sovereignly choose to prohibit abortion.

In recent years, the prohibition of abortion has been considered by some to be a form of torture. According to this argument, which was partially taken up by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in a Report published in July 2019, prohibiting the use of “medically safe abortion” in cases of forced or unwanted pregnancies “can violate the prohibition of torture and ill-treatment[2].”

The ECLJ fully recognizes the suffering that can result from forced pregnancy. However, in all cases, regardless of the woman’s situation and consent to the pregnancy, the abortion procedure is a form of torture for the unborn child.

Whether the abortion is carried out illegally or legally, with or without specialized medical personnel, it consists in a foeticide and the expulsion of the body of an unborn child, a being distinct from the woman carrying them.

The ECLJ wishes to draw the attention of the Special Rapporteur on Torture to two particular practices that are characterized as acts of torture, inhuman, and degrading treatment of human beings. These are the procedure of abortion by dismemberment and neonatal infanticide.

A. The procedure of abortion by dismemberment

This method, also called “abortion through dilatation and evacuation”, is performed between 13 and 22 weeks of pregnancy, when medical or surgical abortion without dismemberment is no longer possible[3]. It consists in inserting a wide-toothed clamp into the woman’s uterus to, usually blindly, remove the different parts of the foetus. The body of the unborn child is dismembered with the clamp. Its head is large and must be crushed with the clamp to pass through the vaginal canal. The limbs of the foetus must then be identified and counted so that the doctor can make sure that no limb remains in the uterus[4].

Several scientific studies indicate that the foetus may feel pain[5]. At a minimum, it has been established that as early as 8 weeks, the foetus responds to touch[6]. Several U.S. states have taken legal steps to take into account this sensitivity to pain of unborn children[7]. As stated in the Pain-Capable Unborn Child Protection Act, as early as 20 weeks of development, the foetus is able to feel pain through a functional nervous system.

It is obvious that the dismemberment of a human being clearly is an act of characterized torture. Per se, such practices on unborn children should be prohibited.

B. Neonatal infanticide

The other main medical practice for abortion beyond 14 weeks is to first perform a foeticide, by injecting potassium chloride into the foetal cord and then by inducing contractions, as in a conventional delivery, to expel the foetus from the woman’s body[8]. This foeticide, as well as the violence of the labour during delivery, means that, in principle,

the foetus is dead when expelled. However, the child may survive the abortion. This is mainly due to the fact that intracardiac or umbilical cord injection is difficult to perform and that some doctors do not do it[9]. Furthermore, the older the unborn child is, the more likely he is to survive leaving the womb[10].

If a child survives the foeticide and expulsion from the uterus, doctors will euthanize them. Doctors either let the child die alone, in an isolated corner, or pressure the child's throat to suffocate them, or give them an injection of potassium chloride .

These are under-acknowledged situations, but they have been documented around the world. In Canada, according to official statistics, there are approximately 60 children born alive each year following an abortion[11]. In the United States, the Center for Disease Control also recognizes this cause of death and gives the minimum figure of 362 children who died after surviving an abortion for the period 2001-2010[12]. Other state statistical surveys indicate a higher number of cases. In Denmark, according to a study conducted at the Skejby University Hospital and published in 2012, of the 877 fetuses aborted after the 12th week in the previous two years, 140 showed signs of life. In Norway, following revelations by midwives, the Ministry of Health recommended in 2013 to no longer allow abortion after 21 weeks and 6 days, and since 2015, the foetus is presumed to be viable after this period.

In the United States, Congress passed a law in 2002 to extend the protection due to all human beings, including children who survive their abortion. Former President Donald J. Trump reaffirmed this in an executive order of September 25, 2020: regardless of the circumstances of their birth, these new-borns have the right to life and care just like any other person. More than 40 U.S. states have also passed laws to strictly prohibit abortion beyond 20, 22 or 24 weeks because of the unborn child's ability to feel pain or because of the threshold of viability[13]. The House of Representatives passed a similar bill three times, but these bills were blocked by the Senate, despite a majority of 51 out of 100 votes in the last vote in 2018, because a qualified majority is required (60 votes).

The ECLJ therefore encourages the Special Rapporteur on Torture to denounce neonatal infanticide and to promote the prohibition of abortions, especially if the unborn child can feel pain.

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<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310015301>
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13. "State Policies on Later Abortions," The Guttmacher Institute, January 1st, 2021.