

Inquiry into item 16525 in Part 3 of Schedule 1 to the Health Insurance (General Medical Services Table) Regulations 2007

Response from Mrs. Rita Joseph to question on notice from Senator Hanson-Young regarding “forced pregnancy”

The term “forced pregnancy” as defined in *the Rome Statute of the International Criminal Court* (2002) does not have any bearing on this particular Inquiry. Under Article 8 entitled Crimes Against Humanity, it is defined as follows:

2 (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.

If however the Senator’s question is referring to pregnancies which result from forced sexual intercourse (rape) and you wanted to know my position on whether or not abortion of the children of rape should be funded under Item 16525, then my answer is no, such abortions should be neither offered nor funded.

In *General Comment No 7* (2005), the UN Committee on the Rights of the Child (CRC) condemned selective abortion as discrimination against children and as a serious violation of their rights, affecting their survival.

Selective abortion includes those abortions based on discrimination related to the social and cultural status of the children of rape and to the social and cultural status of their mothers.

These children together with their mothers are entitled to legal protection and also to adequate programs of practical assistance including pre-natal and postnatal health care as well as personal and social security such as safe housing and financial aid.

There are two sets of reasons that militate against funding the abortion of children who are conceived through rape. One set is based on fundamental principles of international human rights law. The other set of reasons is pragmatically humanitarian, based on the child’s potential to be loved and to love, and so to bring healing and love to an abused mother.

In terms of the human rights of the unborn child, abortion is lethal punishment of the innocent.

Indeed, one of the most fundamental and consistently proclaimed rights of the child (before as well as after birth) is the right to protection from punishment on the basis of the activities or crimes of someone else (such as the child’s father). The Fourth Geneva Convention (1949) states in Article 33:

No protected person may be punished for an offence he or she has not personally committed.

In every premeditated abortion, deprivation of life is the intended outcome. Arbitrary deprivation of life, under modern international human rights law, is still strictly

prohibited. “No one may be deprived of their life arbitrarily”, says Article 6(1) of the *International Covenant on Civil and Political Rights (ICCPR)*. That the right to life is non-derogable means, *inter alia*, that at no time are States permitted to engage in or condone the arbitrary taking of a human life, including the life of a child conceived through rape.

The unborn child’s right to life is also protected under Article 6(5) of the *ICCPR*. The *travaux préparatoires* stated this explicitly:

The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child

If it is agreed that, in order “to save the life of an innocent unborn child”, the child’s mother is not to be executed even though the mother is guilty of a most serious crime punishable by death, then it must be agreed also on these same grounds, that the life of the child must be saved irrespective of the serious crime committed by the father (*i.e.* by either parent). Logic dictates that if the unborn child is not to be executed for the crimes of his/her mother then neither should he or she be executed for the crimes of his/her father.

Clear logical and ethical imperatives to protect the unborn child tend to be overwhelmed by emotionally-driven public sympathy and heightened public sensitivities relating exclusively to the grief, hurt and shame being experienced by a woman, especially a very young woman, who finds herself pregnant through rape.

It only compounds the tragedy when public sympathy towards her tiny innocent child is suppressed—all the concern is focused on the child’s mother and provision of a ‘choice’ to abort the child becomes in itself an insidious pressure.

The very offer of an abortion carries with it a subliminal message that the baby is *not* positively wanted, is *not* going to be warmly welcomed by family, friends and the wider community. Implicit is the concept of mere toleration: the baby’s death will be tolerated just as easily as the baby’s birth. Even an accompanying offer of assistance “should she decide to keep the baby” cannot suffice to undo the damage done by the offer of an abortion at a time when she needs an unqualified affirmation, a straightforward loving acceptance of her child. As the most vulnerable of all pregnant women, the victims of rape need non-ambivalent reassurance, more so than other women.

We need to deal with this appalling social climate in which irrational prejudice transfers public censure of rape to innocent children. Consider, for example, the attitude reported in Maja Kirilova Eriksson’s *Reproductive Freedom in the Context of International Human Rights and Humanitarian Law*, (1999): “...children born as a product of violence were despised...”.

It is a cruel folly that the injustice and evil of acts of rape are transferred to the unborn babies who themselves begin to be treated as unjust and evil.

There seems to be a regrettable reluctance to uncover and condemn the largely hidden prejudice held by the general public towards these children and their mothers. Public attitudes (with an underlay of censure) towards these children (and their mothers who

have “chosen” to bring them to birth) are unjust and must change. It is one of the few remaining vestiges of an earlier barbarism that society will not recognize the vulnerability of both the mother and her child before and after birth and the State and community obligation to protect these victim mothers and their unborn children from further abuse. This has long been one of the hidden tragedies behind the facile practice of quietly aborting the children of rape: women and girls are sent back into the same situation where further abuse leads to further abortions.

In no way should we ever seek to underestimate or trivialize the excruciating pain, both psychological and physical, that is endured by victims of rape. But neither should we ever consent to compound that pain by urging these victims to abort their innocent children who have an inimitable potential to bring true love and healing back into their mothers’ lives.