

remedies is unreasonably prolonged."<sup>20</sup> In *KL v. Peru*,<sup>21</sup> the Human Rights Committee, in holding that the woman complied with the requirement of exhaustion of domestic remedies, said that there was no administrative or judicial remedy at the domestic level "functioning with the speed and efficiency required" to enable her to secure a lawful abortion on therapeutic grounds "within the limited period, by virtue of the special circumstances obtaining in such case." It also referred to previous jurisprudence "that a remedy which had no chance of being successful could not count as such."<sup>22</sup>

6. In the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *the right to a remedy* is implied in Article 2 (c), which speaks of the obligations of States parties "[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the *effective* protection of women against any act of discrimination."<sup>23</sup> For the remedy to be effective, the adjudication of a case must be fair, impartial, timely and expeditious.<sup>24</sup> Gender stereotyping, which often occurs in many prosecutions of gender violence and other gender-related cases, affects women's right to a fair and just trial.<sup>25</sup> Saying that state responsibility extends to judicial decisions that violate the provisions of the CEDAW, the CEDAW Committee declared that "[t]he judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general."<sup>26</sup> Following the same standards set by the Optional Protocol to the ICCPR and the Human Rights Committee, the Optional Protocol to the CEDAW also specifies, as exceptions to the requirement of exhaustion of domestic remedies for a communication to be admissible, cases where "the application of such remedies is unreasonably prolonged or unlikely to bring relief."<sup>27</sup>
7. In the European Union, access to justice as a right is understood to include *the right to a fair trial* and *the right to an effective remedy*, which are guaranteed under the EU Charter of Fundamental Rights,<sup>28</sup> the European Convention on Human Rights,<sup>29</sup> and the International Covenant on Civil and Political Rights.<sup>30</sup> Article 6 (1) of the European Convention on Human Rights, on the right to a fair trial, provides that "[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The European Union Agency

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20. Art. 5 (b).

21. Communication No. 1153/2003, HRC Views of 24 October 2005.

22. Citing Communication No. 701/1996, *Cesareo Gomez Vasquez v. Spain*, Views adopted on 20 July 2000, para. 6.2.

23. UN CEDAW Views adopted on 16 July 2010, para. 8.3, Communication No. 18/2008, *Vertido v. Philippines*, CEDAW/C/46/D/18/2008.

24. *Ibid.*

25. *Ibid.*, para. 8.4.

26. *Ibid.*

27. Art. 4.

28. Art. 47.

29. Arts. 6 & 13.