

Manuela,¹ a Salvadoran woman of modest means, died of Hodgkin's lymphoma at the age of 33 while serving a 30-year prison sentence for the crime of aggravated homicide. She died following an obstetric emergency and having never received adequate treatment for the cancer from which she had been suffering.

Starting in 2006, Manuela made frequent visits to the closest health clinic to her home (more than three miles away and difficult to access), complaining of headaches, nausea, fatigue, and general pain. She was prescribed painkillers and other medications to treat her symptoms of vomiting and nausea. In addition, in May of 2007, a mass appeared on her neck, and by August of that year it had grown. Nevertheless, the clinic continued to treat her with painkillers alone, never ordering any diagnostic exams. During the following months, Manuela's discomfort became more severe. However, it would not be until much later, when she was in prison, that Manuela would finally receive a diagnosis confirming that she suffered from a type of neck cancer and that the masses were tumors.

On February 26, 2008, Manuela fell and injured herself, which led to light pelvic bleeding. She awoke the following day feeling worse than usual; thereafter, her health deteriorated rapidly. Around 11 a.m., she felt an intense abdominal pain. She went to the latrine located approximately 22 yards from her home. There, she felt as if she evacuated, and then she fainted. After regaining consciousness, Manuela had to drag herself to her house while hemorrhaging. Once in bed, she expelled several bloody masses. She lost consciousness once again, coming to only after arriving at the San Francisco Gotera National Hospital. Manuela had suffered severe blood loss.

That same day the hospital sent a report to the Public Prosecutor's Office accusing Manuela of the crime of abortion.² The next day, the police interrogated the doctor who treated her. Contrary to what Manuela had said, the doctor stated that Manuela had most likely induced the abortion. Despite previously having given Manuela a diagnosis of severe preeclampsia, the doctor assumed that Manuela had induced the abortion because Manuela's pregnancy was the result of infidelity, there was no evidence of a fetus in her uterus, and the umbilical cord had been expelled from her body, among other factors. Manuela was interrogated by police officers while in very poor health and without the presence of an attorney. The investigation continued, and on February 28, 2008 a warrant was issued to search Manuela's home.

During the search, Manuela's relatives were mistreated, accused of covering up the alleged crime and threatened with being investigated as accomplices. Police officers then interrogated Manuela's father, who informed them that he was illiterate. Despite this, they asked him to sign a piece of paper whose content was never explained to him. He subsequently provided his fingerprint on a document used to file a complaint that would later become one of the fundamental pieces of evidence in the criminal proceeding against Manuela.³ Upon examining the latrine where Manuela had evacuated, the police found a dead fetus. Despite the fact that Manuela was in the hospital at the time that the police found the dead fetus, the Public Prosecutor's Office argued to the judge that Manuela had been arrested while she was in the act of committing homicide.

Manuela was handcuffed to her hospital bed for eight days while she continued to receive medical care. She was held initially in the San Miguel Center for Preventive Detention and Completion of Prison Sentences, where she did not receive any medical attention despite her poor health. She was later transferred to the Morazán Police Department Jail.

The proceedings carried out against Manuela included a number of irregularities that violated her fundamental right to due process. For example, Manuela's medical history, which was used as evidence against her, included false and incomplete information regarding her health as well as forensic documents, which were also used against her and contained false information about the fetus. Additionally, Manuela could neither read nor write, and during the

proceedings she never had the aid of an attorney who could help her understand what was happening or provide her with information about the investigation being carried out by the Public Prosecutor's Office. The official documents found in the case file indicating Manuela's acceptance of her public defender are forged. In fact, Manuela only met her attorney at the hearing in which she was convicted and sentenced to 30 years in prison for the crime of homicide, to which the attorney did not appeal. The government of El Salvador thus violated Manuela's right to a fair trial, right to an attorney, and right to the presumption of innocence.

Throughout this process, Manuela's health steadily declined. Because she was in prison and thus deprived of liberty, the Salvadoran government was the sole guarantor of her rights. Yet it was not until a year later, when her health was in dire condition, that Manuela received a complete medical examination. She was diagnosed with cancer, which explained the tumors on her neck and the obstetric emergency that led to her conviction. As a result of this diagnosis, in September of 2009, Manuela, already in very poor health, was transferred to the Women's Re-Adaptation Center in Ilopango, where she received outpatient chemotherapy and was sent to recover in her cell. However, the treatment was erratic: in November 2009, she did not receive a single chemotherapy session. Her health rapidly deteriorated and she was admitted to the Rosales National Hospital in San Salvador in January 2010, where she died on April 30 of that year. The state's negligence in guaranteeing Manuela's health constitutes a violation of her rights to health, life, dignity, and personal integrity.

On March 21, 2012, the Center for Reproductive Rights and the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico (Citizens' Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion), a Salvadoran nongovernmental organization, brought Manuela's case before the Inter-American Commission on Human Rights.

¹ Manuela's name has been changed to protect her identity and that of her relatives.

² El Salvador has one of the world's most restrictive abortion laws. Abortion is illegal even when it is necessary to save the life of a pregnant woman.

³ The police had Manuela's father make his mark on the document, which the Public Prosecutor's Office then used during the proceeding, ignoring the prohibition on parents filing complaints against their offspring as established under article 231 of the Criminal Procedure Code in force at the time in El Salvador.

El Salvador has one of the most restrictive abortion laws in the world. In this country, “women who have abortions run the risk of being criminally prosecuted, even in cases in which a pregnancy puts their lives at risk.”¹ The adoption of a new Criminal Code in 1998 “eliminated exceptional cases in which abortion was decriminalized, and even created new conditions under which abortion could be criminalized. In January 1999, Article 1 of the Constitution was amended to establish protection of the right to life from the moment of conception.”² Parallel to this, a “law enforcement apparatus [was established] to process, investigate, and file charges for any suspicious activity in public hospitals and other places throughout the country.”³

According to a 2011 report from the United Nations Special Rapporteur on violence against women, its causes and consequences (Special Rapporteur), the state of sexual and reproductive rights in El Salvador is deeply concerning because “[t]he absolute prohibition of abortion means that women and girls are condemned to bring pregnancies to term and to face victimization by family and society. It has also led women and girls impregnated as a result of rape or incest to resort to unsafe and clandestine abortion practices, sometimes with fatal consequences.”⁴

A study revealed that El Salvador’s absolute ban on abortion disproportionately affects poor young women with little formal education—in other words, the country’s most vulnerable women.⁵ The lack of access to safe abortions and the criminalization and imprisonment of women and girls when they do have abortions “contributes directly to the feminization of poverty in the country, and exacerbates gender inequality.”⁶

The United Nations Human Rights Committee (HRC) commented on the absolute ban on abortion in its 2007 review of the Salvadoran government, recommending that the state take the necessary “steps to bring its legislation into line with the Covenant regarding the protection of life (art. 6), to help women avoid unwanted pregnancies and not resort to clandestine abortions that may put their lives in danger”⁷

In addition, it has become common in El Salvador for health care personnel to file complaints against women who visit clinics or hospitals in search of medical attention for obstetric emergencies. Doctors opt to report women—even if only based on suspicion—in order to avoid accusations of complicity with the woman seeking medical care, or of failure to report in line with article 312 of the Criminal Code. “Consequently, members of El Salvador’s health community are prone to report women who have had spontaneous or induced abortions, as they are under pressure from the government to notify the police when they treat a patient with certain symptoms.”⁸ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed its concern in this regard: “[V]ulnerable groups of women, in particular in rural areas, still have difficulties in accessing health-care services. The Committee is further concerned at contradictory statistics available on the issue of maternal mortality which did not allow it to gain a precise understanding of the situation. The Committee is alarmed at . . . the high number of illegal abortions, including among very young women, which have a negative impact on women’s physical and mental health.”⁹

In 2010, the HRC issued another statement on El Salvador’s abortion ban, highlighting the grave consequences of the criminal code’s provisions criminalizing abortion in all its forms.¹⁰ The Committee expressed its concern about the fact that “women seeking treatment in public hospitals have been reported to the judicial authorities by medical staff who believe they have been involved in abortions, that legal proceedings have been brought against some of these women, and that in some cases these proceedings have resulted in severe penalties for the offence of abortion or even homicide, an offence interpreted broadly by the courts.”¹¹

The Committee further noted:

“Even though the Constitutional Chamber of the Supreme Court has ruled that in cases of vital need a woman facing criminal proceedings for abortion can be absolved of criminal responsibility, the Committee is concerned that this legal precedent has not been followed by other courts and that criminal proceedings against women accused of abortion have not been dropped as a result.”¹²

Finally, the Committee reiterated its recommendation that El Salvador amend its abortion legislation and that it “take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion. Furthermore, until the current legislation is amended, the State party should suspend the prosecution of women for the offence of abortion. The state should initiate a national dialogue to discuss women’s sexual and reproductive health and rights.”¹³

The *Manuela* case offers the Inter-American Commission on Human Rights the opportunity to reinforce the government’s international human rights obligations to ensure women’s safe and equal access to health services, including sexual and reproductive health services. It also represents an opportunity to hold El Salvador responsible for failing to meet its obligations to respect, protect, and fulfill the rights of women, particularly their rights to dignity, health, liberty, due process, and freedom from discrimination.

¹ Human Rights Watch (HRW), *International Human Rights Law and Abortion in Latin America 3* (2005), available at <http://www.hrw.org/legacy/backgrounder/wrd/wrd0106/wrd0106.pdf>.

² Center for Reproductive Rights (previously Center for Reproductive Rights and Public Policy), *Perseguidas: Proceso político y legislación sobre aborto en El Salvador; un análisis de derechos humanos 7* (2000), available at reproductiverights.org/sites/default/files/documents/perseguidas1.pdf [hereinafter *Perseguidas*].

³ Agrupación ciudadana por la despenalización del aborto terapéutico, ético y eugenésico (El Salvador) et al., shadow letter presented to the United Nations Human Rights Committee (HRC): Report on the violations of the human rights of women due to the absolute criminalization of abortion 3 (2010), available at www2.ohchr.org/english/bodies/hrc/docs/ngos/JointSubmission_ElSalvador100_sp.pdf [hereinafter *Shadow Letter*].

⁴ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Additional, Follow-up mission to El Salvador, para. 66, UN Doc. A/HRC/17/26/Add.2 (2011).

⁵ *Perseguidas*, *supra* note 2, p. 48.

⁶ *Shadow Letter*, *supra* note 3, p. 4.

⁷ Human Rights Committee (HRC), Concluding Observations: El Salvador, para. 14, UN Doc. CCPR/CO/78/SLV (2003).

⁸ *Shadow letter*, *supra* note 3, p. 4.

⁹ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations: El Salvador, para. 35, UN Doc. CEDAW/C/SLV/7 (2008).

¹⁰ HRC, Concluding Observations: El Salvador, UN Doc. CCPR/C/SLV/6 (2010).

¹¹ *Id.* para. 10.

¹² *Id.*

¹³ *Id.*

Despite the serious consequences of El Salvador's absolute ban on abortion, the government lacks the political will to change the law. During the XI Regional Conference on Women in Latin America and the Caribbean, held in Brasilia on July 13, 2010, Julia Evelyn Martínez—the director of the governmental agency Instituto Salvadoreño para el Desarrollo de la Mujer (Salvadoran Institute for the Development of Women) at the time—signed the Brasilia Consensus. This document committed the Salvadoran state, among other things, to revise its abortion law.¹

Despite this commitment, however, Salvadoran President Mauricio Funes “discredited . . . Julia Evelyn Martínez’s signature to the Brasilia Consensus. . . . He indicated that a clarification must be sent to the Economic Commission for Latin America and the Caribbean (ECLAC), (which organized the event in Brazil), in order to correct the government’s position on the issue” With regard to abortion, he explained that the issue is not on the national agenda. “I have given no order to amend the law. It is up to the Assembly to review legislation,” he stated. Likewise, he reiterated that “El Salvador should have put forth a reservation on the issue of abortion in the Brasilia Consensus as Chile and Costa Rica did.”²

There is a lack of commitment among Salvadoran authorities to advancing women’s sexual and reproductive rights. No political party in the Legislative Assembly has taken the initiative to lift the absolute ban on abortion. In fact, the last time the Assembly addressed the issue was in 2008, when the Fundación Sí a la Vida (Yes to Life Foundation) successfully obtained signatures from all of the country’s political parties for a statement rejecting abortion.³

Maternal Mortality and Abortion

According to the World Health Organization, the rate of maternal mortality in El Salvador in 2010 was 81 deaths per 100,000 live births.⁴ From 1995 to 2000, there were an estimated 246,275 abortions of which 209 led to the deaths of pregnant woman.⁵ According to information from the Ministry of Health’s Information, Monitoring and Evaluation Unit, from January 2005 to December 2008, 19,290 abortions took place in the country, of which 27.6% were performed on adolescents.⁶ Abortion is now the second-leading cause of maternal mortality in El Salvador. While the maternal mortality rate has varied since the ban, it has been increasing: according to the Ministry of Health, maternal deaths accounted for 15.3% of female adolescent deaths in 2003, 26% in 2004, and 21.4% in 2005.⁷ In addition, the Ombudsman for the Defense of Human Rights reported that suicide among adolescents accounted for 40.6% of maternal mortality.⁸

Persecution of Women

Although El Salvador is not the only country to prohibit abortion completely, it is one of the few in the region that has a mechanism in place for persecuting women suspected of having committed the crime. This policy of criminalization has led to many women being charged with, prosecuted for, and convicted of aggravated homicide, and sentenced up to 30 years in prison after suffering obstetric emergencies without medical care. According to Salvadoran legislation, abortion is penalized by two to eight years in prison, while aggravated homicide is penalized by 30 to 50 years in prison.

The Special Rapporteur stated in a 2011 report that many women are being convicted and sentenced to 30 years in prison without the necessary procedural guarantees.⁹ The report refers to two specific cases in which women were convicted of aggravated homicide.¹⁰ In one of the cases, a woman’s sentence was reduced to three years after review by the Supreme Court of Justice, which found that the evidence was not sufficient to find her guilty. In the other, a woman was convicted of aggravated homicide and subsequently denied access to justice. She was informed that if she wanted to appeal the judgment, she would have to hire a private attorney.

Prison Situation

In addition to the aforementioned situation, women also face prison conditions that violate their human rights. Prisons are overpopulated and in poor conditions, and security procedures are unsanitary and violate women's physical integrity.¹¹ According to the Special Rapporteur on Violence against Women, the Ilopango Women's Rehabilitation Center, where Manuela was held before being hospitalized, has a capacity of 220 inmates, yet houses 1,344.¹²

Both the United Nations Working Group on Arbitrary Detention¹³ and the Office of the Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission¹⁴ made recent visits to prisons in El Salvador and expressed their concern over a number of situations that violated human rights.

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- ¹ Asamblea Legislativa, Citan a directora del ISDEMU, Sala de Prensa, Aug. 8, 2010, *available at* <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/citan-a-directora-de-isdemu>.
- ² Patricia Carías, Funes desautoriza a directora del ISDEMU, *El Faro*, Aug. 25, 2010, *available at* <http://www.elfaro.net/es/201008/noticias/2318/>.
- ³ Daniel Valencia, "ONU pide a El Salvador eliminar penalización absoluta del aborto y derogar Ley de Amnistía," *El Faro*, Oct. 28, 2010, *available at* www.elfaro.net/es/201010/noticias/2756/.
- ⁴ World Health Organization (WHO), World Bank, UNICEF and United Nations Population Fund (UNFPA), Trends in Maternal Mortality: 1990 to 2010 33 (2012), *available at* whqlibdoc.who.int/publications/2012/9789241503631_eng.pdf.
- ⁵ Global Health Council, Promises To Keep: The Toll of Unintended Pregnancies on Women's Lives in the Developing World 43 (2002), *available at* <http://issuu.com/globalhealthcouncil/docs/promisestokeep/1>.
- ⁶ Data from the MSPAS Information, Monitoring and Evaluation Unit with Dr. Elisa Mejívar, Comprehensive Women's Care Unit, El Salvador Ministry of Public Health. Situación del aborto en El Salvador: Conferencia Latinoamericana: Prevención y atención del embarazo inseguro, Perú 2009, *available at* http://www.clacaidigital.info:8080/xmlui/bitstream/handle/123456789/60/Menjivar_ICONFLPAAI.pdf?sequence=1.
- ⁷ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum, Follow-up mission to El Salvador, para. 66, UN Doc. A/HRC/17/26/Add.2 (2011) [hereinafter Human Rights Council, Report of the Special Rapporteur 2011].
- ⁸ Procuraduría para la Defensa de los Derechos Humanos, Primer informe situacional sobre embarazo en adolescentes y su impacto en el derecho a la educación 22 (2009), *available at* http://portalfo.org/inicio/redes-tematicas/descargas/doc_download/40-embarazo-en-adolescentes-su-impacto-en-la-educacion-pddh-el-salvador.html.
- ⁹ Human Rights Council, Report from Special Rapporteur 2011, *supra* note 7, para. 68.
- ¹⁰ *Id.*
- ¹¹ *Id.* para. 39.
- ¹² *Id.* para. 40.
- ¹³ UN News Center, "Grupo de Trabajo alerta sobre condiciones inhumanas en cárceles de El Salvador," Feb. 2, 2012, *available at* www.un.org/spanish/News/fullstorynews.asp?NewsID=22623.
- ¹⁴ Inter-American Commission on Human Rights, Press Release No. 104/10 IACHR Office of the Rapporteur attests to structural deficiencies in prison system of El Salvador, *available at* <http://www.cidh.oas.org/Comunicados/English/2010/104-10eng.htm>; *see also* Inter-American Commission on Human Rights, Annex to Press Release 104/10, Preliminary Observations on the Visit to El Salvador by the Office of the Special Rapporteur on the Rights of Persons Deprived of Liberty, *available at* <http://www.cidh.oas.org/Comunicados/English/2010/ANNEX%20104-10.pdf>.

This section offers an overview of some of the human rights issues implicated in the *Manuela* case.

Right to Life

Universal Declaration of Human Rights

Article 3: Every person has the right to life, liberty, and security of person.

American Convention on Human Rights

Article 4(1): Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

International Covenant on Civil and Political Rights

Article 6(1): Every human being has the inherent right to life. This right shall be protected by law.

Article 9(1): Everyone has the right to liberty and security of person.

Right to Health, including Reproductive Health

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

Article 10: Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental, and social well-being.

International Covenant on Economic, Social and Cultural Rights

Article 12(1): The States Parties . . . recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of . . . infant mortality . . . (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Convention on the Elimination of All Forms of Discrimination against Women

Article 10: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: . . . (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 12(1): States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

(2) . . . States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14(2): States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: . . . (b) To have access to adequate health care facilities, including information, counselling and services in family planning;

Right to Physical and Mental Integrity and Right to Be Free from Cruel, Inhuman, and Degrading Treatment

American Convention on Human Rights

Article 5(1): Every person has the right to have his physical, mental, and moral integrity respected.

(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

(3) Punishment shall not be extended to any person other than the criminal.

International Covenant on Civil and Political Rights

Article 7: No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Inter-American Convention to Prevent and Punish Torture

Article 1: The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6: In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

Right to a Fair Trial

American Convention on Human Rights

Article 8(1): Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

(2) Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: . . . (b) prior notification in detail to the accused of the charges against him; (c) adequate time and means for the preparation of his defense; (d) the right of the accused to defend himself personally or to be assisted . . . ; (h) the right to appeal the judgment to a higher court.

(3) A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

Article 25(1): Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention

(2) The States Parties undertake: . . . (b) to develop the possibilities of judicial remedy.

Right to Equality and Non-Discrimination

American Convention on Human Rights

Article 1: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of . . . sex . . . or other social condition.

Article 24: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

International Covenant on Economic, Social and Cultural Rights

Article 2(2): The States Parties . . . undertake to respect the rights and freedoms recognized herein, without any discrimination for reasons of . . . sex . . . or other social condition.

Convention on the Elimination of All Forms of Discrimination against Women

Article 1: For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Right to Freedom from Gender-Based Violence

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

Article 2: Violence against women shall be understood to include physical, sexual and psychological violence . . . (b) that occurs in the community and is perpetrated by any person, . . . in . . . health facilities or any other place.

Article 7: The States Parties condemn all forms of violence against women and agree to pursue . . . policies to prevent, punish and eradicate such violence and undertake to: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; . . . (e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.

The **Center for Reproductive Rights** and the **Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico**, brought a complaint on behalf of Manuela before the Inter-American Commission on Human Rights on March 21, 2012. The complaint alleges that the Salvadoran government is responsible for the imprisonment, untreated illness, and death of Manuela and asserts that the State violated Manuela’s human rights and those of her relatives.

While Manuela was alive, the Salvadoran government violated her rights to life, personal integrity, liberty, judicial guarantees, and freedom from cruel, inhuman, and degrading treatment, as well as the right of all persons deprived of liberty to be treated with dignity. The state prevented Manuela and her relatives from freely and fully exercising, without discrimination, the rights protected by the American Convention on Human Rights. Additionally, the state failed to comply with its obligation to refrain from carrying out actions of violence against women; it also failed in its obligation to take measures to eradicate patterns that encourage tolerance of violence against women.

El Salvador violated Manuela’s rights to health, life, and physical and mental integrity by failing to provide her with timely and high-quality medical attention, both while she was free and while in state custody

The Inter-American Court of Human Rights (IACtHR) has recognized a connection between the right to health, the right to personal integrity, and the right to life: “Personal integrity is essential for the enjoyment of human life. In turn, the rights to life and humane treatment are directly and immediately linked to human health care.”¹ Likewise, it has found that “States are responsible for regulating and supervising the rendering of health services, so that the rights to life and humane treatment may be effectively protected.”²

In order to understand the scope of the right to health in the Inter-American human rights system, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights must be used as standards for interpretation. In articles 10 and 12, respectively, they establish that this right encompasses the enjoyment of the highest attainable standard of physical, mental, and social well-being, without discrimination.

With regard to El Salvador’s positive obligation to protect and preserve the right to life, the IACtHR has established a standard according to which states are responsible for risks created by third parties when it can be demonstrated that, “at the time of the facts, the authorities knew or should have known of the existence of a situation of real and immediate risk to the life of an individual or group of specific individuals, and that they did not take the necessary measures within their powers that could reasonably be expected to prevent or avoid that risk.”³

In this case, the state was obligated to provide Manuela with high-quality medical attention in order to protect her rights to health, physical integrity, and life. The risks to Manuela’s life and well-being should have been known to authorities given that she was in their custody. Thus, by failing to take measures to prevent harm to her, the state failed to comply with its positive obligations regarding the rights to health, life, and personal integrity.

El Salvador violated Manuela’s right to be free from torture by allowing her to be handcuffed to her hospital bed while she received medical attention following an obstetric emergency

The IACtHR has determined that the “[p]rohibition of torture is absolute and non-revocable”⁴ and that it forms part of international jus cogens.⁵ As established by the Inter-American Convention to Prevent and Punish Torture, torture is “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.”⁶

It has been established that women are at greater risk of being subjected to torture when deprived of liberty or when receiving medical treatment, especially treatment related to reproductive health.⁷ One common practice that deprives women of their liberty is to handcuff them to their hospital beds while they convalesce or face a reproductive health situation such as giving birth. This practice, which occurs either as a form of corporal punishment or as a preventative measure, causes serious physical and emotional suffering. Indeed, the practice has been condemned by international bodies that address the issue of torture including the HRC,⁸ the Committee against Torture,⁹ the United Nations Special Rapporteur on Torture,¹⁰ and the Special Rapporteur.¹¹ These bodies have indicated that the practice of handcuffing women before, during, or after giving birth is a violation of international standards on the prohibition of torture and the protection of personal integrity.

El Salvador violated Manuela’s right to be free from cruel, inhuman, and degrading treatment and to be treated with dignity due to the conditions to which she was subjected while in state custody

The IACtHR has established that states have an obligation “to provide detainees with regular medical review and appropriate medical care and treatment when required”¹² and that states are guarantors of the health of individuals held in their custody. The Court has also stated that “a lack of appropriate medical care does not satisfy the minimum material requirements of humane treatment because of a person’s nature as a human”¹³

In addition, during an official visit to El Salvador, the Inter-American Commission’s Rapporteurship on the Rights of Persons Deprived of Liberty issued a document containing preliminary observations on the condition of the country’s prisons.¹⁴ The report notes that “the Salvadoran prison system suffers serious structural deficiencies. This situation, which today has reached truly critical levels, is not a recent phenomenon, but rather the result of a decades-long failure to design and implement public policies and projects that would enable the prison system to fulfill the aims established by the American Convention on Human Rights”¹⁵

Among the Rapporteurship’s findings is the observation that Salvadoran prisons “are more than 300% over capacity. This high rate of incarceration as well as the lack of adequate physical infrastructure such as access to potable water and bathrooms lead to the proliferation of respiratory infections and illness, creating deplorable health conditions.”¹⁶

El Salvador violated Manuela’s right to due process by failing to provide the minimum guarantees of a fair trial during the criminal proceeding against her

The IACtHR has expressed that there are “procedural requirements that must be met to have effective and appropriate judicial guarantees.”¹⁷ These requirements “are designed to protect, to ensure, or to assert the entitlement to a right or the exercise thereof” and are “the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination.”¹⁸

One of these guarantees is the right to a fair trial. According to the IACtHR, Article 8 of the American Convention on Human Rights “includes different rights and guarantees flowing from a common juridical asset or good and which considered as a whole constitute a single right . . . whose unequivocal purpose is definitely to ensure the right of everyone to a fair trial,”¹⁹ which includes, among other things, the right to have evidence in a proceeding be collected fairly.²⁰

Other judicial guarantees that the government must secure are the rights to be publicly heard by a competent and impartial court,²¹ to the presumption of innocence,²² to legal assistance from a defense attorney,²³ to have time to prepare a defense and communicate with one’s attorney,²⁴ and to appeal a ruling, among others.²⁵

- ¹ Case of Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 171, para. 117 (Nov. 22, 2007) [hereinafter Inter-American Court, Case of Albán Cornejo et al. v. Ecuador]; see also Case of the Indígena Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 214, paras. 203-208 (Aug. 24, 2008) [hereinafter Case of the Indígena Xákmok Kásek Indigenous Community v. Paraguay].
- ² Inter-American Court, Case of Albán Cornejo et al. v. Ecuador, *supra* note 1, para. 121.
- ³ Inter-American Court, Case of the Indígena Xákmok Kásek Indigenous Community v. Paraguay, *supra* note 1, para. 188; see, inter alia, Case of the “Pueblo Bello Massacre” v. Colombia, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 140, paras. 123-124 (Jan. 31, 2006).
- ⁴ Case of the Gómez Paquiyauri Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 110, para. 111 (July 8, 2004); Case of Maritza Urrutia v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 103, para. 89 (Nov. 27, 2003).
- ⁵ *Id.* para. 112.
- ⁶ Inter-American Convention to Prevent and Punish Torture, adopted Dec. 9, 1985, art. 2, S.S.T. OAS No. 67 (entry into force Feb. 28, 1987).
- ⁷ Committee against Torture, General observation No. 2: Application of Article 2 by States Parties, para. 22, UN Doc. CAT/C/GC/2 (2008).
- ⁸ HRC, Concluding Observations: United States of America, para. 33, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006).
- ⁹ Committee against Torture, Concluding observations: United States of America, para. 33, UN Doc. CAT/C/USA/CO/2 (2006).
- ¹⁰ Human Rights Council, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Manfred Nowak, para. 41, UN Doc. A/HRC/7/3 (Jan. 15, 2008).
- ¹¹ Human Rights Commission, Special Rapporteur against women, its causes and consequences, Report presented by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences, Report of the mission to the United States of America on the issue of violence against women in state and federal prisons, paras. 53-54, UN Doc. E/CN.4/1999/68/Add.2 (Jan. 4, 1999).
- ¹² Case of Vera Vera et al. v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 226, para. 43 (May 19, 2011); Case of Albán Cornejo et al. v. Ecuador, *supra* note 1, para. 117.
- ¹³ *Id.* para. 44.
- ¹⁴ Inter-American Commission on Human Rights, Appendix to Press Release 104/10, Preliminary Observations of the visit of the Office of the Rapporteur on the Rights of Persons Deprived of Liberty en El Salvador, *available at* <http://www.cidh.oas.org/Comunicados/English/2010/104-10eng.htm>.
- ¹⁵ *Id.* at 2.
- ¹⁶ Inter-American Commission on Human Rights, Press Release No. 104/10 Office of the IACHR Special Rapporteur attests to structural deficiencies in prison system of El Salvador, *available at* <http://www.cidh.oas.org/Comunicados/English/2010/104-10eng.htm>.
- ¹⁷ The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law (1999), Advisory Opinion OC-16/99, Inter-American Court (ser. A) No. 16, para. 118 (Oct. 1, 1999).
- ¹⁸ *Id.*
- ¹⁹ Raquel Martín de Mejía vs. Peru, Case 10.970, IACHR, Report No. 5/96, OEA/Ser.LV/II.91 doc. 7 p. 168 (1996).
- ²⁰ Case of Bámaca Velásquez v. Guatemala, Merits, Inter-American Court (ser. C) No. 70, para. 189 (Nov. 25, 2000); Edwards vs. United Kingdom, 247-B Eur. Ct. H.R. (ser. A), para. 34 (1992); and Vidal vs. Belgium, 235-B Eur. Ct. H.R. (ser. A), para. 33 (1992).
- ²¹ Case of Las Palmeras v. Colombia, Merits, Judgment, Inter-American Court (ser. C) No. 90, para. 59 (Dic. 6, 2001); Case of Durand and Ugarte v. Peru, Merits, Judgment, Inter-American Court (ser. C) No. 68, para. 129 (Aug. 16, 2000); and Case of the “Street Children” v. Guatemala, Merits, Inter-American Court (ser. C) No. 63, para. 227 (Nov. 19, 1999).
- ²² Cf. Case of López Mendoza v. Venezuela, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 233, para. 128 (Sep. 1, 2011).
- ²³ Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights), Advisory Opinion OC-11/90, Inter-American Court (ser. A) No. 11, paras. 24-25 (Aug. 10, 1990).
- ²⁴ Case of Suárez Rosero, v. Ecuador, Merits, Judgment Inter-American Court (ser. C) No. 35, para. 83 (Nov. 12, 1997).
- ²⁵ Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 107, para. 158 (July 2, 2004).

Excerpts from National and International Media Coverage of *Manuela v. El Salvador*

“Dennis Muñoz, an attorney with Agrupación Ciudadana, explained that the only thing that ‘Manuela’ did ‘was seek emergency care in a hospital’ because of a severe hemorrhage due to a premature birth. ‘Instead of finding medical care, she was accused of the crime of abortion.’ Without any legal knowledge with which to defend herself, she was convicted and sentenced to 30 years in prison. She spent only a little over two years behind bars at which point she lost a long-fought battle with lymphatic cancer. She died on April 30, 2010, orphaning her two children, currently 9 and 11 years of age.”

Gloria Morán, [A justicia internacional maltrato a mujeres](http://www.contrapunto.com.sv/cparchivo/derechoshumanos/a-justicia-internacional-maltrato-a-mujeres), Diario Digital Contrapunto, March 21, 2012, *available at* <http://www.contrapunto.com.sv/cparchivo/derechoshumanos/a-justicia-internacional-maltrato-a-mujeres>.

“At the hospital, she was immediately accused of having induced the abortion. She was brought before courts where the presiding judge found that ‘her maternal instincts should have prevailed’ and ‘that she should have protected the fetus.’ She was convicted and sentenced to 30 years in prison, where she was diagnosed with cancer after several months. . . . When she died, she did not know how to read or write. Her two children, who were both born at home with the assistance of a midwife, were orphaned.”

Roberto Flores, [El Salvador enfrenta nueva demanda en CIDH](http://www.diariocolatino.com/es/20120322/nacionales/101665/El-Salvador-enfrenta-nueva-demanda-en-CIDH.htm), Diario Colatino, March 22, 2012, *available at* <http://www.diariocolatino.com/es/20120322/nacionales/101665/El-Salvador-enfrenta-nueva-demanda-en-CIDH.htm>.

“‘El Salvador is definitely the country that has gone farthest in this persecution, senselessly, without evidence, and without presumption of innocence’ when hospitals have only the slightest suspicion of abortion, said [Alejandra] Cárdenas [attorney with the Center for Reproductive Rights] ‘Hospitals are paranoid and accuse women when they suspect an abortion; the situation is similar in the Dominican Republic, Nicaragua and Honduras, but not to the level seen here,’ which involves ‘taking women from the [hospital] bed to jail.’”

Agencia EFE, [Demandan a el Salvador ante CIDH por acusada de aborto que murió en la cárcel](http://noticias.terra.com.co/internacional/demandan-a-el-salvador-ante-cidh-por-acusada-de-aborto-que-murio-en-la-carcel), Terra.com, March 21, 2012, *available at* <http://noticias.terra.com.co/internacional/demandan-a-el-salvador-ante-cidh-por-acusada-de-aborto-que-Mrio-en-la-carcel,a2a12abd1a636310VgnVCM3000009af154d0RCRD.html>.

“This is a story about social injustice and discrimination. Manuela’s human rights were violated time and again, until she perished. . . . This is a case that demonstrates the cruelty and hate that arise from the campaigns of those who oppose a woman’s right to choose. Manuela never wanted to have an abortion, but the atmosphere against abortion was such that she was judged without any evidence against her. Her only ‘crime’ was having had a hemorrhage; her punishment was prison and then death.”

Grupo de Información en Reproducción Elegida, [Manuela: Suma de injusticias a causa de un aborto espontáneo](http://blogs.eluniversal.com.mx/weblogs_detalle16022.html), El Universal México, March 27, 2010, *available at* http://blogs.eluniversal.com.mx/weblogs_detalle16022.html.

Salvadoran Government

- Provide comprehensive reparations to Manuela's family.
- Liberalize the current abortion law so that it complies with the recommendations of international treaty monitoring bodies, such as the Human Rights Committee and the CEDAW Committee.
- Ensure that investigative procedures for the crime of abortion include the judicial guarantees established in the Constitution and international treaties.
- Introduce public policies that promote rural women's sexual and reproductive health.
- Ensure that the provision of health services respects doctor-patient confidentiality, with the dual aim of protecting patients' health and allowing physicians who provide emergency health services to exercise their profession ethically and without criminal consequences.

Civil Society

- Hold the government accountable for its failure to protect the human rights of women who have obstetric emergencies and who, because of those emergencies, become the subjects of criminal proceedings against them.
- Demonstrate that these human rights violations perpetuate negative gender stereotypes of women.
- Encourage and monitor the drafting of legislation that protects and fulfills women's sexual and reproductive rights.
- Support public campaigns and efforts to raise awareness and promote sexual and reproductive health among rural women.

International Donor Community

- Institutions financing public and private health programs should ensure that such programs are designed to improve reproductive healthcare and promote the exercise of, and respect for women's rights, regardless of educational or economic status.

International and Regional Human Rights Bodies and Experts

- Urge El Salvador to protect the rights to life, health, and dignity of women seeking emergency medical attention and essential reproductive health services. Also, encourage the state to provide redress and remedies for violations of these rights.