

April 20, 2005

The Committee on Economic, Social, and Cultural Rights

Re: Supplementary information on El Salvador,
Scheduled for review by the Committee on Economic, Social, and Cultural Rights
in its 36th Session

Dear Committee Members:

The Center for Reproductive Rights, an independent, non-governmental organization, intends to submit a letter to supplement the periodic reports of the government of El Salvador to the Committee on Economic, Social, and Cultural Rights, which is scheduled to be reviewed during the Committee's 36th Session. We hope that the Committee's review will cover several areas of concern related to the status of the reproductive health and rights of girls and women in El Salvador. This letter is intended to provide a summary of the issues of greatest concern, as well as a list of questions that we hope the Committee will raise with El Salvador's delegation.

Because reproductive rights are fundamental to women's health and equality, states parties' commitment to ensuring them should receive serious attention. Further, reproductive health and rights receive broad protection under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 12(1) recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."¹ Articles 2(2) and 3 guarantee all persons the rights set forth in the ICESCR without discrimination, specifically as to "sex, social origin or other status."² In interpreting the right to health, this Committee, in General Comment 14, has explicitly defined this right to "include the right to control one's health and body, including sexual and reproductive freedoms."³

The Committee has further asserted that states parties are required to take "measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, emergency obstetric services and access to information, as well as to resources necessary to act on that information."⁴ General Comment 14 also specifically states that "[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."⁵

Yet, despite these protections, the reproductive rights of girls and women in El Salvador continue to be neglected and, at times, blatantly violated.

We hope to bring to the Committee's attention the following issues of concern, which directly affect the reproductive health and rights of girls and women in El Salvador:

A. Restrictive and Discriminatory Abortion Legislation

El Salvador has enacted one of the most restrictive abortion laws in the world.⁶ The new Penal Code, which came into effect in April 1998, eliminated the legal grounds that had previously permitted abortion under limited circumstances – such as in cases of rape or danger to the pregnant woman's health – thereby prohibiting abortion altogether.⁷ As part of the tendency to restrict women's access to legal abortion, Article 1 of the Constitution was amended in January 1999 to protect the right to life from the moment of conception.⁸

Abortions performed in high-risk conditions are the second highest cause of maternal mortality in El Salvador,⁹ where the maternal mortality rate was one of the highest in the region: 170 for 100,000 live births for the period 1985–2003.¹⁰ Statistics from the Ministry of Public Health and Social Assistance (MSPAS), which monitors the number of hospital admissions due to abortion in the health centers under its jurisdiction, show that, in 1998, the MSPAS recorded 7,346 abortion-related hospital admissions nationwide,¹¹ and 3,766 such admissions in the first half of 1999.¹² However, these figures can only be seen as an indication of the prevalence of abortion and do not reveal the full extent of the practice of clandestine abortion in El Salvador because of inconsistent record keeping.¹³ Furthermore, women generally avoid going to the hospital when they suffer complications from an unsafe abortion because they fear being reported to the authorities.¹⁴

In its Concluding Observations, the Human Rights Committee identified this restrictive abortion law as an area of concern because of its detrimental effect on women's lives, health, and well-being and called on the government to bring its legislation in line with the International Covenant on Civil and Political Rights.¹⁵ Similarly, the Special Rapporteur on Violence against Women has expressed serious concerns, especially about the hardships the law inflicts on victims of rape, poor women, and adolescents.¹⁶

B. Adolescent Reproductive Health

Adolescents are a particularly vulnerable segment of El Salvador's population. They have been hit hard by the HIV/AIDS epidemic,¹⁷ and El Salvador's adolescent pregnancy rate is one of the highest in Latin America.¹⁸ The Health Minister of El Salvador reported that as of October 2004, 18,574 girls between the age of 10 and 19 were pregnant.¹⁹ Reports indicate that 23% of all registered births are to women younger than 20.²⁰ The low rate of contraceptive use among adolescents is also noteworthy; only 4.4% of women between the ages of 15 and 24 used contraceptives during their first sexual relations.²¹ Forty-eight percent of births to adolescent mothers were unplanned.²²

In 1998, the MSPAS established the Regulations on Health Care for Adolescents (RHCA). Objectives included care for high-risk groups like pregnant adolescents, those at risk of contracting STIs, including HIV/AIDS, and adolescent victims of violence. In addition, the regulations include guidelines for the provision of different types of contraceptives according to the situation of the particular adolescent.²³ However, in 2000, a manual containing information for adolescents on sexual and reproductive health was withdrawn from the educational system.²⁴ Adolescents still face discrimination and have limited access to reliable information and high quality care.²⁵

C. HIV/AIDS

The number of people living with HIV/AIDS in El Salvador has risen consistently since the first AIDS cases were reported in 1984. UNAIDS estimates that 29,000 people were living with HIV/AIDS at the end of 2003, while 2,200 adults and children died of AIDS in the same year.²⁶ For cases analyzed through 2003, heterosexual intercourse was the most frequent means of transmission (65%),²⁷ and there is a trend towards the feminization of the rate of infection reflecting broad societal discrimination and the lack of specific services especially for women.

D. Violence Against Women and Girls and Sexual Harassment

1. Domestic and Sexual Violence

While laws are in place that criminalize domestic and sexual violence, they are undermined by lack of implementation and an inadequate government response. Domestic violence is addressed in two legal instruments, the Law Against Domestic Violence (LVI), passed in November 1996, and the Penal Code, which came into effect in 1998 and defines the crime of domestic violence in Article 200.²⁸ The LVI establishes the state's obligation to prevent, punish, and eradicate domestic violence.

Despite these efforts, domestic violence remains a serious and often deadly threat for the women of El Salvador. The Salvadoran Institute for the Advancement of Women (Instituto Salvadoreño para el Desarrollo de la Mujer, ISDEMU), a government body, received reports of 4,609 cases in 2003 and 4,329 cases in 2004.²⁹ Resources for women experiencing domestic violence remain extremely limited. As of February 2004, ISDEMU operated only one shelter for victims of domestic violence.³⁰

Sexual violence also blights the lives of many women and children in El Salvador despite efforts to improve support services and legal remedies for its victims. As with domestic violence, the underreporting of sexual violence makes it difficult to assess the true magnitude of the problem. Such under-reporting stems from a host of reasons including societal and cultural pressures against the victim; authorities' poor response to victims; and doubt that reporting will actually yield a beneficial result.³¹ These doubts about the efficacy of reporting appear to be borne out. According to the Special Rapporteur on Violence against Women, reports indicate that of the 10,000 sexual offense cases registered with the police each year, only two out of 100 cases ever reach a judge.³²

2. Sexual Harassment and Pregnancy Discrimination

Disturbing reports of sexual harassment and pregnancy discrimination within the National Civilian Police (PNC) raise concerns about whether the institution is protecting the rights of women, both in the force and society at large. According to a 2000 survey conducted by CEMUJER, sexual harassment was pervasive, with almost 60 percent of female sergeants reporting that they had been victims of violence within the police force.³³ There have also been reports that in recent cases involving the brutal murders of young women, families have encountered indifference from police authorities.³⁴ In some cases, female relatives of the victims have reported sexual harassment by the police.³⁵

In addition, independent observers have reported that the expedited disciplinary procedures, which are intended to rid the PNC of wrongdoers, have been used by some supervisors to remove pregnant employees who are innocent of any crime.³⁶ The measures taken by the government to remedy sexist practices within the PNC seem more likely to invite discrimination against pregnant women than to alleviate it. Pregnant women are required to wear formal maternity clothing from the third month of pregnancy on; are relegated to administrative positions; and can only work specified and limited hours.³⁷ Chiefs of police units are required to help ensure that pregnant women under their command have a monthly obstetrical exam,³⁸ which violates women's privacy and suggests that women's pregnancies are being closely monitored.

We hope the Committee will also consider addressing the following questions to the government of El Salvador:

1. What measures are being taken to address the issue of unsafe and illegal abortion, one of the primary causes of maternal mortality? What governmental efforts exist to ensure post-abortion care for complications as well as for reproductive health counseling? What measures are being taken to ensure that women who develop complications are not doubly victimized by both the health care and the criminal justice system?
2. Given the high rate of violence against women in El Salvador and since abortion is illegal even in cases of rape and incest, are suitable measures being taken to ensure that victims of sexual violence have access to emergency contraception? Is the government responding to the concerns of those who seek to reinstate the exceptions for therapeutic abortion?
3. How successful have government programs been in ensuring that adolescents have access to reproductive health services, and what efforts have been made to ensure that adolescents' rights to privacy and confidentiality are respected when seeking such services? Are the needs of adolescents in rural areas being adequately addressed?

4. How successful are government efforts to ensure that all persons living with HIV/AIDS have access to comprehensive medical services? Is the government suitably addressing the problem of the feminization of HIV/AIDS? Are the measures that have been taken to combat discrimination against persons living with HIV/AIDS efficacious and are they being suitably implemented and enforced? What additional legal protections are provided for those living with HIV/AIDS?
5. What governmental efforts have been made to enforce the state's policies and address the continuing problem of impunity with respect to sexual and domestic violence against women? Are there plans to increase the number of shelters for women faced with violence within the family? What efforts are being made to create adequate institutional infrastructures that conduct proper investigations for sexual crimes?

We appreciate the active interest that the Committee has taken in reproductive health and rights and the strong concluding observations and recommendations that it has issued to governments in the past, stressing the need to take steps to ensure the realization of these rights.

We hope that this information is useful to the Committee as it prepares to review the Salvadoran government's compliance with the provisions of the ICESCR. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

Luisa Cabal
Director
International Legal Program

Lilian Sepúlveda-Oliva
Legal Adviser
International Legal Program

¹ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976), art. 12(1).

² *Id.* art. 2(2).

³ Committee on Economic, Social and Cultural Rights, Gen. Comment 14, *The Right to the Highest Attainable Standard of Health*, para. 8, U.N. Doc. E/C.12/2000/4 (2000).

⁴ *Id.* at para. 14.

⁵ *Id.* at para. 21.

⁶ CENTER FOR REPRODUCTIVE RIGHTS, *PERSECUTED: POLITICAL PROCESS AND ABORTION LEGISLATION IN EL SALVADOR: A HUMAN RIGHTS ANALYSIS*, (2001) [hereinafter *PERSECUTED*], at 7, 11.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* at 11.

¹⁰ UNICEF, *EL SALVADOR STATISTICS* available at www.unicef.org/infobycountry/elsalvador_statistics.html.

¹¹ *PERSECUTED*, *supra* note 6, at 25 *citing* MINISTERIO DE SALUD PÚBLICA Y ASISTENCIA SOCIAL (MSPAS) [MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE], DIRECCIÓN DE LA ATENCIÓN A LA PERSONA

[OFFICE OF PRIMARY HEALTH CARE], CUADRO DE HOSPITALIZACIÓN, ABORTOS Y MORTALIDAD MATERNA [ABORTIONS AND MATERNAL MORTALITY] (Jan.-Dec.1998) (on file with CENTER FOR REPRODUCTIVE RIGHTS).

¹² *Id.* at 25 citing MINISTERIO DE SALUD PÚBLICA Y ASISTENCIA SOCIAL (MSPAS) [MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE] CUADRO DE HOSPITALIZACIÓN, ABORTOS Y MUERTES MATERNAS [HOSPITAL ADMISSIONS, ABORTIONS, AND MATERNAL DEATHS] (Jan.-Jun.1999) (on file with CENTER FOR REPRODUCTIVE RIGHTS).

¹³ *Id.* at 25.

¹⁴ *Id.*

¹⁵ *Concluding Observations of the Human Rights Committee: El Salvador*, 78th Sess., 2113rd-2115th mtg., para. 14, U.N. Doc. CCPR/CO/78/SLV (2003).

¹⁶ *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to El Salvador*, U.N. ESCOR, 61st Sess., Agenda Item 12(a), at 20, U.N. Doc. E/CN.4/2005/72/Add.2 (2004) [hereinafter *Violence Against Women: El Salvador*].

¹⁷ United Nations Population Fund (UNFPA), Population and Reproductive Health Country Profile: El Salvador at www.unfpa.org/profile/salvador.cfm [hereinafter UNFPA Profile].

¹⁸ PERSECUTED, *supra* note 6, at 24.

¹⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, EL SALVADOR COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2004 §5, (2005) available at www.state.gov/g/drl/rls/hrrpt/2004/41760.htm (released Feb. 28, 2005) [hereinafter U.S. DEP'T OF STATE COUNTRY REPORT 2004].

²⁰ *Violence Against Women: El Salvador*, *supra* note 16, at 20.

²¹ PERSECUTED, *supra* note 6, at 24 citing MINISTERIO DE SALUD PÚBLICA Y ASISTENCIA SOCIAL (MSPAS) [MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE], NORMAS DE ATENCIÓN EN SALUD PARA LAS Y LOS ADOLESCENTES [HEALTH CARE STANDARDS FOR ADOLESCENT GIRLS AND BOYS] MINISTERIAL RESOLUTION No. 374, 1998, at 7.

²² ALMA VIRGINIA CAMACHO HUBNER, PAN-AMERICAN HEALTH ORGANIZATION, PERFIL DE SALUD SEXUAL Y REPRODUCTIVA DE LOS Y LAS ADOLESCENTES Y JÓVENES DE AMÉRICA LATINA Y EL CARIBE: REVISIÓN BIBLIOGRÁFICA, 1988-1998 [PROFILE OF THE SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENTS AND YOUNG MEN AND WOMEN IN LATIN AMERICA AND THE CARIBBEAN: BIBLIOGRAPHICAL REVIEW], 26 (2000).

²³ CENTER FOR REPRODUCTIVE RIGHTS & ESTUDIO PARA LA DEFENSA DE LOS DERECHOS DE LA MUJER (DEMUS), WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, LATIN AMERICA AND THE CARIBBEAN, PROGRESS REPORT 2000 [hereinafter WOMEN OF THE WORLD] 44 (2000).

²⁴ *Violence Against Women: El Salvador*, *supra* note 16, at 20.

²⁵ UNFPA Profile, *supra* note 17.

²⁶ UNAIDS, EPIDEMIOLOGICAL FACT SHEETS ON HIV/AIDS AND SEXUALLY TRANSMITTED INFECTIONS: EL SALVADOR: 2004 UPDATE, 3 (2004).

²⁷ *Id.* at 6.

²⁸ WOMEN OF THE WORLD, *supra* note 23, 43-44.

²⁹ U.S. DEP'T OF STATE COUNTRY REPORT 2004, *supra* note 19, §5.

³⁰ *Violence Against Women: El Salvador*, *supra* note 16, at 16.

³¹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, EL SALVADOR COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2002 §5, (2003) available at www.state.gov/g/rls/hrrpt/2002/118332pf.htm (released Mar. 31, 2003) [hereinafter U.S. DEP'T OF STATE COUNTRY REPORT 2002].

³² *Violence Against Women: El Salvador*, *supra* note 16, at 19.

³³ U.S. DEP'T OF STATE COUNTRY REPORT 2002, *supra* note 31, §5.

³⁴ *Violence Against Women: El Salvador*, *supra* note 16, at 19.

³⁵ *Id.*

³⁶ U.S. DEP'T OF STATE COUNTRY REPORT 2002, *supra* note 31, §1(c).

³⁷ *Report of the Government of El Salvador before the Human Rights Committee*, 78th Sess., para. 187, U.N. Doc. CCPR/C/SLV/2002/3 (2002).

³⁸ *Id.*