



March 28, 2014

**Committee on Economic, Social and Cultural Rights**  
Office of the United Nations High Commissioner for Human Rights  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva, Switzerland

**Re: Supplementary information on El Salvador, submitted for consideration by the Committee during its 52<sup>nd</sup> Session (April-May 2014)**

Honorable members of the Committee:

1. The Center for Reproductive Rights (CRR) is a non-profit legal advocacy organization dedicated to promoting women's equality worldwide by guaranteeing reproductive rights as human rights. *Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico* (Agrupación Ciudadana) is a multidisciplinary organization working for the sexual and reproductive health and rights of Salvadoran women, notably by creating awareness of the need to amend legislation criminalizing termination of pregnancy. We are writing to draw attention to the plight facing Salvadoran women as a result of infringement of State obligations under the International Covenant on Economic, Social and Cultural Rights,<sup>1</sup> notably with respect to sexual and reproductive health and rights and equality rights, stemming from policies that ban abortion under all circumstances.
2. Over the past 16 years the abortion ban has resulted in: (i) Denial of adequate medical and hospital care to women requiring procedures to terminate their pregnancy; (ii) Stigmatization and discrimination of women seeking post-abortion hospital care; and (iii) Reluctance by women to seek care for fear of prosecution and incarceration, with serious consequences for international health rights obligations.



## I. Criminalization of Abortion in El Salvador

3. The 1973 Criminal Code allowed abortion: (i) To save a woman's life; (ii) When abortion resulted from a crime; (iii) When pregnancy resulted from rape or statutory rape; and (iv) In case of serious fetal impairment.<sup>2</sup>
4. In 1998 El Salvador enacted a new Criminal Code banning all abortion<sup>3</sup> and imposing fines on public employees or officials who failed to report crimes (Art. 312).
5. In 1999 El Salvador amended the Constitution to recognize the unborn as a human being from the moment of conception (Art. 1).<sup>4</sup>
6. These amendments were a serious step backward for sexual and reproductive health and rights and are a clear violation of human rights.
7. State policy criminalizing all forms of abortion endangers the lives, health, and integrity of Salvadoran women and constitutes a clear affront to their dignity.
8. In El Salvador from 1995 to 2000, of an estimated 246,275 abortions, 11.1 percent resulted in maternal deaths. <sup>5</sup> The Information, Monitoring and Evaluation Unit of the Salvadoran Ministry of Health reported 19,290 abortions from January 2005 to December 2008 with 27.6 percent of those administered for adolescents.<sup>6</sup> The Ministry's Maternal Mortality Monitoring System listed suicide by pregnant women as the third leading cause of maternal death in 2011.<sup>7</sup> Suicide accounted for 57 percent of deaths among pregnant girls and teens aged 10 to 19.<sup>8</sup> This said, as long as abortion remains illegal, statistics cannot be expected to accurately reflect the real extent of the issue.
9. The abortion ban specifically impacts young, poor, socially-excluded women. *Marginalized, Persecuted and Imprisoned*, a 2013 report, notes that from 2000 through March 2011 some 129 women were indicted on charges of abortion or aggravated murder, with 23 convicted on abortion charges and 26 convicted of murder.<sup>9</sup> Of these, 68.22 percent were between the ages of 18 and 25; 3.1 percent had a higher education; 1.55 percent had technical training; 11.63 percent had attended high school; 6.98 percent were illiterate; 73.64 percent were single and unattached; 51.16 percent did not have paid work, and 31.78 percent were underemployed.<sup>10</sup> The report also notes that 57.36 percent of reports made to the authorities were filed by health professionals.<sup>11</sup>
10. The Beatriz case is one example of the obstacles facing Salvadoran women who seek an abortion. Beatriz suffers from discoid lupus erythematosus, complicated by lupus nephritis. In April 2013, during the 20<sup>th</sup> week of her second pregnancy, three separate ultrasound tests confirmed that she carried an anencephalic, nonviable fetus. Doctors concluded that continuing the pregnancy endangered Beatriz's life and the pregnancy had to be terminated. Yet, the



abortion ban forced Beatriz to launch a domestic and international legal challenge that took months to resolve while her physical and mental health declined. The Inter-American Court of Human Rights eventually ordered El Salvador to take all steps necessary to protect the life and health of Beatriz, allowing her to terminate her pregnancy.<sup>12</sup>

11. This case and the statistics cited illustrate the severe impact of a total abortion ban on the exercise of women's human rights, especially their sexual and reproductive health and rights, as the ban (i) Prevents access to therapeutic abortions, affecting women who may require it on medical grounds; (ii) Negates reproductive rights, notably autonomy and rights to health, by preventing women from making decisions affecting their bodies and health. This is especially problematic in sexual assault cases, where victims often recoil at the thought of carrying to term the product of such a heinous crime. As such, a ban may affect women's physical and mental health; (iii) Leads women to seek unsafe abortions, increasing maternal mortality; and (iv) Stigmatizes abortion causing it to stop being considered a necessary medical procedure, thus removing women from the benefits of scientific progress.<sup>13</sup>
12. The plights of Manuela and María Teresa provide a stark example of the above. Manuela was a young woman who suffered from lymphoma. After becoming ill in 2006 she sought medical care, but was not diagnosed. In February 2008 her health took a turn for the worse. One day, overcome by acute abdominal pain, she went to the outhouse, had what she thought was a bowel movement, then passed out. Her relatives drove her to hospital, where she was promptly reported on suspicion of abortion. The next day, ailing and without benefit of a lawyer, Manuela was grilled by police. Arbitrarily held, denied all legal guarantees and unable to afford a lawyer, Manuela met her court-appointed defender at her trial. She was convicted of aggravated murder and sentenced to 30 years,<sup>14</sup> a decision that her defender did not appeal. Arrested, tried and sentenced under mere presumptions, Manuela died of cancer in jail without ever having received adequate care.<sup>15</sup>
13. María Teresa, a single mother who worked at a maquila plant in the San Salvador suburb of Mejicanos, was sentenced to 40 years in prison on charges of aggravated murder against her fetus. In November 2011 she went to the latrine, suffering from strong abdominal cramps. While sitting down her fetus was expelled and fell in. She then lost consciousness. María Teresa was taken to hospital, where an attending physician called police on suspicion of abortion. María Teresa was taken into custody, tried, and sentenced to 40 years. The decision was confirmed by the court of appeals and by the court of cassation. In response, an appeal for review was submitted, but it was unsuccessful.
14. Furthermore, we would like to notify the Committee about the precarious security conditions that women and women's organizations dedicated to defending sexual and reproductive rights in El Salvador face, which negatively impacts the protection and exercise of these rights. In 2012, 51 acts of aggression toward female human rights defenders in El Salvador were reported, among them: restrictions on their freedom of expression and freedom of assembly; excessive



use of force; sexual harassment and attempted homicide. Twenty of these 51 acts of aggression were committed against women who defend sexual and reproductive rights.

## II. Obligations Under the ICESCR

15. As a State Party to the ICESCR, El Salvador is required to take steps to guarantee everyone's right to the highest attainable standard of physical and mental health,<sup>16</sup> providing access to all necessary goods, services, and conditions to reach that standard of health.<sup>17</sup> The ESCR Committee has interpreted this right as being inclusive of "...the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture and non-consensual medical treatment and experimentation".<sup>18</sup>
16. The ESCR Committee also notes that States have a positive obligation to offer a wide range of quality, accessible health services, including sexual and reproductive health services.<sup>19</sup> The obligation to guarantee access without discrimination to such services is effective immediately, as opposed to obligations whose nature requires progressive compliance.<sup>20</sup>
17. General Recommendation No. 24 of the CEDAW Committee asserts that States Parties have both positive and negative obligations that require acting in accordance with or refraining from acting in certain ways with regard to health rights, noting that States are required to refrain "...from obstructing action taken by women in pursuit of their health goals"<sup>21</sup> and to "take action to prevent and impose sanctions for violations of rights by private persons and organizations".<sup>22</sup>
18. Sexual and reproductive rights include a range of human rights that encompass reproductive autonomy, including the right to determine whether to have children, how many and their timing, without discrimination or reprisal. This requires access to information and to scientific advances relating to health and family planning.<sup>23</sup> Sexual and reproductive rights include the right to life, health, autonomy, and personal integrity; to be free from cruel, inhuman or degrading treatment, to have a family, and to be free from arbitrary interferences in your personal life.<sup>24</sup>
19. States Parties to the Covenant further undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights,<sup>25</sup> which includes measures guaranteeing both formal and substantive equality.<sup>26</sup> Substantive equality "*...is concerned [...] with the effects of laws, policies and practices ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience*".<sup>27</sup> Norms and statutes guaranteeing reproductive rights, including abortion under certain circumstances, are crucial to ensuring the substantive equality of women.



### **III. Violation by El Salvador of its obligations with regard to women's sexual and reproductive health and rights, as recognized by the ICESCR**

20. As the above statistics and the stories of Manuela and María Teresa show, Salvadoran women are incarcerated for undergoing procedures to terminate their pregnancies or for experiencing obstetric emergencies. They are reported to the authorities by the practitioners who are supposed to provide emergency medical care. This shows wanton disregard for equality and sexual and reproductive health and rights, as follows:
- (i) Having health professionals report women runs counter to medical ethics providing for patient confidentiality and violating women's right to privacy. These actions flout sexual and reproductive health and rights by discounting fundamental confidentiality provisions that preclude health care personnel from disclosing patient information.<sup>28</sup> Punitive abortion laws reinforce gender stereotypes holding reproduction as a woman's main role. This stigmatization results in unwarranted prosecution of women seeking emergency obstetric care for reasons unrelated to induced abortions.<sup>29</sup> The presumption of innocence is violated as health care staff assumes from the start that the obstetric emergency is the result of an induced abortion.
  - (ii) Throughout the investigation and prosecution of women due process is often violated since many meet their defense lawyers at their court hearings, effectively preventing them from gathering evidence and from preparing a proper defense. Moreover, many are questioned or arrested while under the effects of anesthetics or while recovering from treatment.
  - (iii) Disproportionate jail terms of up to 40 years violate the principle of due process that the punishment should fit the crime. Abortion charges are sometimes changed to charges of aggravated homicide with the logic that after 22 weeks of pregnancy it is considered homicide.
  - (iv) Incarcerating women who have committed no crime, but who having suffered obstetric emergencies which infringe no law and prosecuting them as having murdered their children is a gross violation of due process and leads women to shun emergency care for fear of prosecution.
  - (v) The total abortion ban is compounded by legal uncertainty concerning health protocols and regulations, especially when the termination of pregnancy may be required. Legislation banning all abortion runs counter to the constitutional principle of legal certainty and leads to inequality, injustice, and discrimination against women.
21. The foregoing evidence amply shows that El Salvador has failed to comply with its international obligation to guarantee and fulfill sexual and reproductive health and rights.



#### **IV. Conclusions**

22. The total ban on abortion is placing the lives and health of Salvadoran women in dire danger. Faced with an overriding need to terminate a pregnancy, women are forced to seek clandestine, unsafe abortions that all too often end in serious complications. In addition, criminalization leads medical personnel to treat most obstetric emergencies as linked to induced abortion. This negates the right of women seeking care to be presumed innocent<sup>30</sup> and has led to the conviction of scores of innocent women.
23. The plights of Beatriz, Manuela and María Teresa are but three examples of how El Salvador's total abortion ban stands as a serious violation of Covenant obligations with respect to substantive equality and sexual and reproductive health and rights.
24. Adequately protecting women's sexual and reproductive health and rights and complying with the attendant positive obligations requires El Salvador to revise its total abortion ban in order to allow for exceptions.

#### **V. Questions for El Salvador**

25. We respectfully suggest that the Committee ask the State under review the following questions:
  1. Please report on steps taken to prevent women seeking emergency obstetric care from being reported on suspicion of abortion or aggravated murder.
  2. Please report on steps taken to prevent women seeking emergency obstetric care from being prosecuted and incarcerated on charges of abortion or aggravated murder.
  3. Please report on steps taken to combat and eradicate gender stereotypes leading to discrimination against women.
  4. Please report on the impact of the total abortion ban on suicide rates among pregnant women.
  5. Please report on potential reforms to abortion legislation, including exceptions for therapeutic abortion, pregnancy resulting from rape or incest, and nonviable fetuses.
  6. Please indicate what action has been taken for medical personnel to terminate a pregnancy in cases where the pregnancy is putting the woman's life at risk such as an ectopic pregnancy or serious heart condition.

## VI. Recommendation

26. We respectfully suggest that the Committee present the following recommendation to the State under review:
1. Revise and amend its legislation on abortion to bring it into line with the Covenant and allow for exceptions when: (i) Pregnancy endangers a woman's life or health; (ii) Pregnancy is the result of rape, incest, or artificial insemination without the woman's consent; and (iii) A fetus presents with an anomaly incompatible with life.
27. We hope the Committee will find this information useful in its review of compliance by El Salvador of its obligations as a State Party to the Covenant.

Sincerely,

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y el Caribe  
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<sup>1</sup>International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966 G.A. Res. 2200 A (XXI) *ratified* Nov. 30, 1979 [hereinafter ICESCR]. Upon ratification El Salvador voluntarily acquired the obligation to respect, protect and fulfill the rights enshrined in the Covenant. Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en).





<sup>2</sup> El Salvador Criminal Code (1973), art. 169. Available at <http://es.scribd.com/doc/60806391/Codigo-Penal-1973>.

<sup>3</sup> El Salvador Criminal Code (1997), art. 133-137. Available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal>.

<sup>4</sup> Constitution of El Salvador, art. 1. Available at <http://asamblea.gob.sv/asamblea-legislativa/archivos/constitucionVigente.pdf/view?searchterm=constitucion>.

<sup>5</sup> *Global Health Council, Promises to Keep: The Toll of Unintended Pregnancies on Women's Lives in the Developing World*. 2002, p. 43. Cited in *Marginalized, Persecuted and Imprisoned. The Effects of El Salvador's Total Criminalization of Abortion* (hereinafter *Marginalized, Persecuted and Imprisoned*). Center for Reproductive Rights and Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico (2013), p. 21.

<sup>6</sup> Cited in *Marginalized, Persecuted and Imprisoned. Ibid.* p. 21.

<sup>7</sup> Carlos Ayala Ramírez, Suicidio en el embarazo. Cited in *Marginalized, Persecuted and Imprisoned*, *supra* note 5, p. 22.

<sup>8</sup> Inicia una investigación regional para prevenir suicidios en el embarazo (*Regional review on preventing suicide among pregnant women begins*), UNFPA El Salvador, April 16, 2012. Cited in *Marginalized, Persecuted and Imprisoned*, *supra* note 5, p. 22.

<sup>9</sup> *Marginalized, Persecuted and Imprisoned*, *supra* note 5, p. 13.

<sup>10</sup> *Ibid.*, p. 51.

<sup>11</sup> *Ibid.*, p. 51.

<sup>12</sup> *Matter of B v. El Salvador*, Provisional measures with regard to El Salvador, Inter-Am. Ct. H.R. (May 29, 2013), available at [www.corteidh.or.cr/docs/medidas/B\\_se\\_01\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/B_se_01_ing.pdf).

<sup>13</sup> Interview with Coordinating Community and Family Health Physician, cited in *Marginalized, Persecuted and Imprisoned*, *supra* note 5, p. 10.

<sup>14</sup> As the Criminal Code does not include a clear definition of abortion, legislators applied PAHO criteria on fetal death before the 22<sup>nd</sup> week. As such, all deaths occurring thereafter are deemed homicides rather than abortions. Kinship between the woman and the dead fetus is considered an aggravating circumstance.

<sup>15</sup> *Supra* note 5, pp. 37-39.

<sup>16</sup> ICESCR, *supra* note 1, “Art. 12: 1. The States Parties to the present Covenant 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 the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

<sup>17</sup> Committee on Economic, Social and Cultural Rights [hereinafter CESCR], General Comment No. 14: *The right to the highest attainable standard of health* (Article 12 of the Covenant), para. 9. U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), p. 3.

<sup>18</sup> *Ibid.*, para. 8, p. 3.

<sup>19</sup> ICESCR, *supra* note 2. Article 12.1; ESCR Committee, General Comment No.14, *supra* note 17, para. 11.

<sup>20</sup> CESCR General Comment No.14, *supra* note 17.

<sup>21</sup> Committee on the Elimination of Discrimination Against Women. General Recommendation No. 24 (Article 12): *Women and Health*, Chapter I, paras. 14 and 15, U.N. Doc. A/54/38/Rev.1 (Jan. 19-Feb. 5, 1999) [hereinafter CEDAW Committee, General Recommendation No. 24].

<sup>22</sup> *Ibid.*

<sup>23</sup> Programme of Action of the International Conference on Population and Development A/CONF.171/13/Rev.1 (Sep. 5-13, 1994) (hereinafter ICPD).

<sup>24</sup> Center for Reproductive Rights, *Reproductive Rights Are Human Rights*. October 2006.

<sup>25</sup> ICESCR, *supra* note 2, Art. 3.

<sup>26</sup> ESCR Committee. *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, General Comment No. 16 (2005). U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005), para. 8, p. 4. “Substantive equality for men and women will not be achieved simply through the enactment of laws or the





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adoption of policies that are, prima facie, gender-neutral. In implementing article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.”

<sup>27</sup> *Ibid.*, para. 7, p. 3.

<sup>28</sup> The Inter-American Court of Human Rights has ruled that “...physicians have a right and an obligation to protect the confidentiality of the information to which they, as physicians, have access”. *De la Cruz Flores v. Peru*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 115, para. 101 (Nov. 18, 2004).

<sup>29</sup> *Ibid.*, p. 61.

<sup>30</sup> The United Nations Special Rapporteur on violence against women, its causes and consequences has noted that the absolute prohibition of abortion forces women and girls to resort to unsafe and clandestine abortion practices. *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo - Addendum - Follow-up mission to El Salvador*, U.N. Doc. A/HRC/17/26/Add.2 (Feb. 14, 2011), para. 66.