

MARGINALIZED, PERSECUTED, AND IMPRISONED

THE EFFECTS OF EL SALVADOR'S TOTAL
CRIMINALIZATION OF ABORTION



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THE CENTER'S MISSION

The Center for Reproductive Rights uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.

THE CENTER'S VISION

Reproductive freedom lies at the heart of the promise of human dignity, self-determination, and equality embodied in both the U.S. Constitution and the Universal Declaration of Human Rights. We envision a world where every woman is free to decide whether and when to have children; where every woman has access to the best health care available; and where every woman can exercise her choices without coercion or discrimination. More simply put, we envision a world where every woman participates with full dignity as an equal member of society.

THE AGRUPACIÓN CIUDADANA

The Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico (Citizen's Association for the Decriminalization of Therapeutic, Ethical, and Eugenic Abortion) is a multidisciplinary organization formed by men and women in El Salvador in 2009. Its main goals are:

- a) To raise public awareness in order to change existing legislation on the termination of pregnancy in El Salvador;
- b) To provide legal defense for women who have been convicted or are being accused of abortion or related crimes in El Salvador; and
- c) To publicize women's need for sexual and reproductive health care so that they do not have to resort to unsafe abortions that put their health and lives at risk.

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The Agrupación Ciudadana was responsible for the report's quantitative research. **Mayra Aguirre** collected information from the courts, and **Alberto Romero** processed and analyzed the data about the cases.

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EXECUTIVE SUMMARY

The situation in El Salvador is a clear manifestation of how the criminalization of abortion violates the state's international obligation to respect, protect, and fulfill human rights. This criminalization violates women's rights to life, health, and autonomy. In addition, the application of the law criminalizing abortion results in violations of the rights to due process, privacy, and freedom from violence and cruel or inhuman treatment.

This report uses a human rights perspective to document and expose the consequences of El Salvador's total criminalization of abortion. First, our analysis gives voice to five women who were wrongly prosecuted for abortion-related crimes after suffering obstetric emergencies in the absence of medical attention. Their experiences demonstrate the Salvadorian state's failure, through its punitive practices, to respect women's dignity and human rights, as well as the consequences that such failure have for the country's health, legal, and prison systems. The repercussions are as serious as unfounded 35-year prison sentences. Similarly, the report also shows the disproportionate impact that criminalization can have on especially vulnerable women such as the poor, uneducated, and young.

Second, this report addresses the criminalization of abortion from a qualitative angle that examines the profiles of women who were put on trial for abortion-related crimes between 2000 and 2011. The analysis uses a number of variables—including age, education, occupation, and income level—to illustrate how such restrictive legislation can lead to patterns of human rights violations, particularly for El Salvador's most vulnerable women. The study also analyzes the context of the women's judicial proceedings, including the sources of the criminal complaints, the criminal offenses for which the women were accused and brought to trial, and the rulings resulting from their legal proceedings.

Our findings reveal how health professionals who treat women experiencing obstetric emergencies or abortion-related complications believe that they are legally obligated to report their patients to the police in order to avoid criminal prosecution.¹ These criminal complaints² are problematic, not only because they violate standards of professional confidentiality but also because they deter women from seeking necessary health care services.³ This is particularly worrying in cases of women experiencing obstetric emergencies or requiring post abortion care.



“WOMEN SUFFER OBSTETRIC EMERGENCIES WITHOUT MEDICAL ATTENTION IN THE SAN SALVADOR, LISLIQUE, AND CACAOPELA REGIONS.”

The stigma around abortion in El Salvador has led it to no longer be considered a necessary medical procedure in certain cases⁴ and few actors defend women's right to decide whether or not to continue a pregnancy.⁵

Serious violations of the right to due process and the fundamental rights of women have been observed within regard to the police investigations and trials of the women in the cases at hand. Enforcement of the country's abortion law has had serious consequences in hospitals and health care centers, where any woman who comes to an emergency room hemorrhaging is presumed to be a criminal, as well as during police investigations and legal proceedings, which present serious violations of due process.

Finally, our investigation shows that time spent in the penitentiary system has serious consequences for women, who must live with the stigma of having been in prison, job discrimination based on their criminal records, and emotional suffering often caused by the manner in which the media covers their cases.

The Context surrounding El Salvador's Total Criminalization of Abortion

El Salvador has one of the world's most restrictive abortion laws. On April 20, 1998, a new penal code took effect, eliminating situations in which, abortion previously had been permitted, such as in cases where the pregnancy posed a risk to a woman's life, in cases of sex with a minor or rape, and cases of serious fetal deformities.⁶ Additionally, in January of 1999, article 1 of the Constitution was amended to recognize the right to life from the moment of conception.⁷ This move towards more restrictive abortion legislation goes against the global trend of liberalization that has been taking place since 1994, the year in which the International Conference on Population and Development was held. Since then, more than 25 countries have liberalized their abortion laws.⁸ However, El Salvador, along with countries such as Poland and Nicaragua, have instead restricted the conditions under which abortion is allowed.⁹

Despite El Salvador's restrictive legislation, an estimated 246,275 abortions took place between 1995 and 2000, with 11.1% of them resulting in the death of the pregnant woman.¹⁰ According to data from the Ministry of Health's Information, Monitoring and Evaluation Unit, 19,290 abortions between January 2005 and December 2008 were performed, 27.6% of which were on adolescents.¹¹ In February 2011, the United Nations Special Rapporteur on Violence against Women emphasized that the country's absolute ban on abortion puts women and adolescent girls at risk, because many of them, when facing the need to end a pregnancy, may resort to illegal and clandestine abortions.¹² This data on abortion, however, is only an estimate—given that the procedure is illegal, it is impossible to obtain reliable data.

FIVE PERSONAL ACCOUNTS OF ABORTION-RELATED PROSECUTIONS

Manuela's Story

Manuela, a Salvadoran woman of modest means, died of Hodgkin's lymphoma at the age of 33 while serving a 30-year prison sentence for aggravated homicide. She was imprisoned after suffering an obstetric emergency that led to the evacuation of a fetus which resulted from never receiving adequate care for the cancer from which she had been suffering. Manuela suffered numerous abuses and violations of her rights while in the hospital, during the police and criminal investigation, trial, and while in prison. Manuela's parents, Carmen and Juan, who are elderly, rural, and illiterate, were also subjected to serious abuses at the hands of Salvadoran authorities in connection with what had happened to their daughter. The human rights violations suffered by Manuela and her family result from the criminalization and stigmatization of abortion in El Salvador, as well as discrimination in accessing health services and adequate legal defense.

Manuela was preventively detained, and the authorities, in an arbitrary manner, failed to respect even the minimum procedural guarantees. She lacked the financial resources to hire a private attorney and only met her public defenders on the day of her hearing. After being convicted, she could not appeal the ruling due to her defenders' negligence and a lack of remedies. Finally, Manuela, isolated from her family, due to the humiliating searches that her family was forced to undergo in order to visit her, died of cancer in prison. Her death orphaned her two children, who were taken in by her parents.

Sadly, Manuela's story is not unique. Human rights violations were also committed in the cases of María, Isabel Cristina, Rosmery, and Verónica.¹ In each of these cases, the women's rights to due process, life, health, physical and mental integrity, and freedom from cruel, inhuman, and degrading treatment were violated. Their rights to equality and nondiscrimination, right to privacy, right to humane treatment when deprived of liberty and right to be free from violence were also all violated.

María, a student in her last year of high school, was in poor health after having lost a lot of blood, so she went to a public hospital where she was accused of having had an abortion. In reality, María had not known that she was pregnant and had suffered an obstetric emergency. Nevertheless, in July 2009, after spending 15 days in the hospital, she was arrested and accused of aggravated homicide. She was placed in preventive detention until January 2010, when she was found innocent due to a lack of evidence.

Isabel Cristina Quintanilla was 18 years old and pregnant with her second child. She was very excited to become a mother again. After feeling unwell for several days, one night she felt a severe pain and lost consciousness. Though Isabel Cristina had suffered a miscarriage, she was accused of negligent homicide, convicted, and sentenced to 30 years in prison. She was in prison since August 2005 and while she was there, she and other inmates suffered invasive searches by prison guards that involved sexual assault and abuse. In July 2009, the Supreme Court of Justice determined that Isabel Cristina's sentence had been excessive. The Court commuted her sentence, finding that the years she had served were sufficient. She was freed after almost four years in prison.

¹ All names have been changed in order to protect the identities of the women and their relatives, except in the case of Isabel Cristina Quintanilla, who explicitly expressed a desire for her story to be told using her real name.

Rosmery, a mother of three, became pregnant with her fourth child when she was 22 years old. When she was approximately 18 weeks into pregnancy, she experienced a complication that caused serious hemorrhaging and made her lose consciousness. Rosmery was accused of the crime of abortion and was convicted and sentenced to 30 years in prison for aggravated homicide. In 2009, after a hearing to review the sentence, judges found that a judicial error had been made in the ruling to convict her, and Rosmery was freed. Despite the court's recognition of judicial error—an error that, for Rosmery, effectively translated into eight years in prison—she never received reparations from the state.

Verónica became pregnant with her second child when she was 22, but she continued to have her periods during her pregnancy and never felt discomfort that might make her suspect she was pregnant. One morning, upon feeling a severe pain, she fainted and struck her head. In the hospital's recovery room, she was handcuffed by the police, who informed her that she was under arrest for the crime of aggravated homicide. She was subsequently convicted and sentenced to 30 years in prison. As of March of 2013, Verónica had been in the Ilopango prison for three years.

These five women were arrested, investigated, and tried based on a presumption of guilt. They were accused of abortion-related crimes after having suffered obstetric emergencies. In addition, each woman was interrogated by police officers or by the doctors themselves without the presence of an attorney and while receiving medical attention—or, in the cases of María, Rosmery, Isabel Cristina, and Manuela, while still experiencing the effects of anesthesia. Moreover, in clear violation of their right to due process, the women were not given the opportunity to provide testimony or, as in the case of Rosmery and Verónica, were not given the chance to be present at the hearings.

The overcrowded cells and the denial of access to medical services experienced by these women seriously affected their health and lives. In Manuela's case, the lack of prompt and high-quality medical attention prior to her trial and while in prison was a direct cause of her premature death.

The difficulty that these women experienced while accessing health centers, along with the poor treatment they received, constitute discrimination—in particular for those who were deprived of their liberty immediately upon leaving the hospital and while still recovering from the procedures. When medical professionals reported the women to the police, as in the cases of Manuela, Rosmery, and María, they violated the principles of medical ethics, precedents set forth by the Inter-American Court of Human Rights, establishing that “physicians have a right and duty to maintain in confidence the information to which they have access in their capacity as physicians.”¹³

Both Manuela and Verónica were handcuffed while receiving treatment in the hospital. All five women were mistreated and threatened by medical personnel, watched by police officers while in the hospital, and placed into overcrowded prison cells. Isabel Cristina was not only forced to undress in public while in prison but also raped by Ilopango prison guards. These experiences are evidence of the cruel, inhuman, and degrading treatment that these women suffered.

A significant amount of the mistreatment and discrimination mentioned herein is the result of gender stereotypes that dictate that the only role for a woman is being a mother. In Isabel Cristina and Manuela's cases, protecting the fetus was given priority over the health and life of the pregnant woman. In Manuela's case, female stereotypes led to Manuela being branded as "easy" for having conceived out of wedlock.

As result of the strong social stigma around abortion in El Salvador, some of the women have been subjected to insults and beatings while in prison; others have hidden the reason for their imprisonment in order to avoid such mistreatment. In addition, the women whose stories are reported and their relatives were subjected to invasive vaginal and anal inspections by prison officials. These inspections were often performed without regard for basic hygiene, such as the use of new disposable gloves for each inspection.

Legal Proceedings against Women for Abortion-Related Crimes

The Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico analyzed all case files of women prosecuted for abortion-related crimes between January 2000 and April 2011 before investigatory and trial courts in El Salvador. The Agrupación Ciudadana identified 129 women who were prosecuted for abortion or aggravated homicide.¹⁴ Of these, 49 were convicted: 23 for abortion and 26 for different degrees of homicide.

According to the Agrupación Ciudadana's investigation, the women most affected by El Salvador's criminalization of abortion are young women from a lower socioeconomic class. The 129 cases analyzed revealed the following:

- 68.22% of the women were between the ages of 18 and 25.
- 6.98% were illiterate, 40.31% had some primary school education, 11.63% had high school degrees, and 4.65% had completed higher education (technical or university studies).
- 73.64% of the women were single.
- 51.16% of the women were earning any income, and 31.78% had very low-paying jobs.
- 57.36% of the accusations came from health professionals assisting the women and 22.48% from relatives and neighbors.
- In 49% of the cases, the accusations had no basis and their files were closed.
- In 56.51% of the cases, the crime was identified as a homicide, which has serious repercussions vis-à-vis the principle of proportionality of punishment, because the women could have been convicted and sentenced to up to 50 years in prison.
- In 43.41% of the cases, provisional detention was imposed, meaning that the women were imprisoned while their proceedings were being carried out.
- In 51.94% of the cases, the women were represented by public defenders.

The data indicates that a majority of the 129 women were impoverished. They were women who had, throughout their lives, been excluded from educational opportunities, access to basic health care services, and conditions that would have allowed them to change their social status. As a result, these women were extremely vulnerable and lacked the necessary tools to confront the state's authority.

Moreover, as revealed in our interviews, criminal convictions and sentences are being given to women who, facing obstetric emergencies that lead to the loss of the fetus, do not understand the legal risks of the situations they faced, lack the means to access private health care services that will not report them, and cannot afford adequate legal defense.

Due to the fact that the majority of complaints come from medical personnel, women experiencing obstetric emergencies or in need of post abortion care may be afraid to seek medical help or support. This kind of social monitoring by medical personnel is problematic, because the majority of complaints are without basis. Even more seriously, such surveillance violates medical ethics and the principle of beneficence by violating professional confidentiality. Additionally, there is a disconnect between the types of crimes for which these women are being accused and the circumstances of their prosecutions.

The Consequences of El Salvador's Criminalization of Abortion

This report reveals how El Salvador's total criminalization of abortion stigmatizes women and results in human rights violations in three different arenas: health care, judicial, and prison.

The illegality and stigmatization of abortion contribute to a lack of reliable national-level information. Without reliable data, it is difficult to measure the impact of the criminalization of abortion on the life and health of women. As a result, we are left with a number of questions: How many women are not receiving adequate medical attention for pregnancy-related illnesses? How many women commit suicide after becoming pregnant from rape? How many women are being forced to carry to term pregnancies that involve malformations incompatible with life outside the womb? How many women are seeking post abortion care from the public health care system?

The Salvadoran state's criminalization of abortion does not provide for protection of women's life and health and it is based on gender stereotypes that assign traditional roles to women, resulting in restricted access to essential health services—due to fear of arrest—that can lead to death.

Respect for Salvadoran women's human rights can wait no longer. Their right to dignity requires immediate action.

**“THE SALVADORAN STATE’S
CRIMINALIZATION OF ABORTION
DOES NOT PROVIDE FOR
PROTECTION OF WOMEN’S LIFE
AND HEALTH...”**



INTRODUCTION

This report documents the consequences of El Salvador’s total criminalization of abortion from two different rights-based angles. First, it offers a voice to five women who were unjustifiably prosecuted for abortion-related crimes after suffering obstetric emergencies in the absence of medical attention. Their stories also serve as examples of some of the realities facing women in El Salvador and are representative of the quantitative data collected in this report. Second, the report illustrates how restrictive abortion legislation can lead to systemic human rights violations, particularly for the most vulnerable. These violations occur when interrogations are carried out without the presence of an attorney and when the women are under the effects of anesthesia in health care facilities, when medical care is denied to women while in custody, and when evidence is improperly collected and assessed during the legal proceedings. Finally, the report presents an analysis of El Salvador’s total criminalization of abortion, using international human rights law as its basis.

The stories, data, and context presented in this report reveal the Salvadoran state’s failure, through its punitive practices, to respect women’s dignity and human rights, as well as, the consequences that such practices have for the country’s health, legal, and prison systems. This report provides evidence of how, since the year 2000, the state has abandoned women—especially the most vulnerable ones—without justification and has normalized violations of their most fundamental rights.

As its starting point, this report uses *Persecuted: Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis*, which was published in 2000 by the Center (at the time known as the Center for Reproductive Law and Policy) in the wake of El Salvador’s amendments to its Penal Code (1998) and Constitution (1999)—changes that completely banned abortion in the country and that remain in force today. *Persecuted* depicts the situation facing women in El Salvador and the political process that led to the legislative and constitutional changes resulting in the criminalization of abortion.

The consequences described in *Persecuted* include worrisome situations that continue to this day, more than a decade after the change in the law. These include the following: the disproportionate impact of criminalization on women who are impoverished, young, single, and uneducated; the violation of confidentiality by medical personnel who report women seeking medical attention in public health care facilities and who they suspect of having performed an illegal abortion; poor representation by public defenders who represent women during criminal proceedings; and persecution from the health care, law-enforcement, and judicial systems.

This report includes qualitative research carried out by the Center, as well as quantitative research carried out by the Agrupación Ciudadana. From March 1 to 8, 2012, the Center held extensive and detailed interviews with women and their families from San Salvador, Lislique, and Cacaopera who had been or were being prosecuted for abortion-related crimes after suffering obstetric emergencies in the absence of medical care.² Health care providers, public officials, and functionaries within the judicial system were also interviewed. In addition, the Center reviewed human rights reports and national surveys, along with other research prepared by civil society organizations. The five women's stories presented in this report illustrate the most common human rights violations occurring in the context of the abortion ban.

The names of the women profiled in this report have been changed in order to protect their privacy, with the exception of Isabel Cristina Quintanilla, who explicitly expressed a desire for her story to be told in her name. The stigma that exists in El Salvador with regard to abortion at times presented challenges for the research carried out for this report—some of the authorities interviewed refused to be quoted under their own names, while at least one imprisoned woman's family member declined to speak with us out of fear of the social consequences of being associated with the crime of abortion.

The quantitative research was carried out by the Agrupación Ciudadana between 2011 and 2012. It consisted of the collection and review of case files of women prosecuted for abortion-related crimes. The research examined 129 cases in 51 preliminary inquiry courts, 18 first instance courts, and 22 sentencing courts. The quantitative contributions sought to measure the broader context of the issue by providing data on the number of proceedings, the socioeconomic profiles of the women investigated and convicted.

This report is divided into six sections. The first section describes the context surrounding El Salvador's total criminalization of abortion. It includes factors such as the legal development of the criminalization of abortion, indicators on the enjoyment of the right to physical and mental health, and the situation concerning sexual violence in El Salvador from 2008 to 2010. The second section presents the stories of four women who were prosecuted and the story of the family of another woman who was prosecuted and died while in prison, revealing the tragedies of the country's criminal persecution of women and country's total abortion ban. The third section presents quantitative data on the women who have been prosecuted in El Salvador over the last 12 years for abortion-related crimes. This information sketches a profile of the women prosecuted and of the context of their proceedings. The fourth section shows how human rights standards are applicable to the total criminalization of abortion—for example, instances of pregnancy that is a threat to the life or health of the woman or when it is the result of a sexual assault. Finally, the fifth section draws conclusions, while the sixth section offers recommendations to various state agencies and civil society.

² Interviews carried out by the Center for Reproductive Rights with María, Isabel Cristina Quintanilla, Rosmery, Verónica, and the family of Manuela, in the Ilopango Prison, San Salvador, and Cacaopera (March 1-8, 2012).

I. THE CONTEXT OF EL SALVADOR'S TOTAL CRIMINALIZATION OF ABORTION

a) Legal Evolution


El Salvador has one of the world's most restrictive abortion laws. After the International Conference on Population and Development, held in Cairo in 1994, in which 179 countries made a clear commitment to the prevention of unsafe abortion and to reproductive rights,¹⁵ the global trend has been to liberalize restrictive abortion laws. Since 1994, more than 25 countries have liberalized their abortion laws,¹⁶ while a handful of others —such as Nicaragua and El Salvador—have restricted the conditions under which abortion is allowed.¹⁷ In Nicaragua and El Salvador, already restrictive laws were replaced with the complete criminalization of abortion.¹⁸

On April 20, 1998, a new penal code took effect in El Salvador, eliminating the exceptions under which abortion had previously been allowed. Additionally, in January 1999, article 1 of the Constitution was amended to recognize the right to life from the moment of conception.¹⁹

Prior to these changes, although the various constitutions that had successively been adopted since the middle of the nineteenth century did not contain provisions regulating abortion, these constitutions did allow for situations and timeframes in which those seeking or undergoing an abortion were exempt from criminal prosecution. Initially the “defense of honor” and later article 169 of the 1973 Penal Code permitted abortion including when the life of the woman was at risk, in cases of rape or sexual relations with a minor, and in cases of serious fetal abnormalities.²⁰

In 1997, the Penal Code and Penal Procedural Code were amended.²¹ Although the original draft amendment would have allowed abortion for therapeutic, ethical, and eugenic purposes, religious leaders and conservative sectors of society organized a campaign in opposition to these exceptions. Their campaign resulted in the complete criminalization of abortion:²² on April 25, 1997, five days before the end of the legislative session, the Legislative Assembly passed article 133, which remains in force today and which absolutely criminalizes consensual and self-induced abortion without exception.²³ Five days later, on April 30, 1997, the Legislative Assembly passed an amendment to article 1 of the Constitution,²⁴ just hours before the conclusion of its session during that legislative period, declaring that the Salvadoran state “recognizes as a human person every human being from the moment of conception.” Two years later, on February 3, 1999, the Legislative Assembly ratified the constitutional amendment. Once this amendment entered into force,²⁵ changing secondary legislation in order to partially decriminalize abortion became very difficult.

The following section describes the situation that women in El Salvador face with respect to economic indicators, the situation of women's rights and health, particularly regarding access to sexual and reproductive health services, and the situation of sexual violence in the country. This information illustrates women's general socioeconomic status in El Salvador, the types of health services to which they have access, and the

A photograph of two young women with dark hair, looking back over their shoulders. They are positioned in front of a structure with a thatched roof made of dried palm fronds. The woman in the foreground is wearing a brown sleeveless top, and the woman behind her is wearing a colorful patterned top. The lighting is natural, suggesting an outdoor setting.

**“ACCORDING TO DATA FROM THE
2007 POPULATION AND HOUSING
CENSUS...67,000 ADOLESCENTS
AGED 12–19 HAD ALREADY
FORMED A HOUSEHOLD; OF THOSE,
48,000 HAD ALREADY HAD AT
LEAST ONE CHILD.”**

level of information and resources that they have. Moreover, it demonstrates which types of women are able to access sexuality education and reproductive health services. It also illustrates the context in which sexual violence occurs in El Salvador, as well as its impact on adolescent girls who, when faced with unwanted pregnancies, are forced to turn to illegal and unsafe abortions.

Statement of the U.N. Special Rapporteur on Violence against Women

In 2011, the U.N. Special Rapporteur on Violence against Women, Rashida Manjoo, presented a report on her follow-up mission to El Salvador. In her report, she stated:

Deeply rooted patriarchal attitudes and the pervasiveness of a machista culture that reinforces stereotypes about the roles and responsibilities of women and men in the family, the workplace and society constitute serious obstacles to women's rights, in particular their right to be free from all forms of violence. The disadvantaged situation of women is patent at all levels of society, from education and employment to political participation, contributing to the decline of their economic status and to greater vulnerability to violence and exploitation. Particularly worrying is the growing feminization of rural poverty as a result of a major crisis in the agricultural sector and the increase in poor rural households headed by women.¹

b) Socioeconomic Indicators

A high percentage of the population lives in poverty. The 2011 Multipurpose Home Survey (Encuesta de Hogares de Propósitos Múltiples, or EHPM) shows that 41% of nationwide households are impoverished, with the percentage rising to 50% in rural areas.²⁶ Of the impoverished homes in rural areas, 18% lived in extreme poverty and 32% in relative poverty.²⁷ Poverty rates are higher among the rural population, which is particularly concerning given that, as in other Central American countries, a large proportion of the population resides in rural areas. According to the EHPM, 30% of El Salvador's population lives in rural areas, meaning that they live in precarious socioeconomic conditions.²⁸

Regarding the labor sector, according to the 2011 EHPM, 68% of the population is economically active; of that percentage, 59% are men and 41% women.²⁹ On average, men earn 10.12% more income than women.³⁰ Additionally, according to data analyzed in a 2010 report by the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), in 2006, 82% of the female workforce was concentrated in four main occupations: retailing and wholesaling (42%); industrial manufacturing (18.4%); domestic services (10.6%); and community, social, and health services (10.5%).³¹ Of the women employed in the manufacturing sector, 45% worked in *maquiladoras* in very poorly remunerated positions.³²

Another area where El Salvador's gender inequality comes to the fore is education. Females are disproportionately impacted by high illiteracy, school dropout, and course repetition compared to males.³³ According to the 2011 EHPM, illiteracy on a national scale stands at nearly 13% (8% pertains to women and 4.8% to men).³⁴ The difference is accentuated when the data is broken down by place of residence: illiteracy in urban

areas is 8.2% (5.7% women, 2.5% men), while in rural areas it is 21% (12% women, 9% men).³⁵ With regard to school attendance, 32% of the population is enrolled nationwide (30% of women and 35% of men).³⁶

c) Right to Enjoy the Highest Attainable Standard of Physical and Mental Health: Sexual and Reproductive Rights

Reproductive Rights

In 2004, the U.N. Special Rapporteur on Violence against Women identified access to women's health services and the enjoyment of reproductive rights as two of the most essential and urgent issues for effectively addressing and resolving violence against women. The Special Rapporteur repeated this diagnosis in a 2011 report.¹

For its part, the CEDAW Committee noted in 2008 that "vulnerable groups of women [in El Salvador], in particular in rural areas, still have difficulties in accessing health-care services."² In addition, the ESCR Committee recommended that the Salvadoran government "take the necessary measures to consolidate a national health system based on equity and accessibility, in accordance with article 12 of the Covenant, guaranteeing essential health services for the entire population, in particular for vulnerable groups, by increasing the budget allocated for such purposes."³

From 1995 to 2000, an estimated 246,275 abortions took place in El Salvador, with 11.1% of them resulting in maternal deaths.³⁷ According to information from the Ministry of Health's Information, Monitoring and Evaluation Unit, between January 2005 and December 2008, 19,290 abortions took place in the country, of which 27.6% were performed on adolescents.³⁸ In February 2011, the United Nations (U.N.) Special Rapporteur on Violence against Women emphasized that the country's absolute ban on abortion puts women and adolescent girls at risk, because many of them, faced with the need to end a pregnancy, may resort to –illegal and clandestine– abortions.³⁹ This data on abortion is only an estimate. Given the procedure's illegal nature, it is impossible to obtain reliable data.

The statistics on maternal health in El Salvador, especially in rural areas, are alarming. According to a 2011 report, in 2008, there were approximately 110 maternal deaths per 100,000 live births.⁴⁰ Of these deaths, 11% were adolescent girls between the ages of 15 and 19.⁴¹ El Salvador's maternal mortality rate is higher than the regional average in Latin America and the Caribbean, which, in 2010, was 89.1 per 100,000 live births, according to data from the Pan American Health Organization (PAHO).⁴² Additionally, according to data from the Ministry of Health, the main causes of maternal mortality in hospitals in 2008 were complications during labor and childbirth (29.41%), edema, proteinuria, and hypertension during the pregnancy, birth, and puerperium (29.41%), organophosphate poisoning (8.82%), puerperal fever (2.94%), and septic abortion (2.94%).⁴³

A 2012 report by the director of Radio Yusca found that, according to the Ministry of Health's Maternal Death Tracking System, suicide of pregnant women represents the third most common cause of maternal death.⁴⁴ Furthermore, suicide has been similarly reported to account for 57% of the deaths of pregnant females aged 10–19.⁴⁵

Regarding hospital care during childbirth among women who had had at least one live birth during the four years prior to the 2008 National Family Health Survey (Encuesta Nacional de Salud Familiar, or FESAL), 15% of them gave birth outside a hospital setting, including 6% in urban areas and 24% in rural areas.⁴⁶ Of these 15% of nonhospital births, 11% were attended by a midwife, 2% took place “at home with others”, and 2% took place “at home alone”.⁴⁷

Postpartum care is an essential component of maternal health care that also has an impact on mortality rates. According to the 2008 FESAL, there are barriers to the accessibility of postpartum care and the data indicates that only 59% of women received this service. Again, the percentage was lower for rural areas (51%) than for urban areas (66%).⁴⁸ With regard to the awareness of, access to, and use of birth control methods, nearly all interviewees expressed knowledge of the existence of modern birth control methods (99%), with male condoms being the most well-known method.⁴⁹ Between 91% and 95% of respondents were aware of oral contraceptives, female sterilization, and monthly injections; 85% knew of bimonthly and quarterly contraceptive injections; 60% knew of intrauterine devices; and 22% knew about the Norplant implant.⁵⁰ Nevertheless, it is impossible to know at which age they received this information or whether it was received before or after having children.

Although the vast majority of the population is aware of at least one contraceptive method, the percentage that uses it is lower, especially in rural areas. Of the women interviewed in the 2008 FESAL, 67% stated that they had used contraceptives at least once (the percentage in rural areas was 65%, compared to 69% in urban areas).⁵¹ According to the survey, rural women waited longer than urban women before beginning contraceptive use after commencing a conjugal union and sex life; rural women also had more children than urban women prior to beginning contraceptive use.⁵² It is impossible also to know the degree of availability and accessibility of different contraceptive methods and the barriers to access that exist. However, the rate of adolescent pregnancy is revealing. Although the Ministry of Health approved a sexual and reproductive health policy in 2012, the problem persists.⁵³

One of the most serious issues facing El Salvador with regard to sexual and reproductive rights is the prevalence of adolescent pregnancy. Together with Guatemala, Honduras, and Nicaragua, El Salvador has one of the highest adolescent pregnancy rates in Latin America.⁵⁴ Specifically, the rate of pregnancy among adolescents aged 15–19 is 89 per 1,000 women of reproductive age.⁵⁵ According to 2011 estimates from the U.N. Department of Economic and Social Affairs, the adolescent birth rate in Latin America and the Caribbean from 2000 to 2005 was 73.4 births per 1,000 women aged 15–19.⁵⁶ According to data from the 2007 Population and Housing Census, the most recent year available, 67,000 adolescents aged 12–19 had already formed a household; of those, 48,000 had already had at least one child.⁵⁷ In El Salvador, most adolescents who are pregnant or parents are not enrolled in school, nor do they receive benefits from government programs that would allow them to complete their studies.⁵⁸ The U.N. Committee on the Elimination of Discrimination against Women (CEDAW Committee) has stated that it is “alarmed at the high adolescent birth rates, as well as the high number of illegal abortions—including among very young women—as they have negative consequences for the physical and mental health of women.”⁵⁹

Concerning access to sexuality education, the 2008 FESAL interviewed women between the ages of 15 and 24 and found that, on average, 76% had received information in educational centers on at least one sexuality education issue (84% of women in urban areas and 68% in rural areas).⁶⁰ Although this number seems quite high, the 2008 FESAL did not measure the quality or depth of the women's knowledge of sexual and reproductive health, a reality that is better reflected in the disaggregated data. The subject that receives the most attention in educational centers is the development of the body during puberty (64%), while pregnancy and childbirth (59%), contraceptive methods (55%) and sexually transmitted infections and HIV/AIDS (58%) receive less attention.⁶¹

Of those who received information on sexual and reproductive health, between 55% and 69% received it in educational establishments. This is particularly worrying with regard to women, whose access to formal education is limited, as evidenced by their high rates of school dropout and illiteracy. Rates of lack of information regarding sexual and reproductive health vary considerably according to place of residence (rural or urban) and educational level. Of the women who attended educational establishments, approximately 16% in urban areas and 32% in rural areas did not receive information of any kind.⁶² Among women with one to three years of schooling at the time of the 2008 FESAL, 80% had not received information; among women with less than a year of schooling, 97% had not received information.⁶³ In its 2008 concluding observations for El Salvador, the CEDAW Committee expressed concern "at the limited effectiveness of sex education programmes for girls and boys in school curricula."⁶⁴

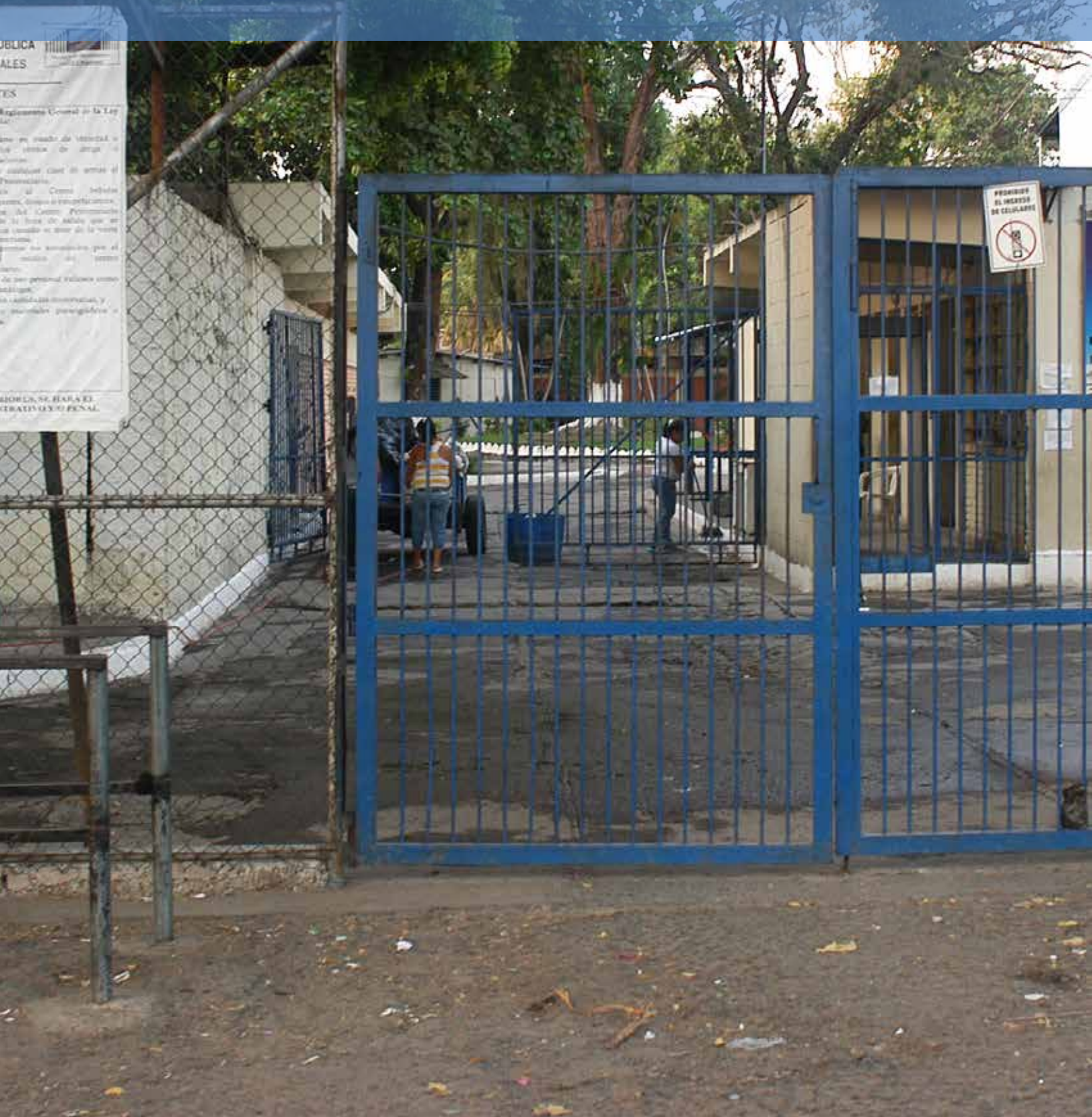
d) Sexual Violence: High Rates, Low Reporting, and Impunity

The available information⁶⁵ indicates that women—particularly girls and adolescents—are the principal victims of sexual violence. According to data from the Institute of Legal Medicine, around 90% (3,634) of the criminal complaints brought in El Salvador in 2009 regarding sexual violence were for cases of violence committed against women of all ages.⁶⁶ With regard to rape specifically, the Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU) has indicated that, according to data from 2008 to 2009, cases can be found of the rape of women of all ages, from one-year-olds to women over 60.⁶⁷ Nevertheless, "the rate peaks for cases involving girls 10 to 14 years old, followed by cases involving women and girls 15 to 19 years old and 20 to 24 years old, in a downward trend."⁶⁸

According to National Civil Police data compiled by the Observatorio de los Derechos de la Niñez y la Adolescencia, in 2010, of the 2,079 sex crimes reported nationally, 54% were committed against girls and adolescents under the age of 18.⁶⁹ In 2009, "the Office of the Attorney General reported that 67% of victims were under the age of 17."⁷⁰ Additionally, from January to July 2007, 1,305 criminal complaints were filed in El Salvador for sexual assault; however, only 47 resulted in convictions.⁷¹

The CEDAW Committee has expressed concern over the high rates of different forms of violence against women in El Salvador and "the insufficient investigations into reported cases and impunity enjoyed by perpetrators [of sexual assault, among other crimes]."⁷² In addition, the Inter-American Commission on Human Rights (IACHR) has expressed that "[t]he exclusive emphasis in the physical evidence, and the scarce credibility

“MARIA WAS FOUND INNOCENT DUE TO THE LACK OF EVIDENCE THAT SHE HAD INDUCED AN ABORTION.”



granted to the declaration of the victims continue being, from a process point of view, two of the major challenges for the access to justice of women.”⁷³ The IACHR has also stated that one of the main difficulties concerning sexual assault in the region is that reliable data does not exist, reporting is low, and information systems are ineffective.⁷⁴

One of the most devastating consequences of sexual violence—taking into account the young age of the majority of the victims—is the unwanted pregnancy that can result from such violence. Current protocols for providing care for victims of sexual violence require that the administration of emergency contraceptives to minors be authorized by a parent or guardian.⁷⁵ This requirement constitutes a barrier to access to services. The high rate of sexual violence against minors and the lack of access to contraceptives force many victims to seek unsafe and illegal abortions. Additionally, the rate of women who continue with their pregnancies is directly related to the school dropout rate due to the impossibility of minors finishing their studies.⁷⁶ This also exposes young women to health problems, suicide, forced marriages, and a future of poverty and social exclusion.⁷⁷

II. FIVE PERSONAL ACCOUNTS OF ABORTION-RELATED PROSECUTIONS: MARÍA, ISABEL CRISTINA, ROSMERY, VERÓNICA AND MANUELA

This section presents the stories of five Salvadoran women, as told by the women themselves and their families, who were prosecuted and convicted for abortion-related crimes. These stories describe the women’s painful journeys through El Salvador’s law-enforcement, health and judicial systems.

a) María

María,³ a young woman in the municipality of Ciudad Delgado in San Salvador, was 18 years old and in her final year of high school when she became pregnant. After suffering a miscarriage, she was arrested and accused of the aggravated homicide of a newborn.

María never felt any of the symptoms of her pregnancy. She only had some pain in her bones, a condition from which she had always suffered. On June 17, 2009, after a physical education class, she began to not feel well, with stronger pains in her bones and in her back. For two days, she suffered fainting spells and hemorrhaging, after which she felt that she had expelled something. When her health did not improve, her sister took her to a private doctor, who told her that she had suffered a miscarriage and needed to go to a public hospital for several tests. It was only then that María learned about her pregnancy.

On June 23, 2009, when she arrived at the San Bartolo National Hospital in San Salvador, María was weak and in very poor health, having lost a lot of blood. She required hospitalization. As soon as she entered the hospital, she was accused of having induced her miscarriage and was threatened with arrest.

³ Name has been changed to protect the identities of the victim and her relatives.

I remember that a doctor saw me ... and began to treat me badly and said,

– “Because of what you came for,” he told me, “forget about leaving here and going back home.”

And after I was there for three days, the police officer arrived.

– “...so, you aborted your child”

– “What child?” I answered him, just like that.

– “You’re not going to admit that there was a child here that you’ve thrown out? And why didn’t you want it? Maybe the person you are with was treating you badly? ... You’re going to leave here,” he told me, “but you’re going straight to jail.”

Even the gynecologist, before performing the curettage—and taking advantage of the fact that María was anesthetized and barely conscious—asked her questions about her alleged abortion.

[The doctor] who did the curettage ... I remember that I was getting tired and I wanted to go to sleep and he said to me, “No, don’t go to sleep ... because now I’m going to ask you a series of questions ... let me get a notebook to write everything down.” And then after that, the hospital reported me.

Once the curettage had been performed, María was transferred to the recovery area, where the gynecologist continued questioning her about the miscarriage—despite the fact that María had still not completely recovered from the anesthesia.

On July 7, 2009, after being treated for 15 days at the San Bartolo National Hospital, she was released. Upon exiting the hospital, the police arrested her and placed her in a jail cell at the Cuscatancino police station. It was only then that she learned she had been arrested for allegedly having committed the crime of murder; her arrest had been based on a criminal complaint filed by the hospital’s social worker. While in jail, she was exposed to rain, forced to sleep on wet ground, and made to exercise for almost an hour on several occasions. María endured these conditions for a week, which worsened her already poor health following the curettage, from which she had not yet fully recovered.

Even when sometimes I felt some pain and told them so, ... they would even make you do exercise. And I ... being in really bad health, didn’t think that was a good idea... [I]f they moved you from one place to another, they always searched you, because they said you could have drugs or ... like other women were searched, sometimes even in their genitals.

The prison performed vaginal searches for drugs and other contraband without changing gloves between inspections.

One day even, at the jail they did a [vaginal] search, and one woman ... she was a police officer, and she didn’t even take the time to change her gloves. She just kept using the same glove for one woman, then the next one.

On several occasions, the police at the jail refused to give María the food that her family had brought for her, as well as the medications prescribed by her doctor for the continuation of her treatment, telling her that she had to pay for her crimes. The pain that María had always felt in her bones grew worse, further aggravating her poor health.

[I]n the jail, there was an area where there was light, but just a grate, so water always came in. So we got wet, and when we told the police to tell my family, because my family would come to see me, they would come to leave food and sometimes [the police] didn't want to pass it through to me, they said "Why? Here you're going to pay for what you did." [I slept] on the wet ground. The truth is that the treatment was really harsh, and personally I wouldn't wish it on anybody.

On July 13, 2009, a preliminary hearing was held in which María was charged with the aggravated homicide of a newborn. However, in response to a petition from the defense, the judge changed the charges to the crime of self-induced abortion with consent, arguing that the physical result of the crime had not yet been found and that, according to medical standards, María's pregnancy had not been far enough along for her to have given birth. Later, the Public Prosecutor's Office submitted alleged evidence of the physical result of the crime, which had been found in a septic tank. Nevertheless, its origin had not been established, and it was not known with certainty whether the evidence was part of a human body.

[A] woman whose name I don't know, I think she was with the Public Prosecutor's Office ... she always came and told me: "Hey, we've gone to your house, and at your house we've done this and that and everyone there says that yeah, that they saw you with a big belly, on and on." I told her, "No, that can't be true." She said:

–She said, "Why not?"

María was sent to the Women's Readaptation Center in Ilopango to serve the preventive detention sentence that had been ordered during the preliminary hearing. She received medical care only during her first four months in prison. No health exams were performed prior to her entering the penitentiary. Afraid of retaliation from other inmates due to the crime for which she had been accused—it was common for inmates to mistreat those accused of abortion—María told other inmates that she was being accused of extortion.

On September 9, 2009, María's defense attorneys sought a writ of nullification, arguing that the search and other investigative actions performed at the home of María's parents had violated her fundamental rights. However, the judge denied the request, finding that a court-issued warrant had been obtained prior to the search.

María's defense asked the court to deny the Public Prosecutor's Office's request to perform a bodily inspection of María in order to verify whether her DNA matched that of the evidence found in the septic tank. The defense argued that because there was no certainty regarding the physical evidence of the crime and because it was not known whether the bone tissue that had been found was human or animal, subjecting María to bodily inspection would be a violation of her fundamental rights and guarantees. The

court agreed, ruling that subjecting María to such an inspection would be a violation. María's trial was suspended until January 2010, when she was found innocent due to the lack of evidence that she had induced an abortion.

b) Isabel Cristina Quintanilla

Isabel Cristina Quintanilla is a Salvadoran woman who became pregnant with her second child when she was 18 years old. She was excited to become a mother for a second time. When she was eight months pregnant, she began to feel discomfort, but assumed that it was a normal part of a pregnancy. On the night of October 25, 2004, she felt an intense pain. She sat on the toilet in her apartment in San Salvador, and then felt a suffocating sensation. Isabel Cristina tried to stand up but could not. She then felt as if she had expelled something and subsequently lost consciousness.

When I sat on the toilet, I felt such a terrible pain, like I was being suffocated but from here When I felt the pain, I wanted to get up, but I couldn't, and I felt like I was suffocating, that I was dying, and all at once something came out of me. And then, I don't ... I felt like when your breath is being cut off and you end up breathless. I know I lost consciousness because I don't remember anything from then on, until I was sitting up and I was covered in blood on the chair in the living room. Then they took me to the hospital, they checked me in to do a curettage. ...When they took me in, they did the curettage, I wasn't unconscious... The only thing I remember saying to the nurse was, "And the baby?" Because I thought ... it was with me, I don't know. She didn't say anything.

Her mother helped her, as did her stepfather, who called the police emergency line to ask that Isabel Cristina be taken to the hospital. They were frightened by the hemorrhaging that Isabel Cristina was experiencing. When the police never came, her mother, with help from their neighbors, took her to the San Bartolo National Hospital in the city of Ilopango.

Because at the time I was experiencing my problem, my stepfather called the police, but not to tell them, "Look at her, look what she's done," but to get them to help me, to take me to the hospital. I mean, do you think that if I had wanted to do something I would've waited until the eighth month?

At the hospital, they sent her to the curettage room, where a nurse asked her where her baby was. After the operation, she was sent to the intensive care unit, where police officers entered and interrogated her. She could not respond clearly and consciously to the questions because she was still under the effects of the anesthesia. That same day, Isabel Cristina was sent to a room with other patients, where the police continued to interrogate her while she was in recovery and without the presence of her attorney. Later, the officers told her that she was under arrest.

When they finished the curettage and left me on a hospital bed, the surgeon was still there, [I saw] someone dressed in blue and a woman. Then I see the badge, I saw that it was a police officer, and with the surgeon still there . . . I don't know how police officers gained access to where I am unconscious to interrogate me... I remember that they asked what my name

was, where I lived, and maybe I couldn't answer them clearly because I don't know how I was speaking, but I didn't tell them very well. Then, and maybe what made me panic a little bit because, "Do you know you're under arrest right now?" Then I was like, "Under arrest?" ... I was not prepared to respond to an interrogation ... When they brought me out to the room where all the women are, they came again to do the same thing... Then they asked me what my name was, the address where I lived, how many months into pregnancy I was, what I had swallowed before going to bed, what I had eaten, and later, when I was in the bathroom... I felt confused, because they were confusing me with their interrogation. I answered them. I was there for two, three days in the hospital. The following day a patrol car took me to a [police jail].

For three days, while she was recovering in the hospital, Isabel Cristina was guarded by three police officers. As soon as she was released, they handcuffed her and drove her to the Ilopango station, where she was placed under arrest for the crime of murdering her son. That same day, she was sent to the Turicentro de Apulo station, where she was held for three days, together with eight other people, in a cell with the capacity for three people. Although Isabel Cristina was still ill and hemorrhaging, she never received medical attention and had to remain seated on the floor, for there was not enough space to lie down.

[W]hen I had been hemorrhaging really badly, I had had a curettage, I was bleeding a lot ... and I was like that for three days, in a cell where there were eight of us in the cell ... like this, all packed in, sitting down because there was not enough space to move around, a mattress doesn't fit, the space is really small.

On October 29, 2004, she was brought before the First Justice of the Peace of Ilopango, where her preliminary hearing was held. Before the court, the Public Prosecutor's Office accused Isabel Cristina of the crime of manslaughter, arguing that she had acted with negligence in her duties as a mother by failing to care for her child and ultimately causing his death. The prosecution's argument did not take into account that Isabel Cristina had been unconscious at the moment of the premature birth and unable to care for even herself, much less another person. She was assigned a public defender for the proceeding, who successfully challenged the position of the Public Prosecutor's Office. The judge released Isabel Cristina upon failing to find any evidence against her. Despite her acquittal, however, the local media accused her of having murdered her own son.

[D]uring the preliminary hearing, the public prosecutor comes and accuses me of the crime of aggravated homicide, but only verbally, it was something different on paper, the paper was going for manslaughter and there was a debate there with the judge, because [the prosecutor] said that I was obligated to take care of my son, that he had died because I was negligent, that I was aware of what the pains were like and that they were labor pains, that I couldn't have been ignorant.

Isabel Cristina returned to the hospital to continue with her post-operative checkups and to recover from the surgery. Fifteen days after the preliminary hearing, she was notified that her case had been reopened and was called to appear before the Preliminary

Inquiry Court of Ilopango. On an appeal from the Public Prosecutor's Office, the Second Criminal Chamber of San Salvador had overturned the ruling to acquit issued by the Justice of the Peace. Thus, the Ilopango Justice of the Peace took up the case once again. In a hearing on August 15, 2005, the judge changed the crime for which Isabel Cristina was charged, convicting her and sentencing her to 30 years in prison for aggravated homicide.

There was a debate and the public prosecutor said that I look very humble, but that was just the method I was using to trick the judges, because I had done it with premeditation, malice, and a whole bunch of things. I mean, the prosecutor was totally terrifying ... When the judge gave the verdict and sentenced me ... to 30 years, she [my defense attorney] said to me, "No, don't worry, you're going to come out of there like a prison professional."

The judge found Isabel Cristina guilty based on the legal-medical report, despite the fact that the report established the cause of the fetus's death to be undetermined. The public defender assigned to Isabel Cristina had not met with her prior to the hearing, had not reviewed the case's documents, had not shown interest in the case, and had not even learned Isabel Cristina's name.

I changed lawyers ... It wasn't a paid lawyer, it was an attorney that the government gives you ... Then it was another lady who didn't even know my name. When the hearing happened, she said, "I'm representing the lady here, and what's your name?" I don't think she had even read the case history, nothing. She wasn't even interested in [the defense], like, I work for the state and the state pays me, but she is not at all interested in the person she is defending.

When she was convicted, Isabel Cristina was taken to the women's prison in Ilopango, where she faced discrimination and poor treatment because the other inmates and the prison staff had learned, through news reports, of the crime for which she had been convicted. Once in prison, Isabel Cristina discovered that women convicted of abortion—or "the murder of their children"—became victims of insults and beatings at the hands of other inmates, who sought to punish them for what they had done. This did not happen to women who were in prison for other crimes.

All of the people who work in that penitentiary, you see them as enemies, because that's how they see you, like you're a cockroach, you're scum, you're the worst thing in here and that's why you're here.

She was depressed for the first three months. Her depression was exacerbated by the extreme overcrowding in the Ilopango prison.

Sometimes in the cell there are 150 inmates in a single one, or 38, 40, 60, 80. In the one I was in, there were 85 ... There was only space of about a brick wide for getting through, there are cots, bunk beds, one here, one here, another here, all of them in a row, and I slept like that and I was in the middle, yeah in the middle ... until it filled up.

Later, she began to take part in prison activities, finished her high school studies, participated in workshops and other activities offered in the penitentiary, and assisted

EMERGENCY

“ON JANUARY 24, 2002, ROSMERY WAS RELEASED FROM THE HOSPITAL AND SENT TO THE APULO JAIL, WHERE SHE SPENT EIGHT DAYS.... WHILE SHE WAS IN CUSTODY, SHE WAS NOT TAKEN TO THE CHECKUPS SCHEDULED TO MONITOR HER HEALTH.”

with chores inside the prison. She did this with the hope that her good behavior would result in a shorter prison term. She even helped other inmates write requests to the prison directors, which helped her endure her situation and end the attacks. Nevertheless, she suffered when the staff prohibited her from participating in activities that had to do with children, such as babysitting at the prison daycare or assisting with presentations. These rejections were based on prejudices having to do with her alleged crime.

We were going to formally request a pardon. This depends on the inmate's conduct, whether they grant a pardon. And I was on the cleaning committee, I was an aerobic instructor, I sang in the church choir, I studied—and they sent a conduct report that said I was a drug addict, that I was a lesbian, that I was an alcoholic, and that I was a revolutionary ... Honestly, I was disappointed. I felt defeated, because I knew that he had been telling me there was a good chance I would get the pardon, but because of my terrible conduct, what could I get? That report is drawn up by the counselors, the ones that are inside, the ones that live with us.

While in prison, she lived in deplorable conditions, including overcrowding and abuse by prison guards, which put her health and life at risk. Isabel Cristina had extremely limited access to medical care. She suffered from discrimination and a lack of personal safety. Together with other inmates, she was also the victim of invasive searches by prison guards that involved sexual assault and abuse. During these searches, the guards touched women improperly and against their will in order to find cell phones, drugs, and other contraband; furthermore, they performed these searches without regard for even minimal hygienic precautions.

[O]ne day they took us out at three in the morning, supposedly for a search, where they violated us, because they made contact with us like this, touching us and everything, in front of male guards, cavity searching men and not only women ... The prison directors, when they got to the search, there were 400, 500 men and women, there were people there who had cancer, who had their periods, they didn't respect that, there were virgins, even they were included. I was crying and angry because I felt that I was being abused, and I don't even undress in front of my mother and I felt absolutely terrible, that they would strip me in front of all those people, and put us on display like that, everyone open up and we're going to do this. [They did it] to everyone. Others went to the hospital because of hemorrhaging.

After a time in prison, Isabel Cristina met with attorney Dennis Muñoz, and, in May of 2007, they requested a review of her case, which was denied. At the beginning of 2008, they brought a request for pardon before the Legislative Assembly, asking that Isabel Cristina's sentence be reduced for good behavior. That request was also rejected; according to Isabel Cristina, despite her activities and good behavior, the conduct report issued by the prison's directors contained lies and prejudices. In response to this rejection, on May 28, 2008, Isabel Cristina and her lawyer sought a commutation of the sentence, which would replace the main punishment imposed by the judgment with a different one. This remedy sought to demonstrate a violation of due process during the

investigation and trial of Isabel Cristina. It took two years for the remedy to be ruled on; finally, on July 22, 2009, the Supreme Court of Justice found that for reasons of justice, equity, and morality, a sentence of 30 years was excessive, disproportionate and severe. Isabel Cristina's sentence was thus commuted to three years—which, she had already served. Isabel Cristina was released on August 14, 2009, almost four years to the day after entering into custody on August 16, 2005.

Today, Isabel Cristina participates in demonstrations and gives interviews to tell her story. She seeks to show that she is not the only woman to be unjustly convicted for the crime of murder after having suffered an obstetric emergency that endangered her own life.

c) Rosmery

Rosmery,⁴ a Salvadoran mother of three, became pregnant with her fourth child when she was 22 years old. On January 17, 2002, when she was approximately 18 weeks pregnant, she experienced a complication that caused serious hemorrhaging and made her lose consciousness. Unconscious, she was taken by her mother and her stepfather to the San Bartolo National Hospital, where a curettage was performed while she was still unconscious. While Rosmery was waking up from the anesthesia, the doctors began to ask her about the whereabouts of the fetus, among other questions that she could not answer due to her state of health. Although Rosmery confirmed that she did not know what had happened and that everything had been very confusing, her attending physicians called the police to report her for the crime of abortion. At about six in the evening that same day, the police arrested her at the hospital, and three police officers were assigned to guard her during her stay. They also took a statement from her. One of the police officers told Rosmery that they were guarding her because she would not be returning home after her release from the hospital—instead she would be going to the police station because she had killed her daughter.

When I arrived at the hospital, I was unconscious, and while I was there, when I came to, the doctors began to ask me things. They asked me a bunch of things like what had I done with the child I had had. Then, around six in the evening on that same day, there were police officers around my bed. One of them told me that they were guarding me because when I got out of there I would not be going home but would be going [with them to the police station], ... that I would not be able to go back home because I had killed my daughter.... The doctors themselves had called the police. That was where they told me I was under arrest.... They took [a statement] from me that same day in the hospital at six in the afternoon... When they began to take my statement, I was just coming out of the anesthesia that they had given me.

On January 24, 2002, Rosmery was released from the hospital and sent to the Apulo jail, where she spent eight days. Still recovering and experiencing bleeding, she had to sleep on the cold floor, which worsened her condition. While she was in custody, she was not taken to the checkups scheduled to monitor her health following the curettage—because the police had not officially registered her detention, they could not transport her to her doctor's appointments.

⁴ Name has been changed to protect the identities of the victim and her relatives.

Even when I have my period, I have a lot of pain, too much, but it's because of ... how cold the ground is. Sleeping right on the ground, and in such delicate health. And they didn't take me to the appointments that had been made for me. I had appointments at the hospital, and they didn't take me to a single one.

Rosmery received proper medical care only once she was definitively transferred to the Ilopango women's prison after being convicted of aggravated homicide. Rosmery had been forewarned of the mistreatment experienced by women who were there for abortion-related crimes; she thus hid this fact and was able to avoid attacks and insults.

In the cell where I was held, how many inmates were there? We were 60... And now everyone definitely sleeps on the floor, people sleeping in bunks even. And in some of those caves, what they've done is put up more cots, they have raised them maybe by half, so that another one fits below—I mean, what they call the third floor, first, second, and third floor—because there's so many people that it's full.

During her criminal trial, Rosmery was represented by private attorneys. Three hearings were held during the proceeding. In the first, she was charged with the crime of abortion. In the second, the crime was changed to aggravated homicide. Finally, on November 29, 2002, during the public hearing, Rosmery was convicted and sentenced to 30 years in prison, despite the fact that the Public Prosecutor's Office had asked for a 15-year sentence for homicide aggravated by familial relationship. During the hearing, her attorneys told her to keep quiet—if she spoke, she would make their job more difficult. For this reason, Rosmery was never able to testify during the proceeding.

The lawyers told me not to say anything. The whole time, they told me to stay quiet because if I talked I could get tripped up and make the work they were doing more complicated. I stayed [quiet] during all the hearings, I only heard what they were saying... I never testified... because they told me not to.

During her initial months of imprisonment, Rosmery cried day and night, remained in bed, and prayed for long stretches. Later, she participated in many of the activities that the penitentiary offered, completing both primary school and high school. In 2007, she began to be visited in prison by lawyers, and she asked for a hearing to review her sentence, which was held on July 6, 2009.

During the hearing, the public prosecutors insisted that Rosmery was guilty and sought a sentence of 28 years in prison in addition to what she had already served.

[T]he public prosecutors still asked that I be given another 28 years, in addition to the ones I had already served... Because for them I was always guilty. And that was the maximum punishment that they wanted... So, I felt like I was going to die when they said that, because they asked for more years for me.

The expert testimonies were crucial in the review. The witnesses revealed that the legal-medical report on which the conviction had been based included serious errors.

All the expert witnesses provided support. The expert witness of [El Salvador] included a lot of errors in the information that he had given. He had said that I had a prostate, and, well, girls don't have those... And when they asked him why the report mentioned a prostate, he said that he hadn't written it—that his secretary had written it with his signature and seal.

At the same time, the expert witness revealed that the legal-medical report had not been followed. Based on this, the court rejected the theory used by the Public Prosecutor's Office to argue that Rosmery had asphyxiated the fetus. After a three-day hearing, the judges found that a judicial error had been made in the ruling to convict and ordered Rosmery's release. However, despite the court's acknowledgment of a judicial error that had put her in prison for eight years, Rosmery never received reparations from the state for the time that she spent separated from her three children.

d) Verónica

Verónica⁵ grew up in the city of Cojutepeque, not far from the country's capital. When she was 12 years old, she began working as a domestic employee in San Salvador to earn income for her family.

Verónica never received any kind of sexuality education, and she became pregnant for the first time when she was 16. After her daughter was born, Verónica spent just five months with her; she then left her daughter with her mother in order to return to work in San Salvador. When Verónica was 22, she entered into a relationship and became pregnant for the second time. During this pregnancy, Verónica bled periodically, although the regularity and duration of the bleeding were different from her normal menstruation. Nevertheless, Verónica never felt any of the discomfort or changes that come with the process of gestation, and thus never suspected that she was pregnant.

On the night of March 4, 2010, Verónica began to experience discomfort and headaches. Her stomach ached and she felt an urge to go to the bathroom. The following morning, she got up early to make breakfast for her employers; however, her pain increased until it became unbearable, at which time Verónica went to the bathroom and felt that something was coming out. Then she fainted.

When she woke up, Verónica was in the National Maternity Hospital receiving medical attention. Her head hurt from the blow that she had experienced upon fainting. The doctor informed her that her newborn had been found dead. At midday, after being taken to the recovery room, Verónica was handcuffed by the police and informed that she was under arrest for the crime of aggravated homicide. Her employers had called the police and filed the criminal complaint.

From the hospital, Verónica was transported to the Monserrat police station, where she was held for six days. While there, she continued bleeding and was very sick, but did not receive any medical attention. On March 9, 2010, an initial hearing was held with only her private defender present, as the Monserrat police station reported that it could not provide transportation for Verónica due to a lack of personnel. Thus, Verónica was informed of the hearing only after it had taken place. After being made to sign a

⁵ Name has been changed to protect the identities of the victim and her relatives.

document, on March 11, 2010, she was transferred to the Women's Readaptation Center in Ilopango, where she was to serve the provisional detention sentence that had been ordered during the initial hearing. During the subsequent hearing, Verónica's private attorney did not allow her to speak and told her that her case was going to be moved to a public hearing. On September 13 and 22, 2010, the public hearings of the oral trial were held, wherein Verónica's attorney still did not give her the opportunity to speak. Finally, on October 1, 2010, Verónica was convicted of the crime of aggravated homicide of her newborn daughter and sentenced to 30 years in prison. The judgment stated that Verónica had strangled her daughter with her apron string.

As of March of 11, 2013, Verónica has been in the Ilopango prison for three years. She was sick when she arrived and did not receive medical care. She lives in poor conditions, sharing a cell with 200 other women; she spent the first 13 months sleeping on the floor. Aside from her father, none of her family members visit or support her. She has not seen her daughter, who is now eight years old, for two years.

I don't like to go around talking about what has happened to me... It is difficult to live life like that, you have to find a way to survive.

e) Manuela

Manuela's parents, Carmen and Juan,⁶ are elderly, from a rural area, and never learned how to read or write. They faced a variety of abuses at the hands of Salvadoran authorities due to what had happened to their daughter.

When they know you don't know how to read, they think you're stupid, that you don't know anything.⁷

Starting in 2006, Manuela regularly sought medical care, complaining of headaches, nausea, fatigue, and general pain. Although she was prescribed analgesics and other medications to treat her symptoms, diagnostic tests were never ordered, and her health steadily worsened.

On February 26, 2008, Manuela suffered a setback and her health deteriorated. Afterward, she felt an intense abdominal pain. She went to the latrine located outside her home, where she felt as if she had evacuated something, and then she fainted. Carmen witnessed all of this. Worried about their daughter's health, Manuela's parents took her to the hospital. That same day, the hospital sent a report to the Public Prosecutor's Office accusing Manuela of the crime of abortion. The following day, Manuela was interrogated by police officers despite being in very bad health and unaccompanied by her attorney.

The investigation continued, and several days later, Carmen and Juan were visited by Salvadoran police officers, who searched the family's house, including Manuela's room and the latrine.

Go on in there if you want, but not here, and since they already closed up everything, and searched everything thoroughly and didn't find anything—

⁶ Names have been changed to protect the identities of the victim and her relatives.

⁷ All the quotes in this section are from Carmen.

because they think she took pills so that it would die in her—“You know,” they told me. They looked under the bed, everywhere.

The Public Prosecutor’s Office asked questions about Manuela, interrogating Carmen to get her to reveal the location of the fetus and the location of the pills that, according to the authorities, Manuela had taken in order to abort. They threatened to charge Carmen and told her that she could not return home until she provided information about the crime that her daughter had committed. In addition, they also caused significant damage to the family’s property and interrogated neighbors about what had happened.

They knocked everything over and made a pit—left it a pit.

During their visit the police officers asked Juan to sign a document. Since Juan cannot read, he did not understand what he signed, and they did not explain the document’s contents to him. Later, the officers informed Juan that his fingerprint was needed to formalize Manuela’s arrest. Thus, without knowing it, Juan signed a criminal complaint against his daughter, which was later used as evidence in the trial against her, along with the complaint filed by her treating physician from the hospital.

Even though Carmen was called as a witness in Manuela’s trial, authorities never gave her the chance to testify.

Yeah, they called me, I have the papers... And they told me that I had to be a witness for my daughter. I said to Juan, “Let’s go,” and I got the kids. Look, they called me twice. Once, it was suspended and they didn’t do it, and then later the police came and left me another paper—and look at that, they left me out.

During the visits that Carmen and Juan made to the public prosecutor in the case, he accused them of having lied and hidden the fetus. The public prosecutor also told them that they needed to register the fetus in the civil registry in order to be able to receive the body, and he gave them a name under which to register it.

Why would he tell us to register the birth? And we, look, we had to go right away to get—to be able to bury the child—to get the certificate in town and call him [the public prosecutor] and make sure the child had the certificate, because if not...

Manuela was arbitrarily held in preventive detention, and, at the time of her arrest, authorities failed to comply with minimum procedural guarantees. In addition, her family could not afford to hire a private attorney; Manuela was aided by public defenders. She was not given adequate time to prepare her defense, nor could she freely and privately communicate with her attorneys, who met her only on the day of her hearing.

Carmen and Juan were never informed about Manuela’s procedural status or about her health while she was in prison. Only when Manuela was transferred to the hospital did they learn informally about their daughter’s health. In this way, Manuela’s parents faced constant violations throughout their daughter’s legal proceedings that caused them anguish, worry, and impacted their health. They had to deal with accusations from the case’s prosecutor and authorities, as well as pressure from the media and neighbors,

who quickly condemned Manuela as a murderer. Carmen stopped visiting Manuela in July of 2008, because every time she visited, she was subjected to a vaginal and anal inspection carried out in unhygienic conditions. These inspections affected Carmen's mental health and ended up isolating Manuela from her family.

Manuela was convicted and sentenced to 30 years in prison for aggravated homicide. The ruling could not be appealed due to the negligence of her defense attorneys and the absence of remedies that would have allowed for a review of the evidence that her conviction was based on. Manuela—who was arrested, investigated, and brought to trial under the presumption of guilt—eventually died of cancer in prison, without having ever received proper treatment for her condition. After her death, Carmen and Juan took over the raising of Manuela's children. They now receive visits from court officials, who are investigating Manuela's recently sanctioned defense attorney; it was proven that, during the judicial proceeding, he had forged Manuela's signatures on appointment records.

I showed her where the people from the Public Prosecutor's Office searched that day. They didn't find anything, but God has defended us each day. They didn't find anything on my daughter

III. LEGAL PROCEEDINGS AGAINST WOMEN FOR ABORTION-RELATED CRIMES

The Agrupación Ciudadana examined all case files of women prosecuted for abortion-related crimes between January 2000 and March of 2011 in preliminary inquiry courts and trial courts. It identified 129 women who were prosecuted for such crimes.⁷⁸ Of the women prosecuted, 49 were convicted—23 for abortion and 26 for varying degrees of homicide (see figure 9). However, the overall number of 129 is not representative of the total number of women accused of such crimes, because many accusations are dismissed before the women are actually prosecuted. This number also does not include minors prosecuted for abortion-related crimes, because their case files were inaccessible due to their status as minors.

This section analyzes the profile of the women prosecuted for abortion or homicide, taking into account their age, schooling, type of romantic relationship they were in when they became pregnant, occupation and income level, and number of previous births. It then analyzes the conditions of the judicial proceedings, the sources of the criminal complaints, the criminal offenses of which women were accused, the order for precautionary and provisional measures, and, finally, the rulings resulting from the legal proceedings. The section concludes by offering observations on the data presented.

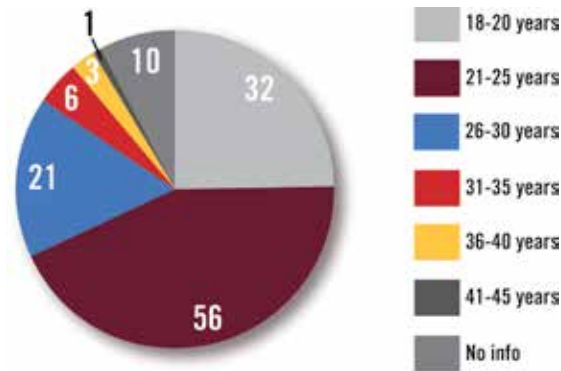
a) Profile of Women Prosecuted, 2000–2011

Of the women prosecuted, 88 were between the ages of 18 and 25—in other words, young women and adolescents. Of these, 56 were aged 21–25. It is worth highlighting that almost a quarter of the women prosecuted—32 women—were between the ages of 18 and 20, which is consistent with the fact that 31.4% of prenatal registrations in El Salvador pertain to adolescent women.⁷⁹ The number of minors prosecuted for abortion

is unknown, as the Law for the Protection of Childhood and Adolescence does not permit access to such data.

FIGURE 1

Age of women prosecuted, 2000-2011

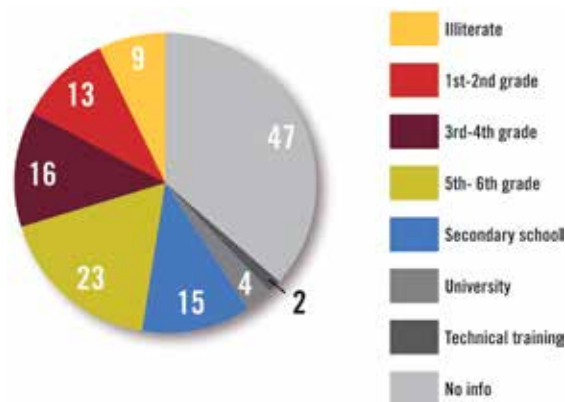


Source: Research from the *Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011*

Of the women prosecuted whose educational background is known, 38 had very little education. Of these 38 women, 9 were illiterate; 13 had finished only the first part of grade school; and 16, mainly older women, had finished the second part of grade school. Forty-four women had completed nine or more years of education; 23 had completed grade school; 15 had high school degrees; 2 had technical degrees; and 4 had some university education.

FIGURE 2

Educational levels of women prosecuted from 2000-2011



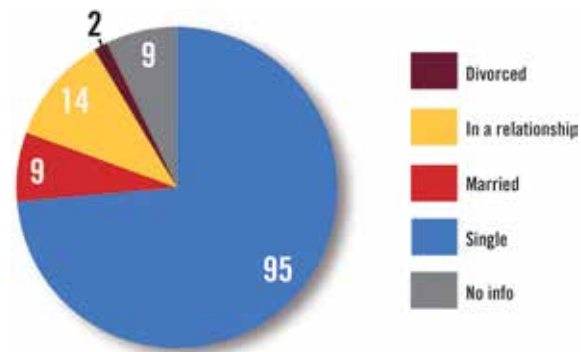
Source: Research from the *Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011*

The type of romantic relationship that women are in when they become pregnant is also an important factor. Of the 129 case files analyzed, 95 of the women reported that they had no partner and were not married; one could draw the conclusion that, in such cases, the pregnancy was the result of an uncommitted relationship in which the man did not assume his responsibility for the pregnancy. In the most serious cases, the pregnancy is the result of rape or incest. Often, in such cases, women hide their pregnancies, meaning that their families and friends are unaware of what they are experiencing and therefore do not offer help—or do so too late, once a tragedy has already come to pass.

The type of relationship that women have is also relevant insofar as single women tend to be more susceptible to being reported to authorities than women who have a partner. Social stigma often means that a single pregnant woman feels shame, which, in turn, may raise suspicions that lead a hospital to report her.

FIGURE 3

Marital status of women prosecuted from 2000-2011



Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

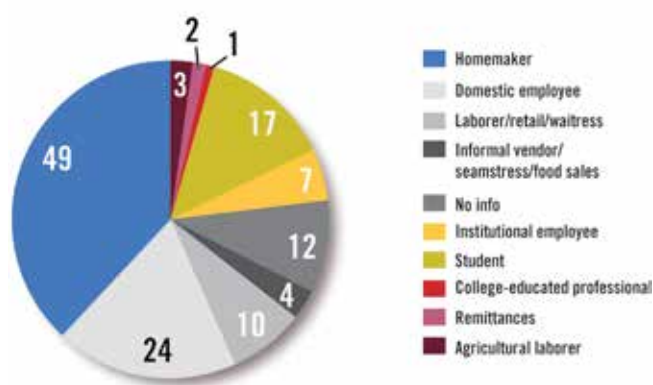
The data collected on type of employment are consistent with the data found in the *Persecuted* report.⁸⁰ A significant portion of the women prosecuted worked in low-paying jobs or did not earn income. More than half of the 129 women (66) did not earn their own income: 49 performed unpaid domestic labor and 17 were students at the time they became pregnant. Forty-one women performed some type of work or activity that generated an income of about USD 200 a month—in other words, minimum wage—or less. Of these women, 24 were domestic employees; 10 worked in *maquiladoras*, as waitresses, or as retail employees; 4 were informal vendors for low-income activities, such as selling *pupusas* or sewing; and 3 were agricultural laborers.

The cases of women who worked as domestic employees demonstrate a pattern of hiding the pregnancy, possibly in order to avoid being fired and losing work that was the sole source of income. The majority of these women faced their situations alone, often under conditions of socioeconomic vulnerability and pressure due to the unstable nature of domestic labor.

The data collected shows that the women who were criminally prosecuted were, by and large, living in situations of poverty or of complete economic dependence. Poverty in general has an effect on the means available to pregnant women who suffer complications during the later stages of gestation. For example, it is difficult for them to travel to health centers that could provide them with the necessary medical attention when they have symptoms that could lead to premature and unattended births. When such situations do arise, they must be transported from their communities, often under dangerous transportation conditions, to public hospitals.

FIGURE 4

Occupation of Women Prosecuted, 2000–2011

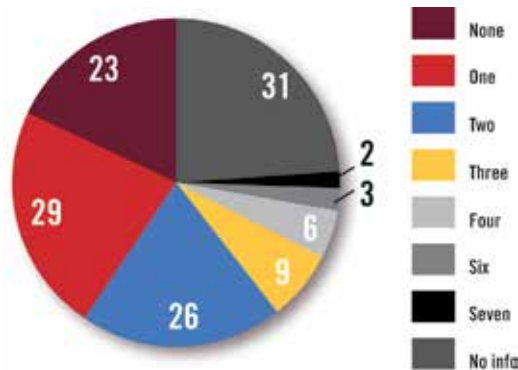


Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico in El Salvador, 2011

Of the 129 women prosecuted, 23 were experiencing their first pregnancy, which seems logical given that the majority were very young women. Twenty-nine had previously given birth once; 26 had previously given birth twice; 9 had previously given birth three times; 11 women had previously given birth four or more times; and there was no information on 31 of the women. There is no clear correlation between the number of pregnancies that a woman had previously had and the type of crime for which she was accused. This is relevant because, in some cases—such as those of Manuela and Isabel Cristina—the fact that they were already mothers was exploited by their accusers, who argued that the women should have known what it was like to be pregnant, that their maternal instincts should have taken precedence over their personal safety, and that they should have acted instinctively to save their children.

FIGURE 5

Number of prior births of women prosecuted, 2000–2011



Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico in El Salvador, 2011

The living conditions of the women who were prosecuted reflect serious conditions of poverty and marginalization. In 78 of the 129 case files reviewed, there was no information about the women's homes. In the other 51 case files, the information was varied. For example, 1515 of the files described homes with basic services (running water, electricity, and modern bathroom), while in 2 of the cases, the women's homes were those of their employers, indicating that they were live-in domestic employees.

Concerning the physical characteristics of the homes, 25 had outhouses; 8 had adobe constructions, indicating rural living conditions; 5 had dirt floors; and 8 had metal roofs. With regard to access to public services, seven of the homes lacked running water and eight lacked electricity. In all, 14 of the 51 homes lacked at least one public service.

In addition, one of the women lived in a *mesón*, a room within a living space that was inhabited by a number of different families and that shared a single bathroom and sink. One woman lived in an 8-by-10-foot shack made of worn sheet metal and plastic; another woman had no home and lived in a shrub grove.

b) Analysis of Legal Proceedings Brought against Women

In 74 of the cases, the complaints originated from public hospitals or the Salvadoran Social Security Institute (ISSS). These types of criminal complaints raise two important issues: the violation of a patient's confidentiality and, consequently, the mistrust that such complaints generate among other women facing similar obstetric issues, which can deter them from seeking medical care.

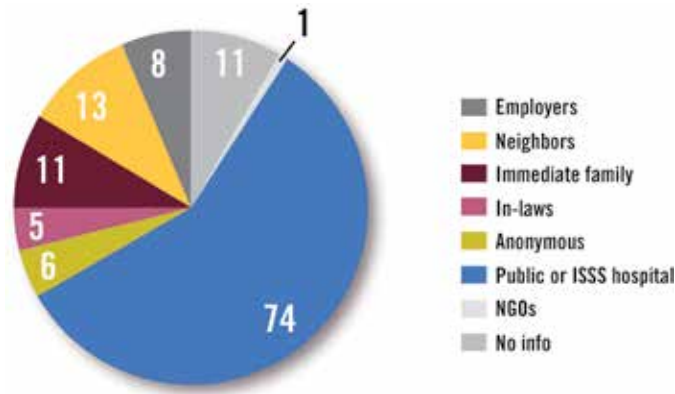
Of the other criminal complaints, 13 were made by neighbors; 11 by immediate family; 5 by in-laws; 8 by employers; 6 by anonymous individuals; and 11 by undetermined sources. Many of the complaints filed by relatives and neighbors involved cases in which families had called the police seeking help in transporting women hemorrhaging from obstetric problems to the hospital, given that the families lived in remote communities.

Although it is impossible to establish which of the complaints made by relatives and neighbors were unintentional, this indicates a situation of social monitoring. Such monitoring, enforced mainly by health care professionals, is worrisome because it punishes women for an apparent crime while ignoring their health situations.

The origins of legal prosecutions are largely linked to the response of state institutions to requests for support from the women themselves or their relatives. The prevalence of criminal complaints filed by medical personnel is a result of the obligation that these professionals feel they have to report incidents in order to not be implicated in the alleged crime; such acts are despite the fact that this reporting violates professional confidentiality.⁸¹

FIGURE 6

Origins of criminal complaints, 2000–2011



Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico in El Salvador, 2011

Of the 179 abortion-related cases investigated by the National Civil Police (PNC, for its Spanish acronym) between 2002 and 2010, 91—or 51% of all complaints—ended up in trial. This means that 49% of reported cases are dismissed due to lack of evidence on which the Public Prosecutor’s Office could base a case.

TABLE 1.

Cases registered by the PNC that went to trial, 2002–2010

YEAR	CASES BROUGHT TO THE ATTENTION OF THE PNC	CASES THAT WENT TO TRIAL	% OF CASES THAT WENT TO TRIAL
2002	15	11	73%
2003	24	19	79%
2004	30	14	47%
2005	13	3	23%
2006	18	8	44%
2007	13	7	54%
2008	22	7	32%
2009	25	14	56%
2010	19	8	42%
Total	179	91	
Average			51%

Data from research conducted by the Agrupación Ciudadana in the courts and with data provided by the National Civil Police for this study. Information from 2002 to 2010, the period for which information from both sources was available. Percentages have been rounded to the nearest whole number.

Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

Of the 129 women prosecuted, 68 were prosecuted for consensual and self-induced abortion (art. 33 of the Penal Code) and 60 for aggravated homicide (arts. 128 and 129 of the Penal Code). In general, the women prosecuted for homicide were initially charged with abortion, but their charges were later changed to aggravated homicide because there were no indications of an abortion having taken place and because a fetus with 6 to 7 months' gestation was found—indicating a premature birth, rupture of the placenta, or another obstetric problem that took place without medical care and outside a hospital facility. Based on these conditions, the Public Prosecutor instead accused the women of the aggravated homicide of their children.

TABLE 2.

Women prosecuted for abortion-related crimes, 2000–2011

	COMPLAINT CRIME			TOTAL COMPLAINTS
	ART. 133: CONSENSUAL AND SELF-INDUCED ABORTION	ART. 128 AND ART. 129: AGGRAVATED HOMICIDE	ART. 199: ABANDONMENT AND NEGLECT OF PERSON	
TOTAL	68	60	1	129
%	52.71%	46.51%	0.78%	100.00%

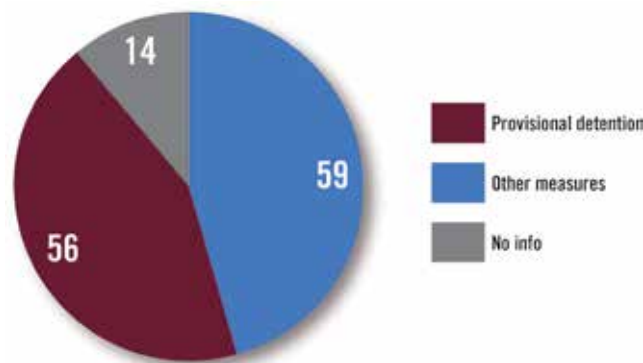
Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

The pursuit of these cases not only as crimes of abortion but also as homicides reveals the stigma attached to abortion by health care professionals, the police, and the judicial system. This, added to the profile and number of women to which the crime is applied, suggests that one of the purposes of punishment is to make an example.

In 59 cases, preventive measures other than prison were ordered during the judicial proceedings; in 56 cases, the women were placed in provisional detention, passing directly from their hospital beds to provisional detention facilities and then to prison.

FIGURE 7

Precautionary measures ordered for women prosecuted, 2000–2011



Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

In 67 cases, the women had public defenders because they could not afford private defense attorneys. However, the type of defense used does not seem to have had an effect on the court rulings: the percentages of acquittals and convictions are similar for cases managed by public defenders and cases managed by private attorneys.

The case files revealed an overall negligence among most defense counsel, who communicated very little—or failed to communicate altogether—with defendants and their families. Communication is essential for the preparation of a good defense. The review also found failures to provide exculpatory evidence and testimony or failures to challenge prosecutor evidence and testimony, in addition to failures to appeal homicide convictions.

Of the 26 cases resulting in homicide convictions, appeals were filed in only 12 cases. In seven cases, the defense did not seek any remedy in response to the ruling to convict; in one case, although the defense filed an appeal before the Supreme Court, the appeal was not granted due to technicalities, indicating the negligence of the defense.

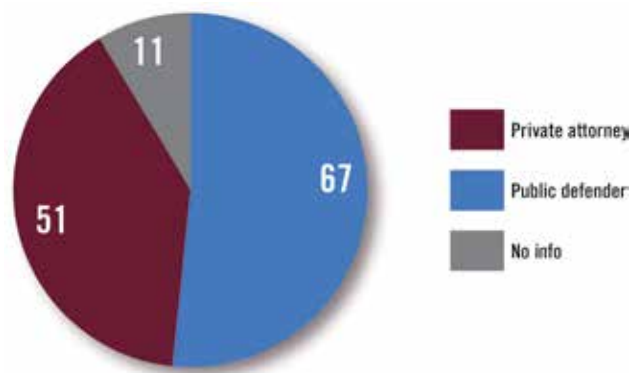
Another problem is the evaluation of evidence provided by expert witnesses. One woman was convicted even though a psychologist serving as an expert witness stated that she could not have been aware of what had happened because she was unconscious after giving birth prematurely. In two cases, the court convicted the women even though the autopsies could not determine the cause of death of the fetuses. In another case, a woman was convicted despite the autopsy having identified perinatal asphyxia as the cause of fetal death—in other words, the fetus had likely suffocated in utero or at the moment of birth, effectively ruling out the possibility of homicide.

In two cases, evaluations of the evidence to determine whether the crimes were committed left out the fact that the women had provided first aid to their newborns and sought help despite their own fragile health. In another case, the reasoning behind the ruling to convict was based on the fact that the woman had allegedly hid her pregnancy from her husband; it ignored the testimony and a sworn statement from her husband in which he denied this.

These irregularities demonstrate a selective assessment of evidence in which information that raised reasonable doubts or demonstrated the women's innocence was ignored.

FIGURE 8

Defense attorneys of women prosecuted, 2000–2011

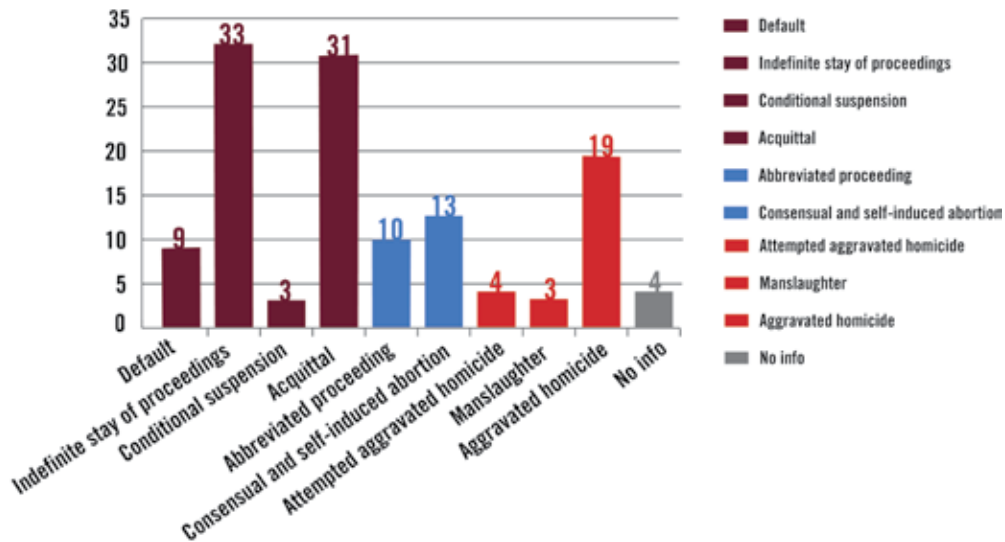


Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

Of the 129 women prosecuted, 49 were convicted—23 for consensual and self-induced abortion (including abbreviated proceedings) and 26 for different varieties of homicide. Of the women convicted for abortion, only one woman has served her prison sentence; the others were granted parole. All of the women convicted of homicide are serving sentences of 12 to 35 years.

FIGURE 9

Court rulings of women prosecuted, 2000–2011



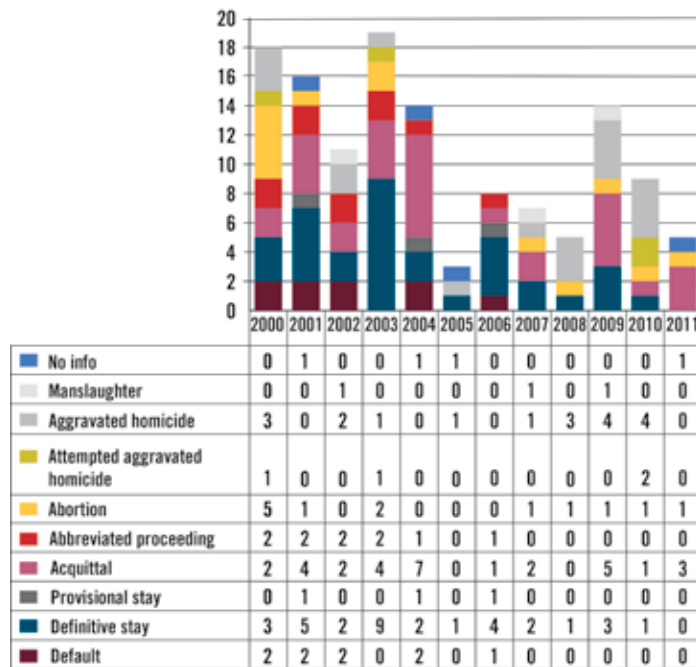
Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugenésico in El Salvador, 2011

Starting in 2005, the number of abortion-related cases dropped significantly, although the number increased again in 2009. This increase could be due to a combination of factors and changes at different levels of decision-making, as well as to the positions taken during the presidential campaign.⁸²

The new presidential administration led to changes in the structure of the Ministry of Health, public hospital leadership, and the ISSS.⁸³ In many cases, these authorities had previously maintained unwritten policies to not report women who sought medical attention for obstetric complications or induced abortions. These political and administrative changes—along with the statement issued by the El Salvador Medical Association in 2010 reminding its members that the association’s professional code of ethics considers abortion in any form to be a serious infraction and a criminal offense⁸⁴—could have influenced medical personnel’s attitudes toward women seeking help for obstetric emergencies or self-induced abortions.

FIGURE 10

Sentences by year and crime, 2000–2011

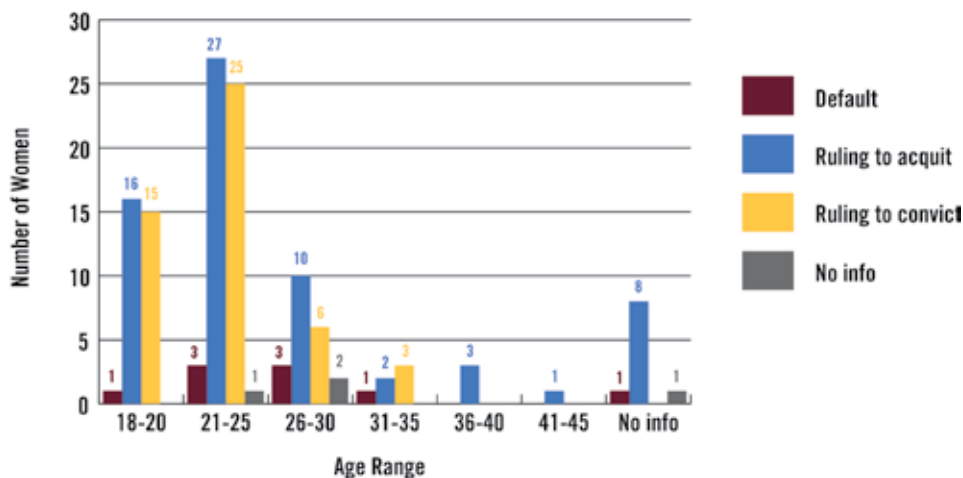


Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

The 49 women who were convicted were between 15 and 35 years of age.

FIGURE 11

Court rulings according to age of women prosecuted, 2000–2011



Source: Research from the Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico in El Salvador, 2011

c) Comments on the Data Presented

The information presented shows that the victims of El Salvador's absolute criminalization of abortion are young, lower-class women. Of the women prosecuted, 68.22% were between the ages of 18 and 25; 3.1% had some university education; 1.55% have technical training; 11.63% had a high school education; 17.83% had finished grade school; 22.48% have had fewer than nine years of education; 6.98% of the women are illiterate; 73.64% were single; 51.16% receive no income; and 31.78% have very low-paying jobs. The data indicates that the majority of women prosecuted were impoverished. They were excluded from enjoying education and access to basic health services, as well as tools that could help them change their social status. These social determinants kept them in vulnerable situations and unable to stand up to the state's punitive power.

Of the 129 complaints, 57.36% were made by health professionals assisting the women. This has two main consequences. First, it makes women afraid of the very people who should be providing them with care. Second, this violation of professional confidentiality contravenes medical ethics and the principle of beneficence. The 22.48% of complaints came from relatives and neighbors; this perpetuates an environment of social monitoring of women. Social monitoring is problematic because the majority of such complaints are generally without basis—indeed, in 49% of the cases analyzed, the complaints had no basis and their files were closed. Further, as revealed by our interviews, criminal convictions and sentences are being handed down to women who, facing dangerous obstetric emergencies, do not understand the legal risks of the situation they are in and lack the means to access private health care services that will not report them.

In 46.51% of the cases, the crime was identified as a homicide, which has serious repercussions vis-à-vis the principle of proportionality of punishment since prison sentences can be for up to 50 years. In 43.41% of the cases, provisional detention was imposed, meaning that the women had to go to prison during the proceeding. And in 51.94% of cases, the women were defended by public defense attorneys.

The 129 women who were prosecuted were in significantly vulnerable situations due to a lack of access to high-quality medical services, their low levels of education, poverty, and a lack of companionship and support. As has been noted, the number of unsafe and illegal abortions in the country is likely much higher than revealed by current statistics—but for a variety of reasons, these abortions are not reported, nor are the women who have had them prosecuted.

This analysis addresses only those women who were put through the legal system between 2000 and 2011. It does not address all of the women in the country who decided to end a pregnancy or who suffered an obstetric complication during the final months of gestation that caused a premature birth. Nor does it address adolescents who were prosecuted, since the Law for the Protection of Childhood and Adolescence prohibits the release of such data.

IV. HUMAN RIGHTS FRAMEWORK

The data presented in this report reveals the precarious nature of El Salvador's public health system and of the judicial guarantees offered to women during prosecutions brought against them. It also reveals the mistreatment of and lack of access to justice among people deprived of liberty in the country. The actions and omissions of the Salvadoran state government described in this report constitute violations of women's human rights protected under domestic, regional, and international law.

The Salvadoran state is obligated to respect, protect, and fulfill the rights to due process, life, health, physical and mental integrity, liberty, equality and nondiscrimination, and freedom from cruel, inhuman, and degrading treatment, among other rights.

a) Right to Due Process

i. International Standards

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;

. . . d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

. . . g. the right not to be compelled to be a witness against himself or to plead guilty; and

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.¹

According to the Inter-American Court of Human Rights, judicial guarantees “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.”⁸⁵ The right to judicial guarantees includes the right to a fair trial,⁸⁶ which itself includes, among other things, the right for evidence presented during the proceeding to be assessed fairly.⁸⁷ When these are not complied with, states parties have an obligation to provide effective judicial and administrative remedies for reviewing and correcting such noncompliance and to prevent the ongoing violation of the rights and freedoms protected under the American Convention on Human Rights (American Convention).⁸⁸

After an official visit to El Salvador in 2012, the U.N. Working Group on Arbitrary Detention confirmed the existence of obstacles to the effective exercise of detained persons’ right to defense, such as the absence of attorneys and public defenders at police stations and the rigorous searches to which visitors are subjected when entering and leaving detention centers.⁸⁹ These practices discourage visits from lawyers, “seriously undermin[ing] the right to a defence.”⁹⁰ The Working Group also identified an excessive workload among “the public defenders of the Counsel-General’s Office ... that seriously undermines their ability to effectively defend their clients.”⁹¹

ii. Application of Standards to El Salvador

The cases presented in this report are indications of serious violations of the right to due process, specifically the right to the presumption of innocence. In some cases, evidence was obtained illegally, such as in the case of Manuela, where the police misled Manuela’s father into filing a criminal complaint in light of his illiteracy. In other cases, such as that of Isabel Cristina, there was no guarantee regarding the quality of the autopsies, which are critical for legal proceedings. In other cases, expert witness evidence establishing the cause of fetal death was ignored. Finally, the ex officio attorneys assigned to the women’s cases were negligent in their defense by failing to appeal rulings and by not allowing the defendants to provide testimony—or to even be present at the hearings, such as in the cases of Rosmery and Verónica.

The stories reveal interrogations carried out by police officers and doctors without the presence of attorneys, while the women were in the midst of receiving medical attention, and even—in the cases of María, Rosmery, Isabel Cristina, and Manuela—while they were still experiencing the effects of anesthesia. In Isabel Cristina’s case, the court recognized that the crime allegedly committed was not proportional to her sentence, for which reason it reduced her prison sentence from thirty years to three. In Rosmery’s case, a judicial error in her conviction was acknowledged. In sum, these cases reflect violations of the right to due process as recognized under international human rights law—a right possessed by all persons who are subjected to criminal proceedings by the state.

b) Right to Life

i. International Standards

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.¹

In December 2012, the Inter-American Court ruled in the case of *Artavia Murillo v. Costa Rica*⁹² on the scope of article 4(1) of the American Convention. In its ruling, the Court clarified that the embryo cannot be understood as a person for the purposes of that article. It determined that protection of the right to life begins only once the embryo is implanted in the uterus, and that as of that moment the protection shall not be absolute, but general, gradual, and incremental according to the embryo's development. This means that the protection of other rights involved—such as, for example, women's right to life—must be taken into account. Additionally, the Court recognized that the decision whether to become a parent forms part of the right to private life, and that personal autonomy, reproductive freedom, and physical and psychological integrity are interconnected. Although this particular case addressed Costa Rica's ban on in vitro fertilization, the scope of the article as established by the Inter-American Court also has an impact on the regulation of abortion in countries that have ratified the American Convention. The Court's ruling is a clear affirmation and recognition of women as rights holders whose privacy and autonomy, among other rights, must be respected. Thus, in accordance with this precedent, legislation in Latin America that bans abortion goes against this interpretation of article 4(1) because it seeks to protect the legal status of potential life absolutely, failing to recognize women's rights to life, health, privacy, and autonomy.

The Court's ruling is consistent with interpretations of U.N. treaty monitoring bodies, which criticize total abortion bans, as violations of women's right to life.⁹³

ii. Application of Standards to El Salvador

The total criminalization of abortion constitutes a violation of El Salvador's international obligation to protect and respect women's right to life. Constitutional and criminal provisions that ban or criminalize abortion under all circumstances, with no exceptions, violate women's rights to life, because they grant an absolute right in the interest of potential life. Such bans mean that even when the pregnancy threatens a woman's life, she must carry it to term.⁹⁴

The U.N. Human Rights Committee (HRC) interprets maternal mortality and other issues related to women's sexual and reproductive rights—including unsafe abortion—to be issues that form part of the right to life of persons.⁹⁵ It has also stated that "... to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care."⁹⁶ For its part, the CEDAW Committee has established that total abortion bans, because of their consequences for women's lives, constitute a violation of the rights to health and life.⁹⁷

The violation of women’s right to health while in state custody constitutes a threat to the right to life. Overcrowding jails and the denial of access to medication and to food that relatives bring in while the women are recovering—as was the case for María, Isabel Cristina, Rosmery, Verónica, and Manuela—seriously compromise women’s health and threaten their right to life. Similarly, forcing women to perform exercises in jail while in poor health, as was the case for María, also constitutes a violation. For all five women, necessary medical treatment was denied while they were in the jail—and in Manuela’s case, the denial of such care both while she was both free, and when she had been deprived of liberty and was under state custody, led directly to her premature death.

c) Right to Health

i. International Standards

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

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.¹

Convention on the Elimination of All Forms of Discrimination against Women

Article 12(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.²

The right to health is not limited to the right to receive medical attention. It also encompasses a series of freedoms, such as freedom from interference in matters related to one’s health, the freedom to control one’s health and body, and the right to be free from torture, among other guarantees.⁹⁸

The Committee on Economic, Social and Cultural Rights (ESCR Committee), the U.N. committee that supervises the enforcement of the International Covenant on Economic, Social and Cultural Rights, establishes in its General Comment 14 that the right to health “imposes three types or levels of obligations on state parties: the obligations to respect, protect and fulfill.”⁹⁹ At the same time, the right includes a series of freedoms, such as the right to have control over one’s health and body, including with regard to sexual and reproductive freedom.¹⁰⁰ The state has an obligation to respect this freedom.

The ESCR Committee has also stated 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.”¹⁰¹ The World Health Organization (WHO) has established that “restricting legal access to abortion does not decrease the need for abortion. Rather, it likely increases the number of women seeking illegal and unsafe abortions, leading to higher rates of morbidity and mortality.”¹⁰² For its part, the CEDAW Committee has stated that “it is the duty of States parties to ensure women’s right to safe motherhood and emergency obstetric

services and they should allocate to these services the maximum extent of available resources,”¹⁰³ including treatment of complications resulting from unsafe abortions.¹⁰⁴

U.N. treaty monitoring bodies have identified restrictive abortion laws as a key factor in the prevalence of unsafe abortion and high maternal mortality rates.¹⁰⁵ The CEDAW Committee, for example, has repeatedly expressed its concern over the criminalization and total prohibition of abortion and has emphasized state’s obligations to amend restrictive legislation and provide abortion services in cases where it is legal, as well as to provide post-abortion care, which is always legal regardless of the legality of abortion.¹⁰⁶

ii. Application of Standards to El Salvador

The total criminalization of abortion constitutes a violation of women’s right to health when the continuation of a pregnancy presents a risk to the woman’s health. Likewise, discrimination and barriers to accessing reproductive health care constitute a violation of women’s right to health, since these services—abortion in particular—are required only by women.

The four essential and interrelated elements of the right to health, as established by the ESCR Committee, are the availability, accessibility, acceptability, and quality of health facilities, goods, and services.¹⁰⁷ In analyzing each of these elements in the Salvadoran context, it becomes evident that women’s right to health is compromised by the limited availability and poor accessibility of health care centers, particularly for women living in rural areas, for whom it is difficult to travel to the closest medical center once an obstetric emergency has occurred. This constitutes discrimination in access to health care services. Such discrimination can be seen in the case of Manuela, where Carmen and Juan had no choice but to pay a neighbor to transport their daughter to the health center. Furthermore, once women are able to access health care centers, they suffer discrimination—they are treated like criminals and are subjected to mistreatment while being provided care.

The availability of services is also violated in cases where criminal law restrictions prohibit abortions from being administered to preserve a woman’s health or life. The Ministry of Health’s 2012 Sexual and Reproductive Health Policy makes no mention of post abortion care, nor does it provide clear directives regarding abortion.¹⁰⁸

Acceptability means that health services and facilities must respect standards of medical ethics.¹⁰⁹ This standard is being ignored in El Salvador, where female patients are often reported to authorities by medical staff—as Manuela, Rosmery, and María each experienced.

In the stories presented herein, the women were denied necessary medical treatment while in jail and were denied access to medications that had been prescribed to them after their curettage treatments. In some cases, such as that of Isabel Cristina, the women were exposed to the elements and forced into overcrowded cells while still hemorrhaging and in the process of recovery.

The ESCR Committee has highlighted the inclusive nature of the right to health. This right encompasses not only health care but also the “underlying determinants of health, such as access to ... health-related education and information, including on sexual and

reproductive health.”¹¹⁰ Access to formal education was something that the five women presented in this report did not have. Rosmery had not finished grade school at the time of her prosecution—only in prison was she able to continue her education and similarly, Isabel Cristina completed high school while in prison. Access to comprehensive sexuality education and information on sexual and reproductive health is limited in El Salvador, particularly for low-income women who live in rural areas. The stories told here provide evidence of this: María became pregnant when she was 18; Isabel Cristina became pregnant with a second child at the age of 18; Rosmery had already had three children when she became pregnant for a fourth time at the age of 22; and Verónica became pregnant for the first time at the age of 16 and then again at 22.

The stories collected in this report—which demonstrate not only serious problems with medical care but also a systematic lack of access to sexual and reproductive health services—reveal violations of the right to health.

d) Right to Physical and Mental Integrity and Right to Freedom from Cruel, Inhuman, and Degrading Treatment

i. International Standards

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.¹

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.²

International law establishes state’s obligations to avoid committing acts of torture or cruel, inhuman, or degrading treatment (CIDT), as well as to prevent such treatment, punish it, and provide reparations for it. According to article 2 of 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.”¹¹¹ With regard to CIDT, evidence of great pain and suffering is needed,¹¹² both the U.N. Committee against Torture and the U.N. Special Rapporteur on Torture have indicated that CIDT can have taken place whether or not for a specific purpose.¹¹³

In its General Comment 20, the HRC states that “article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”¹¹⁴ In addition, the Committee against Torture has established that the state obligation to prevent, punish, and provide reparations for torture and CIDT extends to “all contexts of custody or control, for example, in prisons, hospitals, schools ... and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”¹¹⁵

In its decision in *Ximenes-Lopes v. Brazil*,¹¹⁶ the Inter-American Court of Human Rights made reference to torture and CIDT in the context of health, establishing states' "obligation to prevent third parties from unduly interfering in the enjoyment of the rights to life and personal integrity, which are particularly vulnerable when a person is receiving medical treatment."¹¹⁷

ii. Application of Standards to El Salvador

El Salvador's total criminalization of abortion violates women's internationally established right to be free from cruel, inhuman, and degrading treatment. Forcing a woman to carry to term a pregnancy that endangers her life qualifies as cruel, inhuman, and degrading treatment. The HRC issued a ruling in the case of K.L., a 17-year-old Peruvian woman who, because state officials refused to allow her to have a legal abortion, was forced to carry to term a pregnancy in which the fetus had been diagnosed with anencephaly, a deformity that does not allow the fetus to survive outside the womb. The HRC concluded, among other things, that forcing K.L. to carry a pregnancy to term where the fetus had a deformity that would not allow it to live violated article 7 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits torture and CIDT.¹¹⁸

El Salvador's high rates of sexual assault and its total criminalization of abortion mean that many women are forced to carry to term pregnancies that are the result of rape. This law violates the right to freedom from CIDT. In a similar case against Argentina, the HRC found in March 2011 that the state's failure to guarantee access to legal abortion for a woman with a disability who was pregnant as a result of rape had caused the victim physical and emotional suffering in violation of article 7 of the ICCPR.¹¹⁹

The Committee against Torture has recognized that women are at greater risk of being subjected to torture when deprived of liberty, when receiving medical treatment, or when in situations concerning reproduction.¹²⁰ The practice of handcuffing patients to hospital beds while they are still receiving medical treatment, as well as verbal mistreatment from health care personnel that alludes to an alleged abortion (as was the case in the five stories presented herein), causes physical and emotional suffering that could be classified as CIDT. The HRC,¹²¹ the CAT Committee against Torture,¹²² the Special Rapporteur on Torture,¹²³ and the Special Rapporteur on Violence against Women¹²⁴ have expressed concern over the violation of international standards arising from the practice of handcuffing women before, during, or immediately after giving birth. Similarly, the practice of forcing women who are in poor health to perform exercise while in jail, as was the case for María, also constitutes a violation.

Both Manuela and Verónica were handcuffed while receiving care in the hospital. All five women were mistreated and threatened by medical personnel, surveilled by police officers while in the hospital, and forced to live in overcrowded jail cells. Not only was Isabel Cristina forced to undress in public while she was in prison, but she was also raped by prison guards. These women's stories indicate that the treatment to which they were subjected constitutes CIDT.

e) Right to Equality and Nondiscrimination

i. International Standards

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 race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.¹

Convention on the Elimination of All Forms of Discrimination against Women

Article 1: [T]he 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.²

Article 5: [States Parties shall take all appropriate measures to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³

As established by the HRC, “[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”¹²⁵ Further, the Convention on the Elimination of All Forms of Discrimination against Women specifically establishes the obligation of states parties to take all measures necessary to eliminate discrimination against women in the area of health care (art. 12(1)).

One of the essential elements of the right to health is accessibility and nondiscrimination, which means that “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.”¹²⁶ States must “eliminate discrimination against women in their access to health care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post-natal period.”¹²⁷

The ESCR Committee has established that a state’s actions, policies, or laws that “contravene the standards set out in article 12” of the ICESCR and “that are likely to result in bodily harm, unnecessary morbidity and preventable mortality”,¹²⁸ constitute a violation of the right to health.

In addition, the Convention of Belém do Pará¹²⁹ states that women’s right to a life free from violence includes the right “to be valued and educated free of stereotyped of patterns of behavior” (art. 6(b)) and establishes states’ obligation to take specific measures to combat prejudices, customs, and practices based on stereotyped roles that “legitimize or exacerbate violence against women” (art. 8(b)).

Avoiding treatment based on gender stereotypes is an essential component of this right. “Gender stereotypes make reference to constructs or understandings of men and women that are based on the differences between their physical, biological, sexual and social functions.”¹³⁰ Frequently, “[s]tereotypes degrade women, assign them servile roles in society and devalue their attributes or characteristics. Prejudices regarding the inferiority of women and their stereotypical roles result in a lack of respect for them, in addition to devaluing them at all levels of society.”¹³¹

II. Application of Standards to El Salvador

The CEDAW Committee has explicitly recognized that barriers faced by women in accessing medical care constitute discrimination. This is especially so when a country has laws that “criminalize medical procedures only needed by women and punish women who undergo those procedures.”¹³² Thus, El Salvador’s complete criminalization of abortion violates women’s right to nondiscrimination by denying women access to essential services on which their lives or health may depend and that are required only by women. The total criminalization of abortion is not only discriminatory in and of itself but also leads to new situations of discrimination in state institutions, including in the health care, law enforcement, and the judicial systems.

Women in El Salvador who are prosecuted for abortion-related crimes suffer discrimination when they are denied access to or hindered from accessing quality medical services; they also face discrimination when they are treated differently while in custody due to social stigma in connection with the crime for which they are accused.

In light of the stories and cases presented in this report, it is evident that women who are in state custody face discrimination with regard to access to health care. María, Rosmary, Isabel Cristina, Verónica, and Manuela suffered discrimination from medical personnel, who made comments that stigmatized them and interrogated the women while they were under the effects of anesthesia, and threatened them while they were completely defenseless. The ESCR Committee has clearly identified states’ obligation to respect the right to health, “in particular ... by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees ... to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.”¹³³

Moreover, all five women were discriminated against by police personnel, who threatened them, intimidated them based on the crime for which they were being tried, prevented them from receiving food and medication, and even forced them to perform exercise while they were still in delicate health. In the court system, discrimination manifested itself through the violation of the right to due process, particularly the right to the presumption of innocence. The stories and cases presented herein reveal that the women were convicted in the absence of sufficient evidence to support their convictions, while evidence raising reasonable doubts or proving their innocence was ignored. The disproportionate sentences handed down also illustrate the discriminatory treatment by the judicial system, which, as has been suggested, uses punishment to make an example of women.

The actions described above constitute a form of gender violence and discrimination that violates the obligations and rights recognized in the Convention of Belém do Pará. These violations take place when health care staff or officials from courts and detention centers base their behavior on gender stereotypes that view women's primary role as mothers.

Treatment based on stereotypes in which a woman's only role is that of mother is evidenced in the cases of Isabel Cristina and Manuela, in which protection of the fetus was given priority over the health and life of the pregnant woman. In Manuela's case, she was branded as "easy" for having conceived a child out of wedlock. In Isabel Cristina's case, authorities determined that she had failed in her duty to take care of her child, even though doing so had been impossible due to her unconscious state. From the moment they entered the hospital, all five women were considered, by health care personnel and police officers, to be guilty of the crime of abortion. In the eyes of these individuals, the women deserved not only legal punishment but moral punishment for their supposed transgressions. These attitudes demonstrate some of the stereotypes underlying the judgments and actions of public authorities and health care personnel who interact with women facing obstetric emergencies and abortion in El Salvador. In its ruling in the case of *Artavia Murillo v. Costa Rica*, the Inter-American Court explicitly addressed such stereotypes, finding that they "are not compatible with international human rights law, and measures must be taken to eradicate them."¹³⁴

f) Right to Privacy

I. International Standards

American Convention on Human Rights

Article 11: No one may be the object of arbitrary or abusive interference with his private life, his family, [or] his home ... Everyone has the right to the protection of the law against such interference or attacks.¹

The protection of the right to privacy is particularly relevant for the right to health. The ESCR Committee has established this as a key component of the right to health.¹³⁵ In addition, the CEDAW Committee has stated, in its General Comment 24, that in order for health care services to be considered acceptable, they must guarantee women's dignity and their right to privacy.¹³⁶

The IACHR has clearly stated that professional confidentiality in the health care sector constitutes "a critical necessity for sexual and reproductive health,"¹³⁷ since the violation of a patient's confidentiality has a chilling effect on people's desire to seek medical care. At the same time, the CEDAW Committee has identified a number of scenarios in which women are less likely to seek medical care due to fear of violations of confidentiality, including "medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence."¹³⁸

In the case of *De la Cruz Flores v. Peru*, the Inter-American Court ruled on the professional confidentiality of doctors. María Teresa de la Cruz Flores was convicted by the state of Peru for the crime of terrorism because she had provided medical attention to alleged terrorists and their family members without having brought this to authorities' attention. The Court found that "physicians have a right and an obligation to protect the confidentiality of the information to which, as physicians, they have access."¹³⁹ The Peruvian state thus violated the principle of legality by "penalizing a medical activity, which is not only an essential lawful act, but which is also the physician's obligation to provide; and for imposing on physicians the obligation to report the possible criminal behavior of their patients, based on information obtained in the exercise of their profession."¹⁴⁰

ii. Application of Standards to El Salvador

El Salvador's law total criminalizing abortion and related provisions requiring physicians to report women for abortions violate the right to privacy. Such provisions effectively turn health care personnel into part of the state's law-enforcement apparatus. The requirement to report patients not only compromises women's health but also violates medical ethics.

The right to privacy includes the right to have one's medical history and information kept confidential. The CEDAW Committee has established that states must "[r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice."¹⁴¹ In addition, the IACHR has recommended that states revise "criminal law provisions that force health professionals to violate confidentiality and professional secrecy in accordance with international standards in this area."¹⁴² This is a particularly relevant recommendation given the provisions of the Salvadoran Penal Code that have been interpreted by medical personnel as obligating them to report patients experiencing obstetric emergencies. Such an interpretation ignores provisions of El Salvador's Health Code¹⁴³ and the provision on professional confidentiality in the Penal Code.¹⁴⁴

The stories presented in this report provide evidence of the violations of professional confidentiality. Information about women's legal and medical proceedings was revealed to third parties who should not have had access to such information—the police for example, in the cases of María and Rosmery, inappropriately revealed information. In all five cases, such information was revealed to other inmates and prison employees. Evidence of this type of violation is also seen in the data from the 129 case studies: in 57.36% of these cases, the accusations originated from health care personnel.

g) Rights of Persons Deprived of Liberty

I. International Standards

American Convention on Human Rights

Article 5(2): All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.¹

People deprived of liberty make up an especially vulnerable population that is in the exclusive custody of the state. For this reason, special care must be taken in their treatment. The Inter-American Court has established that states have an obligation to provide adequate medical treatment to people deprived of liberty; in such cases, the state is the direct guarantor of these individuals' rights since they are under state custody.¹⁴⁵ This care includes regular medical attention and adequate attention to and treatment of health problems experienced by prisoners or detainees. When the state fails to meet its obligation to provide adequate medical treatment for people deprived of liberty, it also fails in its duty to treat them with dignity.¹⁴⁶

In 2012, the U.N. Working Group on Arbitrary Detention made an official visit to El Salvador at the invitation of the Salvadoran government.¹⁴⁷ The delegation visited prisons in, among other places, San Miguel and Ilopango,¹⁴⁸ where women were being held for abortion-related crimes.

The Working Group found that the prisons and jails were seriously overcrowded¹⁴⁹ and that the country's criminal detention system was overwhelmed.¹⁵⁰ According to its report, "[t]his overcrowding means that conditions of detention amount to inhuman and degrading treatment. The situation of women detainees in police jails is particularly worrying since they have practically no access to personal hygiene items."¹⁵¹ The Working Group also found that "not only [inmates'] relatives, but also attorneys and public defenders are subjected to humiliating searches."¹⁵² As it concluded, "[t] his practice has seriously discouraged lawyers from visiting their clients and has adversely affected the rights of detainees to effective legal assistance."¹⁵³

II. Application of Standards to El Salvador

The situation facing persons deprived of liberty in El Salvador violates their rights to dignity, health, and physical and mental integrity. As the Working Group on Arbitrary Detention observed, Salvadoran prisons have "serious problems regarding bathroom facilities, access to drinking water, waste disposal, electricity, heating and ventilation. Lawyers and relatives are subjected to rigorous checks and searches by members of the Armed Forces, which control access to the prisons. Relatives are kept at a distance from prisoners, and contact, even during visits, is often only visual."¹⁵⁴ Overcrowding and infrastructure problems seriously affect prisoners' health and quality of life. This is reflected in the stories collected in this report, which reveal extreme cases such as women who are still recovering from being forced to sleep on wet floors.

According to the Special Rapporteur on Violence against Women, the Women's Readaptation Center in Ilopango has a capacity of 220 inmates and 25 to 30 children, yet it houses 1,344 inmates.¹⁵⁵ The Special Rapporteur has expressed particular concern over the security procedures to which inmates and visitors are subjected, including anal and vaginal searches carried out by unqualified personnel who disregard basic standards of hygiene and dignity.¹⁵⁶

Lack of access to medication for ongoing treatment and to regular medical care—as exhibited in all five stories—María, Isabel Cristina, Rosmary, Veronica and Manuela—is another situation that violates women's rights, especially considering that, in several cases, the women were deprived of liberty immediately after leaving the hospital and

while they were still recovering, or even hemorrhaging. In addition the women and their relatives alike were subjected to vaginal and anal inspections, often without regard for hygienic precautions, such as the use of new disposable gloves for each inspection.

Moreover, in light of the strong social stigma around abortion in El Salvador, women held for abortion-related crimes generally receive worse treatment from guards and other inmates, who subject them to insults and beatings.

h) Right to Freedom from Violence

I. International Standards

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

Article 1: [Violence against women includes] any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.¹

Article 3: Every woman has the right to be free from violence in both the public and private spheres.²

As established by the Convention of Belém do Pará, women's right to be free from violence encompasses violence "that is perpetrated or condoned by the state or its agents regardless of where it occurs."¹⁵⁷ It includes the right to be free from all forms of discrimination (art. 6(a) and "to be valued and educated free of stereotypical patterns of behavior and social and cultural practices based on concepts of inferiority or subordination" (art. 6(b)).

The CEDAW Committee has stated that "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."¹⁵⁸ The Committee has also affirmed that violence against women endangers the health and lives of women.¹⁵⁹ Further, the U.N. General Assembly has established that "[v]iolence against women is rooted in historically unequal power relations between men and women. All forms of violence against women seriously violate and impair or nullify the enjoyment by women of all human rights and fundamental freedoms and have serious immediate and long term implications for health, including sexual and reproductive health ..."¹⁶⁰

II. Application of Standards to El Salvador

Not only is El Salvador failing in its obligation to take measures to protect women from violence, but its total criminalization of abortion is also having the effect of forcing medical professionals who assist women to file criminal complaints against them. This exposes women to an even greater degree of violence.

Handcuffing women suspected of having abortions to their hospital beds, as was the case with Manuela and Verónica, constitutes a form of violence against women.¹⁶¹ In

addition, the invasive and unhygienic bodily searches to which the women and their relatives were subjected at prison facilities constitute a form of violence against women that is perpetrated and tolerated by the state.¹⁶² The same can be said of the violence and mistreatment that women accused or convicted of abortion-related crimes suffer in prison at the hands of guards and other inmates. Cases of rape that take place in prison facilities also constitute a form of violence.¹⁶³ Finally, the lack of access to adequate medical services in penitentiary facilities has been interpreted as a form of violence against women.¹⁶⁴

V. CONCLUSION

The situation in El Salvador is a clear manifestation of how the criminalization of abortion violates the state's international obligations to respect, protect, and fulfill human rights. The country's criminalization of abortion violates women's rights to life, health, and autonomy. Moreover, the application of this law results in violations of their rights to due process, privacy, and freedom from violence and CIDT.

This report reveals how El Salvador's total criminalization of abortion stigmatizes women and results in human rights violations in three areas—the health care, judicial, and prison sector—with grave consequences such as unjustified prison sentences of up to 35 years. It also shows how criminalization has disproportionately affected women who are in vulnerable situations due to poverty, a lack of access to education, or being young.

In addition, the report demonstrates how health professionals who attend to women experiencing complications as a result of unsafe abortions or obstetric emergencies are reporting their patients to the police.¹⁶⁵ As the WHO has found, these criminal complaints are problematic not only because they violate professional confidentiality standards but also because they have direct repercussions for women: “the fear that confidentiality will not be maintained deters many women—particularly adolescents and unmarried women—from seeking health care services ...”¹⁶⁶ In this regard, the HRC recommended in 2012 that El Salvador “take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion.”¹⁶⁷

The stories reveal situations of women who are accessing essential health care services being stigmatized and discriminated against by health care personnel. The consequence of such mistreatment and discrimination, along with the fear of being reported, is that women are afraid to seek health care services for obstetric emergencies or post-abortion care. This situation violates women's rights to health and life, as well as their rights to equality and freedom from violence.

Abortion has ceased to be considered a clinical procedure by doctors and nursing associations,¹⁶⁸ in line with the technical guidance from the WHO.¹⁶⁹ In the media and among the public, abortion in any scenario has been stigmatized in El Salvador. This has meant that not even women with ectopic pregnancies receive adequate medical care. In response to this assault, local women and human rights organizations feel threatened, and the voices defending women's right to choose are few and far between.¹⁷⁰

The cases presented herein reveal baseless criminal prosecutions, as well as both serious violations of the right to due process, particularly concerning the presumption of innocence and the right to effective defense counsel. At the same time, violations

of the right to be free from torture and CIDT can be witnessed in the abuses and the conditions to which women are subjected in prisons, along with the denial of adequate health care services while imprisoned. The enforcement of this law in El Salvador has led the state to implement a policy of criminalization that begins in hospitals and health care centers, where any woman who appears in an emergency room and is hemorrhaging is presumed to be guilty of abortion. The Special Rapporteur on Violence against Women stated in a 2011 report that this situation is becoming all too common and that the Salvadoran state's government's zeal in applying in criminal sentences in such cases were leading to many women being convicted and sentenced to 35 years in prison—and that their charges are not being proven with the necessary procedural guarantees.¹⁷¹

Having served time in prison also gives rise to stigmatizing situations. Women imprisoned for abortion-related crimes often must endure subsequent job discrimination based on their criminal records and live with the emotional suffering caused by the way the media handles their cases.

The lack of reliable national statistics on unsafe abortion and access to reproductive health—in part as a result of the fact that abortion has been illegal since the late 1990s and in part due to the stigma around the procedure—means that the impact of criminalization on the health and life of women is difficult to measure. A number of questions must first be answered in order to be able to move forward in the protection of women's reproductive rights: How many women are not receiving adequate medical attention for illnesses due to their pregnancies? How many women commit suicide because of unwanted pregnancies (for example, pregnancies resulting from rape)? How many are being forced to carry to term pregnancies in which the fetus is incapable of surviving outside the womb? How many women are seeking post-abortion care from the public health care system?

According to a 2011 report from Anand Grover, the U.N. Special Rapporteur on the Right to Health, a state's determination of what conduct to punish and how to prioritize its prosecution is the highest expression of a state's power; the authority to punish behavior that is considered wrong or harmful to other individuals or society.¹⁷² Nevertheless, a state's power to use punishment as a form of regulating behavior is limited by the interests of human dignity and the effective enjoyment of human rights. El Salvador's total criminalization of abortion is one example of where this line has been crossed. It is also an expression and clear indicator of the place that the Salvadoran state reserves for women. Although women form a group deserving of special constitutional protection in light of a history of discrimination, the state is ignoring its obligation to guarantee their fundamental rights and to control their own lives and health.

These policies—which fail to provide for the protection of women's health and lives—are based on stereotyped views of women's traditional roles. As captured in this report, a direct consequence of such policies is the stigmatization of women, especially the most vulnerable ones, exposing them to situations in which their fundamental rights are violated. Respect for women's human rights in El Salvador can wait no longer. Their right to dignity requires immediate action.

VI. RECOMMENDATIONS

To the Legislative Assembly

Modify criminal legislation to introduce exceptions to the criminalization of abortion in cases where the woman's life or physical or mental health is at risk, where the pregnancy is the result of rape, and where the fetus is incapable of surviving outside the womb.

To the President of the Republic

Promote national dialogue on how to stop the systemic violation of women's rights as it relates to the criminalization of abortion.

Together with other branches of government, take measures to ensure compliance with international recommendations that have been made to El Salvador regarding women's sexual and reproductive rights.

Oversee and ensure the publication and circulation of periodic reports regarding the state's compliance with sexual and reproductive rights.

Promote the formation of a special commission to analyze the cases of women unjustly convicted and deprived of liberty due to obstetric complications, offering guarantees of legal certainty in the treatment of such cases.

Promote the ratification of the Optional Protocol to CEDAW.

To ISDEMU

Carry out studies to investigate the implications of El Salvador's criminalization of abortion from a human rights perspective.

To the Institute for Access to Public Information

Promote and guarantee access to information on issues relating to sexual and reproductive health and rights.

To the National Civil Police

Launch programs to sensitize and train police personnel on the effective guarantee of human rights, particularly sexual and reproductive rights. The trainings should also seek to overcome gender stereotypes and eradicate the psychological violence to which women accused of abortion-related crimes and their families are subjected.

To the Ministry of Education

Provide comprehensive sexuality education in all public schools and in informal educational programs that is free from religious affiliation and prejudice, scientifically rigorous, and age appropriate.

With regard to the termination of pregnancy, encourage instruction in law and medical schools to be approached scientifically and from a human rights perspective, thereby allowing graduates to exercise their professions in an informed and unprejudiced manner.

To the Ministry of Health

Revise the methodology for identifying cases of maternal deaths so that it includes the collection of information related to non-institutional maternal mortality; improve the classification of causes, including social causes, that contribute to maternal mortality in order to establish the phenomenon's true magnitude. Develop indicators that allow for the establishment of the number of deaths indirectly related to abortion, such as the number of women who are denied necessary treatment because they are pregnant.

Ensure that all public health facilities provide contraceptive information and services that are accessible, available, acceptable, and of high quality and that are provided without coercion, discrimination, or violence.

Establish protocols for the provision of humane health care to women—including post abortion and maternal health care services—that is high quality, friendly, nondiscriminatory, and confidential.

Update and apply health care protocols concerning cases of sexual violence so that they ensure the provision of antiretroviral drugs and emergency contraception.

To the Ministry of Foreign Relations

As a follow-up to recommendations from international human rights bodies regarding sexual and reproductive rights (including abortion), produce periodic reports on this topic for public distribution.

To the Supreme Court of Justice

Provide guidelines and trainings in order to ensure that judicial officials guarantee the right to due process, avoid prejudices and gender stereotypes, and respect procedural guarantees without exception in cases of women prosecuted for abortion-related crimes.

Impose sanctions in cases in which Supreme Court officials, including personnel of the Institute of Legal Medicine, fail to comply with their duties.

To the National Judicial Council

Develop training programs for public officials—including judges, prosecutors, and public defenders—on human rights and sexual and reproductive rights.

To the Institute of Legal Medicine

Provide ongoing technical and scientific training for legal medicine functionaries in order for examinations, reports, and expert opinions in abortion-related trials to be objective, trustworthy, and in line with clinical and scientific standards.

To the Inspector for the Defense of Human Rights

Prioritize the investigation of cases of human rights violations of women prosecuted for abortion-related crimes, providing effective assistance to victims, promoting legal and administrative remedies, and supervising the government's response to victims.

Promote policies to protect the human rights of women prosecuted for abortion-related crimes, as well as those of women deprived of liberty.

Prepare special reports on the situation of women prosecuted for abortion-related crimes and the human rights violations in such cases.

To the Inspector General's Office	Train public defenders in human rights and sexual and reproductive rights so that they will guarantee respect for the right to due process of women prosecuted for abortion-related crimes. Place special emphasis on due diligence and the accessibility of all available remedies.
To the Public Prosecutor's Office	Train personnel in human rights and sexual and reproductive rights with the aim of guaranteeing strict compliance with the right to due process. Place special emphasis on the need to act according to objective standards rather than gender stereotypes and prejudices, and to respect the presumption of innocence in cases of abortion-related crimes.
To the International Donor Community	Ensure that initiatives to reduce poverty and improve public health contain a focus on strengthening sexual and reproductive health policies and services from a human rights perspective.
To United Nations Agencies	<p>Help produce indicators and collect and analyze data that provides a picture of the level of women's access to health care services.</p> <p>Support civil society activities that seek to ensure that public policies respect women's reproductive rights.</p> <p>Support initiatives that provide information to women on reproductive health from a human rights perspective.</p>
To Salvadoran Medical Associations	<p>Change the Code of Ethics of the Medical Association to bring it in line with the 2012 <i>Recommendations on Ethical Issues in Obstetrics and Gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health</i>. These recommendations establish the following:</p> <ul style="list-style-type: none"> - The duty to respect and protect patients' rights to privacy and the confidentiality of their clinical information at all times. - Physicians' duty to treat women without stereotypes or preconceptions, especially with respect to stereotypes that cast women as individuals whose only personal and social purpose is maternity or cast them as lacking the capacity for moral judgment. - The duty of medical associations and their members to promote policies that guarantee the human rights and the sexual and reproductive rights of women by lobbying for the broadest legal access possible to abortion services.

To Civil Society

Hold the state and its representatives responsible for the failure to provide adequate protection for the rights of women, including their sexual and reproductive rights and their right to due process.

Propose and monitor the development of laws and policies on sexual and reproductive health, including on the voluntary termination of pregnancy in cases where the life or physical or mental health of the woman is compromised, where the pregnancy is the result of rape or sex with a minor, and where the fetus is incapable of surviving outside the womb.

Build alliances with international and regional organizations that monitor compliance with international human rights commitments in order to keep them informed of ongoing human rights violations in El Salvador.

Support training and awareness-raising efforts in El Salvador.

GLOSSARY AND COMMON ACRONYMS

Agrupación Ciudadana: Agrupación Ciudadana para la Despenalización del Aborto Terapéutico, Ético y Eugénico (Citizen's Association for the Decriminalization of Therapeutic, Ethical, and Eugenic Abortion): A multidisciplinary organization that seeks to raise public awareness in order to change Salvadoran abortion legislation; provide legal defense for women convicted or accused of abortion-related crimes in El Salvador; and guarantee women's right to receive services that ensure their sexual and reproductive health, thereby preventing unsafe abortions.

American Convention: American Convention on Human Rights: International convention that promotes and protects human rights in the Americas.

CEDAW: Convention on the Elimination of All Forms of Discrimination against women: international treaty that outlines the state's specific obligations to eliminate discrimination against Women.

CEDAW Committee: Committee on the Elimination of Discrimination against Women: U.N. body responsible for monitoring states parties' compliance with CEDAW.

The Center: Center for Reproductive Rights: A nonprofit, legal advocacy organization that promotes and defends the reproductive rights of women worldwide.

CAT Committee: Committee against Torture: U.N. body responsible for monitoring states parties' compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: International treaty aimed at preventing torture.

Convention of Belém do Pará: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women: International treaty codifying states' duties to prevent, punish, and eliminate violence against women in the Americas.

ESCR Committee: Committee on Economic, Social and Cultural Rights: U.N. body responsible for monitoring states parties' compliance with the International Covenant on Economic, Social and Cultural Rights.

FIGO: International Federation of Gynecology and Obstetrics: An international nonprofit organization for obstetricians and gynecologists that aims to promote the well-being of women and improve standards for the practice of gynecology and obstetrics.

HRC: Human Rights Committee: U.N. body responsible for monitoring states parties' compliance with the ICCPR.

IACHR: Inter-American Commission on Human Rights: Body of the Organization of American States charged with promoting and protecting human rights on the American continent; receives and processes complaints on human rights violations and supervises the human rights situations in member states and the region.

ICCPR: International Covenant on Civil and Political Rights: international treaty protecting individuals' civil and political human rights.

ICESCR: The International Covenant on Economic, Social and Cultural Rights: international treaty that protects economic, social and cultural human rights around the world.

Inter-American Court: Inter-American Court of Human Rights: Jurisdictional body of the Organization of American States charged with promoting and protecting human rights on the American continent; receives and processes complaints on human rights violations and supervises the human rights situation in member states and the region.

International Conference on Population and Development: U.N. conference held in Cairo in 1994, where world leaders, high-ranking officials, civil society representatives, and U.N. agencies gathered to agree on an action program to address issues related to population and development.

ISDEMU: Instituto Salvadoreño para el Desarrollo de la Mujer (Salvadoran Institute for the Development of Women): Salvadoran government branch responsible for drafting, directing, executing, and supervising compliance with national policies on women.

NGO: Non-governmental organization.

San Salvador Protocol: The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: protocol that promotes and protects economic, social, and cultural human rights in the American region.

Special Rapporteur: An independent expert appointed by the U.N. Human Rights Council to investigate, monitor, and recommend solutions to human rights problems.

Treaty monitoring bodies: U.N. committees responsible for monitoring states parties' fulfillment of their obligations under the major U.N. human rights treaties.

U.N.: United Nations.

UNFPA: United Nations Population fund: United Nations agency dedicated to financing and supporting reproductive health programs in developing countries.

WHO: World Health Organization: U.N. agency dedicated to researching and promoting public health worldwide.

ENDNOTES

- ¹ The text of article 312 of the Salvadoran Penal Code, which classifies the failure to report an abortion as a criminal offense, together with the absolute criminalization of abortion and the protection of life and recognition of the human person from conception, creates the context that leads doctors to report women in order to avoid being fined or reported themselves for complicity or for failing to alert authorities under the terms established by law. PENAL CODE OF EL SALVADOR, art. 312 (1998), available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal> [hereinafter PENAL CODE (1998)].
- ² In this regard, the U.N. Human Rights Committee (HRC) recommended in 2012 that El Salvador “take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion.” HRC, *Concluding Observations: El Salvador*, para. 10, UN Doc. CCPR/C/SLV/CO/6 (2010).
- ³ WORLD HEALTH ORGANIZATION (WHO), *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* 68 (2003), available at <http://whqlibdoc.who.int/publications/2003/9241590343.pdf> [hereinafter WHO, *SAFE ABORTION*].
- ⁴ Interview with medical coordinator of family health community team, carried out on March 1-8, 2012 (in the Center’s archives); CENTER FOR REPRODUCTIVE RIGHTS, *PERSECUTED: POLITICAL PROCESS AND ABORTION LEGISLATION IN EL SALVADOR: A HUMAN RIGHTS ANALYSIS* 39 (2003), available at <http://reproductiverights.org/sites/default/files/documents/persecuted1.pdf> [hereinafter CENTER FOR REPRODUCTIVE RIGHTS, *PERSECUTED*]; interview with the director of the San Salvador Maternity Hospital, members of the Society of Gynecology and Obstetrics, the director and doctors at the ISSS Primero de Mayo Hospital, as well as a doctor at the Institute for Legal Medicine, performed on August 17, 26 and 30, 1999, and September 7, 1999 (in the Center’s archives); interview with María Elena Rodríguez, president of the Association of Woman Doctors of El Salvador, performed on September 7, 1999 (in the Center’s archives).
- ⁵ CENTER FOR REPRODUCTIVE RIGHTS, *PERSECUTED*, *supra* note 4, p. 41-42.
- ⁶ Effectively, article 169 of the 1973 Penal Code established the cases in which abortion was not punishable: (i) unintentional abortion caused by the woman or an attempt by the woman to cause an abortion due to negligence; (ii) abortion performed by a doctor in order to save the life of the pregnant woman when there is no other way to do so and when performed with the women’s consent and after the issuing of a medical report. If the woman is a minor, incapacitated, or unable to give consent, the consent of her spouse, legal guardian, or close family member shall be required; (iii) abortion performed by a doctor when the pregnancy is presumed to be the consequence of rape or sexual intercourse with a minor and when the abortion is performed with the woman’s consent; and (iv) abortion performed by a doctor when the purpose is to avoid a serious foreseeable deformity of the fetus. See EL SALVADOR’S PENAL CODE, art. 169 (1973) [hereinafter PENAL CODE (1973)].
- ⁷ POLITICAL CONSTITUTION OF EL SALVADOR, art. 1 (1998), available at http://www.asamblea.gob.sv/asamblea-legislativa/constitucion/Constitucion_Actualizada_Republica_El_Salvador.pdf [hereinafter POLITICAL CONSTITUTION].
- ⁸ Concept note, United Nations and the International Conference on Population and Development, ICPD Beyond 2014 International Conference on Human Rights (Feb. 25, 2013), available at http://icpdbeyond2014.org/uploads/browser/files/concept_note_-_icpd_human_rights_conference.pdf [hereinafter Concept note, ICPD Beyond 2014 International Conference on Human Rights].
- ⁹ GUTTMACHER INSTITUTE, *Facts on Induced Abortion Worldwide*, IN BRIEF 2 (2012) [hereinafter GUTTMACHER INSTITUTE, *Facts on Induced Abortion Worldwide*].
- ¹⁰ GLOBAL HEALTH COUNCIL, *PROMISES TO KEEP: THE TOLL OF UNINTENDED PREGNANCIES ON WOMEN’S LIVES IN THE DEVELOPING WORLD* 43 (2002) [hereinafter GLOBAL HEALTH COUNCIL, *PROMISES TO KEEP*].
- ¹¹ Data from the MSPAS Information, Monitoring and Evaluation Unit, cited in Dr. Elisa Mejivar, Comprehensive Women’s Care Unit, El Salvador Ministry of Public Health, presentation at the Latin American Conference: Prevention and care of unsafe pregnancy: The situation of abortion in El Salvador (June 2009, 2012), available at http://www.clacaidigital.info:8080/xmlui/bitstream/handle/123456789/60/Menjivar_ICONFLPAAL.pdf?sequence=1 [hereinafter Dr. Elisa Mejivar, Prevention and care of unsafe pregnancy: The situation of abortion in El Salvador].
- ¹² Special Rapporteur on violence against women, its causes and consequences, *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 (Feb. 14, 2011) [hereinafter Rashida Manjoo, *Follow-up mission to El Salvador*]; Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations: El Salvador*, paras. 35-36, UN Doc. CEDAW/C/SLV/CO/7 (2008); Committee on the Rights of the Child, (CRC), *Concluding Observations: El Salvador*, paras. 60, 61(d), UN Doc. CRC/C/SLV/CO/3-4 (2010); HRC, *Concluding Observations: El Salvador*, para. 14, UN Doc. CCPR/CO/78/SLV (2003); *El Salvador*, para. 10, UN Doc. ONUCCPR/C/SLV/CO/6 (2010).
- ¹³ Case of De la Cruz Flores v. Peru, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 115, para. 101 (Nov. 18, 2004).

- ¹⁴ The Agrupación Ciudadana's study was carried out between 2011 and 2012 and is currently being edited. It was done by looking for information and checking case files in all trial courts in El Salvador.
- ¹⁵ Report on the International Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, paras. 7.6, 8.25, UN Doc. A/CONF.171/13/Rev.1 (1995); *Overview: International Conference on Population and Development*, UNFPA, <http://www.unfpa.org/public/icpd/> (accessed on April 10, 2013).
- ¹⁶ Concept note, ICPD Beyond 2014 International Conference on Human Rights, *supra* note 8.
- ¹⁷ GUTTMACHER INSTITUTE, *Facts on Induced Abortion Worldwide*, *supra* note 9, p. 2.
- ¹⁸ *Id.*
- ¹⁹ POLITICAL CONSTITUTION, *supra* note 7, art. 1.
- ²⁰ PENAL CODE (1973), *supra* note 6, art. 169.
- ²¹ CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, pp. 35-36.
- ²² *Id.*, pp. 30-33.
- ²³ The following text of the Penal Code articles that were passed: "[(1)] *Consensual and self-induced abortion - Article 133* - Whosoever induces an abortion with the woman's consent, or a woman who induces her own abortion or consents to have another person perform an abortion on her, shall be sentenced to two to eight years in prison; [(2)] *Abortion without consent - Article 134* - Whosoever induces an abortion without the pregnant woman's consent shall be sentenced to four to ten years in prison. Whosoever performs an abortion, having obtained the woman's consent through violence or deception, shall receive the same sentence ... [(3)] *Aggravated abortion - Article 135* - Any doctor, pharmacist or person who carries out activities related to said professions who performs an abortion shall be sentenced to six to twelve years in prison. They shall also be suspended from practicing their profession for the same period; [(4)] *Encouragement or assistance to obtain an abortion - Article 136* - Whosoever encourages a woman to have an abortion or provides economic or other means for her to obtain an abortion shall be sentenced to two to five years in prison. If the person who assists or encourages a woman to obtain an abortion is the person who performs the abortion, the sentence shall be increased by one third of the maximum penalty indicated in the previous subsection ... [(5)] *Unintentional abortion - Article 137* - Whosoever unintentionally provokes an abortion shall be sentenced to six months to two years in prison. Neither unintentional abortion caused by the pregnant woman, nor the attempt to abortion, is punishable." PENAL CODE (1998), *supra* note 1.
- ²⁴ CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, p. 36.
- ²⁵ Transcript of debate in the General Assembly of El Salvador on the amendment of Article 1 of the Constitution, February 3, 1999 (in the Center's archives). *Also see* CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, p. 37.
- ²⁶ ECONOMY MINISTRY, GENERAL DIRECTORATE OF STATISTICS AND CENSUS, MULTIPURPOSE HOME SURVEY, 22 (2012) [hereinafter ECONOMY MINISTRY, 2011 MULTIPURPOSE HOME SURVEY]. The Multipurpose Home Survey, carried out by the Ministry of Economy since 1975, constitutes a statistical instrument "that the country has for diagnosing its situation, for implementing appropriate actions toward its development, and for facilitating monitoring of the effects of the policy measures taken." The sample frameworks are updated every five years, but the reports are updated annually as needed.
- ²⁷ *Id.*, pp. 21-22. "Homes whose per capita income does not cover the per capita cost of the basic food basket (CBA) are classified as in extreme poverty, while the homes whose per capita income does not cover the cost of the amplified CBA (twice the value of the CBA) are classified as in relative poverty. In 2011, the per capita cost of the CBA was \$49.08 in urban areas and \$33.93 in rural areas. In 2011, the cost of the CBA in urban areas for an average home of 3.72 members was \$182.60, with the amplified CBA worth \$365.20. The cost of the CBA in rural areas for an average of 4.24 members was \$143.90, with the amplified CBA worth \$287.70."
- ²⁸ *Id.*, p. 1.
- ²⁹ *Id.*, p. 11. "The working age population (WAP) is defined as older than 16 years and is determined according to the specific labor situation in each country. Here, as in the majority of Latin American countries, it is one of the indicators that characterize labor markets and is measured using surveys of homes carried out by different statistical offices. (...) The economically active population (...) is defined as the part of the WAP that carries out any economic activity or is active in the labor market."
- ³⁰ *Id.*, p. 16.
- ³¹ Latin American and Caribbean Committee for the Defense of Women's Rights, *Informe 7º sesión del Examen Periódico Universal sobre El Salvador* [Report on the 7th session of the Universal Periodic Review on El Salvador], 3-4 (2010), available at <http://www.cladem.org/monitoreo/informes-alternativos/El-Salvador/EPU/Informe-alternativo-2009.pdf>.
- ³² *Id.*, p. 4.
- ³³ Rashida Manjoo, *Follow-up mission to El Salvador*, *supra* note 12, para. 12.
- ³⁴ ECONOMY MINISTRY, 2011 MULTIPURPOSE HOME SURVEY, *supra* note 26, p. 4.
- ³⁵ *Id.*
- ³⁶ *Id.* pp. 7-8.
- ³⁷ GLOBAL HEALTH COUNCIL, PROMISES TO KEEP, *supra* note 10, p. 43.
- ³⁸ Data from the MSPAS Information, Monitoring and Evaluation Unit cited in Dr. Elisa Menjivar, Prevention and care of unsafe pregnancy: The situation of abortion in El Salvador, *supra* note 11.
- ³⁹ Rashida Manjoo, *Follow-up mission to El Salvador*, *supra* note 12, para. 66, *also see* CEDAW, *Concluding Observations: El Salvador*,

- paras. 35-36, UN Doc. CEDAW/C/SLV/CO/7 (2008); Committee on the Rights of the Child, *Concluding Observations: El Salvador*, paras. 60, 61(d), UN Doc. CRC/C/SLV/CO/3-4 (2010); HRC, *Concluding Observations: El Salvador*, para. 14, UN Doc. CCPR/CO/78/SLV (2003); *El Salvador*, para. 10, UN Doc. CCPR/C/SLV/CO/6 (2010).
- ⁴⁰ WHO, 2011 WORLD HEALTH STATISTICS, 26, 62 (2011), available at http://www.who.int/gho/publications/world_health_statistics/EN_WHS2011_Full.pdf. Nevertheless, in 2012, El Salvador's Ministry of Health reported that the 2011 maternal mortality rate was 50.8 per 100,000 live births in hospitals. Accord No. 1181, Política de Salud Sexual y Reproductiva, Aug. 9, 2012, vol. 396 No. 149, p. 41, LA GACETA, GOVERNMENT NEWSPAPER [L.G.] Aug. 15, 2012 (El Sal.), available at <http://www.salud.gob.sv/servicios/descargas/documentos/func-startdown/684/> [hereinafter Política de Salud Sexual y Reproductiva 2012]. This report uses the data provided by the World Health Organization, given its nature as a tool for the analysis of international law.
- ⁴¹ Política de Salud Sexual y Reproductiva 2012, *supra* note 40, p. 41.
- ⁴² PAN-AMERICAN HEALTH ORGANIZATION, SITUACIÓN DE SALUD EN LAS AMÉRICAS: INDICADORES BÁSICOS 2010, 5 (2010), available at http://www2.paho.org/hq/dmdocuments/2010/IB_2010_SPA.pdf.
- ⁴³ Public Health and Social Aid Ministry, Cinco grupos de causas por mortalidad materna hospitalaria [Five causes of maternal mortality in hospitals]: El Salvador (2008), http://www.salud.gob.sv/archivos/pdf/causas_frecuentes2008/Cinco_Causas_Muertes_Maternas_2008.pdf. The percentages cited correspond only to maternal deaths that took place in hospitals, and the maternal mortality rate was calculated based on live births in hospitals. In other words, these rates do not include maternal deaths and births that took place in a nonhospital setting. More comprehensive data can be found in a study carried out by the Ministry of Health in 2006. According to this study, the main direct causes of maternal death were hypertension (38%), hemorrhaging (38%), infections (10%), and abortion (6%). Of these maternal deaths, 31.7% of the women did not have access to prenatal care and 30.5% of the deaths took place outside of hospitals. Of the women who used health care services, 48% were referred from a less sophisticated health care center to a more sophisticated health care center, with the central motives for the referrals being a lack of trained staff (32.5%), a lack of equipment (25%), and a lack of supplies (15%). MINISTRY OF PUBLIC HEALTH AND SOCIAL AID, LÍNEA DE BASE DE MORTALIDAD MATERNA EN EL SALVADOR: JUNIO 2005-MAYO 2006 [MATERNAL MORTALITY BASELINE IN EL SALVADOR, JUNE 2005 - MAY 2006], EXECUTIVE SUMMARY 46, 57 (2006), available at http://www.salud.gob.sv/archivos/pdf/documento_LBMM/CONTENIDO_PARTE1.pdf; http://www.salud.gob.sv/archivos/pdf/documento_LBMM/CONTENIDO_PARTE3.pdf; http://www.salud.gob.sv/archivos/pdf/documento_LBMM/CONTENIDO_PARTE4.pdf. However, according to our calculations, which use the 2006 Línea de Base de Mortalidad Materna en El Salvador (Maternal mortality baseline in El Salvador) as a baseline, the main direct and indirect causes of maternal death are hypertension (23.17%), hemorrhaging (23.17%), self-inflicted poisonings (15.25%), infections (6.09%), and abortion (3.65%). These numbers are reached by calculating the percentages according to the total number of direct and indirect maternal deaths and excluding unrelated deaths according to the World Health Organization's definition of maternal mortality, which is "the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes." WHO, MATERNAL MORTALITY IN 2005: ESTIMATES DEVELOPED BY WHO, UNICEF, UNFPA, AND THE WORLD BANK 4 (2008), available at http://www.who.int/whosis/mme_2005.pdf.
- ⁴⁴ Carlos Ayala Ramírez, Suicidio en el embarazo [Suicide during pregnancy], ADITAL, April 17, 2012, http://www.adital.com.br/site/noticia_imp.asp?lang=ES&img=N&cod=66163.
- ⁴⁵ "Inicia una investigación regional para prevenir suicidios en el embarazo" [Regional study launched for the prevention of suicide during pregnancy], UNFPA EL SALVADOR, April 16, 2012, http://www.unfpa.org.sv/index.php?option=com_content&view=article&id=494:inicia-una-investigacion-regional-para-prevenir-suicidios-en-el-embarazo&catid=37:nacionales.
- ⁴⁶ HEALTH MINISTRY *ET AL.*, NATIONAL FAMILY HEALTH SURVEY FESAL 2008, xi (2009) [hereinafter HEALTH MINISTRY *ET AL.*, FESAL 2008].
- ⁴⁷ *Id.*, p. 315.
- ⁴⁸ *Id.*, p. 286.
- ⁴⁹ *Id.*, p. 87.
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² *Id.*, p. 88.
- ⁵³ Política de Salud Sexual y Reproductiva 2012, *supra* note 40, p. 41.
- ⁵⁴ GUTTMACHER INSTITUTE, ASEGURAR UN MAÑANA MÁS SALUDABLE EN CENTROAMÉRICA [ENSURING A HEALTHIER TOMORROW IN CENTRAL AMERICA]: PROTEGER LA SALUD SEXUAL Y REPRODUCTIVA DE LA JUVENTUD DE HOY [PROTECTING THE SEXUAL AND REPRODUCTIVE HEALTH OF YOUNG PEOPLE TODAY] 4 (2008), available at http://www.guttmacher.org/pubs/2008/05/29/PNG_CentralAmerica.pdf.
- ⁵⁵ Política de Salud Sexual y Reproductiva 2012, *supra* note 40, p. 41.
- ⁵⁶ *World Population Prospects: The 2010 Revision, Age-specific fertility rates by major area, region and country, 1995-2100 (births per 1,000 women)*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, available at <http://esa.un.org/unpd/wpp/Excel-Data/fertility.htm> (accessed April 10, 2013).
- ⁵⁷ STATE'S ATTORNEY FOR THE DEFENSE OF HUMAN RIGHTS, PRIMER INFORME SITUACIONAL SOBRE EMBARAZO EN ADOLESCENTES Y SU IMPACTO EN EL DERECHO A LA EDUCACIÓN [FIRST SITUATIONAL REPORT ON PREGNANCY AMONG ADOLESCENTS AND ITS IMPACT ON THE RIGHT TO EDUCATION] 22 (2009).
- ⁵⁸ Rashida Manjoo, *Follow-up mission to El Salvador*, *supra* note 12, para. 67.

- ⁵⁹ CEDAW, *Concluding Observations: El Salvador*, para. 35, UN Doc. CEDAW/C/SLV/CO/7 (2008).
- ⁶⁰ HEALTH MINISTRY *ET AL.*, FESAL 2008, *supra* endnote 46, p. 139.
- ⁶¹ *Id.*, p. 149.
- ⁶² *Id.*, p. 150.
- ⁶³ *Id.*
- ⁶⁴ CEDAW, *Concluding Observations: El Salvador*, para. 35, UN Doc. CEDAW/C/SLV/CO/7 (2008).
- ⁶⁵ According to the report from the Inter-American Commission on Human Rights (IACHR) on access to justice for women victims of sexual violence in Mesoamerica, one of the key difficulties related to the issue of sexual violence is that there is no reliable data for the region, reporting rates are low, and information systems are ineffective (IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, para. 160, OAS/Ser.LV/II., doc. 63 (Dec. 9, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20eng.pdf> [hereinafter IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*]); in addition, the statistics produced by different authorities in El Salvador, such as the Institute of Legal Medicine and the National Civil Police, contradict one another and are not similarly disaggregated (OBSERVATORIO DE LOS DERECHOS DE LA NIÑEZ Y LA ADOLESCENCIA [OBSERVATORY ON THE RIGHTS TO CHILDHOOD AND ADOLESCENCE], BALANCE ANUAL DE LOS DERECHOS DE LA NIÑEZ Y LA ADOLESCENCIA [ANNUAL ASSESSMENT OF THE RIGHTS TO CHILDHOOD AND ADOLESCENCE]: EL SALVADOR, 2010, 9 (2010), available at http://portalfio.org/inicio/redes-tematicas/descargas/doc_download/40-embarazo-en-adolescentes-su-impacto-en-la-educacion-pddh-el-salvador.html [hereinafter BALANCE ANUAL DE LOS DERECHOS DE LA NIÑEZ Y LA ADOLESCENCIA: EL SALVADOR, 2010]).
- ⁶⁶ SALVADORAN INSTITUTE FOR THE DEVELOPMENT OF WOMEN (ISDEMU IN ITS SPANISH ACRONYM), SECOND NATIONAL REPORT ON THE SITUATION OF VIOLENCE AGAINST WOMEN IN EL SALVADOR 2010: A PUBLIC SAFETY ISSUE 30-31 (2011) [hereinafter ISDEMU, SECOND NATIONAL REPORT].
- ⁶⁷ *Id.*, p. 32.
- ⁶⁸ *Id.*; see also IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, *supra* note 64, para. 74.
- ⁶⁹ BALANCE ANUAL DE LOS DERECHOS DE LA NIÑEZ Y LA ADOLESCENCIA: EL SALVADOR, 2010, *supra* note 65, p. 8.
- ⁷⁰ IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, *supra* note 64, para. 161.
- ⁷¹ ISDEMU, SECOND NATIONAL REPORT, *supra* note 66, pp. 44-45; IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, *supra* note 64, para. 78.
- ⁷² CEDAW, *Concluding Observations: El Salvador*, para. 23, UN Doc. CEDAW/C/SLV/CO/7 (2008).
- ⁷³ IACHR, *Access to justice for women victims of sexual violence: Education and health*, para. 148, OAS/Ser.LV/II., doc. 65 (Dec. 28, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf> [hereinafter IACHR, *Access to justice for women victims of sexual violence: Education and health*].
- ⁷⁴ IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, *supra* note 64, para. 160.
- ⁷⁵ Dr. Diana M. Galimberti, Dr. T. Álvarez Intensive Care General Hospital (Argentina), presentation during a meeting on alternative care in the health sector for women survivors of sexual assault: Comparative analysis of the protocols for care in cases of sexual assault (Aug. 2-4, 2005) available at <http://www1.paho.org/Spanish/AD/GE/SexualViolenceAug05.htm>.
- ⁷⁶ IACHR, *Access to justice for women victims of sexual violence: Education and health*, *supra* note 73, para. 3.
- ⁷⁷ BALANCE ANUAL DE LOS DERECHOS DE LA NIÑEZ Y LA ADOLESCENCIA: EL SALVADOR, 2010, *supra* note 65, p. 9.
- ⁷⁸ The Agrupación Ciudadana study was carried out during 2011–2012 and is currently being edited. It was done by looking for information and checking case files in all the trial courts in El Salvador.
- ⁷⁹ Política de Salud Sexual y Reproductiva 2012, *supra* note 40, p. 41.
- ⁸⁰ CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, pp. 47-48.
- ⁸¹ “Professional confidentiality is a duty that arises from the very essence of the profession. The public interest, safety of the sick, honor of the family and reputation of the profession require confidentiality, meaning that whatever they see, hear or discover in the exercise of their professions must remain confidential.” EL SALVADOR HEALTH CODE, art. 37 (1988), available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-de-saulud> [hereinafter HEALTH CODE].
- ⁸² See, for example, “Ávila rechaza el aval de México al aborto” [Ávila rejects Mexico’s legalization of abortion], ELSALVADOR.COM, Aug. 28, 2008, available at http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6351&idArt=2765324&opSM=0; Mayrene Zamora, “Feministas piden despenalizar aborto” [Feminists ask for the decriminalization of abortion], LA PRENSA GRÁFICA, Dec. 10, 2008, <http://www.laprensagrafica.com/el-salvador/politica/5313-feministas-piden-despenalizar-aborto>; “Funes se desliga de feministas por aborto” [Funes distances himself from feminists over abortion], ELSALVADOR.COM, March 24, 2008, http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=6351&idArt=2207906&opSM=0.
- ⁸³ “Starting in June of 2009, with the new administration coming to power in the country, the ISSS will also have a new management and coexistence model under the leadership of Doctor Oscar Kattán Milla, as General Director and Doctor Ricardo Cea Rouanet, as Assistant General Director (...).” *History*, SALVADORAN SOCIAL SECURITY INSTITUTE, http://www.iss.gov.sv/index.php?option=com_content&view=article&id=49&Itemid=84 (accessed on March 27, 2013).

- ⁸⁴ El Salvador Medical Association, “El Colegio Médico de El Salvador fija su posición frente al aborto ‘terapéutico’” [El Salvador Medical Association stakes out its position on “therapeutic” abortion], MUNDO MÉDICO SALVADOREÑO, Nov.-Dec. 2010, pp. 22-23.
- ⁸⁵ 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).
- ⁸⁶ “[Article 8 of the American Convention] 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.” Raquel Martín de Mejía vs. Peru, Case 10.970, IACHR, Report No. 5/96, OEA/Ser.LV/II.91 doc. 7, 1996.
- ⁸⁷ Case of Bámaca Velásquez v. Guatemala, Merits, Inter-American Court (ser. C) No. 70, para. 189 (Nov. 25, 2000); Edwards vs. United Kingdom, Eur. Ct. H.R. (ser. A) No. 247-B, para. 34 (1992); Vidal vs. Belgium, Eur. Ct. H.R. (ser. A) No. 235-B, para. 33 (1992).
- ⁸⁸ Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala, Merits, Inter-American Court (ser. C) No. 63, para. 234 (Nov. 19, 1999).
- ⁸⁹ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention -Addendum-Mission to El Salvador*, paras. 74-75, UN Doc. A/HRC/22/44/Add. 2 (Jan. 11, 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-44-Add2_EN.pdf [hereinafter Working Group on Arbitrary Detention, *Mission to El Salvador*].
- ⁹⁰ *Id.*
- ⁹¹ *Id.*, para. 77.
- ⁹² Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257 (Nov. 28, 2012).
- ⁹³ CEDAW, *Concluding Observations: Belize*, para. 56, UN Doc. A/54/38/Rev.1 (1999); *Chile*, para. 228, UN Doc. A/54/38/Rev. 1 (1999); *Colombia*, para. 393, UN Doc. A/54/38/Rev. 1 (1999); *Dominican Republic*, para. 337, UN Doc. A/53/38/Rev.1 (1998); *Paraguay*, para. 131, UN Doc. A/51/38 (1996); HRC, *Concluding Observations: Argentina*, para. 14, UN Doc. CCPR/CO/70/ARG (2000); *Bolivia*, para. 22, UN Doc. CCPR/CO/79/Ad.74 (1997); *Costa Rica*, para. 11, UN Doc. CCPR/CO/79/Ad.107 (1999); *Chile*, para. 211, UN Doc. A/54/40 (1999); *El Salvador*, para. 14, UN Doc. CCPR/CO/78/SLV (2004); *Ecuador*, para. 11, UN Doc. CCPR/CO/79/Ad.92 (1998); *Gambia*, para. 17, UN Doc. CCPR/CO/75/GMB (2004); *Guatemala*, para. 19, UN Doc. CCPR/CO/72/GTM (2001); *Honduras*, para. 8, UN Doc. CCPR/CO/HND/CO/1 (2006); *Kenya*, para. 14, UN Doc. CCPR/CO/83/KEN (2005); *Lesotho*, para. 11, UN Doc. CCPR/CO/79/Ad.106 (1999); *Mauritius*, para. 9, UN Doc. CCPR/CO/83/MUS (2005); *Madagascar*, para. 14, UN Doc. CCPR/CO/82/MAR (2004); *Paraguay*, para. 10, UN Doc. CCPR/CO/79/Ad.72 (1996); *Peru*, para. 15, UN Doc. CCPR/CO/70/PER (2000); *Poland*, para. 8, UN Doc. CCPR/CO/82/POL (2004); *United Republic of Tanzania*, para. 15, UN Doc. CCPR/CO/79/Ad.97 (1998); *Trinidad and Tobago*, para. 18, UN Doc. CCPR/CO/70/TTO (2000); *Venezuela*, para. 19, UN Doc. CCPR/CO/71/VEN (2001); *Vietnam*, para. 15, UN Doc. CCPR/CO/75/VNM (2002).
- ⁹⁴ In this regard, the HRC has expressed its concern in concluding observations on El Salvador “that the current Criminal Code criminalizes all forms of abortion, given that illegal abortions have serious detrimental consequences for women’s lives, health and well-being.” HRC, *Concluding Observations: El Salvador*, para. 10, UN Doc. CCPR/CO/SLV/CO/6 (2010).
- ⁹⁵ The HRC has indicated that states must report on rates of maternal mortality, unwanted pregnancies, and unsafe abortion as a sign of compliance with their obligations regarding the right to life. HRC, *General Comment No. 28: Equality of rights between men and women* (article 3), (68th Session, 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 229, para. 10, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).
- ⁹⁶ HRC, *Concluding Observations: Mali*, para. 14, UN Doc. CCPR/CO/77/MLI (2003).
- ⁹⁷ CEDAW, *Concluding Observations: Belize*, para. 56, UN Doc. A/54/38/Rev.1 (1999); *Colombia*, para. 393, UN Doc. A/54/38 (1999); *Dominican Republic*, para. 337, UN Doc. A/53/38 (1998).
- ⁹⁸ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The right to the highest attainable standard of health* (art. 12), (22nd Session, 2000), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 78, para. 3, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter CESCR, *Gen. Comment No. 14*].
- ⁹⁹ *Id.*, para. 33. “[T]he the obligation to *fulfil* contains obligations to facilitate, provide and promote. The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to *protect* requires States to take measures that prevent third parties from interfering with article 12 guarantees.”
- ¹⁰⁰ *Id.*, para. 8.
- ¹⁰¹ *Id.*, para. 21. Unofficial translation done by the Center for Reproductive Rights.

- ¹⁰² WHO, SAFE ABORTION, *supra* note 3, p. 90.
- ¹⁰³ CEDAW, *General Comment No. 24. Women and health (art. 12 of the Convention on the Elimination of All Forms of Discrimination against Women)*, (20th Session, 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 104, para. 27, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW, *Gen. Comment No. 24*].
- ¹⁰⁴ CEDAW, *Concluding Observations: Tuvalu*, para. 44, UN Doc. CEDAW/C/TUV/CO/2 (2009).
- ¹⁰⁵ See, among others, CESCR, *Concluding Observations: Bolivia*, para. 43, UN Doc. E/C.12/1/Add.60 (2001); *Costa Rica*, paras. 25, 46, UN Doc. E/C.12/CR/CO/4 (2008).
- ¹⁰⁶ See, among others, CEDAW, *Concluding Observations: Argentina*, para. 38, UN Doc. CEDAW/C/ARG/CO/6 (2010); *Bolivia*, paras. 42-43, UN Doc. CEDAW/C/BOL/CO/4 (2008); *Brazil*, paras. 28, 29.b, UN Doc. CEDAW/C/BRA/CO/7 (2012); *Chile*, paras. 34, 35.d, UN Doc. CEDAW/C/CHL/CO/5-6 (2012); *El Salvador*, paras. 35-36, UN Doc. CEDAW/C/SLV/CO/7 (2008); *Honduras*, paras. 24-25, UN Doc. CEDAW/C/HON/CO/6 (2007).
- ¹⁰⁷ CESCR, *Gen. Comment No. 14*, *supra* note 98, para. 12. Availability means that the state must have “functioning public health and health-care facilities, goods and services, as well as programmes.” Accessibility involves four components: nondiscrimination in access, physical accessibility for all segments of the population, economic accessibility with regard to the cost of care and treatment, and information accessibility. Acceptability means that services and health care facilities must be respectful of medical ethics and culturally appropriate. Finally, quality means that the services and facilities available to the population must be adequate from a medical and scientific point of view.
- ¹⁰⁸ Política de Salud Sexual y Reproductiva 2012, *supra* note 40.
- ¹⁰⁹ CESCR, *Gen. Comment No. 14*, *supra* note 98, para. 12.c.
- ¹¹⁰ *Id.*, para. 11.
- ¹¹¹ See also *Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment (CAT)*, approved on December 10, 1984, Art. 1, A.G. Res. 39/46, UN GAOR, 39th Ses., Sup. No. 51, UN Doc. A/39/51 (1984), 1465 S.S.T. 85 (in force since June 26, 1987). Certain obligations of the CAT apply only to torture—for example, the obligation to punish acts and apply the principle of universal jurisdiction. “[O]ther obligations aimed at prevention, in particular by means of education and training, by systematically reviewing interrogation rules and practices, by ensuring a prompt and impartial *ex officio* investigation, and by ensuring an effective complaints mechanism, as laid down in articles 10 to 13, must be equally applied to other forms of ill-treatment as well (...)” Special Rapporteur on torture and other cruel, inhuman or degrading treatment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Manfred Nowak: Civil and political rights, including the questions of torture and detention*, para. 37, UN Doc. E/CN.4/2006/6 (Dec. 16, 2005) [hereinafter Special Rapporteur on torture, *Civil and political rights 2005*].
- ¹¹² See Memorandum by Matthew Goodro, Open Society Institute Law and Health Initiative, to Jonathan Cohen and Tamar Ezer, Open Society Institute Law and Health Initiative, *Health Care and the Prohibition Against Torture and Cruel, Inhuman, and Degrading Treatment or Punishment*, 7-8 (May 12, 2009) (in the Center’s archives). The ban on torture and CIDT may not be suspended under the ICCPR or the CAT, as none of the provisions of those treaties may be suspended. See Special Rapporteur on torture, *Civil and political rights 2005*, *supra* note 111, para. 36 (citing Art. 7 (on torture and CIDT) and Art. 4(2) (on suspension during states of emergency) of the PIDCP).
- ¹¹³ CAT, *General Comment No. 2: Application of Article 2 by States Parties* (39th Ses., 2007), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 124, para. 10, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CAT, *Gen. Comment No. 2*]; Special Rapporteur on torture, *Civil and political rights 2005*, *supra* note 111, para. 35.
- ¹¹⁴ HRC, *General Comment No. 20: Prohibition of torture and cruel, inhuman or degrading treatment or punishment (Art. 7)*, (44th Ses., 1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 200, para. 5, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).
- ¹¹⁵ CAT, *General Comment No. 2*, *supra* note 111, para. 15.
- ¹¹⁶ Case of Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 149 (July 4, 2006).
- ¹¹⁷ *Id.*, para. 89.
- ¹¹⁸ K.L. v. Peru, HRC, Communication No. 1153/2003, para. 6.3, UN Doc. CCPR/C/85/D/1153/2003 (2005).
- ¹¹⁹ L.M.R. v. Argentina, HRC, Communication No. 1608/2007, para. 9.2, UN Doc. CCPR/C/101/D/1608/2007 (2011).
- ¹²⁰ CAT, *Gen. Comment No. 2*, *supra* note 111, para. 22.
- ¹²¹ HRC, *Concluding Observations: United States of America*, para. 33, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006).
- ¹²² CAT, *Concluding Observations: United States of*

- America, para. 33, UN Doc. CAT/C/USA/CO/2 (2006).
- ¹²³ Special Rapporteur on torture and other cruel, inhuman or degrading treatment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Manfred Nowak: Summary*, para. 41, UN Doc. A/HRC/7/3 (Jan. 15, 2008).
- ¹²⁴ Special Rapporteur against women, its causes and consequences, *Report presented by Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences, pursuant to Resolution 1997/44 of the Human Rights Commission - Addendum - 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 (1999) [hereinafter Radhika Coomaraswamy, *Report on mission to the United States of America*].
- ¹²⁵ HRC, *General Comment No. 18: Non-discrimination*, (37th Ses., 1989), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 234, para. 1, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).
- ¹²⁶ CESCR, *Gen. Comment No. 14, supra* note 98, para. 12(b); also see CESCR, *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)* (34th Ses., 2005), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 137, para. 18, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).
- ¹²⁷ CEDAW, *Gen. Comment No. 24, supra* note 103, para. 2.
- ¹²⁸ CESCR, *Gen. Comment No. 14, supra* note 98, para. 50.
- ¹²⁹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,” adopted on June 9, 1994, arts. 6(b), 8(b) (in force since March 5, 1995).
- ¹³⁰ REBECCA J. COOK & SIMONE CUSACK, *ESTEREOTIPOS DE GÉNERO: PERSPECTIVAS LEGALES TRANSNACIONALES* [Gender stereotypes: Transnational legal perspectives] 2 (2010), available at <http://www.profamilia.org.co/images/stories/libros/estereotipos-de-genero.pdf>.
- ¹³¹ *Id.*, p. 1.
- ¹³² CEDAW, *Gen. Comment No. 24, supra* note 103, para. 14.
- ¹³³ CESCR, *Gen. Comment No. 14, supra* note 98, para. 34.
- ¹³⁴ Case of Artavia Murillo *et al.* (“*In vitro* fertilization”) v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257, para. 302 (Nov. 28, 2012).
- ¹³⁵ CESCR, *Gen. Comment No. 14, supra* note 98, para. 3.
- ¹³⁶ CEDAW, *Gen. Comment No. 24, supra* note 103, para. 22.
- ¹³⁷ IACHR, *Access to information on reproductive health from a human rights perspective*, para. 76, OAS/Ser.LN/II., doc. 61 (Nov. 22, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/womenaccessinformationreproductivehealth.pdf> [hereinafter IACHR, *Access to information on reproductive health*]. In addition, the former U.N. Special Rapporteur on the Right to Health, Paul Hunt, stated that “a lack of confidentiality may deter individuals from seeking advice and treatment, thereby jeopardizing their health and well-being. Thus, States are obliged to take effective measures to ensure medical confidentiality and privacy.” Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report of the Special Rapporteur Paul Hunt*, para. 40, UN Doc. E/CN.4/2004/49 (Feb. 16, 2004).
- ¹³⁸ CEDAW, *Gen. Comment No. 24, supra* note 101, para. 12(d).
- ¹³⁹ Case of De la Cruz Flores v. Peru, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 115, para. 101 (Nov. 18, 2004).
- ¹⁴⁰ *Id.*, para. 102.
- ¹⁴¹ CEDAW, *Gen. Comment No. 24, supra* note 103, para. 31(e).
- ¹⁴² IACHR, *Access to information on reproductive health, supra* note 137, para. 116(9).
- ¹⁴³ HEALTH CODE, *supra* note 79, Art. 37.
- ¹⁴⁴ PENAL CODE (1998), *supra* note 1, Art. 187.
- ¹⁴⁵ 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, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 171, para. 117 (Nov. 22, 2007).
- ¹⁴⁶ Case of Vélez Lóor v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 218, para. 220 (Nov. 23, 2010); Case of De la Cruz Flores v. Peru, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 115, para. 131 (Nov. 18, 2004); among others.
- ¹⁴⁷ Press Release, Working Group on Arbitrary Detention, Statement upon the conclusion of its Mission to El

- Salvador (23 January - 1 February 2012) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11795&LangID=E>.
- ¹⁴⁸ *Id.*
- ¹⁴⁹ Working Group on Arbitrary Detention, *Mission to El Salvador*, *supra* note 89, para. 95.
- ¹⁵⁰ *Id.*, para. 97.
- ¹⁵¹ *Id.*, para. 96.
- ¹⁵² Working Group on Arbitrary Detention, *El Salvador*: “El Salvador: Right to security must not override right to be free from arbitrary detention, urges UN expert body,” OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Feb. 2, 2012), <http://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=11796&LangID=E>.
- ¹⁵³ Working Group on Arbitrary Detention, *Mission to El Salvador*, *supra* note 89, para. 75.
- ¹⁵⁴ *Id.*, para. 103.
- ¹⁵⁵ Rashida Manjoo, *Follow-up mission to El Salvador*, *supra* note 12, para. 40.
- ¹⁵⁶ *Id.*, para. 39.
- ¹⁵⁷ Belém do Pará Convention, *supra* note 129, art. 2(c).
- ¹⁵⁸ CEDAW Committee, *General Comment No. 19: Violence against women*, (11th Ses., 1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, p. 74, para. 1, UN Doc. HRI/GEN/1/Rev.9 (Vol. II)(2008).
- ¹⁵⁹ *Id.*, para. 19.
- ¹⁶⁰ General Assembly, Strengthening crime prevention and criminal justice responses to violence against women, Addendum: *Estrategias y Medidas Prácticas Modelo Actualizadas para la eliminación de la violencia contra la mujer en el campo de la prevención del delito y la justicia penal* [Strategies and Updated Model of Practical Measures for the elimination of violence against women in the area of crime prevention and criminal justice], A.G. Res. 65/228, 65th Ses., Issue 105 on the agenda, para. 2, UN Doc. A/RES/65/228 (2011).
- ¹⁶¹ See, among others, HRC, *Concluding Observations: United States of America*, para. 33, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006); CAT, *Concluding Observations: United States of America*, para. 33, UN Doc. CAT/C/USA/CO/2 (2006); Radhika Coomaraswamy, *Report on mission to the United States of America*, *supra* note 124, paras. 53-54.
- ¹⁶² Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences, conveyed via Note from the Secretary General*, para. 41, UN Doc. A/66/215 (Aug. 1, 2011) (by Rashida Manjoo).
- ¹⁶³ *Id.*
- ¹⁶⁴ *Id.*, para. 42.
- ¹⁶⁵ The text of article 312 of the Penal Code, which classifies the failure to report as a criminal offense, together with the absolute criminalization of abortion and the protection of life and recognition of the human person from conception, creates the context that leads doctors to report women in order to avoid being fined or reported themselves for complicity or for failing to alert authorities under the terms established by law. PENAL CODE (1998), *supra* note 1, Art. 312.
- ¹⁶⁶ WHO, SAFE ABORTION, *supra* note 3, p. 68.
- ¹⁶⁷ HRC, *Concluding Observations: El Salvador*, para. 10, Doc. U.N. Doc. CCPR/C/SLV/CO/6 (2010).
- ¹⁶⁸ Interview with medical coordinator of family health community team, carried out on March 1-8, 2012 (in the Center’s archives); CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, p. 39; interview with the director of the San Salvador Maternity Hospital, members of the Society of Gynecology and Obstetrics, the director and doctors at the ISSS Primo de Mayo Hospital, as well as a doctor at the Institute for Legal Medicine, performed on August 17, 26 and 30, 1999, and September 7, 1999 (in the Center’s archives); interview with María Elena Rodríguez, president of the Association of Woman Doctors of El Salvador, performed on September 7, 1999 (in the Center’s archives).
- ¹⁶⁹ WHO, SAFE ABORTION, *supra* note 3.
- ¹⁷⁰ CENTER FOR REPRODUCTIVE RIGHTS, PERSECUTED, *supra* note 4, pp. 41-42.
- ¹⁷¹ Rashida Manjoo, *Follow-up mission to El Salvador*, *supra* note 12, para. 68; also see HRC, *Concluding Observations: El Salvador*, para. 10, UN Doc. CCPR/C/SLV/CO/6 (2010); Yamileth Cáceres, “Embarazo, abuso y falta de educación sexual afectan a los adolescentes” [Pregnancy, abuse and lack of sex education affect adolescents], [EL SALVADOR.COM](http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47976&idArt=7186087), Aug. 22, 2012, http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47976&idArt=7186087. (Citing the World Bank study “Salud sexual y reproductiva de los adolescentes y jóvenes: incorporando la perspectiva de derechos humanos en la inversión de salud pública” [Sexual and reproductive health among adolescents and young people: Incorporating a human rights perspective into public health investments], “The first pregnancy, which in 41% of young people takes place between the ages of 10 and 19, is explained by acts of violence, of which 12% are committed by some family member . . .”).

¹⁷² Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Provisional report from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, communicated by the General Secretary, para. 11, UN Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover).

TEXTBOX ENDNOTES

STATEMENT OF THE U.N. SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN (P. 20)

¹ Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo - Addendum - Follow-up mission to El Salvador*, para. 11, UN Doc. A/HRC/17/26/Add.2 (2011).

REPRODUCTIVE RIGHTS (P.21)

¹ Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo - Addendum - Follow-up mission to El Salvador*, para. 57, UN Doc. A/HRC/17/26/Add.2 (2011).

² Committee on the Elimination of Discrimination against Women, *Concluding Observations: El Salvador*, para. 35, UN Doc. CEDAW/C/SLV/CO/7 (2008).

³ Committee on Economic, Social and Cultural Rights, *Concluding Observations: El Salvador*, para. 43, UN Doc. E/C.12/SLV/CO/2 (2007).

AMERICAN CONVENTION ON HUMAN RIGHTS: ARTICLE 8. (P.50)

¹ American Convention on Human Rights, adopted on November 22, 1969, Art. 8(1), S.S.T. No. 36, OEA/Ser.L/V/II.23, doc. 21 rev. 6 (in force since July 18, 1978). The right to due process is also protected by the Universal Declaration of Human Rights (art. 11(1)) and the ICCPR (art. 14). In addition, the ICCPR establishes that this right includes the right to be informed of the nature of and basis for the accusation (art. 14(3)(a)) and the right to appeal a sentence to a higher court in the event of a guilty ruling (art. 14(5)).

AMERICAN CONVENTION ON HUMAN RIGHTS: ARTICLE 4.1 (P.52)

¹ American Convention on Human Rights, adopted on November 22, 1969, Art. 4(1), S.S.T. No. 36, OEA/Ser.L/V/II.23, doc. 21 rev. 6 (in force since July 18, 1978). The right to due process is also protected by the Universal Declaration of Human Rights (art. 11(1)); and the ICCPR (art. 14). In addition, the ICCPR establishes that this right includes the right to be informed of the nature of and basis for the accusation (art. 14(3)(a)) and the right to appeal a sentence to a higher court in the event of a guilty ruling (art. 14.5.); see also ICCPR,

Art. 6(1), G.A. Res. 2200A (XXI), UN GAOR, 21^a Ses., Sup. No. 16, UN Doc. A/6316 (1966), 999 S.S.T. 171 (in force since March 23, 1976); Universal Declaration of Human Rights, adopted on December 10, 1948, Art. 3, G.A. Res. 217A (III), UN Doc. A/810 p. 71 (1948); American Declaration of the Rights and Duties of Man, adopted on June 2, 1998, Art. 1, G.A. Res. 1591 (XXVIII-O/98). The Convention of Belém do Pará also explicitly recognizes in its article 4(a) that women have the right to respect for their lives.

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PROTOCOL OF SAN SALVADOR) (P.53)

¹ Additional protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador,” adopted on November 17, 1988, Art. 10, S.S.T. No. 69, reproduced in Basic Documents of the Inter-American Human Rights System, OEA/Ser.L.V/11.82 doc. 6 rev.1 p. 67 (1992) (in force since November 16, 1999). Also see International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted on December 16, 1966, Art. 12, G.A. Res. 2200A (XXI), UN GAOR, Sup. No. 16, UN Doc. A/6316 (1966) (in force since January 3, 1976); Convention on the Rights of the Child, adopted on November 20, 1989, Art. 24, G.A. Res. 44/25, addendum, UN GAOR, 44^a Ses., Sup. No. 49, UN Doc. A/44/49 (1989) (in force since September 2, 1990). These international human rights instruments recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The ICESCR establishes that “States Parties to this covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (art. 12(1)). The Convention on the Rights of the Child (art. 24) and Protocol of San Salvador (art. 10) also recognize the right to enjoy the highest attainable standard of physical, mental, and social health.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (P.53)

² Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18, 1979, G.A. Res. 34/180, UN GAOR, 34^a Ses., Sup. No. 46, UN Doc. A/39/51 (1979), 1249 S.S.T. 13, (in force since September 3, 1981).

AMERICAN CONVENTION ON HUMAN RIGHTS: ARTICLE 5.1 (P.55)

¹ American Convention on Human Rights, adopted on November 22, 1969, Arts. 5(1)-5(2), S.S.T. No. 36, OEA/Ser.L/V/II.23, doc. 21 rev. 6 (in force since July 18, 1978).

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: ARTICLE 7 (P.55)

² This right is also recognized in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 16) and in the Universal Declaration of Human Rights (art. 5). Likewise, the

Convention of Belém do Pará explicitly recognizes women's right to respect for their physical, mental, and moral integrity (art. 4(b)) and their right to be free from torture (art. 4(d)). The Inter-American Convention to Prevent and Punish Torture requires states to take measures to prevent and punish torture and cruel, inhuman, and degrading punishment (art. 6).

**AMERICAN CONVENTION ON HUMAN RIGHTS:
ARTICLE 1 (P.57)**

- ¹ American Convention on Human Rights, adopted on November 22, 1969, Art. 1, S.S.T. No. 36, OEA/Ser.LV/II.23, doc. 21 rev. 6 (in force since July 18, 1978). Also see, *ibidem*, Art. 24, International Covenant on Civil and Political Rights, Art. 2(1), G.A. Res. 2200A (XXI), UN GAOR, 21^a Ses., Sup. No. 16, UN Doc. A/6316 (1966), 999 S.S.T. 171 (in force since March 23, 1976); International Covenant on Economic, Social and Cultural Rights, adopted on December 16, 1966, Art. 3, G.A. Res. 2200A (XXI), UN GAOR, Sup. No. 16, UN Doc. A/6316 (1966) (in force since January 3, 1976).

**CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN**

- ² Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18, 1979, G.A. Res. 34/180, UN GAOR, 34^a Ses., Sup. No. 46, UN Doc. A/34/46 (1979), 1249 S.S.T. 13, (in force since September 3, 1981).
- ³ *Ibidem*, Art. 5(a).

**AMERICAN CONVENTION ON HUMAN RIGHTS:
ARTICLE 11 (P.59)**

- ¹ American Convention on Human Rights, adopted on November 22, 1969, Arts. 11(2)-11(3), S.S.T. No. 36, OEA/Ser.LV/II.23, doc. 21, rev. 6 (in force since July 18, 1978). Also see Universal Declaration of Human Rights (Universal Declaration), adopted on December 10, 1948, Art. 12, G.A. Res. 217A (III), UN Doc. A/810 p. 71 (1948); International Covenant on Civil and Political Rights (ICCPR), Art. 17, G.A. Res. 2200A (XXI), UN GAOR, 21^a Ses., Sup. No. 16, UN Doc. A/6316 (1966), 999 S.S.T. 171 (in force since March 23, 1976). The IACHR has explained that this right “guarantees a sphere that no one may intrude upon, an area of activity that belongs fully to each individual.” *X & Y v. Argentina*, Case 10.506, IACHR, Report No. 38/96, OEA/SER.LV/II.95, doc. 7 rev. para. 91 (1996). The Universal Declaration (art. 12) and the ICCPR (art. 17) likewise protect the right to privacy, defined as the right to not be “the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence” and to “the protection of the law against such interference or attacks.”

**AMERICAN CONVENTION ON HUMAN RIGHTS
ARTICLE 5.2 (P. 60)**

- ¹ American Convention on Human Rights, adopted on November 22, 1969, Art. 5(2), S.S.T. No. 36, OEA/Ser.LV/II.23, doc. 21, rev. 6 (in force since July 18, 1978).

**INTER-AMERICAN CONVENTION ON THE PREVENTION,
PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST
WOMEN (CONVENTION OF BELÉM DO PARÁ) (P.62)**

- ¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted on June 9, 1994, Art. 1 (in force since March 5, 1995) [hereinafter Belém do Pará Convention]. Also see General Assembly, *Declaration on the elimination of violence against women*, G.A. Res. 48/104, 48th Ses., Issue 111 on the agenda, Arts. 1, 2(c), UN Doc. A/RES/48/104 (1994).

- ² Belém do Pará Convention, *supra* note 1, Art. 3.

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