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Secretariat of the Committee on the Elimination of Discrimination Against Women

Office of the United Nations High Commissioner for Human Rights

Palais Wilson

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Switzerland

Re: Supplementary information on El Salvador, submitted for consideration by the Pre-Sessional Working Group of the Committee for the Elimination of Discrimination against Women (the “Committee”) for the 66th Session

Distinguished members of the Committee:

The Center for Reproductive Rights (the “**Center**”) is an independent non-governmental organization that promotes gender equality and the fulfilment of women’s reproductive rights. The Center seeks to contribute to the Committee’s work by providing independent information concerning El Salvador’s obligations to guarantee the rights protected under the Convention on the Elimination of Discrimination Against Women (“**CEDAW**”).

In light of El Salvador’s upcoming review by the Committee, this letter highlights El Salvador’s failure to comply with its obligations under CEDAW to take all appropriate measures to eliminate discrimination against women in the field of healthcare (including family planning), reproductive rights and other human rights and fundamental freedoms by: (a) prohibiting abortion under any circumstances, even in cases of rape or incest, where it endangers the mother’s life, or where the fetus is unviable; and (b) by effectively obliging health professionals to report patients to the police who they merely suspect *may* have had an abortion, in disregard of patient confidentiality, resulting in the incarceration and prosecution of many innocent women who have suffered uninduced miscarriages.

This letter is presented as follows: first, we set out the legislative background to El Salvador’s total criminalization of abortion; second, we set out the tragic and fatal consequences of these laws, including in many cases the incarceration of entirely innocent women; third, we explain how these severe restrictions violate El Salvador’s obligations under CEDAW to eliminate discrimination against women; fourth, we include a list of suggested questions for the Committee to ask the State party’s representatives; and fifth, we include a list of recommendations that we respectfully propose the Committee should make.

I Legislative Background to the Total Criminalisation of Abortion in El Salvador

Until 1998, El Salvador allowed abortion (a) to save a woman’s life; (b) when abortion resulted from a crime; (c) when pregnancy resulted from rape; and (d) in case of serious fetal impairment.¹

In 1998, however, a new Criminal Code (the “**1998 Criminal Code**”) took effect. This criminalized abortion *under any circumstances*,² and criminalized public employees or officials of any authority (including hospitals and clinics) who fail to report crimes, such as abortion.³ This latter provision (which has no real equivalent in any other State)⁴ requires medical professionals, in disregard of patient confidentiality, to report women to the authorities who they suspect of having had an abortion.⁵ In practice, fearing criminal consequences for failure to report, health professionals report

women whenever there is a possibility that they may have had, or attempted to have, an abortion. The effect of this is that women who suffer complications in pregnancy (such as a miscarriage), opt not to seek healthcare assistance – at serious risk to themselves and their pregnancy – due to a fear that they will be prosecuted and imprisoned. In the event that women do seek medical attention, they face being reported to the authorities and prosecuted, possibly without adequate legal advice and representation.⁶

Following the 1998 legislative changes on abortion, El Salvador amended its Constitution in 1999 to recognize an embryo as a human being from “*the moment of conception*”.⁷ A person who performs or self-induces an abortion, even before the fetal stage, is therefore liable to be prosecuted for homicide. This carries a penalty of imprisonment of up to 50 years.⁸

There remains a stigma in El Salvador against speaking about abortion law reform and reproductive rights.⁹ Those who do speak out are often subject to abuse, aggression, and political violence and harassment.¹⁰ This letter seeks to give a voice to women who have sought, but who have been denied, the opportunity to exercise their rights under CEDAW.

II The Consequences of the Total Criminalization of Abortion in El Salvador

El Salvador’s total criminalization of abortion has had and continues to have severe and discriminatory effects on women.

1. Health risks from unsafe abortions

These laws have led to the preventable deaths of many El Salvadoran women.

Women’s access to healthcare is effectively restricted. Between 2000 and 2011, 57.4% of formal complaints to the authorities regarding potential breaches of anti-abortion legislation came from staff in public hospitals and from the Salvadoran Social Security Institute.¹¹ It is notable that there were no complaints at all made by *private* hospitals or *private* healthcare centers and physicians.¹² This cannot be coincidental, and demonstrates that these laws operate in a way that discriminates against poor women in particular. Women with obstetric complications have died from lack of medical treatment because they have been afraid to attend public hospitals.¹³ Women have also died from suicide and from unsafe backstreet abortions¹⁴ (typically involving unskilled providers often operating in unhygienic conditions), or self-inducement, whether by inserting an object or by ingesting inappropriate and lethal medication or substances.¹⁵

2. Prosecution and imprisonment of women

These laws have led to the unjust prosecution and imprisonment of vulnerable women. Between 2000 and 2011, 129 women in El Salvador were prosecuted for abortion or homicide when the fetal deaths occurred in the last months of pregnancy.¹⁶ Of these 129¹⁷ women, 26 were convicted of homicide¹⁸ and 23 were convicted of abortion.¹⁹

Most of these 129 women were young, poor, with limited education, and from remote communities.²⁰ Indeed, 68.2% of the incarcerated women were between 18 and 25 years old with limited education (6.98% were illiterate, 40.31% had only primary education, 11.63% had completed high school, and only 4.65% had progressed to higher education). Almost three-quarters were single.²¹

Between January 2005 and December 2008, the Ministry of Public Health estimated that over a quarter of abortions in El Salvador were performed on adolescents.²² These laws have a particularly

devastating effect on pregnant adolescent girls (especially between 12 and 14)²³ since they are effectively forced to leave education with little possibility of resumption after giving birth.²⁴

Abortion-related investigations invariably lead to the prolonged, pre-trial detention of vulnerable women.²⁵ They are held in unsuitable prisons²⁶ without access to personal hygiene items.²⁷ Many have been incarcerated while still suffering from complications or even hemorrhaging.²⁸ The incarceration of sick and vulnerable women is unnecessary, disproportionate, and uniquely impacts upon women while in a particularly fragile state, thereby constituting a flagrant violation of rights under CEDAW.

The Center has been acting for “Las 17”, a group of 17 El Salvadoran women who, between 1999 and 2011, were each sentenced to up to 40 years in jail following reported miscarriages, mostly on charges of aggravated homicide.²⁹ One of these women, “*Guadalupe*”, suffered a miscarriage at 18 after being raped and was sentenced to 30 years imprisonment in February 2008. In January 2015, she was pardoned³⁰ a decision welcomed by a number of UN special mandate holders.³¹ However, nine of these women remain in prison, still seeking pardons. A petition filed by the Center on their behalf asserting that El Salvador’s conduct breaches international human rights law is currently being considered by the Inter-American Commission on Human Rights.

But for these discriminatory and unduly strict and severe laws, it is very likely that the lives – and social prospects – of many women would have been saved. Two cases are paradigmatic of the human rights violations perpetrated as a result of El Salvador’s criminalization of abortion:

- (a) “*Beatriz*”³² was 22 when she fell pregnant. Her health deteriorated during the fourth month of her pregnancy. Each of her doctors agreed that the foetus was not viable, and that continuing the pregnancy would result in more complications or *Beatriz*’s death. However, the doctors could not terminate the pregnancy as it would have exposed them to criminal conviction, professional disqualification, and imprisonment.

Beatriz appealed to the El Salvadoran Supreme Court requesting urgent treatment. Despite the urgency of her case, the Court took six days just to agree to hear the case.

It was only after *Beatriz* took her case to the IACHR – more than one month after her appeal had been lodged – that the Supreme Court held a hearing to examine her case.

During the hearing, *Beatriz* collapsed and was rushed to hospital. Despite the clear risk to her life, the Court said it would not give a ruling for 15 working days.

At this point the Inter-American Court of Human Rights intervened and ordered El Salvador to take all necessary steps to enable *Beatriz*’s doctors to treat her without interference.³³ It was another five days before El Salvador allowed *Beatriz* to have a Caesarean section.³⁴ By this time, she was over 20 weeks pregnant. The baby was born without large parts of its head and brain, and died hours later. *Beatriz*’s health remains precarious and she is in constant pain.

- (b) “*Maria*”³⁵ was 18 years old and still in school when she fell pregnant. She did not experience or recognise any symptoms of pregnancy and did not realise she was pregnant. However, she began to experience strong pains and suffered from haemorrhaging and fainting for two days. It was only when she went to hospital that she found out she was pregnant.

When *Maria* arrived at hospital, she had lost a lot of blood and was very weak. The hospital staff questioned her aggressively while she was in a barely conscious state, and accused her of inducing a miscarriage.

On release from hospital, Maria was arrested for murder. She was sent to prison where she endured horrific conditions. She was forced to exercise for an hour at a time despite her poor health, was denied medication prescribed to her, and was subjected to frequent vaginal searches by prison staff, who did not observe even the most basic hygienic practices, such as changing their gloves between inspections.

Maria spent six months in prison before the case against her was dropped due to the lack of evidence that she had induced an abortion.

3. Sexual violence and reproductive rights

This Committee has previously expressed its concern at the high incidence of sexual violence against women in El Salvador.³⁶ Alarming, the rate of rape in El Salvador peaks in relation to 10 to 14 year old girls.³⁷ Yet this legislation prohibits abortion even where the pregnancy results from rape or other sexual violence. Forcing women to continue their pregnancies even in the case of sexual violence, rape or incest leads to serious mental health consequences for these women.³⁸ Not only do they lose control over their bodies, they also lose control over their lives.³⁹ In an attempt to regain control, many women feel compelled to seek an unsafe backstreet abortion. As explained above, this very frequently carries fatal or other serious consequences.⁴⁰

El Salvador also has one of the highest adolescent pregnancy rates in Latin America: almost a quarter of women between 20 and 24 years old had their first child before they turned 18.⁴¹

A key cause of this is the limited availability of sex education.⁴² There has been strong resistance in El Salvador to providing sex education, arising mainly from the misguided social stigma attached to it.⁴³ In consequence, there is significant misinformation and lack of information: in 2008, nearly a third of women who were taking oral contraception did not know what to do if they missed a pill, and 80% of women using “traditional” means of pregnancy prevention (such as the rhythm method or withdrawal) were unable to identify where in the menstrual cycle women were most likely to fall pregnant.⁴⁴

El Salvador’s high adolescent pregnancy rate is exacerbated by the fact that El Salvador’s public health service restrictive provision of emergency contraception.⁴⁵ Unsurprisingly, there is a huge unmet need for modern contraception in El Salvador: 33% of married women under 24 and a massive 61% of single, sexually active women under 24 do not use any modern contraceptive method, despite not wanting a child soon or at all.⁴⁶

This violates women’s reproductive rights under Article 16(1)(e) of CEDAW.

4. Zika virus

El Salvador has maintained its stance against abortion and reproductive rights even in the face of the outbreak of the Zika virus, which the Centers for Disease Control and Prevention has now concluded is a cause of neurological disorders (including microcephaly) in fetuses.⁴⁷ The Government’s wholly inadequate response to this crisis has been to urge women to avoid pregnancy until 2018 as a means of militating against the risk of having children with birth defects.⁴⁸

This contradicts the World Health Organization’s official interim guidance of February 18, 2016, which states that women at risk of being infected with the Zika virus should have “*ready access to emergency contraceptive services and counseling*”.⁴⁹ Further, the U.N. High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, has said that this:

“ignores the reality that many women and girls simply cannot exercise control over whether or when or under what circumstances they become pregnant, especially in an environment where sexual violence is so common. ... In situations where sexual violence is rampant, and sexual and reproductive health services are criminalized, or simply unavailable, efforts to halt this crisis will not be enhanced by placing the focus on advising women and girls not to become pregnant. Many of the key issues revolve around men’s failure to uphold the rights of women and girls, and a range of strong measures need to be taken to tackle these underlying problems.”⁵⁰

Implying that only women are to blame for pregnancy entrenches prejudice and gender stereotypes, in direct violation of Article 5 of CEDAW.

5. International calls on El Salvador to reform its restrictive reproductive laws and policies

In January 2015, six U.N. Chair-Rapporteurs and Special Rapporteurs called on El Salvador to repeal its anti-abortion legislation, release the women who remain incarcerated without due process under those laws, stop the prosecution and imprisonment of women who arrive at hospitals seeking medical care for obstetric emergencies, and *“ensure access to sexual and reproductive health and rights, including maternal health care and access to all methods of modern contraception”*.⁵¹

At El Salvador’s last Universal Periodic Review in November 2014, twelve States expressed concern and called on El Salvador to amend or repeal its severe and punitive anti-abortion laws.⁵²

In 2014, the U.N. Committee on Economic, Social and Cultural Rights recommended that El Salvador redouble its efforts to reduce the high rate of teenage pregnancies and ensure access to readily available sexual and reproductive health services, particularly in rural areas.⁵³

In 2010, the U.N. Committee on the Rights of the Child expressed its concern at El Salvador’s high number of teenage pregnancies, and at the fact that the criminalization of abortion may lead girls to resort to unsafe and clandestine abortion practices, sometimes with fatal consequences,⁵⁴ in violation of El Salvador’s obligations under the Convention on the Rights of the Child.⁵⁵

And in 2007, the U.N. Committee on Economic, Social and Cultural Rights expressed concern at the ongoing discrimination faced by women in El Salvador, and urged El Salvador to reform its abortion legislation and to consider exceptions to the total ban.⁵⁶

Despite the international clamor for change, El Salvador’s abusive and discriminatory laws remain in place.

III El Salvador’s Anti-Abortion Legislation and its Failure to Guarantee Reproductive Rights Violates Rights under CEDAW

1. El Salvador Violates the Right to Substantive Equality and the Right to be Free from Discrimination (Articles 2, 3, 5, 15 and 24)

El Salvadoran society suffers from widespread discrimination against women. In 2011, the U.N. Special Rapporteur on Violence against Women, its Causes and Consequences, issued a report on her mission to El Salvador,⁵⁷ stating that:

“[d]eeply 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.”

Under Articles 2, 3, 5, 15 and 24 of CEDAW, El Salvador must ensure the “full development and advancement of women”⁵⁸ and take “all necessary”⁵⁹ measures to eliminate “discrimination against women” in relation to the full complement of “human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.⁶⁰ El Salvador’s severe anti-abortion laws discriminate against women by violating a number of core rights, including:

- (a) the right to life,⁶¹ by:
 - (i) prioritizing the survival of a fetus over the life of a woman, where continuing a pregnancy threatens the woman’s life;⁶²
 - (ii) failing to ensure that women who have suffered a miscarriage or other obstetric complications receive the appropriate care and medicine, and are placed in a suitable environment necessary for their recovery;⁶³
 - (iii) failing to take any measures to provide post-abortion care to women who have sought unsafe abortions;⁶⁴
 - (iv) requiring health professionals to report patients experiencing obstetric emergencies, thus creating an environment of fear which deters women from seeking healthcare;⁶⁵
- (b) the right to liberty and the freedom from torture, cruel, inhuman or degrading treatment or punishment,⁶⁶ by:
 - (i) forcing women to continue their pregnancies even in cases of rape or incest, causing serious physical and emotional suffering,⁶⁷ and leading to many avoidable deaths or long-term damage to health;⁶⁸
 - (ii) allowing mistreatment from healthcare personnel, including by handcuffing women to hospital beds before, during or immediately after giving birth or suffering an obstetric emergency;⁶⁹
 - (iii) detaining and subjecting women to humiliating body inspections, including anal and vaginal searches carried out by unqualified personnel who disregard basic standards of hygiene and dignity;⁷⁰
- (c) the right to due process and fair trial,⁷¹ by:
 - (i) undermining women’s access to lawyers and as such, the rights of detainees to effective legal assistance and to exercise their right to a defense,⁷² for instance by interrogating women in the absence of their attorneys, whilst still receiving medical treatment and in some cases, whilst under the effects of anesthesia;⁷³
 - (ii) allocating State-appointed defense attorneys who fail properly to advise or advocate on behalf of their clients, or to ensure an opportunity for their clients to testify;⁷⁴

- (iii) admitting and using unsafe and/or illegally obtained evidence and ignoring material raising reasonable doubts about the woman’s guilt,⁷⁵ and by misleading illiterate witnesses or otherwise manipulating individuals into filing criminal complaints;⁷⁶ and
- (d) the right to privacy,⁷⁷ by:
 - (i) denying women the right to make decisions about their own bodies and reproductive capacity without the interference of third parties (such as health professionals and the State);⁷⁸
 - (ii) requiring health professionals to report patients experiencing obstetric emergencies, infringing women’s right to patient confidentiality and creating an environment of fear in which women are effectively prevented from seeking medical care.⁷⁹

El Salvador’s total criminalization of abortion furthers the cycle of pervasive gender-based discrimination. It impacts disproportionately on young women from poor, vulnerable and rural backgrounds. Unlike their male peers, most young girls who fall pregnant are forced to drop out of school, with little or no prospect of resuming their studies.⁸⁰ This entrenches a cycle of poverty and discrimination in a way that distinctly affects women, and leads to a continuing state of inequality.

Those who do seek access to healthcare when suffering from obstetric complications fear being reported to the authorities. Once reported, they are placed under investigation, interrogated and often detained without any real sensitivity or consideration for their vulnerable state.⁸¹ And in the event of prosecution, they are exposed to a real risk of a breach of due process and injustice.

These matters reflect a systemic bias in El Salvador against women: from the patriarchal attitudes which manifest themselves in violence against women, to the high rates of sexual assault and rape, to the lack of effective access to healthcare to pregnant women suffering obstetric complications, to the total criminalization of abortion which leads to vulnerable women being investigated, prosecuted and imprisoned (for very lengthy periods of time) without due process. Instead of advancing women’s rights, El Salvador’s total criminalization of abortion exacerbates and entrenches discrimination against women, in contravention of the central tenet of CEDAW.

2. El Salvador Violates the Right of Equal Access to Healthcare (Article 12)

Access to healthcare is a “*basic right*”⁸² recognized by the Committee in General Recommendation 24 to be of “*central*”⁸³ concern. Article 12 requires El Salvador to take all appropriate measures to eliminate discrimination against women in the field of healthcare and to ensure women have access to healthcare services throughout their lifecycle.⁸⁴ As explained in General Recommendation 24, El Salvador must consider the health rights of women from the perspective of women’s needs and interests and must take into account the differences in the needs of men and women,⁸⁵ including biological factors (notably women’s reproductive function), socio-economic factors, psychological factors and health system factors.⁸⁶

The right to access health services includes the right to access reproductive health services. This encompasses the obligation to provide information on family planning and sex education to “*ensure women’s right to safe motherhood and emergency obstetric services*”⁸⁷ with the aim to “*reduce maternal mortality rates through safe motherhood services and prenatal assistance*”.⁸⁸ It is therefore “*discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women*”.⁸⁹

El Salvador must provide health services that are appropriate for and available to women, in the sense that health services must be delivered in a manner consistent with women's rights, including the rights to dignity, autonomy, privacy, confidentiality, informed consent and choice.⁹⁰

As the U.N. Human Rights Committee has stated,⁹¹ El Salvador's anti-abortion legislation violates Article 12 of CEDAW. The legislation discriminates against women in the fulfillment of their right to health in at least the following ways: (a) it endangers women's lives by forcing them to continue with pregnancies that pose a serious threat to their own wellbeing, or by driving women to seek an unsafe backstreet abortion to terminate unwanted or high risk pregnancies; (b) it detrimentally affects women's psychological well-being by forcing women to continue with unviable pregnancies or pregnancies resulting from incest or rape; and (c) it requires medical professionals to report women they suspect of having had abortions, in disregard of patient confidentiality.

The obligation to report has particularly serious consequences, since women thereby suffer from a fear of being reported in situations where there is no culpability, such as where they have suffered unprovoked bleeding and miscarriage. Many women therefore refuse to seek healthcare or medical treatment even though they are in a highly vulnerable situation, with the result that in many cases, women have died through a lack of medical attention, or as a result of unsafe backstreet abortions.⁹² This problem is particularly acute in relation to women of low socio-economic status living in rural areas, as it compounds the already substantial time and resources that poor and uneducated rural women must expend in order to access reproductive health services (see further below in respect of breaches of Article 14).

El Salvador has created real and significant barriers to healthcare during and after pregnancy. In so doing, it fails to meet the "*specific, distinctive health needs and interests of women*".⁹³ This violates Article 12(2), and discriminates against women in violation of Articles 2 and 12(1).

3. El Salvador Violates the Right to Reproductive Freedom (Article 16(1)(e))

Article 16(1)(e) of CEDAW requires El Salvador to provide women⁹⁴ with the "*same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights*". This requires States to facilitate the exercise of women's choice and independence in making family planning decisions, and increase awareness of, and access to, healthcare facilities, and by making family planning information available to women and girls (see also Article 10(h) of CEDAW).⁹⁵

Article 16(1)(e) therefore requires El Salvador to create the necessary conditions for women to control their reproductive capacity.⁹⁶ Yet El Salvador has done the opposite by enacting highly restrictive anti-abortion legislation.

In the case of *K.L. v Peru*,⁹⁷ the U.N. Human Rights Committee found that Peru's refusal to act in accordance with K.L.'s decision to terminate her pregnancy violated Article 17 of the International Covenant on Civil and Political Rights. The Human Rights Committee held that requiring K.L. to carry a pregnancy to term impermissibly interfered with a decision by K.L. affecting her own body and life, and prevented her from having the opportunity to exercise her right to make independent decisions on her reproductive life. Further, as explained by this Committee in the case of *L.C. v Peru*,⁹⁸ the State must provide effective access to reproductive health services in a way that protects and gives effect to women's reproductive rights.

El Salvador's failure to provide adequate access to information and education therefore prevents women from exercising their reproductive rights in contravention of Article 16(1)(e).

4. Disproportionate Effect on Poor and Rural Women (Article 14)

Article 14 of CEDAW requires El Salvador to eliminate discrimination against women in rural areas. Rural living increases women's socio-economic disadvantages by excluding them from services and opportunities, and constitutes a distinct source of discrimination against women.⁹⁹

The Committee has specifically drawn attention to the link between anti-abortion legislation and the rise in maternal (and infant) mortality in rural areas, highlighting "*that many women, in particular in rural areas, give birth at home, and that the practice of illegal and unsafe abortions increases the high rate of maternal mortality.*"¹⁰⁰ High levels of illiteracy amongst rural women impede access to information on sexual and reproductive issues, including prenatal and obstetric issues, which leads to an increase in unplanned pregnancies and perpetuates intergenerational poverty.¹⁰¹

Over a third of El Salvador's population lives in rural areas.¹⁰² Rural life in El Salvador presents particular difficulties, including increased levels of poverty,¹⁰³ illiteracy¹⁰⁴ and inaccessibility.¹⁰⁵ Rural women need to spend more time and resources to access reproductive health services, and are more likely to resort to unsafe abortions because they lack the resources to access private healthcare or travel abroad to jurisdictions where abortion is legal.¹⁰⁶ Rural women also tend to use the most unsafe methods and the most untrained abortion providers, and are therefore more likely to suffer severe complications from unsafe abortion.¹⁰⁷ It is unsurprising, therefore, that many of the "Las 17" come from rural parts of El Salvador.

El Salvador has violated Article 14, since its anti-abortion legislation has a distinctly and disproportionately negative impact on women in rural areas.

5. El Salvador Violates the Rights to Education and Employment and the Right to Participate in Public and Political Life (Articles 7, 8, 10 and 11)

Anti-abortion legislation creates lasting detriment to women and equality by entrenching poverty and by depriving women of educational, economic and social opportunities, leading to cross-generational consequences, as explained further below.

El Salvador's breaches of Articles 12, 14 and 16(1)(e) as set out above give rise to a consequential breach of a number of other rights under CEDAW, including the **right to education** under Article 10, the **right to employment** under Article 11, and the **right to participate in public and political life** under Articles 7 and 8. When women are unable to decide when and whether to bear children, this impacts all facets of their lives, including their ability to finish school (with limited possibility that they will resume their education,¹⁰⁸ especially if they are imprisoned on suspicion of abortion¹⁰⁹), enter the labor force,¹¹⁰ and participate equally in public and political life.¹¹¹ Low female participation deprives women's voices from being heard, reinforces gender stereotypes characterizing women's primary role as child bearers, and further entrenches the cycle of discrimination against women.

El Salvador's anti-abortion legislation therefore has long-term and far-reaching consequences across the economic, educational and political spheres.

6. Conclusions

We applaud the Committee for its commitment to reproductive health and women's reproductive rights, and for the strong recommendations it has issued in the past. We also applaud El Salvador's expressed commitment to pursue measures with significant impacts on the lives of women, such as

increased access to health services and increased efforts to protect women facing situations of vulnerability or violence.¹¹²

However, this commitment on the part of El Salvador does not adequately address the key source of discrimination against women, which is El Salvador's continued violation of women's reproductive rights through lack of access to emergency contraception and through its highly restrictive anti-abortion legislation. These laws make distinctions, exclusions and restrictions on the basis of sex, which have the effect of impairing or nullifying the recognition, enjoyment or exercise by women of their human rights in breach of El Salvador's international legal obligations.¹¹³ Further, failing to prevent coercion in regard to reproduction, and failing to ensure that women are not forced to seek unsafe abortions constitutes gender-based violence, since it seriously inhibits women's ability to enjoy their rights and freedoms.¹¹⁴

IV Questions for El Salvador

We respectfully suggest that the Committee ask El Salvador the following questions:

- (a) Please report on whether reforms to El Salvador's anti-abortion legislation are being planned, particularly in light of the recent outbreak of the Zika virus.
- (b) Please report on the steps being taken to address the effective prevention of access to healthcare for women, owing to fear of prosecution. In particular, please report on:
 - (i) the extent to which health professionals and public officials report women seeking obstetric care on suspicion of abortion and/or aggravated homicide;
 - (ii) whether any (and if so, what) steps are being taken to provide women in these circumstances with adequate healthcare, without fear of prosecution.
- (c) Please report on the nature of the investigation process after a woman has been reported for a suspected abortion. In particular, please explain whether any policies exist to minimise the time taken to investigate women reported in such circumstances (while according women all necessary fair trial rights), and whether steps are being taken to eliminate (or at least minimise) the interim incarceration of women during the investigation process.
- (d) Please report on the steps being taken to provide women – particularly young women and women living in rural areas – with access to adequate family planning information to enable them to have full capacity to exercise their reproductive rights.
- (e) Please report on the steps being taken to reform laws and policies so that women can access free contraception, counselling, and sex education programs, and on the steps being taken to address the stigma around sex education.

V Recommendations

We respectfully request the Committee addressing the following recommendations to the Salvadorian government:

- (a) Urgently repeal El Salvador's highly restrictive anti-abortion legislation.¹¹⁵

- (b) *Alternatively*, urgently amend El Salvador’s anti-abortion legislation to permit exceptions for pregnancy resulting from sexual violence, rape or incest, where there is a threat to the mother’s life or health, or where the fetus is unviable.¹¹⁶
- (c) *In any event*:
 - (i) urgently amend El Salvador’s anti-abortion legislation to remove the obligation of health professionals and public officials to report women to the police based merely on a *suspicion* of abortion; and
 - (ii) formulate and actively implement policies to provide for the widespread dissemination of contraceptive products (particularly emergency contraception) and accurate family planning information to allow women (and particularly adolescents in rural areas) to exercise their reproductive rights.

We appreciate this Committee’s longstanding commitment to reproductive rights and to the eradication of discrimination in the provision of reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Respectfully,

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Annex: Extracts from the 1998 Criminal Code and the 1999 Constitution¹¹⁷

1. El Salvador Criminal Code (1998)

Article 133: One who performs an abortion with a woman's consent or a woman who performs her own abortion or consents to another performing it will be sanctioned by prison for two to eight years.

Article 134: One who performs an abortion without a woman's consent will be sanctioned by prison for four to ten years.

The same penalty will apply to one who performs an abortion on a woman having secured her consent by way of violence or deception.

Article 135: If the abortion is performed by a doctor, pharmacist or by any person who undertakes auxiliary activities to those professions, when such a practice occurs, it will be sanctioned by prison for six to twelve years. The penalty of disqualification from the practice of the profession or activity for the same period shall also be applied.

Article 136: One who induces a woman, or helps her by way of economic or other means to obtain an abortion, will be sanctioned by prison for two to five years.

If the person who helped or induced the abortion is the parent, the sanction will be increased by a third of the maximum penalty indicated in the previous paragraph.

Article 137: One who negligently causes an abortion will be sanctioned with prison for six months to two years.

Culpable abortion caused by the pregnant woman herself, by her own attempt, will not be punishable.

Article 312: An official or public employee, agent of an authority or public authority who, in the exercise of his/her functions or during them, comes to know that a punishable crime has been committed and omits to give notice within twenty four hours to the competent authority, will be sanctioned with a fine of fifty to one hundred days.

The same sanction will be imposed on the boss or person in charge of a hospital, clinic or other such establishment, public or private, who does not notify the competent authority of the admission of injured people, within eight hours following the same, in cases where it could be realistically considered that such is the result of a crime.

2. El Salvador Constitution (1999)

Article 1:

El Salvador recognizes the human person as the origin and the end of the activity of the State, which is organized to attain justice, judicial security, and the common good.

In that same manner, it recognizes as a human person every human being since the moment of conception.

In consequence, it is the obligation of the State to secure for the inhabitants of the Republic, the enjoyment of liberty, health, culture, economic well-being and social justice.

- ¹ Decreto N° 270, Código Penal (1973) (hereinafter ‘1973 Criminal Code’), Article 169, available at <http://es.scribd.com/doc/60806391/Codigo-Penal-1973> (last accessed March 24, 2016).
- ² Performing an abortion on another carries a penalty of imprisonment of up to twelve years, and self-inducing an abortion carries a penalty of imprisonment of up to eight years, see Decreto N° 1030, Código Penal (1998) (hereinafter ‘1998 Criminal Code’), Articles 133-137. See also Código de Ética y Deontología Médica (2015) (hereinafter ‘2015 El Salvador Doctors’ Code of Ethics and Deontology’), Article 87, which provides that “*performing abortion constitutes serious misconduct according to the Criminal Code*”.
- ³ 1998 Criminal Code, Article 312 (extracted in the Annex).
- ⁴ Chile has a similar provision which is, in any event, applied more permissively.
- ⁵ The obligation of doctor-patient confidentiality is set out in 2015 El Salvador Doctors’ Code of Ethics and Deontology, Articles 64 and 65. Article 38(2) of the Decreto N° 955, Código de Salud (“1988 Health Code”), however, provides that this obligation is “*inviolable, except in the case where complying with it would breach the existing laws*”.
- ⁶ Center for Reproductive Rights, *Marginalized, Persecuted, and Imprisoned – The Effects of El Salvador’s Total Criminalisation of Abortion*, 2014, p. 14 (hereinafter “CRR, *Marginalized, Persecuted, and Imprisoned*”).
- ⁷ Decreto N°38, Constitución (hereinafter ‘Constitution’), Article 1 (extracted in the Annex).
- ⁸ 1998 Criminal Code, Articles 128-132.
- ⁹ Center for Reproductive Rights, *Persecuted – Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis*, 2001, p. 40 (hereinafter ‘The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*’).
- ¹⁰ US State Department Country Reports on Human Rights Practices, *El Salvador 2014 Human Rights Report*, available at <http://www.state.gov/documents/organization/236900.pdf> (last accessed March 23, 2016) (hereinafter ‘US State Department Country Reports on Human Rights Practices, *El Salvador*’); See also Women’s Global Network for Reproductive Rights, *WGNRR Demands the Protection of Sexual and Reproductive Rights Defenders in El Salvador* (August 28, 2015), available at <http://wgnrr.org/wgnrr-demands-the-protection-of-sexual-and-reproductive-rights-defenders-in-el-salvador/> (last accessed February 12, 2016).
- ¹¹ Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénésico, *Del hospital a la cárcel: consecuencias para las mujeres por la penalización sin excepciones, de la interrupción del embarazo en El Salvador*, 2013 (“Citizen’s Coalition for the Decriminalisation of Abortion on Grounds of Health, Ethics and Fetal Anomaly, *From Hospital to Jail: the Impact on Women of El Salvador’s Total Criminalisation of Abortion*’, *Reproductive Health Matters*, Vol. 22 (44) (November 2014)”), p. 54 (hereinafter “*From Hospital to Jail Report*”).
- ¹² CCPR, *Report on Violation of Women’s Human Rights due to the Complete Criminalisation of Abortion – In Response to the Periodic Report of El Salvador*, (99th Session) (2010), Annex A, p. 1. See also CEDAW, *Concluding Observations*, U.N. Doc. A/54/38/Rev.1 (1999) (Ireland), ¶ 185.
- ¹³ *From Hospital to Jail Report*, pp. 53-55 (noting that it is impossible to state the number of deaths: as long as abortion remains illegal, statistics cannot be expected to reflect the true position).
- ¹⁴ *From Hospital to Jail Report*, p. 53, citing research from the Guttmacher Institute and the International Family Planning Federation Western Hemisphere Region, which estimates that the rate of unsafe abortions in El Salvador is about 25 per 1,000 women of childbearing age, such that over 35,000 unsafe abortions take place in El Salvador every year. Additionally, according to the Maternal Death Surveillance System of the Ministry of Health of El Salvador, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.

- 15 World Health Organisation, *Unsafe Abortion – Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, (2008 6th ed.), pp. 2 and 7.
- 16 *From Hospital to Jail Report*, pp. 53-55.
- 17 Of the 80 remaining cases, 67 were ultimately dismissed or acquitted, and nine were subject to default judgment. No information is available about four cases. *From Hospital to Jail Report*, p. 55.
- 18 Of these 26 convictions, 19 were for aggravated homicide, 4 were for attempted homicide and 3 were for manslaughter.
- 19 It is not entirely clear the basis upon which El Salvador distinguishes between homicide and abortion. In many cases, there would be a crossover between the two. *From Hospital to Jail Report*, p. 55.
- 20 Of the accused women, 43.4% were aged 21–25 years, 24.8% were aged 18–20 and 16.3% were aged 26–30. Thus, some 85% were women younger than 30. These women had very low levels of education: 46.3% were illiterate or had at most finished two years of primary school. Only 25.6% had attended secondary school, a technical school or university. *From Hospital to Jail Report*, pp. 53-54.
- 21 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 13.
- 22 This is based on women who attend hospital following complications from unsafe abortions. Data from the MSPAS Information, Monitoring and Evaluation Unit, cited in Dr. E. Mejívar, 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), cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 10.
- 23 Primer Informe Situacional Sobre Embarazo en Adolescentes y su Impacto en el Derecho a la Educación, Procuraduría para los Derechos Humanos, 2009, cited in HRC, 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*, A/HRC/17/26/Add.2 (February 14, 2011), ¶ 67 (hereinafter ‘HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*’).
- 24 CEDAW, *Concluding Observations*, CEDAW/C/GNQ/CO/6 (2004) (Equatorial Guinea), ¶ 31; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Suriname), ¶¶ 57-8; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Zambia), ¶ 246; CEDAW, *Concluding Observations*, CEDAW/C/BLZ/CO/4 (2007) (Belize), ¶¶ 23, 24, 27.
- 25 Women are imprisoned pursuant to Articles 329 or 330 of the Code of Criminal Procedure, which permits pre-trial detention if there are elements that support (i) the existence of a crime and the likelihood of participation of the accused and (ii) the seriousness of the crime (Article 329); other factors include, *inter alia*, the risk of escape (Article 330). Being charged with homicide – clearly a serious crime – invariably leads to extended pre-trial detention.
- 26 *Cfr.* HRC, *Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶ 96.
- 27 *Ibid.* ¶ 96.
- 28 HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, A/HRC/31/57 (January 5, 2016), ¶ 26. See also CRR, *Marginalized, Persecuted, and Imprisoned*, pp. 56 and 62. See also Isabel Cristina’s testimony, *Ibid.*, p. 29.
- 29 See Las 17, *No Dejemos que sus vidas se marchiten*, available at <http://www.las17.org/> (last accessed March 30, 2016). See also E. Guevara-Rosas, *El Salvador and Las 17*, NEW YORK TIMES (March 2, 2015), available at http://www.nytimes.com/2015/03/03/opinion/el-salvador-and-las-17.html?_r=0 (last accessed March 30, 2016).
- 30 This was a prolonged process in which El Salvador’s Congress approved Guadalupe’s pardon by 43 votes, following the recommendations of the Human Rights Congressional Committee and the

Supreme Court Committee. See Center for Reproductive Rights, *El Salvador Releases One Woman Wrongfully Imprisoned, But Refuses to Pardon 15 Others* (February 19, 2015), available at <http://www.reproductiverights.org/press-room/el-salvador-releases-one-woman-wrongfully-imprisoned-but-refuses-to-pardon-15-others> (last accessed March 30, 2016); OHCHR, *Guadalupe's pardon: UN experts urge El Salvador to pardon all women jailed for pregnancy complications and repeal restrictive abortion law* (January 28, 2015), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15520&LangID=E> (last accessed March 30, 2016) (hereinafter 'OHCHR, *Guadalupe's pardon*').

31 OHCHR, *Guadalupe's pardon* (The experts were **Emna Aouij** (Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice), **Mads Andenas** (Chair-Rapporteur on the Working Group on arbitrary detention), **Dainius Pûras** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), **Juan Ernesto Mendez** (Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment), **Rashida Manjoo** (Special Rapporteur on violence against women, its causes and consequences), and **Gabriela Knaul** (Special Rapporteur on the independence of judges and lawyers).

32 Amnesty International, *On the Brink of Death: Violence Against Women and the Abortion Ban in El Salvador*, 2014, pp. 24-26 (hereinafter 'Amnesty International, *On the Brink of Death*').

33 *B v. El Salvador*, Provisional Measures with regard to El Salvador, Inter-American Court (May 29, 2013).

34 Medically, this was classified as an induced labour rather than an abortion.

35 CRR, *Marginalized, Persecuted, and Imprisoned*, pp. 25-28.

36 CEDAW, *Concluding Observations*, U.N. Doc. CEDAW/C/SLV/CO/7 (November 7, 2008) (El Salvador), ¶ 23.

37 Salvadoran Institute for the Development of Women, *Second National Report on the Situation of Violence Against Women in El Salvador 2010: A Public Safety Issue*, 2011, p. 32, cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 23. Additionally, in 2009, around 90% of criminal complaints regarding sexual violence were for cases of violence against women.

38 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 56.

39 HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 65.

40 According to the Maternal Death Surveillance System of the Ministry of Health, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.

41 Additionally, among adolescents between 15 to 19 years old, the pregnancy rate is 89 per 1,000 women of reproductive age. See Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America: Protecting the Sexual and Reproductive Health of Young People Today*, 2008, p. 4 (hereinafter 'Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America*'), cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 23.

42 International Planned Parenthood Federation, *Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services: El Salvador case study*, March 2014, p. 14. See also HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 67.

43 *Ibid.*; International Planned Parenthood Federation, *Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health services: El Salvador case study* (March 2014), p. 14. See also HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 67.

- 44 Amnesty International, *On the Brink of Death*, p. 19.
- 45 International Consortium for Emergency Contraception, *EC Status and Availability – El Salvador*, available at <http://www.cecinfo.org/country-by-country-information/status-availability-database/countries/el-salvador/> (last accessed March 30, 2014).
- 46 Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America*, p. 38.
- 47 Centers for Disease Control and Prevention, *CDC Concludes Zika Causes Microcephaly and Other Birth Defects* (April 12, 2016), available at <http://www.cdc.gov/media/releases/2016/s0413-zika-microcephaly.html>; World Health Organization, *Zika Virus Microcephaly and Guillain-Barré Syndrome, Situation Report* (February 26, 2016), p. 1.
- 48 N. Renteria, G. Stardardter, R. Chang, *El Salvador Urges Against Pregnancies Until 2018 as Zika Virus Spreads*, REUTERS (January 21, 2016), available at <http://www.reuters.com/article/us-health-zika-el-salvador-idUSKCN0UZ2SP> (last accessed February 16, 2016).
- 49 World Health Organization, *Prevention of Potential Sexual Transmission of Zika Virus: Interim Guidance*, WHO/SIKV/MOC/16.1 (February 18, 2016).
- 50 OHCHR, *Upholding Women’s Human Rights Essential to Zika Response* (February 5, 2016), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E> (last accessed March 30, 2016).
- 51 OHCHR, *Guadalupe’s pardon*.
- 52 These countries were Australia, Canada, the Czech Republic, France, Germany, Iceland, Luxembourg, Norway, Slovenia, Spain, Sweden and the United Kingdom. See Center for Reproductive Rights, *12 Countries Call on El Salvador to Decriminalize Abortion* (November 10, 2014), available at <http://www.reproductiverights.org/press-room/12-countries-call-on-el-salvador-to-decriminalize-abortion> (last accessed March 27, 2016). See also HRC, *Report of the Working Group on the Universal Periodic Review: El Salvador*, A/HRC/28/5 (December 17, 2014).
- 53 CESCR, *Concluding Observations on the combined third, fourth and fifth period reports of El Salvador*, E/C.12/SLV/CO/3-5 (June 19, 2014), ¶ 23.
- 54 CRC, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding Observations – El Salvador*, CRC/C/SLV/CO/3-4 (January 29, 2010).
- 55 Rights violated include the right to privacy (CEDAW, Article 16(1)), the right to a full and decent life in conditions which ensure dignity, promote self-reliance, and facilitate the child’s active participation in the community (CEDAW, Article 23(1)), the right to health, including access to reproductive health services (CEDAW, Article 24), the right to education (CEDAW, Article 28), and the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts (CEDAW, Article 31).
- 56 CESCR, *Concluding Observations: El Salvador*, E/C.12/SLV/CO/2, (June 27, 2007), ¶¶ 10, 22, 25 and 44.
- 57 HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 11.
- 58 CEDAW, Article 3.
- 59 CEDAW, Article 24.
- 60 CEDAW, Article 1. See also M. A. Freeman, C. Chinkin, B. Rudolf, *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* (Oxford University Press 2012), p. 62 (hereinafter ‘CEDAW, COMMENTARY (2012)’).

- 61 American Convention on Human Rights (“ACHR”), Article 4(1); International Covenant on Civil and Political Rights (“ICCPR”), Article 6(a); Universal Declaration of Human Rights (“UDHR”), Article 3.
- 62 *CRR, Marginalized, Persecuted, and Imprisoned* p. 13. See also CEDAW, *Concluding Observations*, UN Doc. A/53/38/Rev.1 (1998) (Dominican Republic), ¶ 337.
- 63 See the case of “Rosemary” in Center for Reproductive Rights, *Persecuted – Political Process and Abortion Legislation*, p. 33.
- 64 The obligation to provide adequate healthcare arises irrespective of the lawfulness of the abortion. See CEDAW, *Concluding Observations*, UN Doc. CEDAW/C/ARG/CO/6 (2010) (Argentina), ¶ 38; UN Doc. CEDAW/C/ BOL/CO/4 (2008) (Bolivia), ¶¶ 42-43; CEDAW, *Concluding Observations*, UN Doc. CEDAW/C/ SLV/CO/7 (2008) (El Salvador), ¶ 35. See also The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, p. 54.
- 65 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 60.
- 66 Article 5 of the ACHR, Article 7 of the ICCPR, and Article 5 of the UDHR.
- 67 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 56.
- 68 HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, ¶ 43.
- 69 HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, ¶¶ 20 and 44. See also *CRR, Marginalized, Persecuted, and Imprisoned*, p. 56.
- 70 CAT, *Concluding observations*, CAT/C/SLV/CO/2 (El Salvador), ¶¶ 22-23; HRC, *Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶¶ 75 and 103. HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 39; HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, A/HRC/31/57 (January 5, 2016), ¶ 23. See also *CRR, Marginalized, Persecuted, and Imprisoned*, pp. 26 and 32 (describing the invasive searches by prison guards including the sexual assault and abuse perpetrated against Isabel Cristina Quintanilla).
- 71 ACHR, Article 8; UDHR, Articles 7, 9, 10 and 11.
- 72 HRC, *Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶¶ 74-75.
- 73 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 51.
- 74 Amnesty International, *On the Brink of Death*, p. 38; HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 68.
- 75 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 46.
- 76 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 51.
- 77 ACHR, Article 11; ICCPR, Article 17, UDHR, Article 12. See also CEDAW, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999) (hereinafter ‘CEDAW, *General Recommendation 24*’), ¶¶ 22 and 31(e).
- 78 The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, p. 69.
- 79 As stated above, 57.4% of complaints between 2000 and 2011 came from public hospitals or the Salvadorian Social Security Institute, see *From Hospital to Jail Report*, p. 54.
- 80 HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 67.

81 See further below under Section 6, “Breach of El Salvador’s other key human rights obligations”.

82 CEDAW, *General Recommendation 24*, ¶ 1.

83 *Ibid.*, ¶ 2.

84 *Ibid.*

85 *Ibid.*, ¶ 12.

86 *Ibid.*, ¶¶ 12(a)-(c).

87 CEDAW, Article 12(2) and CEDAW, *General Recommendation 24*, ¶ 27. See also CEDAW, Communication No. 22/2009, *L.C. v Peru*, CEDAW/C/50/D/22/2009 (Views of October 17, 2011), ¶ 8.15.

88 CEDAW, *General Recommendation 24*, ¶¶ 23 and 31(c). See also CEDAW, Article 10(h).

89 *Ibid.*, ¶ 11.

90 *Ibid.*, ¶¶ 22 and 31(e).

91 HRC, *Report on Violations of Women’s Health Rights Due to the Complete Criminalisation of Abortion in Response to the Periodic Report of El Salvador*, 99th Session, Oct 2010, p. 7.

92 *From Hospital to Jail Report*, p. 53, citing research from the Guttmacher Institute and the International Family Planning Federation Western Hemisphere Region, which estimates that the rate of unsafe abortions in El Salvador is about 25 per 1,000 women of childbearing age, such that over 35,000 unsafe abortions take place in El Salvador every year. Additionally, according to the Maternal Death Surveillance System of the Ministry of Health of El Salvador, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.

93 CEDAW, Communication No 17/2008, *Alyne v Brazil*, CEDAW/C/49/D/17/2008 (July 25, 2011), ¶ 7.3.

94 This means **all women**, regardless of marital status: CEDAW, *General Recommendation 21*, ¶ 13; CEDAW, COMMENTARY (2012), p. 417.

95 CEDAW, *Concluding Comments*, A/59/38 (2004), ¶¶ 187-188 (Equatorial Guinea). See also CEDAW, *General Recommendation 24*, ¶ 23.

96 The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, 2001, p. 65.

97 HRC, Communication No. 1153/2003, *K.L. v Peru*, CCPR/C/85/D/1153/2003 (Views of October 24, 2005), ¶¶ 3.6 and 6.6. See also CEDAW, Communication No. 22/2009, *L.C. v Peru*, CEDAW/C/50/D/22/2009 (October 17, 2011), ¶ 8.15.

98 CEDAW, Communication No. 22/2009, *L.C. v Peru*, CEDAW/C/50/D/22/2009, 17 Oct 2011, ¶ 8.15.

99 CEDAW, COMMENTARY (2012), pp. 358 and 359.

100 CEDAW, *Concluding Observations*, CEDAW/C/TLS/CO/1 (2009) (Timor-Leste), ¶ 37.

101 CEDAW, COMMENTARY (2012), p. 368.

102 World Bank, *Rural Population: El Salvador*, available at <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> (last accessed March 30, 2016); see also United Nations, Department of Economic and Social Affairs, Population Division, *World Urbanization Prospects: The 2014 Revision*, CD-ROM Edition (2014).

103 41% of households in El Salvador are impoverished, with the percentage rising to 50% in rural areas. See General Directorate of Statistics and Census of the Economy Ministry, *Multipurpose Home Survey (El Salvador)*, 2012, p. 21-22.

- 104 High levels of illiteracy amongst rural women impede access to the already limited information available on sexual and reproductive issues, including prenatal and obstetric issues. See also CEDAW, Article 14(2)(b); CEDAW, COMMENTARY (2012), p.368.
- 105 Access to some households in rural El Salvador is so difficult that women facing an obstetric emergency have to be moved using a hammock, due to a lack of vehicles or because vehicles cannot reach the house. See *From Hospital to Jail Report*, p. 54.
- 106 CCPR, *Report on Violation of Women’s Human Rights due to the Complete Criminalisation of Abortion – In Response to the Periodic Report of El Salvador*, (99th Session) (2010), Annex A, p. 1. See also CEDAW, *Concluding Observations*, U.N. Doc. A/54/38/Rev.1 (1999) (Ireland), ¶ 185.
- 107 Guttmacher Institute, *Facts on Abortion in Latin America and the Caribbean*, November 2015, p. 2.
- 108 CEDAW, *Concluding Observations*, CEDAW/C/GNQ/CO/6 (2004) (Equatorial Guinea), ¶31; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Suriname), ¶¶ 57-8; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Zambia), ¶ 246; CEDAW, *Concluding Observations*, CEDAW/C/BLZ/CO/4 (2007) (Belize), ¶¶ 23, 24, 27.
- 109 The prison occupancy rate in El Salvador is 325.3%. See World Prison Brief and Institute for Criminal Policy Research available at <http://www.prisonstudies.org/country/el-salvador> (last accessed March 30, 2016).
- 110 This is particularly acute in El Salvador as the anti-abortion legislation obliges public officials (which include employers in the public sector) to refer matters to the police if they suspect that an employee has had an abortion. One of the “Las 17”, Teodora del Carmen Vásquez de Saldaña, a school janitor, had an obstetric emergency after being assaulted on a bus while pregnant. When she informed her employer (the dean of the high school) that she was having contractions, he called the police. After Teodora gave birth to a stillborn baby, she was detained. In 2008, she was sentenced to 30 years in prison for the homicide of her baby. Her case – along with those of eight other El Salvadoran women – remains pending before the IACHR: Center for Reproductive Rights, *New Human Rights Case Filed On Behalf of Salvadoran Women Who Miscarried and Are Wrongfully Imprisoned* (March 12, 2015), available at <http://www.reproductiverights.org/press-room/new-human-rights-case-filed-on-behalf-of-salvadoran-women-who-miscarried-and-are-wrongful> (last accessed March 30, 2016).
- 111 Unsurprisingly, female political participation in El Salvador is low. The 84-member Legislative Assembly has only 23 women and the 13-member Cabinet has only 3 women: US State Department Country Reports on Human Rights Practices, *El Salvador*, p. 12 (last accessed February 12, 2016).
- 112 CEDAW, *Eight and Ninth Periodic Report of El Salvador*, CEDAW/C/SLV/8-9 (June 12, 2015), ¶¶ 122-123.
- 113 CEDAW, Article 1.
- 114 CEDAW, *General Recommendation 19*, ¶¶ 1 and 24(m).
- 115 1998 Criminal Code, Articles 132-137; Constitution, Article 1; 2015 El Salvador Doctors’ Code of Ethics and Deontology, Article 87.
- 116 This will require amendments to (at least) Articles 132-137 of the 1998 Criminal Code, along with consequential amendments to along with consequential amendments to Article 1 of the Constitution and Article 87 of Doctors’ Code of Ethics and Deontology.
- 117 These are unofficial English translations. The full 1998 Criminal Code (in Spanish) is available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal>
- The full 1999 Constitution (in Spanish) is available at <http://asamblea.gob.sv/asamblea-legislativa/archivos/constitucionVigente.pdf/view?searchterm=constitucion>.