

**UNITED NATIONS HUMAN RIGHTS COMMITTEE**  
**99<sup>th</sup> Session, Geneva, Switzerland**  
**October 2010**

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**REPORT ON VIOLATIONS OF  
WOMEN'S HUMAN  
RIGHTS DUE TO THE COMPELTE  
CRIMINALIZATION OF ABORTION**

**In response to the  
PERIODIC REPORT  
OF EL SALVADOR**

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*Submitted by:  
(in alphabetical order)*

***CITIZEN WORKING GROUP ON THE DECRIMINALIZATION OF  
THERAPEUTIC, EUGENESIC AND ETHICAL ABORTION (EL SALVADOR)***

***IPAS***

***MADRE***

***WOMEN'S LINK WORLDWIDE***



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## Introduction

This report is intended to supplement, or “shadow,” the report of the government of El Salvador to the Human Rights Committee (“the Committee”) in relation to the complete criminalization of abortion in the country, the lack of health service for women who need to interrupt a pregnancy and the resulting violations of women rights, which in many cases result in maternal death.

El Salvador is one of the only five countries in the Latin America that maintains an absolute prohibition on abortion, including under circumstances when pregnancy endangers the women’s life.<sup>1</sup> Prior to 1998, El Salvador banned abortion, but like many other countries around the world, made exceptions for cases in which the woman’s life or health was threatened, as well as for cases involving rape, incest or severe fetal abnormality. However, in 1998 El Salvador passed a new Penal Code that criminalized all forms of abortion, including instances when a woman’s life was at risk.<sup>2</sup> Chapter II of the reformed Penal Code deals with the Crimes Against the Life of Human Beings in the First Stages of Development and penalizes women who induce their own abortions or give their consent to someone else to induce an abortion; doctors, pharmacists or other health care workers who practice abortions; persons who encourage a woman to have an abortion or provide the financial means to obtain an abortion; and persons who unintentionally cause an abortion. El Salvador’s restrictive abortion laws were further solidified in 1999 with the constitutional amendment, which defined a human being “from the moment of conception.” In conjunction with these two new laws, the country established a policing apparatus to prosecute, investigate and denounce any suspicious activities in public hospitals and other places in the country.

El Salvador’s international obligations to protect women and young girls’ rights are established in various UN agencies and treaty bodies. In addition to ratifying the International Covenant on Civil and Political Rights (ICCPR), El Salvador is also a State party to most of the principal international human rights treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). El Salvador has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), however despite El Salvador’s international human rights obligations and the continued efforts to ensure compliance, the situation remains critical for women and young girls who need to access safe abortion health services.

At the regional level, El Salvador has ratified several conventions relevant to the eradication of torture and other violence against women including the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Sanction and Eradication of Violence Against Women (the “Belem do Para Convention”). In totality, these treaties impose an obligation on El Salvador to guarantee the enjoyment by women of their equal rights as well as to protect women from discrimination of any kind and to protect them from gender specific forms of violence. Under Article 144 of the Constitution of El Salvador, international human rights treaties have the same status of national law and thus, take precedence over national law. Even though these international commitments do not trump the constitution, they should be utilized as a reference when creating national laws in the country.

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<sup>1</sup> The only other four countries worldwide that completely prohibit abortion under all circumstances are Chile,

The Constitution of El Salvador protects every person's right to life, liberty, security of person, and social justice. Furthermore it establishes that all persons are equal before the law and there can be no restrictions based on race, gender or religion.<sup>3</sup> El Salvador's criminal anti-abortion legislation violates all of these constitutional and human rights established in the previously mentioned international conventions.

El Salvador strictly enforces its criminal abortion laws, raising concerns about the intersection of religious dictates, international human rights law, women's health and the criminal law. For example, women who have suffered miscarriages have been prosecuted and condemned for abortion and aggravated homicide.<sup>4</sup> As a result, fear of prosecution inhibits women from seeking health services when suffering from pregnancy complications.

On the other hand, physicians and nurses are also unable to perform their professional duties to assist women with labor complications, fearing that they will be prosecuted as accomplices to the crime of abortion or homicide.<sup>5</sup> As a result, members of the Salvadoran health services community report women who have had spontaneous and provoked abortions under the government imposed impression that they have a legal obligation to notify the police when they treat a patient with the aforementioned symptoms.<sup>6</sup>

The creation and implementation of these laws violate the basic rights of life, integrity, equality, privacy and the presumption of innocence. International Committees that supervise the implementation of human rights treaties ratified by El Salvador have established that legislations that absolutely restrict abortion violate a number of human rights and as a signature to these treaties El Salvador should modify the complete criminalization of abortion.

Furthermore, violence against women and girls in El Salvador remains pervasive and widespread, reinforcing the need for access to therapeutic abortion. Rape and sexual violence are commonly reported and girls are also vulnerable and face sexual violence and acts of incest in the private and public sphere. Women's and young girls are unable to access safe abortions and later criminalized and sent to jail for doing so, directly contributes to the feminization of poverty in the country and further exacerbates the inequality that women face.

In recent years, a growing number of advocates—doctors, lawyers and women's rights groups—have undertaken a serious and open debate regarding the country's abortion laws. These groups are hindered by a lack of objective data as to how abortion laws have been implemented.<sup>7</sup> There is a great need for concrete information to stimulate a public, political, social and national debate.

This shadow report demonstrates how El Salvador's complete ban on abortion health services directly violates of women's and young girls rights to equality, life, liberty, health and be free from torture. Furthermore, it violates every woman's right to receive medical attention while preserving patient confidentiality, which is violated by medical personal that have been pressured by the police to report these incidents. The Salvadorian government has refused to comply with the 2003 recommendations of the Committee which stated that the State should "take steps to bring its legislation into line with the Covenant as regards of the protection of life, so that women

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<sup>3</sup> Article 3 of the Constitution of the Republic of El Salvador in Central America

<sup>4</sup> In El Salvador, abortion carries a 2-8 year sentence and aggravated homicide holds a 30-40 year sentence

<sup>5</sup> See McNaughton et al, *Patient Privacy and Conflicting Legal and Ethical Obligations in El Salvador: Reporting of*

can be helped to avoid unwanted pregnancies and need not resort to clandestine abortions that my put their lives in danger...”<sup>8</sup>

We hope that the findings in this report will inform the Human Rights Committee of the human rights violations of women and young girls occurring in El Salvador as well as serve as a catalyst to prevent further maternal deaths and morbidity by providing access to safe abortion health services.

### **Article 3: Obligation to Ensure Equal Rights of Men and Women in connection with Article 26: Right to Equality Before the Law and Equal Protection**

Article 3 requires “States to provide for equality between men and women in the enjoyment of all Covenant rights.”<sup>9</sup> In General Comment No. 28, the Committee highlights the indivisibility of all human rights by declaring the “important impact of this article on the enjoyment by women of the human rights protected under the Covenant.”<sup>10</sup> Furthermore, Article 26 requires parties to “review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields.”<sup>11</sup>

In concert with this, Article 12 of the CEDAW Convention—which El Salvador ratified<sup>12</sup>—provides that “States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”<sup>13</sup> General Recommendation No. 24 explains, “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”<sup>14</sup> Furthermore, the Committee of Economic, Social and Cultural Rights urged El Salvador to “reform its abortion legislation and consider exceptions to the general prohibition of abortion, in cases of therapeutic abortion and pregnancy resulting from rape or incest.”<sup>15</sup>

The policies of the Government of the Republic of El Salvador, directly contradicts Articles 13 and 26 of the ICCPR and the recommendations of the Committees by refusing to review its abortion laws and by aggressively prosecuting and condemning women for abortion and abortion related homicide, creating a inequality before the law and depriving women of their right to life and freedom.

Since taking office in January 2010 the President of the Republic, Mauricio Funes, has used his executive power to undermine sexual and reproductive rights, especially the right to abortion. President Funes recently declared that the revision of the laws that absolutely criminalize abortion where against the Constitution and not included in his Government plans.<sup>16</sup> President Funes

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<sup>8</sup>ICCPR, Concluding observations of the Human Rights Committee : El Salvador (2003) UN Doc. CCPR/CO/78/SLV.

<sup>9</sup> ICCPR, Article 3, (1966) UN Doc. A/6316.

<sup>10</sup> ICCPR General Comment No. 28, Equality of Rights Between Men and Women ¶ 1 (2000) UN Doc. CCPR/C/21/Rev.1/Add.10.

<sup>11</sup> General Comment No. 28, Equality of Rights Between Men and Women, ¶ 31 *supra* note 36.

<sup>12</sup> El Salvador ratified the CEDAW convention on Aug. 19, 1981.

<sup>13</sup> CEDAW, Article 12, Violence Against Women (1984) U.N. Doc. A/34/46.

<sup>14</sup> CEDAW General Recommendation No. 24, Women and Health, ¶ 11 (1999) UN Doc. A/54/38.

<sup>15</sup> -----

publically denounced the director of ISDEMU<sup>17</sup>, Ms. Julia Evelyn Martínez, for committing the State to reviewing its abortion laws by signing the Declaration of the Brazilian Consensus in the XI Latin America and Caribbean Women's Regional Conference. Furthermore, the Ministry of Justice has adopted and implemented a policing apparatus to prosecute, investigate and denounce women in need of post abortion health services in public hospitals due to pregnancy complications. This aggressive policing strategy has resulted in women, including those who have suffered miscarriages, to be prosecuted and condemned for abortion and aggravated homicide (See Annex A).<sup>18</sup>

El Salvador's restrictive abortion laws violates women's right to equality and non discrimination as it only adversely effects women by denying them access to a medical procedure that only they need and at times is necessary to save their lives.

The application of this law also gives rise to social injustice affecting only women who tend to belong to a lower economic stratus living in rural areas with scare access to resources and health services, constituting a clear violation to the right to equality and non discrimination.

Furthermore, the lack of access to safe abortion services, the criminalization of abortion, and the policing powers enforced by the Ministry of Justice violate women's rights to equality in access to health care services established in Article 12 of the CEDAW. In El Salvador women who require access to abortion services either to save their own lives or because they result pregnant after being a victim of rape or incest have no option but to continue their pregnancy irrespective of the physical and mental dangers they face. Similarly, when women have pregnancy complications the fear of prosecution by the medical staff and the possibility of being arrested prevent women from seeking health services when suffering from pregnancy complications. Furthermore, medical staffs refuse to perform their professional duties to assist women with labor complications, fearing that they will be prosecuted as accomplices to the crime of abortion or homicide.<sup>19</sup>

Even worse, it is very common for the medical providers to initiate the criminal process by contacting the police when they treat a patient who has had an abortion, under the belief that they have a legal obligation to do so.<sup>20</sup> All of the aforementioned barriers for women to safely access post abortion health services without jeopardizing her life and security, is the equivalent to denying women access to health care.

### **Article 6: The Right to Life in connection with Article 7: The Right to be Free from Torture and Article 9: The Right to Liberty and Security of Person**

General Comment No. 6 on the right to life under Article 6(1) requires that the right not to be arbitrarily deprived of one's life be broadly interpreted and that positive measures be undertaken to protect this right.<sup>21</sup> The Committee also holds that Article 6 may be implicated when the lives

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<sup>17</sup> The Salvadorian Institute for the Development of Women (ISDEMU) is responsible for formulating, directing, executing and assuring the fulfillment of legal responsibilities. It also promotes law reforms to better the legal situation of women, especially in the employment sector.

<sup>18</sup> In El Salvador, the crime of abortion carries a 2-8 year sentence and abortion related aggravated homicide holds a 30-40 year sentence

<sup>19</sup> See McNaughton et al, *Patient Privacy and Conflicting Legal and Ethical Obligations in El Salvador: Reporting of*

of pregnant women are at risk in clandestine abortions.<sup>22</sup> Moreover, General Comment No. 28 notes that States parties should provide information with regard to Article 6, “on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions.”<sup>23</sup>

The Committee has made clear that obstructions to accessing sexual and reproductive health rights infringe upon pregnant women’s right to life due to the increased maternal mortality that may result when women are forced to resort to unsafe illegal abortion. For example, in its Concluding Observations for Poland, the Committee noted that limited accessibility to contraceptives, lack of sexual education in schools and insufficiency of family planning implicated Covenant articles including Article 6. Similarly, in its review of Mali, the Committee recommended the State party “strengthen its efforts...in particular in ensuring the accessibility of health services, including emergency obstetric care.”<sup>24</sup>

Article 7 declares that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” which clearly prohibits infliction of both physical and mental suffering.<sup>25</sup> This Committee has long interpreted Article 7 to apply in situations where medical treatment is denied. General Comment No. 28, specifically calls for information from State’s parties on whether women who have become pregnant as a result of rape have access to legal abortion and emphasized the positive character of the State’s obligation.

The Committee repeatedly recognizes the applicability of Article 7 to the denial of medical abortion services. In the 2005 case of *K.L. v. Peru*, the Committee declared the State party in violation of Article 7 when it denied an abortion to Karen Noelia Llantoy Huamán, a 17-year-old carrying an anacephalic fetus.<sup>26</sup> The abnormality was discovered three months into Llantoy’s pregnancy and, although the law permitted therapeutic abortion, the hospital denied authorization.<sup>27</sup> Llantoy gave birth to a baby girl who survived four days, during which time Huamán had to breastfeed her.<sup>28</sup> She subsequently fell into a deep depression.<sup>29</sup> The Committee found that the refusal of a therapeutic abortion was a violation of Article 7, as it was the cause of Llantoy’s mental suffering.<sup>30</sup>

In addition to physical and mental suffering, such policies deny women equal protection pursuant to Article 3 of their right not to be subject to cruel, inhuman and degrading treatment. The message laws that prohibit access to medically needed abortions is that women are not fully human or equally entitled to the life- and health-saving treatment, which is available to all but women and girls needing abortion or emergency obstetric services. As stated by the Special Rapporteur on Torture, discriminatory conduct includes punishment for “transgressing gender

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<sup>22</sup> Human Rights Committee, Concluding Observations: Guatemala, ¶ 19 (2001) UN Doc. CCPR/CO/72/GTM; Concluding Observations: Poland, ¶ 11 (1999) UN Doc. CCPR/C/79/Add.10 (concluding that limited accessibility to contraceptives, lack of sexual education in schools and in sufficiency of family planning implicated Covenant articles including article 6).

<sup>23</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women, ¶ *supra* note 36.

<sup>24</sup> ICCPR, Concluding Observations, Mali, 47 ¶ 81(14) (2003) UN Doc. A/58/40 vol. I.

<sup>25</sup> ICCPR, General Comment No. 20, The Right to Liberty and Security of Person (Art. 9) ¶ 5 (1992) UN Doc. HRI/Gen//Rev.1,30.

<sup>26</sup> *Karen Noelia Llantoy Huamán v. Peru*, Communication No. 1153/2003, ¶ 6.3, (2005) U.N. Doc. CCPR/C/85/D/1153/2003.

<sup>27</sup> *Id.* at ¶¶ 2.1, 2.3.



barriers and mandates or challenging predominant conceptions of gender roles.”<sup>31</sup>

El Salvador’s criminalization of therapeutic abortion and the lack of access to safe abortion services is a direct violation of Article 6, a women’s right to life. In El Salvador maternal mortality is a harsh reality for pregnant women considering that out of 100,000 births an estimate of 57.1-71.2 women die.<sup>32</sup> Despite recommendations by Committees such as the CEDAW, the government has not conducted research or provided information on the number of unsafe abortions conducted annually or of women or girls who commit suicide due to an unwanted pregnancy and the resulting number of maternal deaths in the country. However, according to the World Health Organizations, complications after unsafe abortion cause 13% of maternal deaths worldwide.<sup>33</sup> Access to therapeutic abortion, the interruption of a pregnancy to preserve a woman’s physical and emotional health, is directly correlated to a woman’s right to life. If El Salvador decriminalized therapeutic abortion and provided access to safe abortion for women who’s life and well-being are in danger, they would save women’s lives and reduce the numbers of maternal mortality in the country.

El Salvador’s denial to the right to safe abortion services, causes experiences of both physical and emotional suffering for Salvadorian women, which in specific circumstances amounts to torture. When women are denied access to therapeutic abortions due to complications in their pregnancy, they are forced to suffer painful, frightening and life-threatening conditions, often for many months. This law forces women rape victims and some are forced carrying severely damaged fetuses, rape victims, and women with serious health conditions suffer mentally and physically from their inability to obtain a legal therapeutic abortion. As a result women some women obligated to endure mental anxiety, in addition to the fear of not receiving needed medical treatment and of being prosecuted. This violates the understanding of the World Community as stated in the Beijing Platform for Action, that women suffering complications of abortion ought to be treated expeditiously and humanely.<sup>34</sup> In all cases, the denial of therapeutic abortion fulfills the purpose element of torture, as the required withholding of service is discriminatory and punitive.

The State party has the obligation to prevent acts of inhuman treatment through effective legislative, judicial and administrative means.<sup>35</sup> The State’s Penal Code which defines all forms of abortion as a crime punishable by 4-8 years and further implements abortion related homicide a crime punishable by 30-40 years, does the opposite. These laws prevent women from receiving treatment for abortion and pregnancy-related complications, including life-threatening situations. It violates Article 7 by subjecting pregnant women to torture and inhuman treatment in multiple ways.

In conclusion, El Salvador’s laws criminalizing abortion and prohibiting access to medical abortion services when a woman’s life is in danger, when the pregnancy is a result of rape or incest and when the fetus is unviable violates a woman’s right to life, liberty and in many circumstances amounts to torture and cruel, inhuman and degrading treatment.

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<sup>31</sup> U.N. General Assembly, 56th Session. “Report of the UN Special Rapporteur on the Question of Torture and other Cruel, Inhuman or Degrading Treatment”, Sir Nigel Rodley, Special Rapporteur, ¶ 17. UN Doc. A/56/156 (July 3, 2001).

<sup>32</sup> Naciones Unidas, El Salvador Segundo Informe de Pais: Alacemos los Objetivos de Desarrollo del Milenio en el 2015, El Salvador, 2009, 24 pagina, ISBN: 978-99923-55-26-8.

<sup>33</sup> <http://www.who.int/en/>

<sup>34</sup> Beijing Declaration and Platform for Action C.1. (k), Fourth World Conference on Women, A/CONF. 177/20

## **Article 17: The Right to Freedom from Unlawful Reputational Attacks**

The Committee stated in its General Comment No. 28, that all States parties must report on “any laws or other factors which may impede women from exercising the rights protected under this provision on an equal basis.”<sup>36</sup>

With respect to the denial of abortion, this Committee underlined the critical relationship between the right to information and the right to life in its Concluding Observations on Guatemala’s report. It stated that “the State party has the duty to adopt necessary measures to guarantee the right to life of pregnant women who decide to interrupt their pregnancies by providing the necessary information and resources to guarantee their rights....”<sup>37</sup>

The right to information thus implies a positive duty of the State to guarantee each woman access to accurate and complete medical information about her pregnancy as well as the law to enable her to make the decisions necessary to protect her life and health, whether it is the need for an abortion or for emergency obstetric services. Currently in El Salvador no such initiative exists. Rather than guaranteeing women access to equitable health services and information, health care providers are pressured to denounce women who may have practiced and abortion, which in effect hinders their access to health services and directly endangers their lives.

## **Article 24: Rights of the Child: Denial of the Right to Therapeutic Abortion**

General Comment with respect to article 24, notes that the States Parties are obligated to protect all other rights guaranteed by the Covenant, and “may also be economic, social, and cultural.”<sup>38</sup> Thus, the State Party is obligated to protect more than just the political rights of minors and should also seek to protect rights such as health and life. Additionally, the Covenant on the Right of the Child assures to every child “the right to such measures of protection as are required by [his/her] status as a minor, on the part of [his/her] family, society and the State.”<sup>39</sup>

The failure by the government of El Salvador to provide appropriate reproductive health care for pregnant minors violates the rights of the child by depriving the girl child, at special risk in early pregnancy, of her right to the protection of her life and health. General Comment No. 28 indicates this Committee’s concern about minors’ reproductive rights, calling for information regarding the availability of abortion to women pregnant as a consequence of rape.<sup>139</sup>

The complete abortion ban in El Salvador also violates, *inter alia*, the following articles of the UN Convention on the Rights of the Child (CRC)<sup>40</sup>: Article 6, which recognizes the right to life and survival; Article 24, which guarantees “the right of the child to the enjoyment of the highest attainable standard of health;” and Article 39, which calls upon States Parties to take measures to promote the physical and psychological recovery of child victims of abuse.

The CRC's General Comment No. 4 expresses that Committee's grave concern with the negative health outcomes for the girl child of young motherhood and clandestine abortion, urging that States Parties create appropriate family planning programs for adolescents that include obstetrical care and abortion services. In particular, the General Comment provides:

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<sup>36</sup> ICCPR, General Comment No. 28, Equality of Rights Between Men and Women, ¶ 22 *supra* note, 36.

<sup>37</sup> Human Rights Committee, Concluding Observations: Guatemala (2001) UN Doc. CCPR/CO/72/GTM.

<sup>38</sup> Human Rights Committee, General Comment 17, Rights of the Child, ¶ 3 (1989), UN Doc. HRI/GEN/1/Rev.9

Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices.<sup>41</sup>

Since May of this year, the Maternity department has attended 4,906 births, of which 67 were young girls between the ages of 10-14 and 1,168 were between the ages of 15-19, totaling to 1,235. Therefore, 30% of pregnancies were young girls and adolescents.<sup>42</sup> The effects of the failure of the Salvadorian government to provide appropriate reproductive health care and abortion services for pregnant minors has had a disparate impact on young girls who are ultimately forced to carry out a high-risk pregnancy.

## **VI. SUGGESTED QUESTIONS & RECOMMENDATIONS**

We respectfully request that the Comitee propose the following questions during its revision.

1. What is the opinion of the State Party regarding the declarations made by the Director of ISDEMU and the Ministry of Health supporting the revision of the laws which completely criminalize abortion, and the public rejection of President Funes?
2. What is the opinion of the State Party regarding the fact that single women with limited resources who have had abortions are being prosecuted and condemned for aggravated homicide with 30 year sentences?
3. What is the opinion of the State Party regarding the fact that the medical staff in public hospitals of El Salvador are violating doctor patient confidentiality and reporting women to the police for abortion?
4. What strategies does the State Party propose to reduce clandestine unsafe abortions of high risk, specifically when integral medical attention is not being provided to young women living in poor rural areas in the country?
5. How will the State Party respect women's sexual and reproductive rights, when adequate measures have not been taken to address unwanted pregnancies, especially when it is a result of rape or incest?

We respectfully request that the Comitee propose the following recommendations during its revision.

- The State party should comply with the recommendation of the Committee on the Elimination of Racial Discrimination of 2008 and allocate additional human and financial resources in order to immediately comply with its obligation to conduct research and report on deaths/illnesses as a result of or related to illegal abortions. Furthermore, the State party should facilitate a national dialogue on women's reproductive rights including the

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<sup>41</sup> Committee on the Rights of the Child, General Comment 4 ¶ 31 (2003) U.N. Doc. CRC/GC/2003/4

consequences of restrictive abortion laws.

- The State Party must assure access to sexual and reproductive health care services in conditions of quality and equality. The State Party should assure safe medical attention for women requiring post abortion services, without risk of being reported to the police by medical staff.
- The Ministry of Health should reinforce to all medical staff in public hospitals their obligations to preserve patient-doctor confidentiality and the resulting effects if violated.
- The Ministry of Justice should cease prosecuting women who have had abortions for Aggravated Homicide or related crimes and should implement their obligations in an impartial manner in accordance with international obligations.
- The State party should take immediate measures to guarantee effective access of women to sexual and reproductive health-related services by complying with recommendations of the Committee of the Rights of Child of 2010, The Human Rights Committee of 2003 and the Committee of Economic Social and Cultural rights of 2006 and partially decriminalize abortion in certain circumstances, allowing women to interrupt pregnancies without fear of prosecution when their life or health (physical or mental) is in danger; when the pregnancy was a result of rape or incest; or where there is a fetal malformation, which makes life outside the womb unviable. The State should ensure that women who decide to voluntarily interrupt their pregnancies have the right to use the public health system for services that are necessary to carry out the abortion in safe and dignified conditions.

## ANNEXOS:

### *A: Cases of Women Convicted of Aggravated Homicide and Manslaughter*

For: Committee of Human Rights

Date: October 2010

Re: CASES OF WOMEN WHO HAVE HAD ABORTIONS AND HAVE BEEN CONVICTED FOR AGGRAVATED HOMICIDE AND MANSLAUGHTER IN EL SALVADOR

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The objective of this memorandum is to illustrate to the Committee the reality which women face in El Salvador. Below you will find cases of women who are victims of the implementation of the laws, which completely criminalize abortion in El Salvador, and have resulted in convictions of AGGRAVATED HOMICIDE and MANSLAUGHTER with sentences of up to 30 years. Please note that the following women all have a similar profile, they are young women, single or single mothers, of limited economic resources, without access to health services and have been reported to the police by the medical staff in public hospitals.

Karina del Carmen Herrera Climaco, a young woman of 24 years of age who worked in domestic services was convicted of AGGRAVATED HOMICIDE with a 30 year sentence on November 29, 2002 by the Third Tribunal of San Salvador. Karina was a single mother with 3 children who had undergone a medical procedure to seal her fallopian tubes, when she resulted pregnant. On January 17<sup>th</sup> of the same year, Karina auto assisted her birth and had her daughter in her home in San Bartolo. Karina's mother found her lying and bleeding profusely in her bed and called the police so that they may take her to San Bartolo Hospital. While Karina was undergoing treatment in the hospital, the police searched her home and found the newborn child lifeless. Even though the affiliation between the newborn and Karina was never established and the medical exams never proved she was born alive, the Third Tribunal of San Salvador condemned Karina for AGGRAVATED HOMICIDE with a 30 year sentence. Almost 8 years later, with the support of a group of national and international attorneys and women activists, Karina's sentence was reviewed and annulled. To this date, the court had not indemnified Karina for the time she was deprived of her liberty and for the unjust sentence.

María Edis Hernández Méndez de Castro, a woman of 30 years of age who worked in domestic services was condemned for AGGRAVATED HOMICIDE with a 30 year sentence on August 11, 2008 by the Tribunal of San Francisco Gotera in the department of Morazan. Maria was a single mother with 4 children when she found out she was pregnant. Maria knew she was pregnant, even though she was unaware of how many months of gestations she had her family was informed of her pregnancy. On the 27 of February of the same year, Maria felt a pain and went to the septic bathroom in her home at which time she suffered labor complications and fainted, gaining consciousness when she was in the National Hospital of San Francisco. Dr. Dohan Vanesa Mata Herrera treated Maria and subsequently reported her to the police for having had an abortion. On the 11<sup>th</sup> of August of 2008 the Tribunal condemned Maria for AGGRAVATED HOMICIDE and based their reasoning on the following:

1. There were inconsistencies between the allegations of Maria and the medical reports, which raised suspicion
2. The pregnancy was “ a result of an act of infidelity” and the biological father did not take responsibility
3. That Maria did not “act like a biological mother”, which would have taken care of, fed, and lived for her new born and therefore her reactions were “contrary to nature.”
4. That “ her personal interest prevailed over the life of her newborn”

Sonia Esther Tabora Contreras, a young single woman of 21 years of age, who lived in a rural area in Sacacoyo was convicted for AGGRAVATED HOMICIDE with a 30 year sentence on September 19, 2005 by the Tribunal of Sonsonate. On the 18<sup>th</sup> of February of the same year, Sonia Esther felt stomach pains and went outdoors to take care of her physiological needs close to her home in Colonia Buenavista, when she suffered complications in her pregnancy. Due to her prolonged absence her family went to search for her and they found her outside, bleeding and semi-conscious. Soon afterwards she was taken to the Lourdes emergency room where Dr. Jose Cruz Gomez attended her. After conducting the routine post-abortion treatment, Dr Cruz Gomez interrogated her insisting that she tell him what had happened and later reported her to the police, violating their patient-doctor confidentiality. Currently Sonia Esther is detained in the Prevention and Re-adaptation Center for Women in Iliopango in San Salvador and her sentence will mature on February 19, 2035.

Glenda Liseth Figueroa Castañeda an adolescent of 19 years of age who worked in domestic services, was convicted of MANSLAUGHTER on November 27, 2007 by the Second Tribunal of Santa Ana. Glenda Liseth was a single mother with a 4 year old daughter, when she became pregnant. Unfortunately Glenda Liseth never received prenatal treatment and was unaware of how many months of gestation she had because she could not pay for the visits and lived far away in a small marginalized community. On May 3<sup>rd</sup> of the same year, Glenda Liseth went to the septic bathroom and felt that she expelled “a ball of meat” and that “something came loose”. She tried to grab it, but it fell in the septic tank. She began to bleed profusely and called her mother before she lost consciousness. Upon arriving at the Hospital San Juan of Santa Ana, the nurse on duty called the police to report the abortion. Glenda Liseth was condemned with MANSLAUGHTER and given a 4 year sentence, leaving her 4 children in orphanage.

*ANNEX B: Documentation of the Director of ISDEMU and the Ministry of Health supporting the revision of laws which completely criminalize abortion and the public rejection by the President of the Republic of El Salvador*

Salvadoreños se oponen al aborto y apoya decisión pro-vida de Presidente Funes - Mozilla Firefox

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## Salvadoreños se oponen al aborto y apoya decisión pro-vida de Presidente Funes

Comentarios: 7

SAN SALVADOR , 01 Sep. 10 / 03:25 pm (ACI)

Una encuesta reveló que **el 93 por ciento de salvadoreños** se opone a despenalizar el aborto y el 76 por ciento apoya la decisión del Presidente Mauricio Funes de rechazar el llamado Consenso de Brasilia que pretende obligar a los países firmantes a imponer la práctica antívida.

La encuesta fue realizada por JBS Opinión Pública para El Diario de Hoy. Ante la pregunta "¿Está usted de acuerdo con que se modifique la Constitución de la República y se permita el aborto?", el 93 por ciento de salvadoreños **respondió no estar de acuerdo**.

Entre las razones para oponerse a la despenalización del aborto, la tercera parte dijo que "todos tenemos derecho a la vida", un 20 por ciento afirmó que el término de la vida "es algo que sólo Dios puede decidir", el 18 por ciento señaló que el aborto es el asesinato de un ser indefenso y el 12 por ciento indicó que es un crimen.

Asimismo, se citaron motivos como que se trata de un acto inconstitucional, inhumano, y que "no es una buena solución" para problema alguno.

Como se recuerda, durante la 11ª Conferencia Regional sobre la Mujer de América Latina y el Caribe celebrada en Brasil, se firmó el llamado Consenso de Brasilia que compromete a los países a revisar sus legislaciones en materia de aborto. En el caso de El Salvador, **fue suscrita por Julia Evelyn Martínez**, directora del Instituto Salvadoreño para el Desarrollo de la Mujer (Isdemu).

Ante ello, el Presidente de El Salvador, Mauricio Funes, declaró que el texto suscrito por Martínez "no tiene iniciativa de ley" y que como mandatario "no he dado ninguna orden, ni he dado ninguna instrucción, para que se proceda a revisar la legislación en materia de aborto". La Constitución salvadoreña **protege la vida humana desde la concepción**.

La encuesta también mostró que el 76 por ciento respalda al Presidente al momento de rechazar el Consenso de Brasilia. Asimismo, a través de diversas respuestas, los salvadoreños criticaron la actuación de Martínez al frente del Isdemu.



### Noticias relacionadas:

- Presidente salvadoreño desautoriza a feminista que firmó Consenso abortista de Brasilia
- Corte Suprema de El Salvador abre la puerta a despenalización del aborto
- Arzobispo denuncia "criminal" reparto de abortivos entre escolares salvadoreños
- Advierten que jueza Argibay deberá abstenerse de fallar en caso de aborto
- Jueza argentina promueve aborto como derecho en cita feminista

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La titular de Salud critica la prohibición del **aborto terapéutico** y le pide a la Asamblea Legislativa **"reconsiderar"** la prohibición que califica de "injusta e infame" **PÁG. 3**

### SEGURIDAD



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### ACUERDO TRAS PROTESTA

Agentes de la PNC vigilan la zona del Parque Infantil donde fueron desalojados los vendedores. Ayer hubo nuevas protestas, pero luego se alcanzó un acuerdo con la alcaldía capitalina **PÁG. 7**

**PREVALECIÓ AUSENTISMO EN ELECCIONES PARA CONSEJO NACIONAL DE LA JUDICATURA** **PÁG. 12**



