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El Salvador's Compliance with the International Covenant on Civil and Political Rights

Women's Link Worldwide

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Women's Link Worldwide
Bogotá, Colombia
Tel. + 57 (1) 257 54 91
www.womenslinkworldwide.org

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I. Introduction

From June to August of 2017 Women's Link Worldwide conducted over 35 interviews in El Salvador to identify the State's response to the Zika Virus; specifically, as related to sexual and reproductive rights and the rights of people with disabilities. The interviewees were public servants, health providers, international and non-governmental organizations, professional associations for health care, academia and the media. The sources agreed to participate in the interviews under a confidentiality agreement concealing personal identities. Women Enabled International provided invaluable technical assistance to incorporate a disability rights perspective to this document.¹

We present here a summary of the conclusions obtained through the interviews. The conclusions demonstrate the State's failure to ensure human rights in response to the epidemic of Zika. The findings also reveal the absence of a comprehensive gender and disability approach in El Salvador's response, amplifying inequality and discrimination in the country. As discussed in this document, the inadequate response from the State breaches the right to life,² equality and non-discrimination,³ the right to privacy;⁴ the right to information,⁵ all of which are recognized by the ICCPR. The consequences of these violations are still being felt by Salvadoran people, especially by women and children with disabilities born with congenital Zika syndrome as they continue to struggle to have access to comprehensive care and support.

The mosquito transmitting the Zika virus not only found favorable environmental and sanitary conditions for its reproduction, it found pre-existing deficiencies in the protection of sexual and reproductive rights and the rights of people with disabilities. It is these substandard conditions that maximized the mosquito's negative impact. The impact of the Zika virus would have been less severe for women, children and families if the epidemic had arrived in a country that guaranteed these rights. Therefore, even after the global emergency has ended, it remains critical for the Committee to monitor the situation to prevent these rights violations from happening again. The Zika virus is endemic to the Salvadoran territory, so if structural violations of sexual and reproductive rights and rights

¹ Women Enabled International (WEI) works at the intersection of women's rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women's rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls. <https://www.womenenabled.org/>

² International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, art. 6, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR].

³ ICCPR, art. 2(1); ICESCR, *supra* note 2, art. 2(2); CRPD, *supra* note 1, arts. 5, 6(1), 7; CEDAW, *supra* note 2, arts. 1, 3; CRC, *supra* note 2, arts. 2, 5.

⁴ ICCPR, *supra* note 2, art. 9(1), 17(1).

⁵ ICCPR, *supra* note 2, art. 19(2).

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of people with disabilities are not addressed, a new epidemic of Zika or a virus with similar characteristics will have similar consequences on its population.

II. The burden of the Zika virus disproportionately affects the rights of women and girls protected by the ICCPR

Zika virus in the context of absolute prohibition of abortion

As this Committee will recall from its 2010 review of El Salvador, it expressed concern “that the current Criminal Code criminalizes all forms of abortion, given that illegal abortions have serious detrimental consequences for women’s lives, health and well-being” and recommended that El Salvador “amend legislation on abortion to bring it into line with the Covenant”⁶ which include in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality.⁷ The Committee based its recommendation in the protection of the rights to life, equality and non-discrimination and privacy, recognized by the ICCPR. The Committee’s recommendation is more relevant now than ever before given the Zika virus’ presence in El Salvador.

Because of risks such as congenital Zika syndrome that persist in continued pregnancy after Zika infection, “more women are seeking access to abortion in countries with restrictive abortion laws, and many of these women are or will be doing so in unsafe and clandestine circumstances, with attendant risks to life and health.”⁸ Also, “[t]he anxiety and uncertainty that a pregnant woman infected with Zika faces, as well as the physical and psychological effects of a potential miscarriage or stillbirth, can have a significant impact on the woman’s physical and mental health...”⁹ Criminalization of abortion can “exacerbate the mental health implications of Zika infection for pregnant women, as women in these settings face additional fears and anxiety in their decision-making when abortion carries a risk of imprisonment and death.”¹⁰

Furthermore, the Zika virus has been linked to “a heightened risk of miscarriage, stillbirth, and other pregnancy-related complication”¹¹, which poses Salvadorian women of reproductive age again in a difficult position. In 2010 the Committee considered the situation of medical staff reporting women seeking treatment in public hospitals to the judicial authorities under suspicion of their being involved in abortions, even when they experienced obstetric emergencies or miscarriages, and the resulting legal proceedings that

⁶ Human Rights Committee, *Concluding Observations: El Salvador*, para. 10, U.N. doc CCPR/C/SL V/CO/6 (2010).

⁷ Human Rights Committee, *Concluding Observations on Ireland*, CCPR/C/IRL/CO/4 para. C(a); *Whelan* CCPR/C/119/D/2425/2014 (12 Jun. 2017), *K.L. v. Peru*, CCPR/C/85/D/1153/2003; *V.D.A. v. Argentina*, Human Rights Committee, *Concluding Observations on Guatemala*, CCPR/C/GTM/CO/3 (2012), para. 20; Panama, CCPR/C/PAN/CO/3 (2008).CCPR/C/101/D/1608/2007, para. 9.3.

⁸ In *Women Enabled International*, “Talking Points: Zika, Microcephaly, Women’s Rights, and Disability Rights”, April 15, 2016, pp. 4-5.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

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have ensued.¹² In light of these circumstances, Salvadoran pregnant women may fear criminal consequences if they seek medical care for these heightened risks associated with pregnancy due to the Zika virus.

In sum, El Salvador's complete ban on abortion continues to violate the ICCPR, particularly in the face of the Zika virus as it subjects women to the increased risks mentioned above. As States parties "should give information on any measures taken by the State ... to ensure that they do not have to undergo life-threatening clandestine abortions"¹³, we respectfully request to the Committee to ask El Salvador which specific measures are being taken nowadays given the epidemic nature of the Zika virus.

The shortage of contraceptive methods

It was a common denominator in several interviews of people belonging to various sectors, to point out that, during the Zika virus outbreak in 2016, there were shortages of contraceptive methods, situation that occurs regularly in the system public health. It was also expressed that the availability of emergency contraception did not increase as it did happen with other contraceptive methods.

As States parties "should give information on any measures taken by the State to help women to prevent unwanted pregnancies..."¹⁴, we respectfully request to the Committee to ask El Salvador which specific measures are being taken nowadays given the epidemic nature of the Zika virus.

III. Lack of adequate and widespread information about sexual and reproductive rights

In January 2016, when the Minister of Health instructed Salvadoran women to postpone their pregnancies, the Ministry presented no new information in its prevention campaigns to explain the impact of the Zika virus on sexual and reproductive health. In fact, the only information disseminated about the Zika virus was a mention of the virus added to the existing health campaigns of dengue and chikungunya, viruses that do not have such impact. At a later stage, messages focused on particular risks for pregnant women were included but the young population of reproductive age was not included. Most of the messages lacked information about the sexual transmission of the virus, which had been confirmed since the beginning of 2016.

Only in June of 2017, when the most critical time of epidemic had already passed, the Ministry of Health launched an advertising campaign ("Safe mother, baby safe from Zika"). It includes the option of using contraceptives methods if the individual does not want to procreate and a recommendation to use condoms to prevent the sexual transmission.

¹² Human Rights Committee, *Concluding Observations: El Salvador*, para. 10, U.N. doc CCPR/C/SL V/CO/6 (2010).

¹³ General Comment No. 28 at para. 10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 29, 2000).

¹⁴ *Id.*

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However, there was no mention of oral emergency contraception, which can prevent pregnancy after sexual contact and serves as a critical part of medical attention to victims of sexual violence, where more than 70% of the cases are people under 17 years of age.¹⁵

Also, in contrast to actions related to mosquito control and monitoring of pregnant women, in which the government employed a proactive strategy of entering communities to disseminate relevant information, efforts to supply contraceptives relied on a passive structure of relying on the population to travel to a health center for access.

The "Technical guidelines for the comprehensive care of people with Zika" issued in July 2016 by the Ministry of Health instructs women of childbearing age who want to become pregnant to attend a preconception consultation to receive the necessary information provided in all health facilities. Unfortunately, these guidelines again demonstrate a focus on pregnancy rather than on providing comprehensive information to the entire population of reproductive age. Furthermore, experts claimed that guidelines exist for counseling on sexual and reproductive health and a national policy on sexual and reproductive health exists, but an effective implementation is not yet widespread.

According to our interviews, non-governmental organizations responsible for most of the community work for the prevention of the virus focused their efforts on mosquito control measures and the use of condom to prevent sexual transmission. Some pointed out that the absence of a comprehensive emphasis on sexual and reproductive rights in the community work is due to the recently implemented restrictions on the use of funding provided by the United States of America, known as the Mexico City Policy or Global Gag Rule, which in some cases are real and in others are just assumed by recipients of funding ("chilling effect").

In order to guarantee the right to information under Article 19, El Salvador is expected to "proactively put in the public domain Government information of public interest" and "make every effort to ensure easy, prompt, effective and practical access to such information."¹⁶ The failure of the State to provide critical information to the population of reproductive age regarding about their health during the time of Zika then violates Article 19.

IV. Limitations to ensuring rights of children with disabilities as well as rights of their families

Many families continued to be affected by the inadequate response to congenital Zika syndrome by the State's failure to guarantee the rights of children with disabilities and their caregivers. States have the obligation to provide educational, medical, financial, social and other support necessary to these families, such as those required by the Convention on the

¹⁵ See, <http://observatoriodeviolencia.ormusa.org/violenciasexual.php>

¹⁶ *CCPR General Comment No. 34* at Art. 19, U.N. Doc. CCPR/C/GC/34 (Sept. 23, 2011).

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Rights of People with Disabilities.¹⁷ States with an increase in the population of children with disabilities should take measures to ensure that free, quality and mainstream (non-segregated) educational services are available to them,¹⁸ as well as measures to guarantee their right to live independently and be included in the community;¹⁹ the right to equality and non-discrimination;²⁰ the right to respect for home and family;²¹ and the right to nationality.²²

There is great urgency in fulfilling these rights as comprehensive and early interventions make a significant difference in the physical and cognitive skills of children with problems in their central nervous system.²³ Additionally, studies attribute high rates of abandonment and institutionalization of children with disabilities to the lack of resources for parents and lack of community-based services.²⁴ States affected by Zika should invest to prevent this from happening to children born with Zika Syndrome.

In El Salvador there were 11,778 cases reported of suspected Zika virus infection. Of these cases, 391 were pregnant women.²⁵ Of the nearly 400 cases of pregnant women infected with the Zika virus, the State reports only four women gave birth to a child with congenital Zika syndrome. There are 72 cases that are being studied since 2016 without any results.²⁶

The vast majority of the people interviewed in various sectors doubt the veracity of the low number of cases of congenital Zika syndrome. Health service providers stated that during the epidemic, they never received results from samples they sent to confirm the relationship between the alterations in the central nervous system with the Zika virus. The professionals had to make further inquiries to get the results. Additionally, some specialists identified technical flaws in the tests that could lead to false negatives, such as failures in the

¹⁷ AG/Res 61/106, Doc. ONU A/Res/61/106, art. 24, 25, 26 y 28, 13, 2006, Women Enabled International, “Talking Points: Zika, Microcephaly, Women’s Rights, and Disability Rights”, April 15th, 2016, pag. 4.

¹⁸ See CRC Committee, *Concluding Observations: Afghanistan*, para. 50(d), U.N. Doc. CRC/C/AFG/CO/1 (2011); CRC Committee, *Concluding Observations: Albania*, para. 53, U.N. Doc. CRC/C/15/Add.249 (2005). CRPD Committee, *Concluding Observations: Spain*, paras. 45, 53, U.N. Doc. CRPD/C/ESP/CO/1 (2011).

¹⁹ CRPD, *supra* note 1, art. 19; Universal Declaration of Human Rights *supra* note 23, art. 29(1); ICCPR, *supra* note 3, at art 12; ICESCR, *supra* note 2, art. 11; CEDAW, *supra* note 2, at arts 1, 15; CRC, *supra* note 2, arts. 9(1), 18(2), 20, 23(1). See also CRPD Committee, *General Comment on Article 19*, *supra* note 16.

²⁰ ICCPR, *supra* note 404, art. 2(1); ICESCR, *supra* note 405, art. 2(2); CRPD, *supra* note 406, arts. 5, 6(1), 7; CEDAW, *supra* note 407, arts. 1, 3; CRC, *supra* note 408, arts. 2, 5.

²¹ CRPD, *supra* note 1, art. 23; Universal Declaration of Human Rights *supra* note 23, art. 12; ICCPR, *supra* note 3, art. 17(1); ICESCR, *supra* note 2, arts. 10-11; CEDAW, *supra* note 2, at arts 16.

²² CRPD, *supra* note 1, art. 18; Universal Declaration of Human Rights *supra* note 23, art. 15; ICCPR, *supra* note 3, art. 24(3); CRC, *supra* note 2, arts. 7-8.

²³ Hannah Kuper, *Focus on Disability: ‘Zika babies’ need support now*, SciDev.Net, <http://m.scidev.net/global/children/analysis-blog/zika-babies-support-brazil.html>, 24 de febrero de 2016. En ídem, pag. 2.

²⁴ IACHR, *Report on the Right of Boys and Girls to the Family: Alternative care. Ending Institutionalization in the Americas*, ¶ 71, OEA/Ser.L/V/II.Doc. 54/13 (October 17, 2013) [hereinafter Right of Boys and Girls to the Family], available at <https://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf>.

²⁵ “Zika-Epidemiological Report,” Pan American Health Organization, World Health Organization (Sept. 25, 2017) at p 4.

²⁶ “Zika Cumulative Cases – December 21, 2017” in http://www.paho.org/hq/index.php?option=com_content&view=article&id=12390&Itemid=42090&lang=en. This figure presents a disparity with the epidemiological report made in week 52 in 2017 by the Ministry of Health, which indicates that there were 452 cases in 2017, for a total of 8,050 cases and 7,598 suspected cases in 2016. <http://www.salud.gob.sv/download/boletin-epidemiologico-semana-52-del-24-al-30-de-diciembre-de-2017/>.

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sampling and the inadequate management of the cold chain. Few others accept the figure as evidence that the impact in this country was not comparable to others such as Brazil or Colombia.

Ultimately, there is no clarity on the matter, and as mentioned, there are 72 tests with unknown results.

Uncertainty about the number of cases of congenital Zika syndrome prevent an assessment on whether the services that exist are sufficient. Furthermore, the information about what services are available is not accessible. The Ministry and a select number of organizations providing technical support control the information, which presents an initial obstacle for the fulfillment of rights as well as a breach of the State's duties. Not even the agencies created to address the disability and children's issues did not have specific information on the matter or were not making a follow-up to the situation of the affected families.

The State's failure to collect such important data regarding the amount of women and children affected by congenital Zika syndrome limits the State's ability to address this serious issue in violation of the right to information, which as indicated above requires the State to "make every effort to ensure easy, prompt, effective and practical access to such information."²⁷ This failure also affects rights to equal protection, non-discrimination and in violation of children's special protection before the law.

V. Recommendations

We respectfully ask the Committee to recommend El Salvador adopt the following measures:

1. The Ministry of Health should ensure that all mass media campaigns and all community activities concerning the prevention of Zika virus include messages to women, men and youth of reproductive age about contraceptive methods and prevention of sexually transmitted diseases, including emergency contraception, available in the country and where to get them free of charge or at low cost. In relation the consequences of Zika on pregnancy, the Ministry should take measures to ensure that the information is presented in a way that is unbiased and non-discriminatory and imparted in a way that is sensitive to disability, together with information about the availability of services and supports for raising children born with disabilities; measures should include training to this respect to the people disseminating the information.
2. The Ministry of Health should include information about counseling on sexual and reproductive health in the "Technical guidelines for the comprehensive care of people with Zika" so people who wish to prevent or delay pregnancies are able to do so. With respect to the consequences of Zika on pregnancy, the Ministry should take measures to ensure that the information is presented in a way that is unbiased and non-discriminatory and imparted in a way that is sensitive to disability, together with

²⁷ *CCPR General Comment No. 34* at Art. 19, U.N. Doc. CCPR/C/GC/34 (Sept. 23, 2011).

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information about the availability of services and supports for raising children born with disabilities; measures should include training to this respect to the health care professionals disseminating the information.

3. The Ministry of Health should take measures to eradicate shortages of contraceptive methods, including emergency contraception, in the public health network.
4. The Ministry of Health should take measures to ensure compliance with the protocols on counseling in sexual and reproductive health, the sexual and reproductive health policy and the route for victims of sexual violence.
5. The Ministry of Health should take measures to strengthen post-abortion health services (treatment of safe and unsafe abortion complications and miscarriages) with strict observance of doctor-patient confidentiality and medical ethics, and to strengthen programs related to reducing maternal morbidity and mortality.
6. Meet the international standards regarding the decriminalization of abortion, among others, in those cases in which the life or health of the pregnant woman is at risk.
7. The Ministry of Health should provide the Human Rights Committee with detailed supported information on the number of suspected and confirmed cases of congenital Zika syndrome and information regarding the services the State is providing to these children, female caregivers and families.
8. The Ministry of Health should take measures to guarantee the implementation of the 'Technical guidelines for the care of children with microcephaly' and the 'instructive to provide psychosocial support to pregnant women and families affected by microcephaly and other basic neurological complications in the context of Zika virus'.
9. The Ministry of Health should immediately inform the public, in a clear and accessible way, the services available for children born with congenital Zika syndrome and their families and how to access them.