

ON THE BRINK OF DEATH

VIOLENCE AGAINST WOMEN AND
THE ABORTION BAN IN EL SALVADOR

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First published in 2014 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2014

Index: AMR 29/003/2014
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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ACKNOWLEDGEMENTS

Amnesty International would like to thank all of the activists and medical professionals who shared their invaluable expertise and experience, and whose knowledge contributed to the writing of this report. Amnesty International is also grateful for the assistance of the various Salvadoran state officials and for their willingness to meet with Amnesty International researchers.

Most of all, Amnesty International thanks all of the women who courageously told their stories, even when it was painful to do so, motivated by the hope that their words could contribute to change for the future.

Many women whose stories are told in this report have asked Amnesty International not to include information that might allow them to be identified. The real names of most of the survivors have, therefore, been withheld and replaced with pseudonyms chosen by the women themselves.

It has not been possible to include all the testimonies of those who shared their experiences, but all the stories told, without exception, played an important role in the preparation of this report.

INTRODUCTION

“We are many, and we will not rest until there are no more femicides, until the decriminalization of abortion is not just a dream.”

J, youth activist on women's and girls' rights, Interview with Amnesty International, March 2014.

Despite advances in women's rights over the last decades, women and girls in El Salvador continue to face a myriad of socio-political, economic and cultural barriers to the full realization of their human rights, particularly those linked to their sexual and reproductive choices.

Persistent gender discrimination and inequality in Salvadoran society is at the root of women and girls' inability to exercise their human rights. This is apparent in beliefs around what constitutes acceptable behaviour for women and girls, stereotypes around women's primary role as mothers, girls being seen as potential child-bearers, adolescent sexuality, and attitudes towards sexual activity before marriage. The patterns of discrimination and inequality that affect women's lives also shape the legal and societal response to issues concerning women, hold back the development of women's empowerment and reinforce the continuum of violence.

Such discriminatory stereotypes remain deeply rooted in a conservative and patriarchal culture which still segregates women to the sphere of social reproduction – a culture widely promoted, in part by conservative forces including the Catholic Church hierarchy. These stereotypes have negatively influenced the development of laws, policies and practices, including the total ban on abortion and its criminalization and the response by the health care and criminal justice systems.

Every year, thousands of women and girls in El Salvador are denied their rights and choices by El Salvador's total ban on abortion and its criminalization. All women and girls, regardless of their reasons for seeking an abortion, are prohibited from doing so. Women and girls whose health or lives are at risk or those who have been raped are denied this essential health service. Those with limited financial resources cannot access quality reproductive health information or maternal health care, and there is a lack of sexuality education and contraception for girls and young women. These restrictions are serious violations of the

human rights of women and girls and must be dealt with as a matter of urgency.

Due to the criminalization of abortion in all circumstances, women and girls who are carrying an unwanted pregnancy are confronted with two options: commit a crime by terminating the pregnancy, or continue with the unwanted pregnancy. Both options have life-long and potentially devastating implications. The problem is exacerbated by the failure to provide comprehensive sexuality education in the country's education system, and by the difficulty faced by young people, in particular, in obtaining quality, modern contraception.

The negative influence of gender stereotypes on the criminal justice system is evident when women try to defend themselves from charges of undergoing an illegal abortion. In such cases, as documented in this report, women and girls experience gender-based discrimination and some face the same institutionalized violence that put them in these circumstances in the first place.

Human rights obligations require El Salvador to prevent such discrimination and violence in a manner that addresses the root causes of the systemic marginalization of women and girls at all levels of society and in all circumstances, whether public or private, including the political, family, health care, education, judicial and administrative contexts.

In 1997, El Salvador's Legislative Assembly passed into law the prohibition of all forms of abortion, making it a criminal offence for a woman to have an abortion, or for anyone to assist her in procuring or carrying out an abortion. Women found guilty of terminating their pregnancies may be sentenced to long jail terms. Conviction is often based on weak or inconclusive evidence, following flawed trials. This prohibition denies access to safe and legal abortions for women and girls who are pregnant as a result of rape or whose pregnancy endangers their life and health. The effects of this legislation are nothing other than institutionalized violence and amount to torture and other forms of ill-treatment.¹

The legislation also has the effect of forcing women and girls to undergo clandestine abortions, increasing the risks to their lives and health. Those with the fewest resources suffer most; they are less likely to be able to travel to other countries for the procedure or pay for treatment at private, clandestine clinics, and more likely to resort to medication obtained illegally, or to dangerous agricultural chemicals in the hope of ending their pregnancies. In desperation, some take their own lives.

The anti-abortion law has created suspicion and discrimination against women. Some pregnant women who arrive at hospital suffering blood loss or other problems due to miscarriage or botched abortions face criminal prosecution. They can find themselves being convicted of serious offences such as homicide and sentenced to long prison terms on weak or inconclusive evidence, often following flawed trials.

With this report, Amnesty International focuses on the impact of El Salvador's ban on abortion and the underlying and intersecting factors which have influenced the development and impact of this discriminatory legislation, and examines the seriousness of the resulting human rights violations. The report concludes with a series of detailed recommendations, calling on the Salvadoran authorities to fulfil their international obligations to ensure respect for women and girls' human rights, without prejudice or discrimination.

METHODOLOGY

This report is the result of research carried out by Amnesty International into the issue of discrimination and denial of human rights of women in El Salvador. Amnesty International conducted research missions to El Salvador in April 2012, April and September 2013 and March 2014, during which a broad range of survivors, civil society organizations, activists, health care professionals and other experts, as well as state officials were interviewed.

Amnesty International interviewed survivors of gender-based violence, women who had undergone clandestine abortions and women who had served or were serving prison sentences for aggravated homicide linked to pregnancy related-complications. The organization also met with dozens of women's rights defenders, including leaders of civil society and women's rights groups, grassroots activists, lawyers and academics to hear their views on the issue of violence against women in El Salvador in its various forms.

Amnesty International interviewed 20 members of the health care profession, including doctors, psychologists, social workers, community health promoters and midwives.

Amnesty International also held meetings with representatives of the Salvadoran Institute for the Advancement of Women; the current and former Directors of the National Civil Police; the Public Prosecutor and the Deputy Public Prosecutor; the Public Defender; a representative of the Institute of Forensic Medicine; the Human Rights Ombudsman; the former Minister of Health; the President of the National Council of the Judiciary; the UN Resident Co-ordinator in El Salvador and the UN Fund for Population Activities Representative.

1. THE CONTEXT OF EL SALVADOR'S TOTAL BAN ON ABORTION

“I have to ask the government for permission to do something for my life, and permission from the Church, from organizations who decide on my behalf... I have to ask permission, and they are the ones who take the decision for me!”

- Maryana, who underwent a clandestine abortion to safeguard her life and health in 2012, interview with Amnesty International, April 2013

Women and girls worldwide, including in El Salvador, seek and undergo abortions for many reasons. For all women and girls, it is a highly personal and individualized decision based on their life circumstances. Some women and girls have wanted pregnancies but their physical or mental health or a life-threatening condition prevents them from continuing the pregnancy. Others choose abortion because their pregnancy is the result of sexual violence or because they are carrying a pregnancy with a serious, and possibly fatal, foetal impairment. For many more others, their decision to terminate a pregnancy is based on their very personal social or economic circumstances.

El Salvador's total ban on abortion and its criminalization denies women and girls the ability to make decisions, regardless of their circumstances, about their own bodies, stripping them of their physical and mental integrity and autonomy. It has resulted in the death and morbidity of thousands of women and girls and the loss of dignity for many more. The total ban on abortion in El Salvador is nothing less than institutionalized violence against women and a form of torture or other ill-treatment. The criminalization of abortion places the Salvadoran government ultimately responsible for these violations.



EL SALVADOR'S ABORTION BAN IN THE INTERNATIONAL CONTEXT

El Salvador has one of the most restrictive abortion laws in the world. Only a handful of other countries ban abortion in all circumstances.² In El Salvador the law criminalizes the procedure and prohibits women from terminating their pregnancies under any circumstance, even if the pregnancy puts the woman's life or health at risk or is the result of rape.

The legislation introducing the total prohibition on abortion in El Salvador stands in marked contrast to the global trend of the past 20 years towards liberalization of abortion laws.³ This trend is a result, in part, of the growing recognition that gender equality cannot be achieved without ensuring that women are able to make their own decisions concerning their bodies.

Worldwide, less restrictive laws still allow for abortion in order to save a woman's life and to preserve her health, as well as in cases of foetal impairment and in cases of rape or incest. Some legal systems also allow abortion for socio-economic reasons or without restriction up to a certain gestational period.⁴

The global consensus regarding the harmful effects of restrictive abortion laws is reflected in the rulings, statements and recommendations made by a wide range of international and regional health and human rights bodies to which El Salvador is a party.⁵ It is also connected, although less explicitly, to the global agreements that El Salvador has committed to, including the Programme of Action of the International Conference on Population and Development (ICPD), the Beijing Platform for Action, and the Millennium Development Goals (MDGs). The ICPD and Beijing documents recognize reproductive rights as human rights⁶ and that the human rights of women and girls include their right to exercise control over – and decide freely and responsibly on matters related to – their sexual and reproductive health, free from coercion, discrimination and violence.⁷ El Salvador has also committed to the MDGs, which include a commitment to reduce maternal mortality,⁸ including mortality stemming from unsafe abortions.

Since the passage of the abortion ban in El Salvador in 1997, international treaty monitoring bodies, which monitor state compliance with international human rights treaties, including the Committee against Torture and the Committee on the Rights of the Child, have consistently criticized the ban as a violation of the fundamental rights of women and girls. These bodies have called on El Salvador to decriminalize abortion and ensure its availability in accordance with international human rights obligations, which include cases where there is risk to a woman's or girl's life or to her physical and mental health, in cases of rape or incest and in some cases of foetal impairment.

In 2009, the Committee against Torture noted that El Salvador's law, which criminalizes women for undergoing an abortion, has resulted in serious harm to women, including death, and implicates Articles 2 and 16 of the Convention against Torture.⁹ Article 2 places an obligation on El Salvador to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" and provides that: "An order from a superior officer or a public authority may not be invoked as a justification of torture."

The latest condemnation and recommendation comes from the Committee on Economic, Social and Cultural Rights, which monitors state compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). In June 2014, it issued a recommendation to El Salvador to decriminalize abortion, explaining the breadth of the harm of the total ban on abortion:

“The Committee reiterates its concern at the continuing complete ban on abortion, which affects poor and less educated women in particular, with no allowance for exceptional circumstances, which has given rise to grave situations of distress and injustice (E/C.12/SLV/CO/2, paras. 25 and 44). The Committee is particularly concerned at cases in which women whose health was seriously at risk have turned to the health system and been reported on suspicion of having had an abortion. In some cases disproportionate criminal penalties have been imposed with no regard for due process. The Committee is also concerned at the high number of unsafe and illegal abortions, which have serious consequences for health and are still one of the main causes of maternal mortality (art. 12).

The Committee urges the State party to revise its legislation on the total prohibition of abortion to make it compatible with other fundamental rights such as the woman's right to health and life, and consistent with the dignity of women. The Committee urges the State party to provide quality treatment for complications arising from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution.”

THE HISTORY OF THE LAW ON ABORTION IN EL SALVADOR AND THE INFLUENCE OF THE CATHOLIC CHURCH HIERARCHY

The abortion ban



In 1990, a new Penal code became effective in El Salvador, which bans abortion in all circumstances, without exception. The penalties for women accused of having an abortion are severe. If found guilty of having had an abortion, a woman faces from two to eight years in prison. Those found guilty of assisting a woman to terminate a pregnancy, with her consent, face the same sentence. Health professionals who assist women face a heavier sentence of between six and 12 years.¹⁰

A few days after these changes to the Penal Code were adopted, the Legislative Assembly also passed an amendment to the El Salvador constitution recognizing the right to life from the moment of conception,¹¹ making future liberalization of the law more challenging.

There has not always been a total ban on abortion in El Salvador. The previous law governing abortion, the 1973 Penal Code (Article 169), permitted abortion including when it was the only way to save a woman's life; when the pregnancy was the result of rape; and when the fetus carried severe abnormalities.¹²

In the wake of El Salvador's civil war and the signing of the Peace Accords in 1992, discussions began on proposals for a new Penal Code. An initial draft amendment retained many of the provisions of Article 169 which would have continued to allow for therapeutic abortions, albeit with the introduction of gestational limits.¹³ Women's rights organizations

also put forward a proposal for one additional ground for exemption from prosecution; where the woman's physical and mental health was endangered. However, a targeted campaign by the Catholic Church hierarchy and other anti-choice actors were against all exceptions. Their advocacy was successful, resulting in an absolute ban on abortion.

Morena Herrera, a feminist activist who was involved in the abortion law reform, explained to Amnesty International: "Some very conservative and fundamentalist groups feared that this could open the way to decriminalization in the new Penal Code."¹⁴ Lobbying by groups backed by the Catholic Church hierarchy to ban abortion in all circumstances intensified. Catholic Church doctrine opposing abortion was increasingly used by legislators and government officials to support the total ban on abortion.

On the day the Legislative Assembly was due to vote on the new Penal Code, a representative from the anti-choice lobby had been granted permission to show a graphic anti-choice film to the Assembly. After repeated insistence by women's rights organizations that they should also be allowed to address the Assembly, a representative of the woman's movement was finally allowed to speak. Morena Herrera described what happened:

*"It was almost midnight when they let us speak for five minutes. [Those supporting a total ban on abortion] had been given an hour... Immediately after we spoke, another woman spoke and said that she had wanted to have an abortion but she didn't have it in the end. As soon as she had finished they moved to the vote."*¹⁵

The World Health Organization in its recommendations on formulating laws dealing with reproductive health issues  that the development of laws should not be guided by religious principles and states must formulate and advance laws that serve their populations' best interest.¹⁶

The prevailing discourse on the issue of abortion in El Salvador continues to centre on religious beliefs and entrenched discriminatory stereotypes of what constitutes appropriate behaviour for women. Politicians of all parties have either opposed reform of the law, remained silent on the issue, or claimed that their hands are tied. Against this challenging panorama, there are signs that public opinion and the views of some of those in the political establishment may have shifted slightly in recent years, as the reality of what the ban on abortion means for women and girls becomes ever more evident.

A 2012 opinion poll of a wide cross-section of Salvadoran society found that:

- 51% believed that a therapeutic abortion should be legally permitted in cases where the foetus was not viable and would not survive after birth.
- 57% believed that abortion should be permitted in cases where the woman's life is threatened by continuing with the pregnancy.
- 22% believed that therapeutic abortion should be permitted in cases of rape or incest.¹⁷

A more recent opinion poll conducted in 2013 by *La Pagina*, a newspaper, 74% of those surveyed said they were in favour of an abortion when a woman's life is at risk.¹⁸

UNDERLYING SOCIAL AND ECONOMIC FACTORS INFLUENCING THE IMPACT OF THE ABORTION BAN

Amnesty International has identified some underlying and intersecting factors that have influenced the development and implementation of the law and its impact. These are persistent gender inequality and poverty, the pervasiveness of violence against women and girls, the lack of access to the full range of modern contraception¹⁹, especially by young women, and the lack of quality sexual and reproductive health information and education.

El Salvador has itself recognized similar barriers in relation to reaching the targets of the MDGs, especially regarding its failure to meet the target to reduce maternal mortality. In its 2014 report to the United Nations on the issue, the government acknowledged that the total abortion ban is hampering further efforts to reduce maternal mortality and that reaching some of the targets is hindered due to 'socio-cultural' and economic factors, lack of access to contraceptives and prevalence of violence against women and girls.²⁰

GENDER INEQUALITY AND POVERTY

Despite the advancements of human rights protection and institution building since the end of the 12 year civil war in 1992 and the particular achievements of the Salvadoran women's movement, including a new law on violence against women—the 2012 Special Integral Law for a Life Free from Violence for Women—gender inequality and sex discrimination persist in El Salvador. Entrenched discriminatory and harmful stereotypes around women's sexuality and their roles and responsibilities in the family, including as mothers and child bearers, permeate all levels of society.

The UN Special Rapporteur on Violence against Women has characterized the problem of gender inequality in El Salvador as being deeply rooted in patriarchal attitudes.²¹ The CEDAW Committee, which monitors state compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, called on El Salvador to dismantle these stereotypes.

CEDAW Committee Concluding Observations to El Salvador (2008)

"Notwithstanding various measures taken by the State party to eliminate gender stereotypes, the Committee is strongly concerned at the pervasiveness of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family, in the workplace and in society, which constitute serious obstacles to women's enjoyment of their human rights, in particular their right to be free from all forms of violence, and impede the full implementation of the Convention. The Committee is further concerned that an overall strategy to eliminate sexist stereotypes has not yet been put in place by the State party.

"The Committee urges the State party to increase its efforts to design and implement comprehensive awareness-raising programmes to foster a better understanding of and support for equality between women and men at all levels of society. Such efforts should aim at modifying stereotypical attitudes and cultural norms about the responsibilities and roles of women and men in the family, the workplace and in society, as required under articles 2 (f) and 5 (a) of the Convention, and strengthening societal support for equality between women and men. The Committee also urges the State party to adopt an overall strategy to eliminate sexist stereotypes, including through the inclusion of awareness-raising in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys."²²

Yet, women's inequality in El Salvador persists. Women and girls in El Salvador have lower levels of education, higher school dropout rates and almost twice the rate of illiteracy compared to males.²³ They generally work in poorly paid positions and earn less than men.²⁴ This inequality worsens for women and girls whose ethnic background or social conditions expose them to multiple discrimination, for example Indigenous women and girls.

A 2011 government survey revealed that 41% of households nationwide are impoverished. This rises to 50% in rural areas, where 30% of the population resides.²⁵ The poverty rates for women, across all categories, are higher than for men.²⁶ The UN Special Rapporteur on Violence against Women has noted the worrying trend of the growing feminization of rural poverty and the increase in poor rural households headed by women.²⁷

The high numbers of children and young people heading up households is particularly worrying. According to the 2007 Census, 67,000 adolescents aged 12-19 had already formed a household and 48,000 of those already had at least one child.²⁸

All of this results in women and girls' greater vulnerability to poverty and to violence and exploitation. According to the non-governmental organization Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico (Agrupación Ciudadana), an organization advocating for the decriminalization of abortion in El Salvador, the women worst affected by El Salvador's abortion ban are the young, and those living in poverty.

VIOLENCE AGAINST WOMEN AND GIRLS

Violence against women and girls is pervasive in El Salvador. High rates of violence, low reporting, and impunity are factors which hinder progress in addressing this serious human rights violation.

The UN Special Rapporteur on Violence against Women has recognized the persistence of such violence in El Salvador, noting that '...impunity for crimes, the socio-economic disparities and the *machista* culture foster a generalized state of violence, subjecting women to a continuum of multiple violent acts, including murder, rape, domestic violence...' "²⁹

Official statistics on rape and other sexual violence are hard to find in El Salvador. This is due, in part, to the inconsistent criteria used by the various agencies who compile statistics. The 2012 Special Integral Law for a Life Free from Violence for Women attempts to address this challenge by creating a unified database with consistent criteria to be used across all relevant agencies. However, almost three years after entry into force of the law, the database, like many other aspects of the law, such as failure to create shelters for women fleeing violent partners, has yet to become operational.³⁰

Additional barriers to reliable statistics include the societal stigma associated with these crimes and the widespread belief that the criminal law system will not deliver justice to survivors, resulting in women and girls failing to report violence to the authorities.

One woman interviewed by Amnesty International in September 2013 told of her community's response to a young woman who filed a rape case:

"People said that she had asked for it, they said she was a flirt, that she went round talking to men, they said she wore skimpy clothes, that she had been asking for it."

The sense that the criminal justice system is not responsive is especially felt by women belonging to particularly marginalized groups such as sex workers, domestic workers and trans women, who also report facing harassment from the police.

In the words of one sex work activist:

*"What we have seen is that when a sex worker reports a crime, they don't pay attention to it. They just take the paper, fill it in, file it away. It's not like a human being came to report a crime; that's what I have seen. Also, if a sex worker who has been raped goes there, it's as if sex workers can't be raped. The chauvinist thought is that everyone can attack us, everyone can rape us, and do what they want"*³¹.

Additionally, a woman with scarce economic resources may be unwilling to file a complaint of domestic violence against her partner if she depends on him for financial support. As one women's rights activist explained to Amnesty International:

*"We were in a rural area recently and they told us: 'People have to file complaints and use the law'. That's true, but if I report him, he'll go to jail, and if he goes to jail, who's going to help me raise my children?"*³²

Despite these limitations, the figures that are available paint a picture of widespread and entrenched sexual violence, especially against girls and young women. According to the National Family Health Survey, 13.4% of women in El Salvador have experienced sexual violence during their lives, with 7.8% suffering rape, and 10% suffering sexual abuse. Half of those who suffered sexual abuse and 28% of those who were raped were aged under 15 the first time the sexual violence took place.³³

In 2013, the National Civil Police registered a total of 1,346 rapes of women and girls. In close to two-thirds of these crimes (967), the victim was officially classified as "under age or mentally incapacitated"³⁴ that is, they were under 15 years old or unable to give informed

consent because of their mental health or because they were rendered unconscious, and therefore suffered the crime of statutory rape. In the same year, the police recorded a further 560 cases of sexual violence classified as “sexual intercourse through deceit” with girls aged between 15 and 18 (“estupro”).

In the context of domestic violence, a 2008 nationwide government survey showed that almost half of Salvadoran women who had been in a relationship reported experiencing violence at the hands of their partner. Of these, a quarter had suffered physical violence and almost 10% had experienced sexual violence.³⁵

Women and girls who are pregnant as a result of sexual violence do not have legal access to abortion, forcing them to either continue with their pregnancies or to undergo illegal and unsafe abortions. Some also take their own lives.

Lack of access to justice for survivors of violence

Amnesty International is concerned that discrimination in the criminal justice system, including negative gender stereotypes and the religious beliefs of some judges, prevents women from accessing justice, compounding the abuse they have already suffered.

The CEDAW Committee has expressed concern over El Salvador’s “insufficient investigations into reported cases and impunity enjoyed by perpetrators”.³⁶ The Inter-American Commission on Human Rights (IACHR) has noted two major challenges the region faces in ensuring access to justice for survivors of violence: emphasis on the physical evidence and lack of credibility granted to the declarations of survivors.³⁷ Based on testimony gathered by Amnesty International, these appear to be contributing factors to the problem in El Salvador.

Alba, a 25-year-old woman living in a rural area of El Salvador, told Amnesty International in September 2013 that she had suffered many years of physical and psychological violence from her partner in a relationship that began when she was aged 14. When finally able to file a complaint of domestic violence, Alba explained:

“The judge said that because I didn’t have any bruises and I didn’t report him at the time that he hit me, then he couldn’t do anything about it.”

Instead, the judge reportedly sent Alba and her ex-partner to attend parenting classes.

One lawyer spoke of her frustration at the judiciary’s inability to move forward in applying the 2012 Special Integral Law:

“There’s a lot of issues to do with access to justice, which is the most critical aspect for us. Our reading of it is that it’s as if we had given a computer to a dinosaur...The judges still issue rulings which legitimize the men’s right to discipline women³⁸.”

A survivor of domestic violence, Yaneth, told Amnesty International of how the religious

beliefs of the judge presiding over her case influenced the judge's decision:

*"[The judge] told me: 'In order to have a good relationship and to improve your relationship, you both have to go to Mass. It's your obligation to go to Mass every Sunday, and I'll send for your children to check that you are doing what I've ordered'. She left us with that; perhaps the word of God would help us improve our relationship. I left disillusioned, because I didn't find the help I was looking for... I felt humiliated in that place, in the court."*³⁹

LACK OF FULL ACCESS TO MODERN CONTRACEPTION

Access to timely emergency contraception is key to preventing a potentially devastating consequence of sexual violence: unwanted pregnancy. As the only effective form of post-coital contraception, it is critical that survivors of sexual violence have easy access to emergency contraception. Emergency contraceptives can reduce the likelihood of pregnancy by up to 95% if taken within 24 hours after intercourse and up to 88% if taken up to five days after intercourse.⁴⁰ Availability and accessibility of emergency contraception, as with other forms of modern contraception, is particularly important in El Salvador, given its complete ban on abortion.

Yet, access to any form of modern contraception, including emergency contraception, can be difficult. Women in El Salvador face multiple barriers to accessing contraception. This is particularly true for those who are unmarried, young, have fewer economic resources or lower educational attainment and those who live in rural areas.⁴¹

For many, access is compromised by societal, cultural and religious attitudes and restrictive gender norms that associate female sexuality with shame and embarrassment and reinforce women's roles as principally wives and mothers and potential child bearers. This acts to limit access to modern contraceptives and discourages women, particularly young women and girls, from addressing their sexual and reproductive health needs. It limits decision-making and available options and also contributes to the discriminatory treatment of women and girls within health services.⁴²

The data available on contraceptive use only includes women who are married or cohabiting. It indicates that while 66% of women who are married or cohabiting report using modern methods of contraception, 35% of women rely on female sterilization and 20% on injectable contraception. Just 11% use other modern methods such as male condoms or oral contraceptives and over 6.2% rely on 'traditional' and unreliable means of preventing pregnancy such as the rhythm method and withdrawal.⁴³

Young women and girls appear to face some of the greatest challenges in meeting their contraceptive needs. In 2013, the Ministry of Health reported that El Salvador had the highest rate of teenage pregnancy in Latin America, and that 32% of all pregnancies in El Salvador are to adolescents.⁴⁴ The most recent National Family Health Survey indicates that 23% of all adolescent girls between the ages of 15 and 19 years old have had at least one pregnancy. Nearly half (47.7%) of those aged 18 or under when they first became pregnant said they had not wished to become pregnant.⁴⁵

The cost of modern contraceptives provided through private clinics and pharmacies can be prohibitive for some, especially the young, those living in poverty, and women who are experiencing violence, all of whom may not have access to their own financial resources. Additionally, access to a range of modern contraceptive methods is mostly limited to urban areas. Those who lack access to economic resources, or who live in rural locations are therefore particularly reliant on Ministry of Health clinics. Accessing clinics can prove challenging due to the difficulty of travel in rural settings. These clinics have also been associated with provision of fewer options and poorer levels of service for young women including denial of services and discriminatory treatment.⁴⁶

The UN Committee on Economic, Social and Cultural Rights - General Comment 14 on the Right to Health

El Salvador has an international human rights obligation to ensure the availability, accessibility (physical and economic), and quality of health care services, including modern contraception.

As part of this core obligation on the right to health, the Committee recommends states to ensure that the commodities listed in national formularies are based on the World Health Organization model list of essential medicines, which guides the procurement and supply of medicines in the public sector. A wide range of contraceptive methods, including emergency contraception, is included in this model list.⁴⁷

Legal barriers faced by young women

Young women also face a number of specific legal and procedural barriers in accessing contraceptive and reproductive services. Article 167 of the Penal Code states that anyone “who promotes or facilitates the corruption of a person under eighteen of age” by “various acts of sexual intercourse, although the victim consents to participate in them, shall be punished with imprisonment from six to twelve years”.⁴⁸

The International Planned Parenthood Federation (IPPF), in a recent survey on young people’s access to sexual and reproductive health services in El Salvador, has found evidence that the ‘facilitation’ aspect of the Salvadoran law is being used by health care providers as justification for denying young women access to contraception on the basis that they believe they will be criminalized for doing so. They also point to a lack of laws underpinning young people’s rights to access services alongside inconsistent application of confidentiality protocols in undermining young people’s confidence in and access to services.⁴⁹

The law requiring parental or guardian consent in the provision of medical care to minors also appears to influence young women’s access to contraception. There is evidence of confusion by some over whether parental consent is required with regards to the provision of contraceptives. For example, IPPF reports that some health care providers considered it necessary where medical intervention was required for longer-term contraceptives, such as in the case of implants or IUDs, whilst others believed that it was never required.⁵⁰ In practice, confusion over parental consent laws appears to contribute to the high level of discretion that clinics apply towards provision of contraception for young people and to the high level of expectation among parents that they should be consulted.

A youth worker noted that this represents a serious barrier to access to services:

“Young women are looked badly upon if they go and ask for condoms at the health clinic. If they want contraception, if they are under age, then they need to bring parental permission or be accompanied by their father or mother. There’s no real access to contraception.”⁵¹

The **UN Committee on the Rights of the Child**, which monitors state compliance with the Convention on the Rights of the Child, and the **World Health Organization (WHO)** recommend the provision of sexual and reproductive health services, including contraceptive information and services, for adolescents without mandatory parental and guardian authorization or notification, in order to meet the educational and service needs of adolescents.⁵²

LACK OF QUALITY SEXUAL AND REPRODUCTIVE HEALTH INFORMATION AND EDUCATION

Misinformation and lack of information also creates barriers to effective contraception and prevention of pregnancy for women and girls. According to El Salvador’s 2008 National Health Survey nearly 33% of women who were taking oral contraception did not know what to do if they missed a pill. Eight out of 10 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 become pregnant.

IPPF has found evidence of young people in El Salvador being denied information through education and health services and also being given misinformation, for example being told their bodies are under-developed and that sex is therefore dangerous, that contraceptive use causes cancer and that therapeutic abortion results in permanent physical injury. Service providers and young people participating in the IPPF survey attributed the restrictive narratives to which young people are subjected to the influence of the church and other conservative influences.

The deficit in this area is partially due to stigma surrounding the issue. According to IPPF: “Historically, this stigma has translated into a resistance to establishing comprehensive sex education in schools at the policy level, a failure to establish sex education among teachers themselves, and objections by parents to their children receiving sex education.”⁵³

One youth worker told Amnesty International of the need for sexuality education that meets the needs of young people, and is more holistic in its approach:

“Sex education in the schoolroom is just about biology, the development of the human body. Many teachers don’t know how to broach the issue of sexuality from the emotional perspective, from the perspective of establishing a different type of relationship. Often, young people have mistaken ideas about sexuality, and it’s because they obviously don’t have access to scientific or genuine information on sex.”⁵⁴

UNESCO Guidelines on Sexuality Education

'Sexuality' encompasses far more than just physiological or sexual activity, and UNESCO's guidelines to states on the provision of sexuality education reflect that. They recommend that states develop comprehensive sexuality education programmes that include information on the following: growth and development; sexual anatomy and physiology; reproduction, contraception, pregnancy and childbirth; HIV and AIDS; sexually-transmitted infections; family life and interpersonal relationships; culture and sexuality; human rights empowerment; non-discrimination, equality, and gender roles; sexual behaviour; sexual diversity; sexual abuse; gender-based violence; and harmful practices.⁵⁵

The UN Committee on the Rights of the Child expressed concerns over the high teenage pregnancy rates in El Salvador and the impact that El Salvador's lack of preventive measures and highly restrictive abortion law has on girls. It recommended that El Salvador ensure access to sexuality education and reproductive health services for adolescents. It also recommended that El Salvador decriminalize abortion.⁵⁶

Ensuring comprehensive and accurate sexuality education and information and full access to modern contraceptive methods will certainly reduce the number of unwanted pregnancies, but will never eliminate them altogether. According to the WHO, an estimated 33 million contraceptive users worldwide are expected to experience accidental pregnancy annually while using contraception. Some unplanned pregnancies will result in births, while others will be terminated by induced abortions, many in unsafe conditions.⁵⁷

2. THE IMPACT OF EL SALVADOR'S ABORTION BAN

WHO estimates confirm that the legal status of abortion does not reduce the number of induced abortions, as women will seek abortion regardless of its legal status and lawful availability. While abortion is a safe procedure when performed by skilled health care providers in sanitary conditions, illegal abortions are generally unsafe and lead to high rates of complications and to maternal deaths and morbidity.⁵⁸ According to the WHO, the first step for avoiding maternal deaths is to ensure that women have access to contraception and safe abortion. This will reduce unwanted pregnancies and unsafe abortions.⁵⁹

This chapter begins by briefly presenting data on maternal mortality, both in El Salvador and globally. It is followed by testimonies demonstrating how the law prevents women, especially young women, and girls from accessing essential health services. It also looks at suicides linked to unwanted pregnancies and provides testimonies related to the situation of rape survivors. The chapter then explores the practice and impact of unsafe and clandestine abortions, including the disproportionate impact on women and girls living in poverty, as well as their treatment in the health care system when seeking post-abortion care. It also looks at how the criminalization of abortion impacts women who have had miscarriages. Finally, this chapter examines how the criminal justice system denies such women access to justice, and the impact that imprisonment has on their lives and the lives of their families.

EL SALVADOR'S TOTAL ABORTION BAN KILLS WOMEN AND GIRLS

While maternal mortality in El Salvador has dropped in recent years, government statistics are not reliable, as is evidenced by UN agency reports. For example, between 2008 and 2012, the Salvadoran government reported an average of 50.8 pregnancy-related deaths of women per 100,000 live births. Periodically, UNICEF, WHO, UNFPA and the World Bank evaluate the data provided by national governments and make adjustments to account for under-reporting and misclassification of maternal deaths. The adjusted figure for El Salvador, 80.1 pregnancy-related deaths, is significantly higher than the average figure reported by the national authorities.⁶⁰ El Salvador's maternal mortality rate is also higher than the regional average in Latin America and the Caribbean.

Data on abortion-related deaths and maternal morbidity in El Salvador is even more challenging to obtain due to the criminalization of abortion. The Ministry of Health, however, reported that between 2005 and 2008, 19,290 abortions took place in the country, of which 27.6% were undergone by girls.⁶¹ Earlier figures indicate that 11% of abortions resulted in the death of the pregnant women;⁶² however, this figure is likely much higher.

Worldwide, there are approximately 22 million unsafe abortions occurring annually, 98% of which are carried out in developing countries. Globally, unsafe abortion results in death for approximately 47,000 women and causes disability for an additional 5 million.⁶³ This accounts for roughly 13% of maternal mortalities, making unsafe abortion the third largest cause of maternal mortality globally.⁶⁴

Restrictive abortion regimes are a major contributor to the reliance on unsafe abortions.

While Salvadoran authorities assert that they are working toward reducing maternal mortality and have made some important progress, the one step they could take that will certainly reduce mortality – ensuring access to safe and legal abortion – is not being taken. The government itself acknowledged that the total abortion ban is hampering further efforts to reduce maternal mortality:

“The law [criminalizing all forms of abortion] impedes the provision of attention for many pregnant women whose lives are at risk.”⁶⁵

OVER PROTECTION OF FOETAL INTERESTS PUSHES WOMEN WITH HEALTH RISKS TO THE BRINK OF DEATH

“It seems as though science is advancing and the country’s laws stop us from advancing alongside it. Laws should be made to strengthen health care, rather than health care being limited by the law. But that isn’t what happens here. We avoid carrying out medical procedures because the law demands it, when it should be the other way around, legislation that improves health care more and more. But in this case, when it’s to do with women, it’s not like that. And I still can’t manage to understand how they introduced that reform to the law and didn’t take all of this into account.” - Amnesty International interview with a medical doctor, September 2013

The total ban on abortion and its criminalization in El Salvador has resulted in delays to and denial of crucial medical care for women and girls whose health or lives are endangered by continuing with their pregnancies. One specialist lawyer working in the field of health care told Amnesty International how the law places health care professionals in an ethical dilemma; to follow their general ethical obligation to protect a patient’s life would mean to possibly risk prosecution and imprisonment of six to 12 years.

A doctor working in a maternal health unit in a public hospital told Amnesty International:

“We’re not discussing a medical question, but a purely legal one. We all know what needs to be done, but we go back to the fact that we all have our hands tied by what is written in the law.”⁶⁶

Doctors reported to Amnesty International that they are reduced to monitoring for sufficient

deterioration in the woman's condition before undertaking any procedure which could harm the foetus, including termination of pregnancy.

One doctor interviewed by Amnesty International in September 2013 explained how the abortion ban pushes women to the brink of death:

"There is no option. That's the problem. If we had the alternative of saying: 'Look. These are the options. To risk your life and wait for something miraculous to occur, and until your pregnancy is far enough advanced for your child to survive; or carry out an interruption now, which from a medical point of view is the best option for your health. And especially when you have other children to think of'. But we can't tell a woman that, because if we do, she'll say 'yes, I want the interruption'. And we'll say: 'Yes, but we can't, because it's illegal.' 'So why do you offer it to me?'"

A doctor with many years' experience working in maternal health told Amnesty International that even, for example, in the case of ectopic pregnancies (a non-viable pregnancy in which the fertilized egg implants and begins to develop outside the uterus, most commonly in a fallopian tube) the criminalization of abortion and disproportionate protection of foetal life, puts health professionals in the position of not being able to offer the medically indicated treatment. At a certain point, if left untreated, an ectopic pregnancy can cause the fallopian tube to rupture, leading to internal bleeding and the woman's death.

"Even though we know that we must intervene, we can't because the embryo is still alive. So, we have to wait until the patient shows signs of haemorrhage, because otherwise it's illegal. Some colleagues will note on ultrasound scans: 'ectopic pregnancy: embryo alive'. Beneath that will be noted: 'remember, it is illegal to do this'. And the patient is even more confused. 'Look, I know what needs to be done... what am I going to do?'" - Doctor on a public hospital maternity ward, September 2013.

RIGHT TO LIFE PROTECTIONS IN INTERNATIONAL TREATIES DO NOT APPLY BEFORE BIRTH

Opponents to abortion make the claim that right to life protections set forth in international and regional human rights treaties are accorded before birth, therefore prohibiting states from allowing abortions. In fact, no human rights body has ever found allowing termination of pregnancy to be incompatible with the right to life of the foetus or other human rights protections. UN bodies, however, have recognized that prenatal interests can be protected through promoting the health and well-being of pregnant women.⁶⁷ Moreover, international human rights bodies *have* found restrictions on access to abortion in law or in practice to be a violation of state obligations (see Annex for details).⁶⁸

The CEDAW Committee, in a case of denial of abortion to a suicidal young girl who had been raped, recommended that the state take measures to ensure access to abortion in cases of rape and that the life and health of a pregnant woman or girl are prioritized over protection of the foetus.⁶⁹

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have affirmed that the American Convention on Human Rights does not protect an absolute right to life before birth, as is evidenced by the case of Beatriz (see below).⁷⁰

In a case concerning a ban on in-vitro fertilization, the Inter-American Court of Human Rights addressed whether the right to life protection under the American Convention on Human Rights (article 4(1)), applies to embryos. The Court found that while protection of the right to life begins only once the embryo is implanted in the uterus, the protection is not absolute – it is general, gradual, and incremental according to the gestational period. Moreover, the Court recognized that the right to private life and related and interconnected principles of personal autonomy, reproductive freedom, and physical and psychological integrity, are implicated in decisions on whether to become a parent.⁷¹ In accordance with these decisions, El Salvador's total ban on abortion is incompatible with the American Convention.

Women, however, are forced to undergo prolonged pain and trauma in the full knowledge that their lives hang in the balance. The same doctor reported some women trying desperately to stay awake so that they would be immediately aware of the deterioration in their condition and could call for life-saving treatment before it was too late:

*"What could have been very straightforward operation is turned into high-risk surgery."*⁷²

Sometimes women simply discharge themselves from hospital and return home to await their fate with their loved ones. Amnesty International was told of a case where a woman died by the time she was re-admitted as an emergency to a local hospital.

The case of Beatriz illustrates the physical and mental torture meted out by the health care and judicial systems as a result of El Salvador's abortion ban. It shows the lengths to which the health care and judicial systems sometimes disregard women's lives.

BEATRIZ' CASE

In late 2012, Beatriz, a 22-year-old woman from a rural part of El Salvador, became pregnant for a second time. She had suffered serious complications during her previous pregnancy. Beatriz has a history of lupus, a disease in which the body's immune system attacks the person's own tissue. She also has other medical conditions, including kidney disease related to the lupus. In early 2013, it also became clear that the foetus she was carrying  anencephalic (lacking a large part of the brain and skull), a fatal condition that medical science has well-established would not allow it to survive more than a few hours or days beyond birth.

In March 2013, with Beatriz' health deteriorating as she began her fourth month of pregnancy, the doctors treating her at San Salvador's National Specialized Maternity Hospital requested an opinion from the hospital's Medical Committee regarding the legal situation. While the health team working on her case were aware that, medically, Beatriz' symptoms indicated the need for a therapeutic abortion, the law tied their hands. Under Article 135 of the Penal Code, a medical professional who carries out an abortion faces a prison sentence of between six and 12 years, and risks being struck off the medical register and barred from exercising their profession for the same period (making it extremely difficult to re-enter the profession following release).

One doctor who worked on Beatriz' case and was part of the team who worked to stabilize her condition in increasingly difficult circumstances told Amnesty International in September 2013: *"Given her condition, absolutely no one could say that they were against it [an abortion] from the medical point of view... continuing with the pregnancy could only result in more complications or even her death... Nevertheless, a*

group of doctors, despite agreeing with us told us: 'Yes, yes, we agree, but it's illegal'."

Meanwhile, Beatriz' health continued to worsen. The stress of fearing that she could die at any minute and missing her family and her one-year-old son took a further toll on her health.

On 11 April 2013, Beatriz' legal representatives appealed to the Constitutional Chamber of the Salvadoran Supreme Court of Justice requesting that she be given the treatment she needed without further delay. Despite the medical urgency, the Court took six days just to agree to hear the case, and no decision on whether she was entitled receive urgent medical treatment to safeguard her life and health was forthcoming.

In the light of the failure of the national authorities to act to protect her life, Beatriz and those supporting her turned to the regional human rights system for help. Agrupación Ciudadana, the NGO which supported Beatriz and campaigned on her behalf, along with the Feminist Collective and the Centre for Justice and International Law (Centro por la Justicia y el Derecho Internacional, CEJIL) took the case to the Inter-American Commission on Human Rights (IACHR). On 29 April, the IACHR granted Beatriz "protective measures" urging El Salvador to provide her with the medical treatment recommended by her doctors, in accordance with her wishes, within 72 hours. Yet still Beatriz did not receive the necessary treatment.

On 26 April, four UN experts also called on the Salvadoran government to urgently provide Beatriz with the necessary medical treatment to save her life.

Beatriz's case was covered in the newspapers almost daily in El Salvador and was attracting increasing attention worldwide. But still the government maintained its silence.

In May, hundreds of thousands of emails, faxes and letters were sent by activists from organizations around the world, including Amnesty International, and demonstrations in support of Beatriz were organized outside Salvadoran embassies in Latin America and Europe.

In the face of official indifference and the state's continuing unwillingness to address her situation, Beatriz recorded a video interview to plead for her own life: *"I think it would be best for them to go ahead to save my life because... it doesn't make sense to continue with my pregnancy if the baby won't survive and I hope that the Court accepts and that they do what they need to do with my life – with me – because I... I want to live. I ask them from the bottom of my heart to do it."*

On 15 May, more than a month after her appeal was first lodged, the Supreme Court's Constitutional Chamber finally held a hearing to examine Beatriz' case.

The courtroom was filled with lawyers, officials, human rights workers and doctors. Beatriz, now six months pregnant, was present along with her two lawyers.

One person who was not permitted to enter the hearing was Dr Aníbal Faúndes, an internationally renowned obstetrician and gynaecologist who was to serve as an expert witness in the hearing. He was refused permission on the pretext that the paper attesting to his professional qualifications had not been legally notarized. The Salvadoran Minister of Health, Dr María Isabel Rodríguez, was quoted in the press expressing her astonishment at the Chamber's decision: *"Anyone in the scientific world who knows about this field knows that he is one of the leading authorities on the continent... the very best expert possible."*

In the middle of the hearing, after being questioned for 30 minutes and attempting to convince the magistrates to allow her to receive the medical treatment she needed to save her life, Beatriz suffered an attack of hypertension and was rushed to hospital.

The hearing concluded on 16 May. Despite the increasing risk to Beatriz' life with each passing day, the magistrates of the Chamber said they would give a definitive ruling within 15 working days.

On 29 May, in response to the seriousness of the situation and the Salvadoran authorities' failure to provide Beatriz with the "protective measures" she had been granted by the IACHR, the Inter-American Court of Human Rights intervened and ordered the state to take all necessary steps to enable Beatriz' doctors to treat her without interference.

On 3 June, the Salvadoran government finally permitted Beatriz to have an early caesarean section. Their delays had forced Beatriz to wait until she had passed the 20th week of pregnancy. At that point, the end of the pregnancy was no longer medically classified as an abortion, but rather as induced labour. By gambling with Beatriz' life, the authorities were able to claim that no new legal precedent had been set and that the total prohibition on abortion had been respected.

As expected, the newborn died hours after birth; large parts of its head and brain were missing. Beatriz survived. It is still not clear what the long-term effects of the delay in treatment will be on her physical and mental health .

GIRLS AND YOUNG WOMEN AT PARTICULAR HEALTH RISK

Pregnancy in girls carries particular risks because their bodies are not yet sufficiently physically developed. Many suffer from obstructed labour as the pelvis is too narrow to allow the foetus to progress into the birth canal. Other complications particularly associated with this age group are premature births or miscarriages, and obstetric fistula, a condition which renders the woman or girl incontinent.⁷³ According to the WHO, the main cause of death for adolescent girls in most developing countries is complications in pregnancy and childbirth and those most at risk of dying of pregnancy-related conditions are adolescent girls under the age of 15.⁷⁴

In 2013, the Ministry of Health reported that 32% of all pregnancies in El Salvador are to adolescents ,the highest rate of teenage pregnancy in Latin America.⁷⁵ The most recent National Family Health Survey indicates that 23% of all adolescent girls between the ages of 15 and 19 years old have had at least one pregnancy. Nearly half (47.7%) of those aged 18 or under when they first became pregnant said they had not wished to become pregnant.⁷⁶

The UN Office of the High Commissioner for Human Rights in a global report on maternal mortality and morbidity identified some of the underlying causes of adolescent pregnancy:

"The first step is to analyse not only why adolescent girls suffer from high rates of maternal morbidity and death, but also why they are becoming pregnant. A human rights-based approach defines the problem and

addresses it in terms of both the immediate and underlying causes of maternal mortality and morbidity, given that they determine the possibilities for resolving concrete problems at the local level. Amidst many other factors, adolescent pregnancy might be due to a lack of comprehensive sexuality education; gender norms that reinforce early pregnancy; early marriage; high levels of sexual violence and/or transactional sex; a lack of youth-friendly health services; lack of affordable and accessible contraception; or a combination of the above. Disproportionately high rates of morbidity and death may be attributable to, inter alia, late arrival at health facilities or failure to seek care for any of the reasons noted in the example above. Among adolescents, there might also be a disproportionately high rate of self-induced abortion and fear of criminal sanctions; a marked lack of awareness relating to obstetric alarm signals; perceived and actual insensitivity to youth in facilities; or a combination of the above".⁷⁷

THE STIGMA OF ADOLESCENT PREGNANCY

Testimonies gathered by Amnesty International show how the stigma of adolescent pregnancy can heap shame on girls, resulting in mistreatment by the health care system and harm to their health. One gynaecologist, speaking to Amnesty International in early 2014, described the treatment received by pregnant girls:

"In the last six months, we had four cases of girls aged between 10 and 14 years old, whose babies were forming without kidneys. [Such babies] die at birth. It wasn't just that they made them carry the pregnancy to term, but also that when they explained to them that the baby had this condition, they said it was the girl's fault for having got pregnant. It's outrageous because it's a congenital defect, it has nothing to do with what she's done... but that is what the doctors told them when they gave them the news."⁷⁸

Globally, as in El Salvador, pregnant girls are subjected to an intense level of social ostracism that has serious consequences for their future. Blaming the girl also has the effect of avoiding multiple underlying factors that result in early pregnancy. These can be traced back to a lack of respect for the rights of girls on a whole range of issues, including their rights to education and to freedom from violence and to non-discrimination. Taken together, violations of these rights result in a systemic denial of the human rights of girls and women.⁷⁹

UN Committee on the Rights of the Child, Concluding Observations on El Salvador, 2010

"The Committee welcomes the reform of the General Law on Education (2004) as well as the Opportunities Programme and the National Plan of Education 2021. It also notes the forthcoming launch of an early childhood policy. However, the Committee is concerned at:

The substantial discrepancy in the access to education between urban and rural areas as well as between boys and girls [...]

The high number of young girls and boys who drop out of school due to teenage pregnancy, child labour or reasons related to economic migration."

One psychiatrist described how pregnant girls are rejected, isolated, shamed and blamed to the point of driving them into depression:

*"First they suffer total rejection at school. They say to them, while you're pregnant, you don't come to school, you would be a bad example for the other girls... The shame that many of the girls suffer is a cultural, a structural shame, it's sometimes not even necessary that it is explicit. Just knowing that because they are pregnant, they won't go to school anymore because there they would be rejected. At home, another rejection: 'Why didn't you take care? Why did you go around having sex?' Rejection at school, rejection at home, rejection in the community too. Because in the community they start to gossip, that they were promiscuous girls... in the end, they just end up never leaving the house. So all of this creates the conditions for these girls to become emotionally affected, because this is what happens, they end up suffering from serious depression, and serious depression always leads to suicidal behaviour. They've been socially attacked, and rejected by the whole world."*⁸⁰

PUSHED TO DESPAIR: ADOLESCENT SUICIDES LINKED TO PREGNANCY

Carla, a youth worker, described to Amnesty International her desperation when she found out that she was pregnant:

*"You can easily end up deciding that it's best not to [carry on living]... and above all because we women are [ill-treated], put down, suffer from low self-esteem. The packet of rat poison works out cheaper and so... it's obvious, you could end up doing that. At that moment, when you're crying, when you feel bad, when you feel like there's no way out, when you feel like you have no support, that option seems like the easier one."*⁸¹

According to the Ministry of Health, suicide ranks second as a cause of death for young people aged 10 to 19 years. Moreover, suicide accounts for 57% of the deaths of pregnant females aged 10 to 19.⁸² No data exists on whether or not these pregnancies were a result of rape or consensual sex, but the Salvadoran government itself has recognized that this needs to be investigated.⁸³ Additionally, given the stigma surrounding pregnancy and sexuality in girls and adolescents, and around suicide itself, it is likely that other similar cases were not recorded.

"Many of these girls, we've come to know about – not because they've arrived at the hospital, but via the Institute of Forensic Medicine, imagine where they have ended up – they've ended up in the morgue, they've killed themselves."

- A psychiatrist who treated a 13-year-old girl who became suicidal after she was raped by gang members and became pregnant as a result.

Available data does not include attempted suicides that caused long-term physical harm. Amnesty International interviewed one doctor who described the case of a young woman lying in a coma from which she was not expected to recover. She had taken rat poison in a bid to either take her own life or end her pregnancy.⁸⁴

HEAPING VIOLENCE ON VIOLENCE: THE SITUATION OF RAPE SURVIVORS

The link between sexual violence, unwanted pregnancy and unsafe abortion is clear. While comprehensive data is hard to come by, the WHO has characterized sexual violence as a major public health problem and a violation of human rights. Around the world, including in El Salvador, girls and young women experience higher rates of sexual violence than adult women, contributing to their higher risk of unwanted pregnancy and unsafe abortion.⁸⁵ Women and girls in El Salvador who become pregnant as a result of sexual violence have no option other than to carry the pregnancy to term or seek an illegal, unsafe abortion.

The consequences of forcing rape survivors to carry a pregnancy to term are profound and long-lasting. The violence initially committed against the woman or girl is, in effect, compounded by the state, through its decision to ban abortion. Once again, they are denied control over their own body and again, it is the young who are most at risk of harm.

One doctor described his experience of treating a nine-year-old pregnant rape survivor who was forced to carry the pregnancy to term:

*"We had a nine-year-old girl here. She gave birth aged 10. She had been abused since infancy. She fell pregnant and... it was a very difficult case. Very difficult... it ended up being a caesarean section at 32 weeks... That case marked us a lot perhaps because she didn't understand what was happening to her... She asked us for colouring pencils. Crayons. And it broke all of our hearts because she started to draw us all, she drew and she stuck it on the wall. And we said: 'She's still just a girl, just a little girl'. And in the end she didn't understand that she was expecting."*⁸⁶

A psychiatrist interviewed by Amnesty International in March 2014 described the case of a 13-year-old girl who became pregnant as a result of rape by gang members and the additional trauma she faced in being required by law to continue the pregnancy against her will:

"When the doctors explained what changes she would begin to feel, and what would happen with the baby's movements, she said she didn't want to feel them, and asked to be anaesthetized, because she didn't want to feel the baby moving, she didn't want to know anything at all about that baby. She wanted to beat herself in the abdomen, that kind of thing."

An eminent psychiatrist working with teenage girls in El Salvador describes the situation as torture:

"We already know what a devastating effect it has on a woman, to have to carry to term an unwanted pregnancy which is the result of rape. But for an adolescent? It's even more devastating: its torture. Obliging an adolescent to carry on with such a pregnancy is torture, because it means exposing a girl to experiencing all the changes that come with pregnancy, feeling the baby move, and therefore constantly remembering what happened to her... We are torturing them."

The alarmingly high rates of sexual violence against girls and young women and the lack of access to contraceptives forces many survivors to seek illegal and unsafe abortions, risking their health and even their lives.

CLANDESTINE ABORTIONS

Amnesty International interviewed women and doctors who described the precarious and illegal circumstances under which they or their patients have undergone illegal abortions. Some resort to dangerous methods such as consuming pesticides. Others introduce sharp foreign objects into their cervix, such as knitting needles or pieces of wood. Women with more financial resources seek the services of expensive clandestine clinics. However, the illegal nature of these clinics mean that they escape government regulation and oversight; a crucial measure of protecting women's health and lives.

"In a country like this where abortion is criminalized, it makes us afraid. Having to do it behind my mother's back, my sister's back, my friend's back, and maybe ending up in jail as well, they call us witches, the truth is, it's really difficult here."

– Maryana, who sought a clandestine abortion when a pre-existing health condition began to worsen after she became pregnant, interview with Amnesty International, April 2013.

Unsafe abortions are the third largest cause of maternal mortality worldwide. The WHO estimates that in 2008, 21.6 million unsafe abortions took place globally, leading to the deaths of 47,000 women and disabilities for an additional 5 million.⁸⁷ Although data from El Salvador is unreliable due to the criminalization of the procedure, the Ministry of Health has reported that between 2005 and 2008, 19,290 abortions, took place in the country, of which 27.6% were performed on girls.⁸⁸ Earlier figures indicated that 11% of abortions resulted in the death of the pregnant woman.⁸⁹

Restrictive abortion laws are a major contributor to unsafe abortion. While abortion itself is a safe procedure if carried out in an adequate setting, with qualified medical supervision and assistance, legislation such as that in place in El Salvador drives abortion provision underground and places the lives and health of women and girls at risk. The WHO data reflects that globally, deaths and morbidity resulting from abortion are high in countries where access to abortion is legally restricted and tend to be lower in countries where abortion is legally permitted in a wider range of situations.⁹⁰

While maternal mortality may not be completely avoidable, the deaths of women and girls who undergo unsafe abortion due to restrictive legal regimes *are* avoidable. The WHO notes that the first step for avoiding maternal deaths is to ensure that women have access to family planning services and safe abortion.⁹¹

In addition to the physical health impact that illegal abortions have, there is also the mental health impact, due to the stigma associated with the procedure and the fear of being punished, caused by the criminalization of abortion. Several people who initially agreed to be interviewed by Amnesty International in the end felt unable to speak about their experiences, and those who did tell their stories did so only on condition of strict anonymity.

"I think that laws change the way people think... I was very afraid [of speaking with you] but I feel that expressing all of this helps me, because I can't talk about this with many people. It's also the culture, because I can have a friend who I really love and who I tell everything to, but I can't tell her openly 'I did this', because even though she knows that I have an illness that stops me from having a normal pregnancy, the life of the foetus is always there in the midst of things, she would see it in a different way."

- Maryana, who underwent a clandestine abortion in 2012, interview with Amnesty International, April 2013.

Impact on women and girls living in poverty

As in other countries in the world, the quality and thus the health consequences of illegal abortions depend on women and girls' economic means. Women and girls with fewer financial resources experience compounding forms of discrimination: they are denied services required solely by women and girls, which has a disproportionate impact on them because they are living in poverty. The WHO has warned that in restrictive legal environments women and girls living in poverty, and those living in rural and more isolated areas may be at particular risk of unsafe abortions.⁹² This should be of particular concern to the Salvadoran authorities given the extent of poverty and large percentage of the population living in rural areas.

The effect of the restrictions imposed by the total abortion ban on women and girls living in poverty are clear to one health professional working in this field.

*"These aren't problems that you see in other [social] classes because they can go to... we all know that it works like this... there are places here inside the country where they can go. But they have to have money to do it. Or they go abroad. It's a custom some people have. They go to Miami, to Cuba, to Mexico, to Los Angeles. And there is no problem. It works out fine for them... That's what some colleagues were saying to me: 'Beatriz's sin is that she didn't have money [see case of Beatriz in box above]. Because if she had money she certainly wouldn't be in this situation. She would already have paid a doctor privately or she would have gone abroad'."*⁹³

Cristina, a woman interviewed by Amnesty International in September 2013, reported having had a miscarriage and then being accused of aggravated homicide (see below for information on this practice). She underlined her situation and its inherent inequality:

"Of course, if I'd been the daughter of a politician, none of this would have happened to me. It would never have happened to me. To start with, I would never have gone to a public hospital, because [I would have enough] money to go to a private one. Me, a poor woman, where am I going to go to give birth? Where everyone goes. They violate people's rights, and even more so women's rights, because a man is never going to have a miscarriage. Women's rights. This has got to be underlined: the issue is women's inequality."

Illegal use of misoprostol to induce abortion

The drug misoprostol, used in treating ulcers, has become widely used to induce abortions, including in some countries where restrictive laws prevail.⁹⁴ Use of misoprostol to induce abortion has been cited as contributing to a decrease in the number of deaths and severe complications attributed to unsafe abortion.⁹⁵

This drug may be a life-saver for some women and girls in El Salvador who otherwise would have resorted to more dangerous methods. However, lack of information on appropriate dosages to induce abortion and lack of any medical supervision can result in serious complications.

"I was [bleeding] for just over two weeks. And I started to feel a little panicky because it was increasing. I was really afraid, because of all that going to see a doctor implied. The doctors have the power. The power to say: 'I support you or I report you'... I felt like I couldn't go to see the doctor straight away because many women recommend not to do it in case there are still the remnants of the pills you used. I was really, really afraid."

- Carla, interview with Amnesty International, April 2013.

The criminalization of abortion and its chilling impact on women's ability to call on medical support turn what should be a straightforward procedure into a terrifying ordeal. One woman described what happened when she sought to assist another young woman to use misoprostol in a desperate bid to end her pregnancy:

"She took two pills, and then another two after that. And it's not nice, because you start to think, I hope everything turns out okay. There's a lot of pressure because if she talks and mentions my name, I will end up in prison. So it's not nice. But I was conscious of what I was risking. Yes, it's frightening, because nobody wants to be in prison, but because of my own convictions, let's say, I helped her."

"I told her how to do it and all that, but for this girl it didn't work, she didn't pass everything out. She started to run a temperature, it was bad. I spoke with another person and that person managed to get hold of a doctor. She checked her over and did a curettage [outside of hospital and legal regulation], because she hadn't passed everything out."

"They could have sent that girl to prison because she used the pills vaginally, she couldn't go to hospital because she'd done it that way... It's also the money side of things, you can't afford to buy all those pills, I also didn't have all the information to help her, I couldn't get hold of all the pills she needed, she didn't have enough money, so she only used four. Thank God she didn't die, or that anything else happened."

"Afterwards, she rang me to thank me, saying: 'I would have died, what would have happened to my baby?' I think it's true that she would have died... she said that if she hadn't had a doctor who did the curettage, she would be in prison or she would have died of the infection".

- Roxana, interview with Amnesty International, April 2013

BREACH OF CONFIDENTIALITY: THE PRACTICE OF REPORTING WOMEN SEEKING POST-ABORTION CARE TO THE POLICE

Approximately 40% of women who have a clandestine abortion worldwide experience complications that require treatment.⁹⁶ The Salvadoran health system, in accordance with national standards and international human rights law, is required to treat women who have complications arising from illegal abortions. Despite this, there is increasing evidence that the complete ban on abortion in El Salvador is obstructing the provision of post-abortion care as well as compromising services for women experiencing a miscarriage (see below for information on how this is impacting women experiencing miscarriages).

As is evidenced by some of the testimonies in this report, there is a well-founded fear by women of being reported to the authorities if they seek necessary medical care after having an illegal abortion. The harsh criminal penalties for assisting in or performing abortions, and lack of legal clarity around patient confidentiality (see below), have resulted in some health professionals and hospital staff reporting women who have had illegal abortions or miscarriages to the police. According to research on 129 cases conducted by Agrupación Ciudadana, over 57% of complaints to the police of suspected abortion originated from health professionals.

Such reporting severely compromises access to post abortion care, placing women at increased risk of lasting health complications and death⁹⁷. Women may be less likely to seek post-abortion care and therefore risk their ongoing health. The quality of care received by those who do access services is also likely to be compromised where it results in police involvement or mistreatment by healthcare staff.⁹⁸

CEDAW Committee General Recommendation 24 on Women's Health (1999)

Lack of respect for confidentiality of patients "may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for... contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence... Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives."

Additionally, the law in El Salvador on the protection of confidentiality does not provide clear guidance in these circumstances. The Penal Code classifies the failure to report a suspected crime as a criminal offence.⁹⁹ However, under the Criminal Procedures Code, health professionals are exempted from this if they have become aware of it while bound by patient confidentiality.¹⁰⁰ Moreover, the Salvadoran Health Code, the Penal Code and the Criminal Procedures Code all recognize patient confidentiality as a duty stemming from the core role of the medical profession. A health professional's duty to maintain this confidence is taken

so seriously that a health professional who breaks this confidence can be imprisoned. Health professionals are also prohibited from testifying against their patients in court regarding information they have obtained in the course of their duties.¹⁰¹ However, Amnesty International is not aware of any health providers who have been punished or reprimanded in any way for reporting women seeking post-abortion care or treatment for miscarriage to the authorities.

CRISTINA'S STORY

Cristina, whose testimony is also included above, told Amnesty International that she was 18 when she was arrested in October 2004. While pregnant she felt a searing pain and rushed to the bathroom. She lost consciousness and was found by her family, haemorrhaging and covered in blood. She was rushed to hospital where, far from being treated as a patient in distress, she was accused of being a criminal and asked "why did you kill your child?"

Hospital staff reported Cristina to the police on suspicion of having brought on an abortion. She was given a general anaesthetic and curettage to remove any remaining tissue from her womb. Police officers arrived at the hospital and interrogated her before she had fully regained consciousness.

"When you come round from the anaesthetic you feel all dizzy. I couldn't see properly, I just saw everything blurred. What I could see was something shining, but I said to myself, doctors don't wear blue. And I saw it was the badge he was wearing that was shining. And that's when he said to me 'You're under arrest for the murder of your child'."

- Interview with Amnesty International, September 2013.

Recognizing the grave implications this has for the patient, the Human Rights Committee in its last review of El Salvador's compliance with the International Covenant on Civil and Political Rights has recommended that El Salvador take measure to prevent women treated in public hospitals from being reported by medical and administrative staff.¹⁰²

In *De la Cruz Flores v Peru* (2004), a case of a doctor accused of providing health care to alleged terrorists, the Inter-American Court of Human Rights, upheld the right of the medical profession not to be criminalized in the provision of essential health care, which they were obliged to provide in accordance with their medical codes of ethics. The Court found a further breach on the part of the state as it had forced doctors to reveal privileged information, violating the principle of confidentiality between the doctor and patient. Judge García Ramírez, stated:

*"In my view, the state must not, through rules and regulations that dissuade a doctor from fulfilling their duties, violate the professional obligation doctors have to protect the right to health and life, for example through threatening doctors with criminal prosecution, threatening them with being struck off as a medical practitioner, or by compelling doctors to make distinctions contrary to the principles of non-discrimination and equality, or obliging them to assume responsibilities other than their own, or which conflicts with their own duties, and raises unacceptable dilemmas or changes the dynamics of the relationships between doctors and their patients, like what happens when you compel a doctor to report or break confidentiality regarding the patients they attend."*¹⁰³

HARSH INQUIRIES WHEN WOMEN SUFFER MISCARRIAGES

Amnesty International's research indicates that the criminalization of abortion also has consequences for women suffering miscarriages. Amnesty International met women who reported being treated with suspicion and contempt when seeking treatment for a miscarriage, including being harassed and accused of murder by medical staff.

Some women suffering miscarriages are reported to the authorities by health care personnel and interrogated by the police, sometimes resulting in homicide prosecutions (see below for more information). Such wrongful prosecutions and misapplication of the criminal law is rooted in the harmful and discriminatory stereotype that women's value stems from their role as mothers and child bearers. Amnesty International interviewed a lawyer working for Agrupación Ciudadana, who seeks the release of women wrongly prosecuted. He explained:

"In these cases, they immediately assume that the women are guilty and there's no gender perspective. This is a witch hunt. The authorities are trying to make an example of these women."

- Dennis Muñoz, Agrupación Ciudadana's lawyer, interview with Amnesty International, March 2014

CEDAW General Recommendation 24 on Women and Health (article 12) explains that states have an obligation to ensure that health care services "are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives".

WOMEN IMPRISONED

"On the day of the hearing, I only felt pain. When they passed sentence on me I asked God for strength. 'Lord,' I said, 'my son will be 45 years old by the time I get out of this place.'"

- María Teresa Rivera, Interview with Amnesty International, September 2013. Behind the walls of one of the most overcrowded prisons in El Salvador, itself the most overcrowded prison system in Central America,¹⁰⁴ María Teresa Rivera is serving a 40-year prison sentence as a result of having a miscarriage.

The human rights organization Agrupación Ciudadana has identified 129 women who were charged with abortion or aggravated homicide between January 2000 and April 2011, reporting that some of these women had illegal abortions and others had miscarriages.¹⁰⁵

Of the 129 women who were charged, 23 were prosecuted and found guilty of having had an abortion. More recently, the National Civil Police recorded a total of 16 women and girls charged with the crime of abortion in 2013, of whom six were aged 17 or under at the time of the alleged offence.¹⁰⁶ A further eight women and girls were charged with undergoing an

abortion from January to March 2014.¹⁰⁷ Although some of the women who have been convicted are serving non-custodial sentences, the fact that the law does punish women and women have been charged and found guilty and some imprisoned for having an abortion, the threat of a prison sentence is very real.

According to Agrupación Ciudadana, 26 of the 129 women charged were convicted of homicide and given prison terms. As reflected in the testimonies in this report and medical evidence presented in court, some of the women charged with homicide or aggravated homicide appear to have had miscarriages. Of the 26, most were found guilty of “aggravated homicide”, on the grounds that they were related to the victim. This charge carries a sentence of between 30 and 50 years’ imprisonment.

Agrupación Ciudadana told Amnesty International that the 129 women charged tended to be young, single, poorly educated and living in poverty. For example, almost 70% were between the ages of 18 and 25 and almost 75% were single.

UN Human Rights Committee Recommendations to El Salvador, 2010

“The Committee reiterates its recommendation that the State party should amend its legislation on abortion to bring it into line with the Covenant. The State party should take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion. Furthermore, until the current legislation is amended, the State party should suspend the prosecution of women for the offence of abortion. The State party should open a national dialogue on the rights of women to sexual and reproductive health.”¹⁰⁸

‘THE GROUP OF SEVENTEEN’

María Teresa is one of a group of 17 women imprisoned, some on pregnancy-related grounds, including abortion and miscarriage, on whose behalf Agrupación Ciudadana lodged a petition for pardon on 1 April 2014, having exhausted all other legal avenues for their release. According to Agrupación Ciudadana, some of the women have already served over 10 years in prison. All of them come from the poorest sectors of Salvadoran society.

Based on information Amnesty International has received from the women’s lawyers and from Agrupación Ciudadana, the cases of the 17 women raise serious concerns regarding the women’s right to due process, including their rights to a fair and effective investigation and to a fair trial.

All persons are entitled without any discrimination to the equal protection of the law, including on grounds of gender and socio-economic status. Amnesty International is concerned that in these cases, the women’s socio-economic status and gender has played a role in the discriminatory treatment they have received from the criminal justice system, and has tainted the gathering and assessment of evidence used to convict them. Amnesty International is further concerned that the emotive context regarding women and girls’ access to sexual and reproductive rights in El Salvador has influenced the prosecution and

sentencing of these 17 women, and possibly others.

The following is María Teresa Rivera's story as reported to Amnesty International by her and Agrupación Ciudadana.¹⁰⁹

MARÍA TERESA RIVERA'S STORY

María Teresa Rivera was a 28-year-old single parent working in a garment factory when she experienced the wide impact of El Salvador's abortion ban. Unaware that she was pregnant, in the early morning one day in November 2011 she felt the urgent need to use the toilet. She was found by her mother-in-law, bleeding on the bathroom floor.

She was rushed to hospital where a member of staff reported her to the police. Police officers arrived and began questioning María Teresa without a lawyer present.

María Teresa was charged and tried. Inconclusive scientific evidence was presented by the prosecution, yet it was accepted by the presiding judge as being strong enough to convict her.

In the ruling, the judge declared that María Teresa's assertion that she had not known she was pregnant – a key point in the case – was not credible because the court had evidence that in January 2011 she told her employer that she thought she might be pregnant. A pregnancy which began in January 2011 and ended in November 2011 would mean María Teresa had been pregnant for 11 months.

In the face of this erroneous evidence, the court apparently saw in María Teresa a woman who had transgressed the expected role of maternal protector and had in some way deliberately ended her pregnancy. Sentencing María Teresa to 40 years' imprisonment for aggravated homicide in July 2012, it was reported to Amnesty International that the judge said:

"She had the obligation to care for and protect this little baby that she carried in her stomach, and in this sense, she went to the aforementioned septic tank, with the intention of expelling it violently so that inside, it would not have the opportunity to breathe, and so cause its death, in order to later say that she had suffered a miscarriage; without foreseeing that she would suffer complications and would be obliged to make her way to a hospital..."

María Teresa told Amnesty International in September 2013:

"What are my hopes for the future? Freedom. I often feel sad at night, because I want to be with my son, to sleep beside him... I want them [women outside prison] to value all that they have outside, because they don't realize what they've got. Water, one cent... they should value everything, everything".

DENIAL OF DUE PROCESS AND ARBITRARY DEPRIVATION OF LIBERTY

Amnesty International is concerned about what appear to be due process violations faced by María Teresa and other women prosecuted in pregnancy-related cases, specifically the implications on their right to a fair trial, including their right to equality before the law.

Amnesty International identified three overlapping concerns raised by lawyers, health professionals and women Amnesty International interviewed: stigmatizing and discriminatory stereotypes of women as primarily child bearers and mothers, including placing unreasonable and sometimes irrational obligations on women to protect foetal life; lack of adequate counsel; and evidence which does not support the charges.

Moreover, Amnesty International is concerned that in some cases, the mischaracterization of the facts, despite what appears to be available evidence to the contrary, has led to the misapplication of the criminal law, resulting in the arbitrary deprivation of liberty. For example, having a miscarriage rightfully does not constitute a criminal offence under the law of El Salvador and thus, women cannot be held criminally liable. Yet, according to Agrupación Ciudadana, women have been being wrongly prosecuted under homicide and aggravated homicide statutes, despite medical evidence indicating they had a miscarriage.

Stigmatizing and discriminatory stereotypes

Manuela, a woman suffering from cancer, was arrested in 2008 on suspicion of having had an abortion. She was questioned by police officers while gravely ill, without the presence of a lawyer. Unable to pay for a private defence lawyer, Manuela was represented by public defence lawyers, whom she only met on the day of her court appearances. The lawyer who represented her for the final stage of her trial told the defence witnesses that there was no need for them to testify; as a result, the court heard evidence only from prosecution witnesses.

The judge reportedly stated that Manuela's "*maternal instinct should have prevailed*" and that "*she should have protected the foetus*". Manuela was found guilty of aggravated homicide and sentenced to 30 years in prison.

In fact, Manuela's cancer may have caused the loss of her pregnancy. She did not receive adequate treatment for her illness while she was imprisoned and she died in April 2010, in prison, separated from her mother, father and children.

Lack of adequate counsel

"Firstly, the majority of public defence lawyers usually don't present witnesses in cases like these. And on the other hand they don't know about sexual and reproductive health, and while they are not obliged to, if they take on a particular case, they must make the effort".

- Dennis Muñoz, lawyer with Agrupación Ciudadana, interview with Amnesty International, March 2014

One health expert told Amnesty International in September 2013 that limitations in the provision of public defence lawyers mean that women's chances of an adequate defence are undermined from the outset:

"The patient who is accused of abortion doesn't have access to a strong defence. They give them a solicitor from the Public Defender's Office, who in reality, even if they want to do their job in the most professional way possible, is overburdened with work. If they had a private lawyer... but sadly, the people who end up in this situation don't have the money to defend themselves."

Evidence does not support the charges

The Citizens' Group has previously worked on the cases of a number of women who were detained pending trial or in prison but who were later released due to serious lack of evidence to support a conviction and disproportionate sentencing. Amnesty International interviewed some of the women, known as "Las Liberadas" (The Freed Ones).

Cristina, whose testimony is presented above, was charged with aggravated homicide which was dismissed in October 2004 on grounds of insufficient evidence. However, the Attorney General's Office appealed and Cristina was subsequently convicted in August 2005 and sentenced to 30 years' imprisonment. She told Amnesty International:

"In my case, a doctor from the Institute of Forensic Medicine noted [about my condition]: 'She suffered shock at the moment of the birth, she lost consciousness and she couldn't help her baby.' ...[t]he cause of death was undetermined, they didn't know why the baby had died, so how is it possible that they accused me of aggravated homicide for the death of my child when they didn't even have this basic evidence? This is negligence on the part of the judges, and it is completely obvious. I say to my colleagues: We only have our high school certificates but we understand this. So how do these people, who are supposed to be such professionals, make this kind of mistake?"¹¹⁰

Cristina herself attributes part of the reason for her conviction to gender discrimination and prejudice, as exemplified by the arguments presented against her in the first trial.

"In my case [during the initial hearing], the Prosecutor said: 'She is obliged to help her child'. And how was I, passed out unconscious on the floor, supposed to go running to the hospital with my baby?"

The Ministry of Justice and Public Security eventually commuted her sentence on the grounds that the sentence imposed had been excessive, severe and disproportionate. Cristina was released from prison in August 2009, but not before having served four years in prison.

BELÉN'S STORY

Belén, an 18-year-old student at the time of her arrest in June 2009, was unaware that she was pregnant, but had begun to feel increasingly weak with what she thought at first was a very heavy period. She had been haemorrhaging for around one week by the time her family took her to a private doctor. The doctor diagnosed her as having suffered a miscarriage and advised her to go to hospital for treatment. Hospital staff reported her to police on suspicion of having induced an abortion. Belén spent two weeks in hospital and was arrested by police as she left the building after being discharged. She was taken into preventive custody at a police

station accused of both aggravated homicide and inducing an abortion.

A medical examination of Belén carried out by a doctor from the Institute of Forensic Medicine found that the cause of her pregnancy ending could not be determined. A key piece of evidence presented against Belén at her trial was the supposed existence of human bones from the latrine where she had suffered the haemorrhage. However, an autopsy carried out on the supposed remains of the foetus determined that they were in fact animal, not human, bones.

Despite the weakness of the evidence against her, Belén was held in preventive detention for eight months before charges were dropped for lack of evidence.

As reported above, other women remain in prison despite what appears to be lack of evidence to support a guilty verdict.

THE WIDER IMPACT ON WOMEN AND THEIR FAMILIES

Women released from prison after serving part of their sentences told Amnesty International of their feelings of profound sadness for the years they lost with their families and loved ones and the impact it has had on their children.

Rosemery served more than seven years of a 30-year sentence for aggravated homicide before her sentence was annulled following a review. She was released in 2009. She told Amnesty International of the impact of the separation from her three young children for seven years.

"My eldest daughter was seven years old. My youngest daughter was four years old. And my little boy was just one year and three months old. He was still just a baby. It was hard when my little boy used to come to see me. He used to grab hold of my blouse and he ripped a good few of my blouses because he used to grab hold of me and he didn't want to leave me. It was hard for me to turn away, not to look at his face, and to hand him to my mum. As he got older, he started to ask me what this place was. He passed three years believing that I worked there. One day he said to me: 'Mum, you lied to me'. I said to him: 'why son?', but my eyes welled up with tears. 'You're not working here, you're a liar', and he said to me 'when I'm getting off the bus with my grandma and my sisters, they say 'women's prison, women's prison'. And that's where we get off. So you're a prisoner here'. They are words that stay in the deepest part of my heart.

"A year after that, one day he said – he took a look at the policeman, he looked at me, and he looked over his shoulder – and he said: 'Mum, I'm going to ask you something, but do it. I'm going to go over and talk to the policeman and while I'm talking with him, and he turns round towards me, you run out of here. Run out of here and I'll wait for you outside.' Another day he said to me: 'Mum, I'm going to ask you a big favour, but please do it for me'. He stayed looking right at me and my mother, and he said – this still hurts me when I remember it – 'make yourself really small, the smallest you can, and I'll put you in the pocket of my trousers. And when they search me not even the policeman or anybody will find you'. Yes, that still hurts."¹¹

Cristina, whose interview is also above, and who was separated from her young child while imprisoned, commented on the wider implications of the decision to imprison women with young children:

“This situation is not only an abuse of one’s own rights, as a woman, for this type of crime, it also leads to family breakdown. It’s not just one problem, but a whole chain of problems”.

The imprisonment of women such as Rosemary, Cristina, and María Teresa Rivera is contrary to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also known as the Bangkok Rules. While not legally-binding, the Rules lay out a set of standards that states should aspire to implement, with a view to “improving outcomes for women prisoners, their children and their communities”. They recommend that:

“Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.”

In handing down lengthy custodial sentences to mothers of young children, including following unfair trials, the Salvadoran authorities are not only violating the rights of these women, but also the rights of their children.

CONCLUSION

This report details the pervading cultural and institutional barriers which women and girls in El Salvador face to exercising their human rights, particularly those barriers that obstruct the realization of their sexual and reproductive rights. The testimonies of the women and others who spoke to Amnesty International illustrate in explicit and distressing terms the terrible cost that these barriers exact on women and girls on a daily basis in relation to their health, personal freedoms, socio-economic circumstances and mortality. They also demonstrate how gender equality cannot become a reality in El Salvador as long as cultural prejudices and prevalent gender stereotypes are enshrined and promoted through discriminatory laws and institutional practices.

El Salvador's total abortion ban kills women and girls. It also severely compromises the health and wellbeing of thousands who are forced to rely on clandestine abortions, who have suffered miscarriage, or who have been raped. It leads to the arbitrary and unjust imprisonment of women and girls for 'crimes' which in reality amount to attempting to exercise their basic human rights. The failure of the Salvadoran government to address damaging cultural norms that marginalize and restrict the lives of women and girls, as well as their failure to properly address the barriers to modern contraception and effective sexuality education, condemns generations of young women to a future shaped by inequality, discrimination, limited choices and restricted freedoms.

The government of El Salvador has committed to the advancement of the rights of women and girls through the adoption of a wide range of international and regional human rights treaties and global agreements including the Programme of Action of the International Conference on Population and Development (ICPD), the Beijing Platform for Action, and the Millennium Development Goals (MDGs). However, these commitments are rendered meaningless by its systematic failure to address legal, institutional and societal discrimination and violence against women in the country.

The following recommendations outline what the Salvadoran government must now do to honour its human rights obligations and effectively respect, protect and fulfil the rights of women and girls.

RECOMMENDATIONS

Amnesty International calls on the Salvadoran authorities to take legislative and educational measures towards eliminating harmful and discriminatory gender stereotypes throughout society, including in the criminal justice system, and to pay particular attention to vulnerable groups, such as girls and those living in poverty.

Amnesty International calls on the Salvadoran authorities to:

1. Ensure access to safe and legal abortion

- Repeal laws criminalizing abortion; ensuring the elimination of punitive measures for women and girls seeking abortion, and for health care providers and others performing abortions or assisting in obtaining such services where consent is fully given;
- Ensure access to abortion both in law and in practice, at a minimum, in cases where pregnancy poses a risk to the life or to the physical or mental health of a pregnant woman or girl, in cases where the foetus will be unable to survive outside the womb, and in cases where the pregnancy is the result of rape or incest;
- Ensure that all laws and practices clearly establish the duty of health providers to respect patient confidentiality, including by not reporting women suspected of undergoing abortions and those who have had miscarriages to law enforcement authorities. Ensure that all staff working in the health care system are aware of this legal obligation and impose sanctions on those failing to comply.

2. Imprisonment of women in connection with pregnancy-related issues

- Immediately and unconditionally release all women and girls who have been imprisoned in relation to undergoing abortions or for having miscarriages, including those convicted of abortion, homicide, aggravated homicide or any other crimes. Ensure that such women and girls, as well as those serving non-custodial sentences, are not left with a criminal record and that they have access to effective remedies for violations of their human rights;
- Drop charges against women and girls whose cases are pending trial in relation to undergoing an abortion or having a miscarriage, and immediately and unconditionally release any of them who are detained;
- Until relevant laws are changed, cease investigating and charging women and girls in relation to undergoing abortions or for having miscarriages;
- When considering the pardon petition submitted by the human rights group Agrupación

Ciudadana in relation to women imprisoned for other pregnancy-related issues, assess if convictions were a result of unfair proceedings. In particular, examine the following:

- Whether the woman was informed of her rights prior to questioning;
- Whether the woman had access to effective and timely legal representation;
- Whether the woman was questioned while lucid, including not under the effects of anaesthetic, severe blood loss or while in shock;
- Whether forensic evidence met acceptable scientific standards, and whether forensic and other evidence against these women was incomplete, contradictory or inconclusive;
- Whether any of the women were suffering from a mental health disorder or condition at the time the events occurred;
- Whether the law enforcement and justice officials involved in the cases complied with their professional obligations to non-discrimination and ensuring equality before the law, including not relying on discriminatory gender stereotypes when fulfilling their job duties.

3. Guarantee access to modern contraceptive information and services

- Ensure that all women, including adolescents, can access contraceptive information and services, including the full-range of quality modern methods of contraception, including emergency contraception;
- Ensure access to youth-friendly, confidential sexual and reproductive health information and services, including by repealing laws and stopping practices which mandate parental or guardian consent for accessing contraception;
- Provide comprehensive, accurate and non-discriminatory sexuality education both inside and outside the formal education system.

4. Fully implement and resource the 2012 Special Integral Law for a Life Free from Violence for Women

- Ensure that all state bodies tasked with the implementation of the 2012 Special Integral Law and other related legislation designed to promote and protect women's rights have the necessary resources to carry out their roles and that they are trained in the application of the 2012 Special Integral Law and in gender sensitivity and non-discrimination;

- Ensure that a single coherent system of data collection is available and operational, in order to properly assess and address the scale and nature of violence against women and girls;
- Ensure that additional shelters are made available across the country for women and their children fleeing gender-based violence;
- Ensure that any official who allows, promotes or tolerates impunity for, or who blocks investigation of crimes of violence against women faces a sanction for doing so, as articulated in Article 4 of the 2012 Special Integral Law.

ANNEX - RELEVANT INTERNATIONAL HUMAN RIGHTS LAW

Through ratification of international and regional human rights treaties, El Salvador has undertaken to put into place domestic measures and legislation compatible with its treaty obligations and duties. International and regional human rights law sets out minimum obligations that states, including El Salvador, are bound to respect, protect and fulfil. The implementation of international human rights treaties is monitored by UN treaty bodies. Treaty bodies also have a mandate to provide interpretative guidance to states on fulfilling their specific human rights obligations under each of the treaties they have ratified.

El Salvador is party to all major UN and Inter-American human rights treaties relevant to the issues raised in this report, including:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- The International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention on the Rights of the Child (CRC)
- The American Convention on Human Rights (ACHR)
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

The Salvadoran Constitution states that once a treaty is ratified by El Salvador and enters into force, it becomes part of national law. In the case of a conflict between national law and El Salvador's international treaty obligations, the treaty obligations take precedence.¹¹²

The findings of this report reveal violations of fundamental human rights. These rights include the right to life, the right to be free from torture and other ill-treatment, the right to privacy, the right to health, the right to determine the number and spacing of children, the right to due process and the right to freedom from discrimination. The issues described in this report demonstrate that El Salvador is not implementing its international obligations to respect, protect and fulfil these rights.

Many of the specific human rights violations highlighted in this report are rooted in discriminatory and harmful stereotypes of women and girls. The existence of such stereotypes has led to a situation where laws, policies and practices have institutionalized violence against women and girls in all forms, including when they are prohibited from accessing a therapeutic abortion.

Article 5 of CEDAW requires El Salvador to take measures to modify existing social and cultural patterns of conduct, which are based on stereotyped roles for men and women. The treaty body that monitors implementation of the Convention, the CEDAW Committee, has called on states to take all necessary action to improve the situation for women “including the dismantling of patriarchal barriers and entrenched gender stereotypes”.¹¹³

The information below addresses the specific human rights concerns presented in this report and highlights El Salvador’s obligation to address them. Other international human rights standards can be found throughout the report.

The criminalization of abortion in El Salvador violates human rights law

“Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women’s right to health and must be eliminated. These laws infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health.”

- UN Special Rapporteur on health, Report to the UN General Assembly A/66/254, para. 21 (2011)

El Salvador’s criminalization of abortion and the imprisonment of women accused of undergoing abortions breach a wide range of human rights, including the following:

- the right to life
- the right to be free from torture and other ill treatment
- the right to be free from violence
- the right to the highest attainable standard of health
- the right to privacy
- the right to decide the number and spacing of children
- the right to due process

- the right to non-discrimination

The Human Rights Committee, which monitors state compliance with the ICCPR, along with other United Nations treaty bodies have called for the removal of punitive measures for abortion.¹¹⁴ The Human Rights Committee has also called on countries to suspend the prosecution of women for the offence of abortion, to release women who have been imprisoned for undergoing illegal abortions and to reform their abortion laws.¹¹⁵ Governments have been held accountable for not ensuring that abortion is available in cases when the life or health of women and girls is in danger, in cases of fatal foetal impairment and in cases of rape or incest.¹¹⁶ States are responsible for women's deaths and disability, and for other violations of fundamental rights when women are forced to resort to unsafe abortions due to restrictive abortion laws.

Treaty bodies have noted the close link between the right to life and maternal health and mortality, recommending that impediments to women's access health services, such as safe abortion, be removed.¹¹⁷ The CEDAW Committee has explicitly stated, "it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women."¹¹⁸

The degree of pain and suffering caused by El Salvador's abortion ban can be so severe as to constitute torture. The UN Committee against Torture has raised concerns that El Salvador's total ban on abortion "has resulted in serious harm to women, including death", and notes in the same context El Salvador's obligation to prevent acts of torture.¹¹⁹

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also taken note of these and related standards:

"International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender. Examples of such violations include abusive treatment and humiliation in institutional settings; [and] violations of medical secrecy and confidentiality in health-care settings, such as denunciations of women by medical personnel when evidence of illegal abortion is found."¹²⁰

Under international human rights standards, El Salvador has obligations to:

- Decriminalize abortion in all circumstances so as to eliminate punitive measures for women and girls seeking abortion, and health care providers performing abortion services, where consent is fully given;¹²¹
- Ensure access to abortion both in law and in practice, at a minimum, in cases where pregnancy poses a risk to the life or health of a pregnant woman or girl, in cases of fatal foetal impairment, and in cases of rape or incest;¹²²
- Take measures to ensure that the life and health of the woman or girl are prioritized over protection of the foetus.¹²³

Regardless of the legal status of abortion, states have an obligation to ensure access to

confidential, quality health services for the management of complications arising from unsafe abortions and miscarriages. Such care must be free from discrimination, coercion or violence.

Under international human rights standards, El Salvador also has obligations to:

- Ensure adequate training, support and supplies to ensure that abortion-related complications can be treated;¹²⁴
- Guarantee patient confidentiality for women and girls accessing post-abortion care, and ensuring that procedures are in place to investigate and sanction those who violate women's confidentiality;¹²⁵
- Eliminate laws or practices where health care providers report patients who have undergone or are suspected of having undergone an illegal abortion;¹²⁶
- Ensure that women and girls seeking post-abortion care are not forced to make statements as a condition for care, and that statements are not used to prosecute them for undergoing the procedure.¹²⁷

The right to due process in pregnancy-related prosecutions

The right to due process is a fundamental human right guaranteed by all major regional and international human rights treaties. Its protection is critical to ensuring fairness and effectiveness in the administration of justice. The right to due process includes the right to a fair trial which, in the context of criminal proceedings, includes among other things the right to free, competent and effective legal counsel, the rights to be tried without undue delay and to have adequate time and facilities to prepare a defence, as well as the right to challenge the lawfulness of detention. During trial, it includes the right to equality before the law and courts, presumption of innocence, the right to a fair hearing, and the right to have evidence assessed fairly, among other things. It also includes the rights to appeal and to retrials. These fundamental principles are applicable to everyone at all times.

The Human Rights Committee has reaffirmed that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights”.¹²⁸

Information presented in this report indicates violations of the rights to due process and equality before the law. This includes flaws and inconsistencies in assessing medical and forensic evidence, which at times results in the mischaracterization of alleged crimes committed; the failure to ensure the provision of effective legal counsel; and the prevalence of harmful gender stereotypes in the courtroom.

The right to access modern contraception

Access to contraceptive information and services not only enables individuals and couples to

determine whether and when to have children, it also contributes to the achievement of a high standard of health and increases their autonomy.¹²⁹ It is directly concerned with sexual relationships, not just for those planning families, but for all, including adolescents. Access to contraceptive information and services plays an important role in promoting sexual health, and for ensuring a responsible, satisfying and safe sex life. It can help improve communication between partners and promote healthier sexual decision-making.¹³⁰ Contraceptive information and services are also important in preventing pregnancies resulting from sexual violence, and in preventing sexually transmitted infections and HIV transmission.

Ensuring contraceptives are available, accessible, acceptable and of good quality, as part of the full range of reproductive health services, is not just sound policy from a public health perspective, but is also a human rights obligation.¹³¹ UN treaty bodies have recognized that the right to access modern contraception is integral to the realization of fundamental rights protected in treaties, including the following rights:

- the right to life
- the right to be free from torture and other ill treatment
- the right to the highest attainable standard of health
- the right to privacy
- the right to determine the number, timing and spacing of children
- the right to non-discrimination

The UN Committee against Torture has recognized that grave violations can occur when survivors of rape lack access to emergency contraception, framing the lack of access as a potential violation of the right to freedom from torture and other cruel, inhuman or degrading treatment.¹³²

Under international human rights standards, El Salvador has obligations to:

- Ensure access to contraceptive information and services by integrating such services into clinics and maternal and other reproductive health services;¹³³
- Make available and accessible the full range of quality modern contraceptive methods, including those listed in national formularies and on the WHO's Model List of Essential Medicines;¹³⁴
- Ensure that emergency contraceptives are available to all women and girls, especially women and girls who have been raped;¹³⁵
- Provide special attention to the contraceptive needs of vulnerable and disadvantaged populations and groups, including adolescents and sex workers;¹³⁶
- Ensure modern contraceptive methods such as condoms, hormonal methods and

emergency contraception be made easily and readily available to sexually active adolescents;¹³⁷

- Make contraceptive products and services affordable by addressing financial barriers such as health insurance coverage and other budgetary and economic barriers, especially for people with lower incomes and those living in poverty;¹³⁸
- Ensure that health services are staffed with technically competent health care providers who can provide quality information and services, including services that guarantee informed consent and that respect the privacy and confidentiality of all, including adolescents;¹³⁹
- Revise laws and practices that require parental or guardian authorization to access contraceptive services.¹⁴⁰ States should instead apply the principle of ‘evolving capacities’ which relates to the adolescent’s acquisition of sufficient maturity and understanding to make informed decisions on matters of importance, without the authorization of their parents or guardians, to sexual and reproductive health services, including contraceptive services.¹⁴¹

The right to health information and education

The treaty bodies have recognized that access to information on sexual and reproductive health is integral to the realization of fundamental rights protected in treaties, including the following rights:

- the right to the highest attainable standard of health
- the right to information
- the right to education
- the right to privacy
- the right to decide the number, timing and spacing of children
- the right to non-discrimination

The right to health extends “to the underlying determinants of health, such as... access to health-related education and information, including on sexual and reproductive health”. The right to information includes the right to seek, receive and disseminate information, including on reproductive health issues. Information should be accessible, understandable to the person and appropriate to the person’s particular needs and educational level.¹⁴²

The Committee on the Rights of the Child has consistently raised concerns regarding the high number of teenage pregnancies in El Salvador and the state’s failure to prevent them. In this context the Committee also raised concerns about El Salvador’s criminalization of abortion and its fatal consequences for girls. The Committee recommended that El Salvador provide sexual and reproductive health education in schools and access to confidential youth-friendly services.¹⁴³

With regards to sexuality education, the UN Office of the High Commissioner for Human Rights has specifically identified a lack of comprehensive sexuality education as an underlying cause of adolescent pregnancy.¹⁴⁴ Pregnancy-related deaths are one of the leading causes of death for adolescent girls in developing countries.¹⁴⁵ The Committee on the Rights of the Child notes that sexuality education should aim to transform cultural views against adolescents' access to contraception and other taboos regarding adolescent sexuality.¹⁴⁶ Research has shown that egalitarian gender attitudes are associated with safer sexual behaviours such as consistent use of contraceptives, especially condoms.¹⁴⁷

Addressing the increasing prevalence of ideologically driven information on sexual and reproductive health that is often not evidence-based, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have clarified that the rights to health and information require states to refrain from censoring, withholding or misrepresenting health-related information.¹⁴⁸

Under international human rights standards, El Salvador has obligations to:

- Ensure access to unbiased, comprehensive and evidence-based information on sexual and reproductive health, including information necessary to prevent unwanted pregnancy and reduce unsafe abortion;¹⁴⁹
- Ensure that individuals have access to comprehensive sexuality education, both in and outside formal education systems;¹⁵⁰
- Make comprehensive sexuality education programmes part of the standard school curriculum, provided throughout schooling in an age-appropriate manner and without the requirement of parental consent;¹⁵¹
- Make sexuality education programmes also available outside of formal school settings, such as through community based organizations, so as to reach individuals excluded from the educational system, including street children;¹⁵²
- Ensure that curriculum materials do not perpetuate harmful or discriminatory stereotypes, paying special attention to diversity and gender issues, including gender role stereotyping;¹⁵³
- Develop public education campaigns to raise awareness about sexual and reproductive health issues, such as risks of early pregnancy and prevention of sexually transmitted infections, through medical and other alternative forums.¹⁵⁴

Violence against women

Violence against women is a violation of fundamental human rights. It is violence directed towards women or girls, whether done by private persons or the state in times of peace or conflict.¹⁵⁵ Violence against women and girls can violate numerous human rights, including the rights to life and health and the right to be free from torture and other ill-treatment. Violence against women also constitutes a form of discrimination against women.¹⁵⁶

The Convention of Belém do Pará, a regional treaty addressing violence against women which El Salvador has ratified, guarantees that women's right to be free from violence encompasses violence "that is perpetrated or condoned by the state or its agents regardless of where it occurs". It includes the right to be free from all forms of discrimination and "to be valued and educated free of stereotypical patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination".¹⁵⁷

UN treaty bodies, including the CEDAW Committee, the Committee against Torture and the Human Rights Committee, have consistently raised concerns about the high rates of violence against women and girls, including domestic violence, in El Salvador, and the lack of co-ordination amongst bodies handling domestic violence and disaggregated data – necessary to identify and remedy the violations and develop effective strategies.¹⁵⁸

Under international human rights standards El Salvador has an obligation to prevent and punish such violence and to exercise due diligence when cases do arise, including by:¹⁵⁹

- Investigating, prosecuting and punishing instances of gender-based violence;
- Ensuring access to justice, which includes a requirement to treat women victims and their relatives with respect and dignity throughout the legal process;
- Ensuring comprehensive reparations for women survivors of violence and their relatives;
- Adopting comprehensive legislation and other measures to prevent gender-based violence;
- Collecting, analysing and disseminating disaggregated data so as understand and adequately respond to violence against women;
- Implement programmes to train police, prosecutors and the judiciary about gender-based violence;
- Ensure that programmes addressing gender-based violence take into account underserved and vulnerable groups, such as persons living in rural areas, trans women and sex workers;
- Ensure that survivors of sexual violence have access to emergency contraception;¹⁶⁰
- Initiate public education campaigns to raise awareness about gender-based violence and to combat gender-based stereotypes, including root causes.

ENDNOTES

¹ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez has stated that denial of abortion, in some circumstances, can amount to torture or other ill-treatment. Human Rights Council's Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 2013, UN Doc. A/HRC/22/53, para. 46.

² Center for Reproductive Rights, *The World's Abortion Laws, 2013*, available at <http://worldabortionlaws.com/>, accessed 10 August 2014.

³ United Nations and the International Conference on Population and Development, ICPD Beyond 2014 International Conference on Human Rights, 2013.

⁴ Center for Reproductive Rights, *The World's Abortion Laws Map 2013*, Update. Available at http://reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap_Factsheet_2013.pdf, accessed 10 June 2014.

⁵ The UN Human Rights Committee (HRC); the UN Committee for the Elimination of Discrimination against Women (CEDAW); the UN Committee on the Rights of the Child (CRC); the UN Committee against Torture (CAT); the UN Committee on Economic, Social and Cultural Rights (CESCR); and the Inter-American human rights system all have pressed states with such rigid legislation to revise laws and/or ensure access to abortion in certain circumstances as a matter of urgency.

⁶ United Nations General Assembly, *Programme of Action of the International Conference on Population and Development*, 1994, UN Doc. A/171/13, para. 7.3.

⁷ United Nations General Assembly, Beijing Declaration and Platform for Action: Fourth World Conference on Women, 1995, UN Doc. A/Conf. 177/20, para. 9.5.

⁸ UN General Assembly, Millennium Development Goals, 2000.

⁹ CAT Concluding Observation to El Salvador, Nov 2009, CAT/C/SLV/CO/2, para. 23.

¹⁰ Penal Code of El Salvador, 1998, Chapter 2.

¹¹ Constitution of El Salvador, 1998, Article 1.

¹² Article 169 of the 1973 Criminal Code stated that abortion would not be punishable in the following limited circumstances:

1)- El aborto culposo propio que se hubiere ocasionado la mujer o la tentativa de ésta para causar su aborto;

2)- El aborto realizado por facultativo con el propósito de salvar la vida de la madre, si para ello no hubiere otro medio, y se realizare con el consentimiento de la mujer y previo dictamen médico.

Si la mujer fuere menor, incapaz o estuviera imposibilitada de dar el consentimiento, será necesario el de su cónyuge, el de su representante legal, o el de un pariente cercano;

3)- El realizado por facultativo, cuando se presumiere que el embarazo es consecuencia de un delito de violación o de estupro y se ejecutare con consentimiento de la mujer; y

4)- El practicado por facultativo con el consentimiento de la mujer cuando el propósito sea evitar una deformidad previsible grave en el producto de la concepción”.

¹³ See Agrupación Ciudadana por la despenalización del aborto terapéutico, ético y eugenésico, *Del Hospital a la Cárcel: Consecuencias para las mujeres por la penalización sin excepciones, de la interrupción del embarazo en El Salvador*, 2012, p. 47.

¹⁴ Interview with Amnesty International, May 2014.

¹⁵ Interview with Amnesty International, May 2014.

¹⁶ R. Cook and B. Dickens, *Considerations for Formulating Reproductive Health Laws*, Second edition, World Health Organization, 2000.

¹⁷ Instituto Universitario de Opinión Pública Universidad Centroamericana “José Simeón Cañas”, *Encuesta de opiniones sobre el aborto terapéutico*, San Salvador: El Salvador, 2012.

¹⁸ See www.lapagina.com/sv/res_encuesta.php?is_encuseta=362, accessed on 25 July 2014. This sudden spike in support of abortion on grounds of protecting women's lives, may have occurred due to the national and international attention paid to the case of Beatriz (see info in this report).

¹⁹ Modern contraceptives are clinic and supply methods of contraception, including female and male sterilization; IUDs; hormonal methods, such as oral pills, injectables, hormone-releasing implants, skin patches, and vaginal rings; condoms; and vaginal barrier methods, such as the diaphragm, cervical cap, spermicidal foams, jellies, creams, and sponges.

²⁰ Government of El Salvador, Third Report on the Progress of the Millennium Development Goals, El Salvador, 2014, pp. 55 and 62.

²¹ 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*, 2011, UN Doc. A/HRC/17/26/Add.2, para. 11.

²² CEDAW Committee Concluding Observation to El Salvador, October 2008, UN Doc. CEDAW/C/SLV/7, paras 21-22.

²³ Economy Ministry, General Directorate of Statistics and Census, Multipurpose Home Survey (2012).

²⁴ Economy Ministry, General Directorate of Statistics and Census, Multipurpose Home Survey (2012).

²⁵ Economy Ministry, General Directorate of Statistics and Census, Multipurpose Home Survey (2012).

²⁶ Cuaderno sobre Desarrollo Humano No 10. La igualdad y la equidad de género en El Salvador UNDP (2011) <http://www.pnud.org/sv/2007/gen/content/blogcategory/0/98/>; Encuesta de Hogares de Propósitos Múltiples 2012 (El Salvadorian Economic Ministry) <http://www.digestyc.gob.sv/EHPM2012/digestyc/resultado.pdf>

²⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo - Addendum Follow-up mission to El Salvador, 2011, UN Doc. A/HRC/17/26/Add.2, para. 11.

²⁸ Population and Housing Census (2007)

²⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Ms.

Rashida Manjoo - Addendum Follow-up mission to El Salvador, 2011, UN Doc. A/HRC/17/26/Add.2.

³⁰ Currently, just one refuge exists in El Salvador which can accommodate only 35 women and children.

³¹ Interview with Amnesty International, March 2014.

³² Interview with Amnesty International, September 2013.

³³ Encuesta Nacional de Salud Familiar FESAL 2008, pp. 270-273.

³⁴ Penal Code of El Salvador, Art.159 Violación en menor o incapaz,- el que tuviere acceso carnal por vía vaginal o anal con menor de Quince años de edad o con otra persona aprovechándose de su enajenación mental, de su estado de inconsciencia o de su incapacidad de resistir, será sancionado con prisión de catorce a veinte años. Quien mediante engaño coloque en estado de inconsciencia a la víctima o la incapacite para resistir, incurrirá en la misma pena, si realiza la conducta Descrita en el inciso primero de este artículo.

³⁵ Encuesta Nacional de Salud Familiar FESAL, 2008, p. 239.

³⁶ CEDAW Concluding Observations to El Salvador, 2008, UN Doc. CEDAW/C/SLV/CO/7, para. 23.

³⁷ IACHR, *Access to justice for women victims of sexual violence: Education and health*, 2011, OAS/Ser.L/V/II. doc. 65.

³⁸ Interview with Amnesty International, March 2014.

³⁹ Interview with Amnesty International, March 2014.

⁴⁰ WHO Emergency Contraception fact sheet No 244, 2012; Princeton University, Office of Population Research & Association of Reproductive Health Professionals, *Emergency Contraception: Effectiveness of Emergency Contraceptives*, 2012.

⁴¹ El Salvador Encuesta Nacional de Salud Familiar (FESAL), 2008.

⁴² IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health services, 2013.

⁴³ United Nations, Department of Economic and Social Affairs, Population Division, *World Contraceptive Patterns 2013*.

⁴⁴ "Alarmante incidencia de embarazos en adolescentes en el país reporta Salud", *La Página*, 9 July 2013, available at www.lapagina.com.sv/nacionales/84029/2013/07/09/Alarmante-incidencia-de-embarazos-en-adolescentes-en-el-pais-reporta-Salud, accessed 12 August 2014.

⁴⁵ Encuesta Nacional de Salud Familiar FESAL, 2008.

⁴⁶ IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health services, 2013.

⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment 14 on the Right to the Highest Attainable Standard of Health, 2000.

⁴⁸ *Código Penal Decreto N° 1030.- La Asamblea Legislativa De La Republica De El Salvador*, available at http://www.oas.org/dil/esp/Codigo_Penal_El_Salvador.pdf, accessed 8 Aug 2014.

⁴⁹ IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health services, 2013.

⁵⁰ IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health

services, 2013.

⁵¹ IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health services, 2013.

⁵² World Health Organization, *Ensuring human rights in the provision of contraceptive information and services: Guidance and Recommendations*, 2014; Committee on the Rights of the Child, General Comment 4 on Adolescent Health, 2003.

⁵³ IPPF, El Salvador: A study on legal barriers to young people's access to sexual and reproductive health services, 2013.

⁵⁴ Interview with Amnesty International, March 2014.

⁵⁵ UNESCO, *International Technical Guidance on Sexuality Education*, 2009.

⁵⁶ UN Committee on the Rights of the Child, Concluding Observations to El Salvador, 2010.

⁵⁷ World Health Organization, *Safe abortion: technical and policy guidance for health systems, Second edition*, Geneva: WHO, 2012, available at www.who.int/reproductivehealth/publications/unsafe-abortion/9789241548434/en/ p. 17 [hereinafter WHO, Safe Abortion Guidance, 2012].

⁵⁸ WHO, Safe Abortion Guidance, 2012, pp. 23, 47-49. The World Health Organization defines unsafe abortion as a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills, or in an environment that does not conform to minimal medical standards, or both.

⁵⁹ WHO, Safe Abortion Guidance, 2012.

⁶⁰ See www.unicef.org/infobycountry/elsalvador_statistics.html

⁶¹ MSPAS Information, Monitoring and Evaluation Unit, as cited to in a presentation by a representative at the Minister of Public Health, Comprehensive Women's Care Unit at the Latin America Conference: prevention and care of unsafe pregnancy (2009, 2012).

⁶² WHO, *Unsafe abortion incidence and mortality, Global and regional levels in 2008, and trends during 1995-2008*, 2011.

⁶³ WHO Safe Abortion Guidance, 2012.

⁶⁴ World Health Organization, *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008, sixth ed.*, Geneva: WHO, 2011 [hereinafter WHO, Unsafe Abortion, 2011].

⁶⁵ 3rd Report on Progress towards the Millennium Development Goals in El Salvador, Government of the Republic of El Salvador, United Nations System in El Salvador, 2014, p. 62.

⁶⁶ Amnesty International interview with doctor maternal health unit in a public hospital, September 2013.

⁶⁷ See, for example, CEDAW Article 12; CEDAW General Recommendation 24 on Women and Health, 1999, para. 31(c).

⁶⁸ See, for example, *L.C. v. Peru*, CEDAW Committee, 2011; *KL v Peru*, Human Rights Committee, 2005; *LMR v Argentina*, Human Rights Committee, 2007.

⁶⁹ *L.C. v. Peru*, CEDAW Committee, 2011, para. 8.15; CEDAW Concluding Observation to Hungary, 2013, para. 30.

⁷⁰ See also Inter-American Commission on Human Rights case regarding a pregnant woman denied cancer treatment where the Commission issued precautionary measures designed to protect the life and health of the woman determining that the state could not deny the woman health and life-saving treatment. Inter-American Commission on Human Rights, Precautionary Measure, 43-10, 'Amelia' Nicaragua, 2010.

⁷¹ *Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257, 28 November 2012.

⁷² Interview with Amnesty International, September 2013.

⁷³ United Nations Fund for Population Activities (UNFPA), *State of the World Population 2013: Motherhood in Childhood: facing the challenge of adolescent pregnancy*, 2013.

⁷⁴ United Nations Fund for Population Activities (UNFPA), *State of the World Population 2013: Motherhood in Childhood: facing the challenge of adolescent pregnancy*, 2013, Chapter 2.

⁷⁵ "Alarmante incidencia de embarazos en adolescentes en el país reporta Salud", *La Página*, 9 July 2013, available at www.lapagina.com.sv/nacionales/84029/2013/07/09/Alarmante-incidencia-de-embarazos-en-adolescentes-en-el-pais-reporta-Salud, accessed 12 August 2014.

⁷⁶ Encuesta Nacional de Salud Familiar FESAL, 2008.

⁷⁷ Office of the High Commissioner for Human Rights, *Technical guidance on the application of a human-rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality*, 2012, para. 59.

⁷⁸ Interview with Amnesty International, March 2014.

⁷⁹ United Nations Fund for Population Activities (UNFPA), *State of the World Population 2013: Motherhood in Childhood: facing the challenge of adolescent pregnancy*, 2013.

⁸⁰ Interview with Amnesty International, March 2014.

⁸¹ Interview with Amnesty International, September 2013.

⁸² 'Inicia una investigación regional para prevenir suicidios en el embarazo', UNFPA El Salvador, available at www.unfpa.org.sv/index.php?option=com_content&view=article&id=494:inicia-una-investigacion-regional-para-prevenir-suicidios-en-el-embarazo&catid=37:nacionales, accessed 12 August 2014; 'MINSAL inauguró taller de investigación regional para prevenir suicidios en el embarazo' Ministry of Health of El Salvador, available at www.salud.gob.sv/novedades/noticias/noticias-ciudadanosas/182-abril-2012/1323--16-04-2012-minsal-inauguro-taller-de-investigacion-regional-para-prevenir-suicidios-en-el-embarazo.html, accessed 14 August 2014.

⁸³ 'El suicidio constituye una importante causa de muerte materna que afecta principalmente a las mujeres adolescentes, por lo que es necesario profundizar acerca de si los embarazos en estas edades es el resultado de un acto de violencia o incesto'. 3er Informe de avance de los Objetivos de Desarrollo del Milenio El Salvador. 2014, Gobierno de la República de El Salvador, Sistema de las Naciones Unidas en El Salvador, P. 62.

In May 2013 it was further reported that five pregnant women, four of them aged between 20 and 22 years old, had committed suicide between February and April that year. See <http://elmundo.com.sv/salud-reporta-suicidio-de-cinco-embarazadas>.

⁸⁴ Interview with Amnesty International, September 2013.

⁸⁵ See World Health Organization, *Preventing intimate partner and sexual violence against women*, 2010.

⁸⁶ Interview with Amnesty International, September 2013.

⁸⁷ World Health Organization, *Unsafe abortion incidence and mortality, Global and regional levels in 2008 and trends, during 1990–2008*, 2011.

⁸⁸ MSPAS Information, Monitoring and Evaluation Unit, as cited to in a presentation by a representative at the Minister of Public Health, Comprehensive Women's Care Unit at the Latin America Conference: prevention and care of unsafe pregnancy (2009, 2012).

⁸⁹ World Health Organization, *Unsafe abortion incidence and mortality, Global and regional levels in 2008, and trends during 1995–2008*, 2011.

⁹⁰ World Health Organization, *Unsafe abortion incidence and mortality, Global and regional levels in 2008, and trends during 1995–2008*, 2011.

⁹¹ WHO, Safe Abortion Guidance, 2012.

⁹² WHO, Safe Abortion Guidance, 2012.

⁹³ Interview with Amnesty International, September 2013.

⁹⁴ In many countries where abortion is legal, misoprostol combined with the drug mifepristone has been approved also for use in inducing abortions. These medical methods for first trimester abortion have been demonstrated to be both safe and effective. Use of misoprostol alone is also effective, albeit less so. World Health Organization Reproductive Health Medical Library, *Medical Methods for First Trimester Abortion*, available at <http://apps.who.int/rhl/fertility/abortion/dgcom/en/>.

⁹⁵ World Health Organization, *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, available at http://whqlibdoc.who.int/publications/2011/9789241501118_eng.pdf?ua=1 p. 14.

⁹⁶ S.A. Cohen, 'Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide', *Guttmacher Policy Review*, Vol. 12. No. 4, 2009.

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¹⁰⁴ Overcrowding in the women's prison at Ilopango is estimated to stand at almost 1000%. See

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¹⁰⁶ Information on the number of women and girls charged in 2013 and 2014 supplied to Amnesty International by the National Civil Police, 11 April 2014.

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¹⁰⁸ UN Human Rights Committee, 100th session, Geneva, 11–29 October 2010, Un Doc. CCPR/C/SLV/CO/6.

¹⁰⁹ María Teresa Rivera was the only woman Amnesty International interviewed who wanted to be identifiable, this is her real name.

¹¹⁰ Interview with Amnesty International, September 2013.

¹¹¹ Interview with Amnesty International, September 2013.

¹¹² Constitution of the Republic of El Salvador: Article 144.

¹¹³ CEDAW Convention, Article 5.

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¹¹⁶ *K.L. v Peru*, Human Rights Committee, 2005; *LC v Peru*, CEDAW Committee, 2011; *LMR v Argentina*, Human Rights Committee, 2007).

¹¹⁷ Committee on the Elimination of Discrimination against Women, General Recommendation 24: Women and health (Art. 12), 1999, para. 14; See also, Human Rights Committee, General Comment no. 28: equality of rights between men and women (Art. 3), 2000, para. 3.

¹¹⁸ CEDAW General Recommendation 24: Women and health, para. 11.

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¹²⁰ Report of the UN Special Rapporteur on Torture, UN Doc. A/HRC/22/53, 1 Feb 2013, [available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf) accessed 11 August 2014.

¹²¹ CEDAW Concluding observations to Philippines, 2006, para. 28; Children's Rights Committee Concluding Observations to Nigeria, 2010, para. 59(b).

¹²² On the obligation to ensure access to an abortion when a pregnancy threatens a woman's life or health: UN treaty bodies have consistently noted that in order to prevent maternal mortality and morbidity, and guarantee the right to life and health of women, states must ensure access to safe and

legal abortion when a woman's life or health is in danger. 'Health' is consistently understood by international human rights and health bodies to include both mental and physical health.

On the obligation to ensure access to an abortion in cases of sexual assault, rape and incest: UN treaty bodies have consistently urged countries to implement laws establishing rape and incest as grounds for abortion and have repeatedly urged countries that do not allow this to amend their laws to this effect. In two separate cases from Latin America, the Human Rights Committee and CEDAW Committee found that by failing to provide young women with a legal therapeutic abortion in a case of rape and in a case of fatal foetal abnormality, governments had violated numerous rights, including the rights to equality and non-discrimination, the right to privacy and the right to be free from torture and other cruel, inhuman and degrading treatment. See *L.C. v. Peru*, CEDAW Committee, 2011; *KL v Peru*, Human Rights Committee, 2005.

¹²³ *L.C. v. Peru*, CEDAW Committee, 2011, para. 8.15; CEDAW Concluding Observation to Hungary, 2013, para. 30.

¹²⁴ Committee against Torture Concluding Observations to Chile, 2004, para. 7(m); Report of the United Nations Special Rapporteur on the Right to the Highest Attainable Standard of physical and mental health, UN Doc. A/66/254, 2011, paras 27 and 65(k).

¹²⁵ CEDAW General Recommendation 24: Women and Health, 1999, Article 12, para. 12(d).

¹²⁶ Human Rights Committee, General Comment 28 on equal rights between men and women, para. 20; CEDAW Concluding Observations to Chile, 1999; Committee against Torture Concluding Observations to Chile, 2004, para. 7(m); Report of the UN Special Rapporteur on the right to the highest attainable standard of physical and mental health, UN Doc. A/66/254, 2011.

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¹³³ Committee on Economic Social and Cultural Rights. General comment no. 14: The right to the highest attainable standard of health, 2000, Article 12, para. 12; See also, World Health Organization, *Integrating sexual and reproductive health-care services, Policy Brief*, 2006.

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attainable standard of health, 2000, Article 12, paras. 18-27; CEDAW General Recommendation no. 24: Women and health (article 12), 1999, para. 6.

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¹³⁸ CEDAW Committee, Concluding Observations: Hungary, para. 254, UN Doc. A/51/38, 1996; Slovakia, para. 28, UN Doc. CEDAW/C/SVK/CO/4, 2008; See also HRC, Concluding Observations: Poland, para. 9, U.N. Doc. CCPR/CO/82/POL, 2004.

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ON THE BRINK OF DEATH

VIOLENCE AGAINST WOMEN AND THE ABORTION BAN IN EL SALVADOR

Persistent gender discrimination and inequality are at the root of women's and girls' inability to exercise their human rights in El Salvador.

Every year, thousands of women and girls are denied their rights and choices by El Salvador's total ban on abortion and its criminalization. Women and girls who are carrying an unwanted pregnancy are confronted with two options: commit a crime by terminating the pregnancy, or continue with the unwanted pregnancy. Both options have life-long and potentially devastating implications. The number of girls and young women facing this choice is exacerbated by the failure to provide comprehensive sexuality education and quality, modern contraception.

These restrictions are serious violations of the human rights of women and girls and must be dealt with as a matter of urgency. The Salvadoran government is ultimately responsible for the deaths of women and girls denied an abortion and for thousands of others whose human rights have been violated as a result of the country's total abortion ban.

This report details the pervading cultural and institutional barriers that women and girls in El Salvador face in exercising their human rights, particularly those barriers that obstruct the realization of their sexual and reproductive rights. Alongside testimony from health experts and women's rights defenders in El Salvador, the testimonies of women show the devastating impact of violence against women in all its forms.

September 2014
Index: AMR 29/003/2014
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