

El Salvador, Bogota, March 27, 2019

Secretariat of the Committee on the Elimination of Discrimination Against Women
Office of the United Nations High Commissioner for Human Rights

Palais Wilson
52, rue des Pâquis
CH-1201 Geneva 10
Switzerland

Re: Report for the Third Universal Periodic Review ("UPR") on El Salvador, 34th Session of the UPR Working Group ("Working Group") of the Human Rights Council ("Council")

Distinguished members of the Council:

1. The Center for Reproductive Rights (the “**Center**”) is an independent non-governmental organization that promotes gender equality and the fulfilment of women’s reproductive rights across the world. *La Agrupacion Ciudadana* is an independent non-governmental organization that works towards the recognition of women’s reproductive rights in El Salvador. The Center and *La Agrupacion* seek to contribute to the Council’s work by providing independent information concerning El Salvador’s obligations to guarantee women’s reproductive rights protected under international human rights law.
2. In light of El Salvador’s upcoming review by the Council, this letter highlights El Salvador’s failure to comply with its obligations under international human rights law to take all appropriate measures to eliminate discrimination against women in the field of healthcare, reproductive rights and other human rights and fundamental freedoms.
3. This letter is presented as follows: **I** We set out El Salvador’s current legislation concerning abortion; **II** We set out the tragic and fatal consequences of El Salvador’s continuing criminalization of abortion, which are compounded by inadequate and ineffective healthcare policies; **III** We set out the various recommendations issued by UN Treaty bodies and outline the failed domestic attempts to reform the legislation; **IV** We include a list of questions for the Working Group to ask the State Party’s representatives; and **V** We include a list of recommendations that we respectfully propose the Working Group should make to the State.

I. El Salvador’s total criminalization of abortion

4. El Salvador enacted a Criminal Code in 1998 which criminalized abortion under any circumstances, even in cases of rape or incest, where it endangers the mother’s life, or where the fetus is unviable.¹ It also criminalizes health professionals, working either in hospitals or clinics, who perform abortion.² The Criminal Code also provides that health professionals must report a pregnant woman or an adolescent girl to the authorities whenever they suspect that they may have had, or attempted to have, an abortion.³ This obligation, which is in clear breach of patients’ confidentiality, has no equivalent in any other State. The dramatic effect of this provision is that women who suffer obstetric emergencies, including a miscarriage and stillbirths, prefer not to seek healthcare assistance. And if women do seek medical attention, they face being reported to the authorities and prosecuted.⁴



5. El Salvador also amended its Constitution in 1999 to recognize an embryo as a human being from “the moment of conception.”⁵ This means that a person who performs or self-induces an abortion can be prosecuted for homicide, facing imprisonment of up to 50 years.⁶

II. The Impact of El Salvador’s continued criminalization of abortion and its violation of international human rights law

6. The implications of criminalizing abortion in all circumstances and imposing a legal obligation on medical professionals to report those that they suspect may have had, or attempted to have, an abortion, are that the women and children of El Salvador endure serious human rights violations in numerous respects.

A. Health risks due to unsafe abortions

7. Unsafe abortion can lead to a range of harms that affect women’s quality of life and well-being, including the potential for life-threatening complications,⁷ such as incomplete abortion, infection, uterine perforation, pelvic inflammatory disease, hemorrhage, or other injury to internal organs, all of which may result in death, permanent injury or infertility.⁸
8. Between January 2005 and December 2008, the Ministry of Health’s Information, Monitoring and Evaluation Unit reported that 19,290 abortions took place, with 27.6% of those abortions being performed on adolescents.⁹ The actual figures are likely however, to be much higher as, due to the criminalization of abortion, it is impossible to obtain reliable data.
9. El Salvador’s total criminalization of abortion puts pregnant women at significant risk as the law compels them to carry to full term even if there are potentially grave implications for their health and their babies’ health.
10. Women who are suffering from obstetric complications have died from lack of medical treatment because they have been afraid to attend public hospitals.¹⁰ Between 2000 and 2011, 57.4% of formal complaints to the authorities regarding potential breaches of anti-abortion legislation came from staff in public hospitals and from the Salvadoran Social Security Institute.¹¹ It is notable that there were no complaints at all made by *private* hospitals or *private* healthcare centers and physicians.¹² This cannot be coincidental, and demonstrates that these laws operate in a way that discriminates against poor women in particular.
11. The effect of having to carry an unwanted pregnancy to full term is also damning on women’s mental health, with many pregnant women resorting to suicide.¹³ In fact, according to the Maternal Death Surveillance System of the Ministry of Health of El Salvador, the most common cause of death amongst teenage mothers in El Salvador is suicide.¹⁴

B. Prosecution and imprisonment

12. El Salvador’s laws have led to the unjust prosecution and imprisonment of vulnerable women. Between 2000 and 2011, 129 women in El Salvador were prosecuted for abortion or homicide when the fetal deaths occurred in the last months of pregnancy.¹⁵ Of these 129 women,¹⁶ 26 were convicted of homicide¹⁷ and 23 were convicted of abortion.¹⁸
13. According to reports of interviews, many of the women arrested or charged for abortion-related crimes were unaware that they were pregnant at the time and/or had suffered obstetric

emergencies. Having sought medical assistance, they were subsequently reported by hospital staff and interviewed by police officers, or by the doctors themselves, without any legal representation, while receiving medical attention and, in certain cases, while still under the effect of anesthesia.

14. Abortion-related investigations invariably lead to the prolonged, pre-trial detention of vulnerable women.¹⁹ They are held in unsuitable prisons²⁰ without access to personal hygiene items.²¹ Many have been incarcerated while still suffering from complications or even hemorrhaging.²² The incarceration of sick and vulnerable women is unnecessary, disproportionate, and uniquely impacts upon women while in a particularly fragile state, thereby constituting a flagrant violation of their human rights.
15. The Center has been acting for a group of El Salvadoran women who, between 1999 and 2011, were each sentenced to up to 40 years in jail following reported miscarriages, mostly on charges of aggravated homicide.²³ Several global news outlets have reported that at least thirty women jailed for abortions have been freed over the last 10 years following retrials and reviews, but around twenty women still remain in prison.²⁴
16. In March 2019, however, the government of El Salvador decided to commute the prison sentences of three women who were wrongly imprisoned after suffering obstetric emergencies.²⁵ One of the three women, named Alba Lorena Rodriguez, was represented by the Center before the Inter-American Commission on Human Rights. Alba was 21 years old when she learned that she was pregnant for the third time in 2009. During her regular prenatal appointment, Alba informed her doctor that she had twice experienced bleeding and was assured that her pregnancy was fine. Alba subsequently suffered a miscarriage and sought help, only to be accused of having an abortion and later of aggravated homicide. Alba was sentenced to 30 years in prison and was denied pardon in 2014, as well as a request to have her sentence commuted in 2015.²⁶

C. Impact on adolescent girl's personal development and education

17. The total criminalization of abortion has a devastating effect on pregnant adolescent girls (especially between 12 and 14)²⁷ since they are effectively forced to leave education with little possibility of resumption after giving birth.²⁸ Lower levels of education are attained by teenage mothers, leading to a reduction in economic opportunity and, consequently, increased poverty.²⁹
18. Furthermore, children of teenage mothers, later in life, are more likely to attain lower levels of education and are at greater risk too of teenage pregnancy, thereby leading to a perpetuating vicious cycle of children being born to teenage mothers in continuing poverty.³⁰
19. This negative impact is compounded by the fact that El Salvador has one of the highest adolescent pregnancy rates in Latin America: almost a quarter of women between 20 and 24 years old had their first child before they turned 18.³¹

D. Sexual violence against girls and adolescents

20. Sexual violence committed against women is an endemic problem in El Salvador. In the first semester of 2017, the National Police of El Salvador registered 1,948 cases of sexual offenses, of which 72.52% were committed against adolescents: 95.43% of them were against girls and

4.57% were against boys.³² Alarmingly, the rate of rape peaks in relation to 12 to 14-year-old girls.³³

21. Yet the legislation prohibits abortion even where pregnancy results from rape or other sexual violence. Forcing women and girls to continue their pregnancies even in the case of sexual violence, rape or incest leads to serious mental health consequences for these women.³⁴ Not only do they lose control over their bodies, they also lose control over their lives.³⁵ In an attempt to regain control, many women feel compelled to seek an unsafe backstreet abortion. As explained above, this very frequently carries fatal or other serious consequences.³⁶

E. Sex education

22. El Salvador also has one of the highest adolescent pregnancy rates in Latin America.³⁷ A key cause of this is the limited availability of sex education.³⁸ There has been strong resistance in El Salvador to providing sex education, arising mainly from the misguided social stigma attached to it;³⁹ a fear that the provision of information to young people will lead to them becoming "curious" and sexually active.⁴⁰ Amongst women and girls without higher secondary education, sexual education is virtually non-existent.⁴¹ In educational centers, attention is given to the development of the body during puberty, while contraceptive methods receive less attention.⁴² A 2014 report called into question the quality of sexual education in El Salvador given that nearly one third of women taking oral contraception were uncertain of what to do if they missed the pill, and 80% of women who used pregnancy prevention methods were unable to identify when in their menstrual cycle they were most likely to get pregnant.⁴³
23. While the *Ley General de Juventud* was passed in 2012, recognizing the El Salvador government's obligation to provide a comprehensive sexual education,⁴⁴ the lack of access to information is greater in rural areas than in urban areas: 80% of girls with one to three years of formal education were reported in a 2008 census as receiving no information of any kind, increasing to 97% for those with only one year of formal education.⁴⁵

F. Contraception

24. El Salvador's high adolescent pregnancy rate is exacerbated by the restrictive provision of emergency contraception by El Salvador's public health service.⁴⁶ Unsurprisingly, there is a huge unmet need for modern contraception in El Salvador: 33% of married women under 24 and a massive 61% of single, sexually active women under 24 do not use any modern contraceptive method, despite not wanting a child soon or at all.⁴⁷
25. El Salvadoran girls also face barriers of access to effective contraception because of the unclear interpretation of relevant laws. While the age of consent in El Salvador is 18, it is a crime under the Criminal Code to "*promote or facilitate the corruption of a person under eighteen years of age in sexual or erotic acts, individually or organized, publicly or privately*"⁴⁸ with any person who is found to have done so being "*punished with a penalty of three to eight years in prison.*"⁴⁹ This has led some health service providers to interpret the law such that they may be held criminally liable if they provide contraception to girls believed to be under the age of 18.⁵⁰ Access to contraceptives and other sexual health services is also being denied by health service providers mistakenly interpreting secondary legislation requiring children under the age of 18 to obtain parental or guardian consent prior to the provision of medical care.⁵¹

26. The issue of access to sexual health services and contraception is a significant issue in rural parts of El Salvador. Such services are limited in number, frequently requiring long distances to be travelled, and generally poorly stocked, overcrowded and understaffed clinics.⁵² Interview subjects reported that people do not go to clinics because they do not have the money and the clinic is far away.⁵³

III. El Salvador has failed to implement recommendations from UN Treaty Bodies

G. International calls and recommendations to decriminalize abortion

27. In October 2018, the UN Committee on the Rights of the Child ("CRC") noted its deep concern about the extremely high rate of teenage pregnancies in El Salvador, and requested El Salvador to "[d]ecriminalise abortion and ensure access to safe abortion and post-abortion care services for adolescent girls, making sure that their views are always heard and given due consideration as a part of the decision-making process...".⁵⁴
28. In March 2018, the Inter-American Commission on Human Rights called on El Salvador to review carefully the convictions of at least 26 women and to amend the legislation that currently bans abortion in all circumstances, to bring it into line with international human rights law.⁵⁵
29. In December 2017, the UN High Commissioner for Human Rights, Mr Zeid Ra'ad Al Hussein, issued a statement urging El Salvador "to launch a moratorium on the application of article 133 of the Penal Code, and review all cases where women have been detained for abortion-related offences, with the aim of ensuring compliance with due process and fair trial standards."⁵⁶ Mr Al Hussein also stated that "should it be found their cases were not compliant, I appeal for the immediate release of these women."⁵⁷
30. In March 2017, the Committee on the Elimination of All Forms of Discrimination against Women (the "CEDAW") recommended that El Salvador overturn its legislation criminalizing abortion and enact legislation to prevent sexual harassment of girls at school, strengthen the capacity of teaching staff in comprehensive sexual education, and strengthen measures to ensure access to sexual and reproductive health services.⁵⁸
31. In January 2015, six UN Chair-Rapporteurs and Special Rapporteurs called on El Salvador to repeal its anti-abortion legislation, release the women who remain incarcerated without due process under those laws, stop the prosecution and imprisonment of women who arrive at hospitals seeking medical care for obstetric emergencies, and "ensure access to sexual and reproductive health and rights, including maternal health care and access to all methods of modern contraception".⁵⁹
32. In 2014, the CESCR reiterated its concern at the continuing total criminalization of abortion, noting the scarcity and inadequacy of sexual and reproductive health services, particularly for girls and women, which continues to give rise to high maternal mortality and teenage pregnancy rates. The CESCR urged El Salvador to revise its total prohibition of abortion, redouble its efforts to reduce the high rate of teenage pregnancies and ensure access to readily available sexual and reproductive health services, particularly in rural areas.⁶⁰
33. At El Salvador's last UPR in November 2014, twelve States expressed concern and called on El Salvador to amend or repeal its severe and punitive anti-abortion laws.⁶¹ On 17 December



2014, the Working Group submitted its Report on El Salvador,⁶² calling on El Salvador to decriminalize life-saving abortion and abortion in the cases of pregnancies resulting from rape or incest and immediately and unconditionally releasing all women and girls incarcerated for having undergone an abortion, or for having endured one spontaneously, and also removing their criminal records.⁶³

34. In 2010, the CRC expressed its concern at El Salvador's high number of teenage pregnancies, and at the fact that the criminalization of abortion may lead girls to resort to unsafe and clandestine abortion practices, sometimes with fatal consequences,⁶⁴ in violation of El Salvador's obligations under the Convention on the Rights of the Child.⁶⁵ Furthermore, this Committee noted the high number of young girls who drop out of school as a result of teenage pregnancy.⁶⁶ Accordingly, it recommended that El Salvador should promote and ensure access to sexual education and reproductive health services for all adolescents and consider revising the provisions of the penal code criminalizing termination of pregnancy in all circumstances.⁶⁷

H. Domestic attempts to decriminalize abortion

35. In recent years there have been some proposed amendment to El Salvador's criminalization of abortion, however these have never been realized and the opportunity to do so may have been missed. In 2016 and 2017, two members of Parliament tabled two different draft bills to decriminalize abortion.⁶⁸ MP Peña proposed a bill in 2016 to include exceptions to Article 133 of the Criminal Code, allowing abortion: (a) to save the mothers' life if in danger; (b) when pregnancy results from rape; (c) when the fetus is not viable; and (d) in the case of minors, when the pregnancy results from rape, subject to the parents' consent.⁶⁹ In 2017, Senator Wright tabled the second bill proposing narrower exceptions to the law hoping to obtain the favorable vote of more conservative legislators. However, El Salvador's Legislative Assembly failed to bring up a vote to reform its abortion law. The legislative period ended on 30 April 2018.⁷⁰ On 1 May 2018, a new Assembly was created and is dominated by conservative parties that are opposed to the decriminalization of abortion and will not even bring it up for discussion.⁷¹
36. On 3 February 2019, El Salvador elected a new President to serve a five year term: Nayib Bukele.⁷² Aged 37, the President started his career in politics only 7 years ago as a member of the left-wing party Farabundo Marti National Liberation Front, however he has ultimately been elected as President whilst being a member of the right-wing party Grand Alliance for National Unity ("**GAN**A").⁷³ Therefore, in the absence of any clear indication from the President, his political allegiances and views are relatively unclear.⁷⁴ It is reported that Bukele has voiced some support for abortion solely in instances where the mother's life is at risk,⁷⁵ however this conflicts with the conservative views of his current political party GANA.⁷⁶ As such, although it is difficult to anticipate how Bukele's coming to office will affect the status of abortion in El Salvador, it is unlikely that it will result in the legislative, political and cultural changes required to adequately protect the human rights of women and young girls.
37. The recent court case of Imelda Isabel Cortez Palacios ("**Imelda**") also illustrates the dramatic and cruel situation affecting women and adolescents as a result of the total criminalization of abortion. After being repeatedly raped by her step-father since the age of 12, Imelda became pregnant with his child when she was 18. She suffered an obstetric emergency, giving birth to a baby girl in the latrine at her family's home. Imelda did not know that she was pregnant and screamed for help before she fainted and started to hemorrhage heavily. Her mother took her to the local public hospital, where medical personnel determined she had given birth. Because

there was no baby or fetus present, they notified the police. The baby was rescued from the latrine without any injuries.⁷⁷ The Prosecution did not present any evidence that Imelda had taken any action to endanger or attempt to murder the baby yet, in April 2017, she was charged with attempted aggravated homicide and faced 22 years in prison.⁷⁸ It was only in December 2018, after widespread international criticism, that the court declared Cortez not guilty of any crime and ruled she was free to go home.⁷⁹ The fact that this young woman, who had been subjected to years of sexual abuse, was detained for 18 months before being found wholly innocent, even under the current, oppressive anti-abortion legislation, demonstrates El Salvador's flagrant infringement of women and young girls' rights.

38. Despite the repeated international calls for change, El Salvador maintains its total criminalization of abortion.

IV. El Salvador's anti-abortion legislation and its failure to guarantee reproductive rights violates international human rights law

1. Violation of the right to substantive equality and the right to be free from discrimination

39. Instead of advancing women's rights, El Salvador's restrictive laws on abortion exacerbate and entrench discrimination against women, in contravention with El Salvador's obligations under international human rights treaties.⁸⁰
40. El Salvador's severe anti-abortion laws discriminate against women by violating a number of core rights, including the right to life,⁸¹ by prioritizing the survival of a fetus over the life of a woman, where continuing a pregnancy threatens the woman's life.⁸² The laws fail to ensure that women who have suffered a miscarriage, or other obstetric complications, receive the appropriate care and medicine, and are placed in a suitable environment necessary for their recovery.⁸³ The laws, ultimately, fail to take any measures to provide post-abortion care to women who have sought unsafe abortions.⁸⁴ Additionally, the laws require health professionals to report patients experiencing obstetric emergencies, thus creating an environment of fear which deters women from seeking healthcare.⁸⁵
41. El Salvador's criminalization of abortion impinges on women's the right to liberty and the freedom from torture, cruel, inhuman or degrading treatment or punishment,⁸⁶ by forcing women to continue their pregnancies even in cases of rape or incest, causing serious physical and emotional suffering,⁸⁷ and leading to many avoidable deaths or long-term damage to health.⁸⁸ The laws allow mistreatment from healthcare personnel, including by handcuffing women to hospital beds before, during or immediately after giving birth or suffering an obstetric emergency.⁸⁹ Women can be detained and subjected to humiliating body inspections, including anal and vaginal searches carried out by unqualified personnel who disregard basic standards of hygiene and dignity.⁹⁰
42. The abortion ban has also an impact on women's right to due process and fair trial,⁹¹ by undermining women's access to lawyers and as such, the rights of detainees to effective legal assistance and to exercise their right to a defense,⁹² for instance by interrogating women in the absence of their attorneys, whilst still receiving medical treatment and in some cases, whilst under the effects of anesthesia.⁹³ The laws allocate State-appointed defense attorneys who fail properly to advise or advocate on behalf of their clients, or to ensure an opportunity for their clients to testify.⁹⁴ Moreover, the laws admit the use of unsafe and/or illegally obtained



evidence and ignore material raising reasonable doubts about the woman's guilt,⁹⁵ and misleads illiterate witnesses or otherwise manipulating individuals into filing criminal complaints.⁹⁶

43. El Salvador's anti-abortion legislation breaches also the right to privacy,⁹⁷ by denying women the right to make decisions about their own bodies and reproductive capacity without the interference of third parties (such as health professionals and the State).⁹⁸ This requires health professionals to report patients experiencing obstetric emergencies, infringing women's right to patient confidentiality and creates an environment of fear in which women are effectively prevented from seeking medical care.⁹⁹
44. Finally, adolescent's rights are breached, including children's rights for their best interests to be a primary consideration, by criminalizing abortion with no exceptions,¹⁰⁰ even in cases of adolescent girl's pregnancies, including those resulting from rape.

2. El Salvador violates the right of equal access to healthcare¹⁰¹

45. Access to healthcare is a "basic right"¹⁰² recognized by the CEDAW in General Recommendation 24 to be of "central"¹⁰³ concern. Article 12 CEDAW requires El Salvador to take all appropriate measures to eliminate discrimination against women in the field of healthcare and to ensure women have access to healthcare services throughout their lifecycle.¹⁰⁴ Article 24 of the CRC requires El Salvador to provide children with the highest attainable standard of health,¹⁰⁵ as well as ensure appropriate pre-natal and post-natal health care for mothers.¹⁰⁶
46. As explained in General Recommendation 24, El Salvador must consider the health rights of women from the perspective of women's needs and interests and must take into account the differences in the needs of men and women,¹⁰⁷ including biological factors, socio-economic factors, psychological factors and health system factors.¹⁰⁸ The right is widely acknowledged as encompassing not only a right to physical health but also a right to mental health and social well-being.¹⁰⁹
47. The right to access health services includes the right to access reproductive health services. This encompasses the obligation to provide information on family planning and sex education to "ensure women's right to safe motherhood and emergency obstetric services"¹¹⁰ with the aim to "reduce maternal mortality rates through safe motherhood services and prenatal assistance".¹¹¹ It is therefore "discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women".¹¹²
48. El Salvador must provide health services that are appropriate for and available to women, in the sense that health services must be delivered in a manner consistent with women's rights, including the rights to dignity, autonomy, privacy, confidentiality, informed consent and choice.¹¹³
49. The obligation to report has particularly serious consequences, since women thereby suffer from a fear of being reported in situations where there is no culpability, such as where they have suffered unprovoked bleeding and miscarriage. Many women therefore refuse to seek healthcare or medical treatment even though they are in a highly vulnerable situation, with the result that, in many cases, women have died through a lack of medical attention, or as a result of unsafe backstreet abortions.¹¹⁴ This problem is particularly acute in relation to women of low socio-economic status living in rural areas, as it compounds the already substantial time and



resources that poor and uneducated rural women must expend in order to access reproductive health services (see further below in respect of breaches of Article 14).

50. El Salvador has created real and significant barriers to healthcare during and after pregnancy. In so doing, it fails to meet the “specific, distinctive health needs and interests of women”.¹¹⁵ This violates Article 12(2) and discriminates against women in violation of Articles 2 and 12(1).

3. El Salvador Violates the Right to Reproductive Freedom¹¹⁶

51. Article 16(1)(e) of CEDAW requires El Salvador to provide women¹¹⁷ with the “same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”. This requires States to facilitate the exercise of women’s choice and independence in making family planning decisions, and increase awareness of, and access to, healthcare facilities, and by making family planning information available to women and girls (see also Article 10(h) of CEDAW).¹¹⁸

52. Article 16(1)(e) therefore requires El Salvador to create the necessary conditions for women to control their reproductive capacity.¹¹⁹ Yet El Salvador has done the opposite by enacting highly restrictive anti-abortion legislation.

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

4. Disproportionate Effect on Poor and Rural Women¹²⁰

54. Over a third of El Salvador’s population lives in rural areas.¹²¹ Rural life in El Salvador presents particular difficulties, including increased levels of poverty,¹²² illiteracy¹²³ and inaccessibility.¹²⁴ Rural women need to spend more time and resources to access reproductive health services, and are more likely to resort to unsafe abortions because they lack the resources to access private healthcare or travel abroad to jurisdictions where abortion is legal.¹²⁵ Rural women also tend to use the most unsafe methods and the most untrained abortion providers, and are therefore more likely to suffer severe complications from unsafe abortion.¹²⁶ It is unsurprising, therefore, that many of the women currently imprisoned come from rural parts of El Salvador.

55. Article 14 of CEDAW requires El Salvador to eliminate discrimination against women in rural areas. Rural living increases women’s socio-economic disadvantages by excluding them from services and opportunities and constitutes a distinct source of discrimination against women.¹²⁷ High levels of illiteracy amongst rural women impede access to information on sexual and reproductive issues, including prenatal and obstetric issues, which leads to an increase in unplanned pregnancies and perpetuates intergenerational poverty.¹²⁸

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

5. El Salvador Violates the Rights to Education and Employment and the Right to Participate in Public and Political Life¹²⁹
57. Anti-abortion legislation creates lasting detriment to women and children by entrenching poverty and by depriving women and adolescent girls of educational, economic and social opportunities, leading to cross-generational consequences, as explained further below.
58. El Salvador's breaches of Articles 12, 14 and 16(1)(e) as set out above give rise to a consequential breach of a number of other rights under CEDAW and the CRC, including the right to education under Article 10 CEDAW and Article 28 CRC, the right to employment under Article 11 CEDAW, and the right to participate in public and political life under Articles 7 and 8 CEDAW. When women are unable to decide when and whether to bear children, this impacts all facets of their lives, including their ability to finish school (with limited possibility that they will resume their education,¹³⁰ especially if they are imprisoned on suspicion of abortion¹³¹), enter the labor force,¹³² and participate equally in public and political life.¹³³ Low female participation deprives women's voices from being heard, reinforces gender stereotypes characterizing women's primary role as child bearers, and further entrenches the cycle of discrimination against women.
59. El Salvador's anti-abortion legislation therefore has long-term and far-reaching consequences across the economic, educational and political spheres.

V. Questions for El Salvador

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

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

- (e) Please report on the steps being taken to reform laws and policies so that women and adolescent girls can access free contraception, counselling, and sex education programs, and on the steps being taken to address the stigma around sex education.
- (f) Please report on any measures in the last two years taken to comply with the recommendations made by the Office of the U.N. High Commissioner for Human Rights, CEDAW and the CRC.
- (g) Please report the number of women and adolescent girls that continue to be imprisoned as a result of the total criminalization of abortion and the number of women that were below the age of 18 when they got pregnant and are currently not in prison as a result of abortion.

VI. Recommendations

60. We respectfully request the Council addressing the following recommendations to the Salvadorian government:

- (a) Urgently repeal El Salvador's highly restrictive anti-abortion legislation.¹³⁴
- (b) *Alternatively*, urgently amend El Salvador's anti-abortion legislation to permit exceptions for pregnancy resulting from sexual violence, rape or incest, where there is a threat to the mother's life or health, or where the fetus is unviable.¹³⁵
- (c) *In any event*:
 - (i) urgently amend El Salvador's anti-abortion legislation to remove the obligation of health professionals and public officials to report women to the police based merely on a *suspicion* of abortion; and
 - (ii) formulate and actively implement policies to provide for the widespread dissemination of contraceptive products (particularly emergency contraception) and accurate family planning information to allow women (and particularly adolescents in rural areas) to exercise their reproductive rights.

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- ¹ Performing an abortion on another carries a penalty of imprisonment of up to twelve years, and self-inducing an abortion carries a penalty of imprisonment of up to eight years, see Decreto N° 1030, Código Penal (1998) (hereinafter ‘1998 Criminal Code’), Articles 133-137. *See also* Código de Ética y Deontología Médica (2015) (hereinafter ‘2015 El Salvador Doctors’ Code of Ethics and Deontology’), Article 87, which provides that “*performing abortion constitutes serious misconduct according to the Criminal Code*”.
- ² 1998 Criminal Code, Article 312.
- ³ The obligation of doctor-patient confidentiality is set out in 2015 El Salvador Doctors’ Code of Ethics and Deontology, Articles 64 and 65. Article 38(2) of the Decreto N° 955, Código de Salud (“1988 Health Code”), however, provides that this obligation is “*inviolable, except in the case where complying with it would breach the existing laws*”.
- ⁴ Center for Reproductive Rights, *Marginalized, Persecuted, and Imprisoned – The Effects of El Salvador’s Total Criminalisation of Abortion*, 2014, p. 14 (hereinafter “CRR, *Marginalized, Persecuted, and Imprisoned*”).
- ⁵ Decreto N°38, Constitución (hereinafter ‘Constitution’), Article 1 (extracted in the Annex).
- ⁶ 1998 Criminal Code, Articles 128-132.
- ⁷ WHO Fact Sheet, *Preventing unsafe abortion* (reviewed February 2019).
- ⁸ Human Rights Watch, *International human rights law and abortion in Latin America*, July 2005, p. 5; Amnesty International, *On the brink of death - Violence against women and the abortion ban in El Salvador*, 25 September 2014, p. 33.
- ⁹ Center for Reproductive Rights (“CRR”), *Marginalized, persecuted, and imprisoned – The effects of El Salvador’s total criminalization of abortion*, 2014, p. 21.
- ¹⁰ *From Hospital to Jail Report*, pp. 53-55 (noting that it is impossible to state the number of deaths: as long as abortion remains illegal, statistics cannot be expected to reflect the true position).
- ¹¹ Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico, *Del hospital a la cárcel: consecuencias para las mujeres por la penalización sin excepciones, de la interrupción del embarazo en El Salvador*, 2013 (“Citizen’s Coalition for the Decriminalisation of Abortion on Grounds of Health, Ethics and Fetal Anomaly, *From Hospital to Jail: the Impact on Women of El Salvador’s Total Criminalisation of Abortion*’, *Reproductive Health Matters*, Vol. 22 (44) (November 2014)”), p. 54 (hereinafter “*From Hospital to Jail Report*”).
- ¹² CCPR, *Report on Violation of Women’s Human Rights due to the Complete Criminalisation of Abortion – In Response to the Periodic Report of El Salvador*, (99th Session) (2010), Annex A, p. 1. *See also* CEDAW, *Concluding Observations*, U.N. Doc. A/54/38/Rev.1 (1999) (Ireland), ¶ 185.
- ¹³ *From Hospital to Jail Report*, p. 53, citing research from the Guttmacher Institute and the International Family Planning Federation Western Hemisphere Region, which estimates that the rate of unsafe abortions in El Salvador is about 25 per 1,000 women of childbearing age, such that over 35,000 unsafe abortions take place in El Salvador every year. Additionally, according to the Maternal Death

Surveillance System of the Ministry of Health of El Salvador, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.

- ¹⁴ International Planned Parenthood Federation ("IPPF"), *Over-protected and under-served - A multi-country study on legal barriers to young people's access to sexual and reproductive health services – El Salvador case study*, 8 July 2014, p. 17, ¶3.5; see also "Citizen's Coalition for the Decriminalisation of Abortion on Grounds of Health, Ethics and Fetal Anomaly, *From Hospital to Jail: the Impact on Women of El Salvador's Total Criminalisation of Abortion*', *Reproductive Health Matters*, Vol. 22 (44) (November 2014)", p. 54, citing research from the Guttmacher Institute and the International Family Planning Federation Western Hemisphere Region, which estimates that the rate of unsafe abortions in El Salvador is about 25 per 1,000 women of childbearing age, such that over 35,000 unsafe abortions take place in El Salvador every year. Additionally, according to the Maternal Death Surveillance System of the Ministry of Health of El Salvador, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.
- ¹⁵ *From Hospital to Jail Report*, pp. 53-55.
- ¹⁶ Of the 80 remaining cases, 67 were ultimately dismissed or acquitted, and nine were subject to default judgment. No information is available about four cases. *From Hospital to Jail Report*, p. 55.
- ¹⁷ Of these 26 convictions, 19 were for aggravated homicide, 4 were for attempted homicide and 3 were for manslaughter.
- ¹⁸ It is not entirely clear the basis upon which El Salvador distinguishes between homicide and abortion. In many cases, there would be a crossover between the two. *From Hospital to Jail Report*, p. 55.
- ¹⁹ Women are imprisoned pursuant to Articles 329 or 330 of the Code of Criminal Procedure, which permits pre-trial detention if there are elements that support (i) the existence of a crime and the likelihood of participation of the accused and (ii) the seriousness of the crime (Article 329); other factors include, *inter alia*, the risk of escape (Article 330). Being charged with homicide – clearly a serious crime – invariably leads to extended pre-trial detention.
- ²⁰ *Cfr. HRC, Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶ 96.
- ²¹ *Ibid.* ¶ 96.
- ²² HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, A/HRC/31/57 (January 5, 2016), ¶ 26. See also CRR, *Marginalized, Persecuted, and Imprisoned*, pp. 56 and 62. See also Isabel Cristina's testimony, *Ibid.*, p. 29.
- ²³ See Las 17, *No Dejemos que sus vidas se marchiten*, available at <http://www.las17.org/> (last access March 30, 2016). See also E. Guevara-Rosas, *El Salvador and Las 17*, *NEW YORK TIMES* (March 2, 2015), available at http://www.nytimes.com/2015/03/03/opinion/el-salvador-and-las-17.html?_r=0 (last access March 30, 2016).
- ²⁴ BBC News, "El Salvador: three women jailed for abortions freed", 7 March 2019, available at <https://www.bbc.co.uk/news/world-latin-america-47487116> (last access March 26, 2019).

- 25 Associated Press, "El Salvador: three women jailed for abortions released", 7 March 2019, available at <https://www.theguardian.com/world/2019/mar/07/el-salvador-three-women-jailed-for-abortions-released> (last access March 25, 2019).
- 26 See "El Salvador releases three women who were wrongfully imprisoned for obstetric emergencies", 7 March 2019, available at <https://www.reproductiverights.org/El-Salvador-Releases-Three-Women-Who-Were-Wrongfully-Imprisoned-for-Obstetric%20Emergencies>.
- 27 Primer Informe Situacional Sobre Embarazo en Adolescentes y su Impacto en el Derecho a la Educación, Procuraduría para los Derechos Humanos, 2009, cited in HRC, Special Rapporteur on Violence against Women, its Causes and Consequences, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms Rashida Manjoo – Addendum – follow-up mission to El Salvador*, UN Doc A/HRC/17/26/Add.2, February 14, 2011 (hereinafter "HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – Follow-up mission to El Salvador*"), ¶ 67.
- 28 CEDAW, *Concluding observations on the sixth periodic report of Equatorial Guinea*, UN Doc CEDAW/C/GNQ/CO/6, 9 November 2012, ¶ 31; CEDAW, *Report of the CEDAW on the work of its twenty-seventh session*, UN Doc A/57/38 (Part II), 8 October 2002, (Suriname), ¶¶ 57-58, (Zambia), ¶ 246; CEDAW, *Concluding comments of CEDAW: Belize*, UN Doc CEDAW/C/BLZ/CO/4, 10 August 2007, ¶¶ 23, 24, 27.
- 29 As noted in the UN's Human Rights Council Follow-up mission to El Salvador Report of 2011, the overwhelming majority of teenage girls "dropped out of school and is not benefitting from any formal or informal educational programme or training that could facilitate their return to school in the future." HRC, *Report of the Special Rapporteur on Violence against Women, Addendum - Follow-up mission to El Salvador*, ¶ 67.
- 30 Guttmacher Institute, *Adolescent Sexual Behavior and Reproductive Outcomes in Central America: Trends over the past two decades*, March 2010, p. 1.
- 31 Additionally, among adolescents between 15 to 19 years old, the pregnancy rate is 89 per 1,000 women of reproductive age. See Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America: Protecting the Sexual and Reproductive Health of Young People Today*, 2008, p. 4 (hereinafter 'Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America*'), cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 23.
- 32 ORMOSA, *Indicadores de Violencia Sexual*, 2017, available at <http://observatoriodeviolencia.ormusa.org/violenciasexual.php>. (last access March 26, 2019).
- 33 Salvadoran Institute for the Development of Women, *Second National Report on the Situation of Violence Against Women in El Salvador 2010: A Public Safety Issue*, 2011, p. 32, cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 23. Additionally, in 2009, around 90% of criminal complaints regarding sexual violence were for cases of violence against women.
- 34 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 56.
- 35 HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 65.



- 36 According to the Maternal Death Surveillance System of the Ministry of Health, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.
- 37 Additionally, among adolescents between 15 to 19 years old, the pregnancy rate is 89 per 1,000 women of reproductive age. See Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America: Protecting the Sexual and Reproductive Health of Young People Today*, 2008, p. 4 (hereinafter ‘Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America*’), cited in CRR, *Marginalized, Persecuted, and Imprisoned*, p. 23.
- 38 International Planned Parenthood Federation, *Over-protected and under-served: A multi-country study on legal barriers to young people’s access to sexual and reproductive health services: El Salvador case study*, March 2014, p. 14. See also HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 67.
- 39 *Ibid.*; International Planned Parenthood Federation, *Over-protected and under-served: A multi-country study on legal barriers to young people’s access to sexual and reproductive health services: El Salvador case study* (March 2014), p. 14. See also HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 67.
- 40 IPPF, *Over-protected and under-served - A multi-country study on legal barriers to young people’s access to sexual and reproductive health services – El Salvador case study*, 8 July 2014, p. 15, ¶ 3.3.
- 41 University of Baltimore Journal of International Law, *Emerging Issues: The Case of Maria Teresa Rivera: The Fight for Reproductive Rights in El Salvador*, Vol III, No 2, Article 6, 2015, p. 140.
- 42 CRR, *Marginalized, persecuted, and imprisoned – The effects of El Salvador’s total criminalization of abortion*, 2014, p. 23.
- 43 Amnesty International, *On the brink of death - Violence against women and the abortion ban in El Salvador*, 25 September 2014, p. 19. It should be noted that knowledge does not always translate into contraceptive use. Research has shown that in El Salvador, 80% of female adolescents have received information on sexual and reproductive health (including contraception use), but only 18% have reported using contraceptives during their first sexual encounter: see CRR, *Unheard Voices: Women’s Experiences with Zika in El Salvador*, 2018, p. 29.
- 44 Population Services International, *Crisis-in-the-Triangle- Addressing Adolescent Reproductive Health & Violence Prevention in El Salvador, Guatemala and Honduras*, 2016, p. 24.
- 45 CRR, *Marginalized, persecuted, and imprisoned – The effects of El Salvador’s total criminalization of abortion*, 2014, p. 23.
- 46 International Consortium for Emergency Contraception, *EC Status and Availability – El Salvador*, available at <http://www.cecinfo.org/country-by-country-information/status-availability-database/countries/el-salvador/> (last access March 30, 2014).
- 47 Guttmacher Institute, *Ensuring a Healthier Tomorrow in Central America*, p. 38.
- 48 1997 Criminal Code, Art. 169.
- 49 *Ibid.* Art. 169.



- 50 IPPF, *Over-protected and under-served - A multi-country study on legal barriers to young people's access to sexual and reproductive health services – El Salvador case study*, 8 July 2014, p. 7, ¶ 2.3.
- 51 *Ibid.*
- 52 IPPF, *Over-protected and under-served - A multi-country study on legal barriers to young people's access to sexual and reproductive health services – El Salvador case study*, 8 July 2014, p. 17, ¶ 3.4.
- 53 *Ibid.*
- 54 CRC, *Concluding observations on the combined fifth and sixth periodic reports of El Salvador*, CRC/C/SLV/CO/5-6, 29 November 2018, ¶ 36(d).
- 55 IACHR, *IACHR Urges El Salvador to End the Total Criminalisation of Abortion*, 7 March 2018 (last access March 26, 2019)
- 56 UNHROHC, Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador, 17 November 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E>
- 57 *Ibid.*
- 58 CEDAW, *Concluding observations on the combined eighth and ninth periodic reports of El Salvador*, UN Doc CEDAW/C/SLV/CO/8-9, 3 March 2017, ¶¶ 22(a), 30(a) and (b), 31, 34, 35, 36 and 37.
- 59 OHCHR, *Guadalupe's pardon*.
- 60 CESCR, *Concluding Observations on the combined third, fourth and fifth period reports of El Salvador*, E/C.12/SLV/CO/3-5 (June 19, 2014), ¶ 23.
- 61 These countries were Australia, Canada, the Czech Republic, France, Germany, Iceland, Luxembourg, Norway, Slovenia, Spain, Sweden and the United Kingdom. See Center for Reproductive Rights, *12 Countries Call on El Salvador to Decriminalize Abortion* (November 10, 2014), available at <http://www.reproductiverights.org/press-room/12-countries-call-on-el-salvador-to-decriminalize-abortion> (last access March 27, 2016). See also HRC, *Report of the Working Group on the Universal Periodic Review: El Salvador*, A/HRC/28/5 (December 17, 2014).
- 62 HRC, *Report of the Working Group on the Universal Periodic Review – El Salvador*, A/HRC/28/5, 17 December 2014.
- 63 *Ibid.*, see e.g. ¶¶ 103.41, 103.51 and 105.51-105.62.
- 64 CRC, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding Observations – El Salvador*, CRC/C/SLV/CO/3-4 (January 29, 2010).
- 65 Rights violated include the right to privacy (CEDAW, Article 16(1)), the right to a full and decent life in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community (CEDAW, Article 23(1)), the right to health, including access to reproductive health services (CEDAW, Article 24), the right to education (CEDAW, Article 28), and the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and arts (CEDAW, Article 31).



66 *Ibid.*, ¶ 68(f).

67 *Ibid.*, ¶ 61(b) and (d).

68 See, for example, the bill put forward by MP Lorena Guadalupe Peña Mendoza on 11 October 2016 and the proposal put forward by Senator John T Wright on 17 August 2017.

69 Bill put forward by MP Lorena Guadalupe Peña Mendoza on 11 October 2016.

70 E Malkin, "Supporters of El Salvador's Abortion ban foil efforts to soften it, 26 April 2018, available at <https://www.nytimes.com/2018/04/26/world/americas/abortion-ban-salvador.html> (last access March 26, 2019).

71 *Ibid.*, E Nunez, AM Rodriguez, "Time is running out for El Salvador to decriminalize abortion in extreme situations", 26 April 2018, available at <https://www.univision.com/univision-news/latin-america/time-is-running-out-for-el-salvador-to-decriminalize-abortion-in-extreme-situations> (last access March 26, 2019).

72 E Sweigart, "El Salvador: Meet the Candidates in Latin America's First Election of 2019", 30 January 2019, available at <https://www.americasquarterly.org/content/el-salvador-meet-candidates-latin-americas-first-election-2019> (last access March 26, 2019).

73 The Guardian, "El Salvador: anti-corruption candidate Nayib Bukele wins presidential election", 4 February 2019, available at <https://www.theguardian.com/world/2019/feb/04/el-salvador-anti-corruption-candidate-nayib-bukele-wins-presidential-election> (last access March 15, 2019).

74 M Delcid, J Guy, "The Strange Political path of Nayib Bukele, El Salvador's new President", 10 February 2019, available at <https://edition.cnn.com/2019/02/09/americas/el-salvador-president-bukele-profile-intl/index.html> (last access March 15, 2019).

75 M Nochez, "Candidate for "new ideas" opposes equal marriage", 7 November 2018, available at https://elfaro.net/es/201811/el_salvador/22660/Candidato-de-las-%E2%80%99Cnuevas-ideas%E2%80%99D-se-opone-al-matrimonio-igualitario.htm; M Martinez, "El Salvador: A 'millennial' mayor the favourite to win next presidential election", 1 February 2019, available at <https://www.euronews.com/2019/02/01/el-salvador-a-millennial-mayor-the-favourite-to-win-the-next-presidential-elections> (last access March 15, 2019).

76 M Martinez, "El Salvador: A 'millennial' mayor the favourite to win next presidential election", 1 February 2019, available at <https://www.euronews.com/2019/02/01/el-salvador-a-millennial-mayor-the-favourite-to-win-the-next-presidential-elections> (last access March 15, 2019).

77 K Bougher, In El Salvador, a 20-Year-Old Faces Prison Time After Giving Birth to Her Stepfather's Baby in a Latrine, 11 April 2018, available at <https://www.bbc.co.uk/news/world-latin-america-46600886> (last access March 15, 2019).

78 *Ibid.*

79 BBC News, "El Salvador court frees woman jailed under anti-abortion laws", 12 December 2018, <https://www.bbc.co.uk/news/world-latin-america-46600886> (last access March 15, 2019).

- 80 El Salvador’s restrictive abortion laws discriminate against women by violating the various rights described below. As Dr Carmel Shalev, a former member of the CEDAW Committee, has said: “*Laws which criminalize health services that only women need – whether aimed at the persons who provide such services, or the women who receive them – are discriminatory, as such. The criminalization of abortion is particularly heinous, because it not only impairs women’s right to reproductive choice – to make free and responsible decisions concerning matters that are key to control of their lives – but also exposes them to the serious health risks of unsafe abortion, violating their rights to bodily integrity and, in the most extreme cases, to life itself*”. See, C. Shalev, *Right to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women*, paper presented at the International Conference on Reproductive Health, Mumbai (India), 18 March 1998, p. 10.
- 81 American Convention on Human Rights (“ACHR”), Article 4(1); International Covenant on Civil and Political Rights (“ICCPR”), Article 6(a); Universal Declaration of Human Rights (“UDHR”), Article 3, Convention on the Rights of the Child (“CRC”), Article 6; CEDAW, Article 14.
- 82 *CRR, Marginalized, Persecuted, and Imprisoned* p. 13. See also CEDAW, *Concluding Observations*, UN Doc. A/53/38/Rev.1 (1998) (Dominican Republic), ¶ 337.
- 83 See the case of “Rosemary” in Center for Reproductive Rights, *Persecuted – Political Process and Abortion Legislation*, p. 33.
- 84 The obligation to provide adequate healthcare arises irrespective of the lawfulness of the abortion. See CEDAW, *Concluding Observations*, UN Doc. CEDAW/C/ARG/CO/6 (2010) (Argentina), ¶ 38; UN Doc. CEDAW/C/ BOL/CO/4 (2008) (Bolivia), ¶¶ 42-43; CEDAW, *Concluding Observations*, UN Doc. CEDAW/C/ SLV/CO/7 (2008) (El Salvador), ¶ 35. See also The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, p. 54.
- 85 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 60.
- 86 Article 5 of the ACHR, Article 7 of the ICCPR, and Article 5 of the UDHR.
- 87 *CRR, Marginalized, Persecuted, and Imprisoned*, p. 56.
- 88 HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, ¶ 43.
- 89 HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, 5 January 2016, A/HRC/31/57, ¶¶ 20 and 44. See also *CRR, Marginalized, Persecuted, and Imprisoned*, p. 56.
- 90 CAT, *Concluding observations*, CAT/C/SLV/CO/2 (El Salvador), ¶¶ 22-23; HRC, *Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶¶ 75 and 103. HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 39; HRC, *Report of the Special Rapporteur on torture and other cruel and inhuman or degrading treatment or punishment*, A/HRC/31/57 (January 5, 2016), ¶ 23. See also *CRR, Marginalized, Persecuted, and Imprisoned*, pp. 26 and 32 (describing the invasive searches by prison guards including the sexual assault and abuse perpetrated against Isabel Cristina Quintanilla).
- 91 ACHR, Article 8; UDHR, Articles 7, 9, 10 and 11.

- 92 HRC, *Report of the Working Group on Arbitrary Detention – Addendum – Mission to El Salvador*, A/HRC/22/44/Add.2, ¶¶ 74-75.
- 93 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 51.
- 94 Amnesty International, *On the Brink of Death*, p. 38; HRC, *Report of the Special Rapporteur on Violence against Women, Addendum – follow-up mission to El Salvador*, ¶ 68.
- 95 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 46.
- 96 CRR, *Marginalized, Persecuted, and Imprisoned*, p. 51.
- 97 ACHR, Article 11; ICCPR, Article 17, UDHR, Article 12. See also CEDAW, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999) (hereinafter ‘CEDAW, *General Recommendation 24*’), ¶¶ 22 and 31(e).
- 98 The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, p. 69.
- 99 As stated above, 57.4% of complaints between 2000 and 2011 came from public hospitals or the Salvadorian Social Security Institute, see *From Hospital to Jail Report*, p. 54.
- 100 CRC Article 2, CRC Article 3.
- 101 CEDAW, Article 12. CRC Article 24.
- 102 CEDAW, *General Recommendation 24*, ¶ 1.
- 103 *Ibid.* ¶ 2.
- 104 *Ibid.*
- 105 CRC Article 24 (2) (d).
- 106 CRC, Article 24 (1)
- 107 *Ibid.*, ¶ 12.
- 108 *Ibid.*, ¶¶ 12(a)-(c).
- 109 Preamble to the Constitution of the WHO.
- 110 CEDAW, Article 12(2) and CEDAW, *General Recommendation 24*, ¶ 27. See also CEDAW, Communication No. 22/2009, *L.C. v Peru*, CEDAW/C/50/D/22/2009 (Views of October 17, 2011), ¶ 8.15.
- 111 CEDAW, *General Recommendation 24*, ¶¶ 23 and 31(c). See also CEDAW, Article 10(h).
- 112 *Ibid.*, ¶ 11.
- 113 *Ibid.*, ¶¶ 22 and 31(e).



- 114 *From Hospital to Jail Report*, p. 53, citing research from the Guttmacher Institute and the International Family Planning Federation Western Hemisphere Region, which estimates that the rate of unsafe abortions in El Salvador is about 25 per 1,000 women of childbearing age, such that over 35,000 unsafe abortions take place in El Salvador every year. Additionally, according to the Maternal Death Surveillance System of the Ministry of Health of El Salvador, the suicide rate among pregnant women was the third largest cause of maternal deaths in 2011, after hypertensive disorders and obstetric hemorrhage.
- 115 CEDAW, Communication No 17/2008, *Alyne v Brazil*, CEDAW/C/49/D/17/2008 (July 25, 2011), ¶ 7.3.
- 116 CEDAW, Article 16(1)(e).
- 117 This means **all women**, regardless of marital status: CEDAW, *General Recommendation 21*, ¶ 13; CEDAW, COMMENTARY (2012), p. 417.
- 118 CEDAW, *Concluding Comments*, A/59/38 (2004), ¶¶ 187-188 (Equatorial Guinea). See also CEDAW, *General Recommendation 24*, ¶ 23.
- 119 The Center for Reproductive Law and Policy, *Persecuted – Political Process and Abortion Legislation*, 2001, p. 65.
- 120 CEDAW Article 14.
- 121 World Bank, *Rural Population: El Salvador*, available at <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> (last access March 30, 2016); see also United Nations, Department of Economic and Social Affairs, Population Division, *World Urbanization Prospects: The 2014 Revision*, CD-ROM Edition (2014).
- 122 41% of households in El Salvador are impoverished, with the percentage rising to 50% in rural areas. See General Directorate of Statistics and Census of the Economy Ministry, *Multipurpose Home Survey (El Salvador)*, 2012, p. 21-22.
- 123 High levels of illiteracy amongst rural women impede access to the already limited information available on sexual and reproductive issues, including prenatal and obstetric issues. See also CEDAW, Article 14(2)(b); CEDAW, COMMENTARY (2012), p.368.
- 124 Access to some households in rural El Salvador is so difficult that women facing an obstetric emergency have to be moved using a hammock, due to a lack of vehicles or because vehicles cannot reach the house. See *From Hospital to Jail Report*, p. 54.
- 125 CCPR, *Report on Violation of Women’s Human Rights due to the Complete Criminalisation of Abortion – In Response to the Periodic Report of El Salvador*, (99th Session) (2010), Annex A, p. 1. See also CEDAW, *Concluding Observations*, U.N. Doc. A/54/38/Rev.1 (1999) (Ireland), ¶ 185.
- 126 Guttmacher Institute, *Facts on Abortion in Latin America and the Caribbean*, November 2015, p. 2.
- 127 CEDAW, COMMENTARY (2012), pp. 358 and 359.
- 128 CEDAW, COMMENTARY (2012), p. 368.

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- 129 CEDAW, Articles 7, 8, 10 and 11; CRC, Article 28.
- 130 CEDAW, *Concluding Observations*, CEDAW/C/GNQ/CO/6 (2004) (Equatorial Guinea), ¶¶31; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Suriname), ¶¶ 57-8; CEDAW, *Concluding Observations*, A/57/38 (Part II) (2002) (Zambia), ¶ 246; CEDAW, *Concluding Observations*, CEDAW/C/BLZ/CO/4 (2007) (Belize), ¶¶ 23, 24, 27.
- 131 The prison occupancy rate in El Salvador is 325.3%. See World Prison Brief and Institute for Criminal Policy Research available at <http://www.prisonstudies.org/country/el-salvador> (last access March 30, 2016).
- 132 This is particularly acute in El Salvador as the anti-abortion legislation obliges public officials (which include employers in the public sector) to refer matters to the police if they suspect that an employee has had an abortion. Teodora del Carmen Vásquez de Saldaña, a school janitor, had an obstetric emergency after being assaulted on a bus while pregnant. When she informed her employer (the dean of the high school) that she was having contractions, he called the police. After Teodora gave birth to a stillborn baby, she was detained. In 2008, she was sentenced to 30 years in prison for the homicide of her baby. Her case – along with those of eight other El Salvadoran women – remains pending before the IACHR: Center for Reproductive Rights, *New Human Rights Case Filed On Behalf of Salvadoran Women Who Miscarried and Are Wrongfully Imprisoned* (March 12, 2015), available at <http://www.reproductiverights.org/press-room/new-human-rights-case-filed-on-behalf-of-salvadoran-women-who-miscarried-and-are-wrongful> (last access March 30, 2016).
- 133 Unsurprisingly, female political participation in El Salvador is low. The 84-member Legislative Assembly has only 23 women and the 13-member Cabinet has only 3 women: US State Department Country Reports on Human Rights Practices, *El Salvador*, p. 12 (last access February 12, 2016).
- 134 1998 Criminal Code, Articles 132-137; Constitution, Article 1; 2015 El Salvador Doctors’ Code of Ethics and Deontology, Article 87.
- 135 This will require amendments to (at least) Articles 132-137 of the 1998 Criminal Code, along with consequential amendments to along with consequential amendments to Article 1 of the Constitution and Article 87 of Doctors’ Code of Ethics and Deontology.