



## INTER-AMERICAN COURT OF HUMAN RIGHTS

### BEATRIZ v. EL SALVADOR

Case 13.378

#### AMICUS CURIAE



**Presented by: The Youth Network for Abortion Rights in Latin America and the Caribbean [Red de Jóvenes por el Derecho al Aborto en LAC] – CLACAI**

**Endorsed by: CLACAI’s Legal Network [Red Jurídica del Consorcio Latinoamericano contra el Aborto Inseguro], Center for Reproductive Rights [Centro de Derechos Reproductivos], Women and Health in Uruguay [Mujer y Salud en Uruguay], Young Heartbeats [Jóvenes Latidas], REDefine Quintana Roo, Inclusive Flowers [Flores Inclusivas] and Legal Abortion Costa Rica [Aborto Legal Costa Rica]**



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Lima, Peru, Friday, March 31, 2023

Honorable  
Inter-American Court of Human Rights  
Avenida 10, Calles 45 y 47 Los Yoses, San Pedro  
San José, Costa Rica

**María Camila Gómez Cortés and Dana Repka**, representing the Youth Network for Abortion Rights in Latin America and the Caribbean, hereby submit this brief for the purpose of being considered as Amici Curiae to the Honorable Inter-American Court of Human Rights (IACtHR) in the case known as Beatriz vs. El Salvador (Case No. 13.378). To this end, we respectfully state the following:

### **I. Introduction of the Youth Network for Abortion Rights in LAC**

The right to abortion is a fundamental human right, crucial for ensuring a dignified life of women and other people with the capacity for pregnancy.<sup>1</sup> Over recent decades in Latin America and the Caribbean (LAC), the "green wave" movement has been at the forefront of championing sexual autonomy and reproductive rights. This advocacy has led to noteworthy advancements in both legislation and judicial decisions related to abortion.<sup>2</sup> Latin American youth have been crucial in this progress, stepping forward as prominent advocates for the destigmatization, decriminalization, and legalization of abortion.

In this context, in the year 2021, with the support provided by the Latin American Consortium Against Unsafe Abortion (CLACAI), Women and Health in Uruguay (MYSU), Young Heartbeats, and the Center for Reproductive Rights (CRR), the Youth Network for Abortion Rights in LAC was established. Our Network brings together youth organizations dedicated to advocating for women's rights in all their diversity and focuses on the right to abortion from an intergenerational perspective. Aligned with the feminist movement in LAC and committed to promoting and defending sexual and reproductive rights through an intersectional approach, the Network seeks to amplify the voices of young feminists, creating spaces for dialogue and advocacy at the regional level. Following its public launch at the end of 2022,<sup>3</sup> the Network now includes over 40 young activists from organizations

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<sup>1</sup> See, for example: UN Human Rights Committee (HRC). *General Comment No. 36 on Article 6 on The Right to Life*, CCPR/C/GC/36, 3 September 2019, para. 8; Committee on the Elimination of Discrimination Against Women (CEDAW). *General Recommendation No. 28 on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 18; Committee on Economic, Social and Cultural Rights (CESCR). *General Comment No. 22 on Article 12 of the International Covenant on Economic, Social and Cultural Rights on Sexual and Reproductive Health*, E/C.12/GC/22, 2 May 2016, paras. 30 and 31.

<sup>2</sup> In LAC, the term "Green Wave" (Ola verde in Spanish) is used to describe the movement advocating for abortion rights. This movement is identified by the green scarves initially adopted during the Argentine Campaign for the Right to Legal, Safe, and Free Abortion, which became highly visible in the 2018 debate in Argentina regarding the legalization of abortion. Over the last years, the adoption of the green scarf as a symbol for the abortion rights cause has spread across the region, symbolizing unity and the ongoing fight for the health and autonomy of women and people with the capacity for pregnancy.

<sup>3</sup> See: CLACAI. *Youth Network for Abortion Rights in Latin America and the Caribbean*, [Youtube.com](https://www.youtube.com/watch?v=...).



across Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, the Dominican Republic, Uruguay, and Venezuela.<sup>4</sup>

## II. Legitimate Interest and Purpose of the Brief

Given that the issue to be discussed in the aforementioned case pertains to human rights within the framework of sexual and reproductive rights, particularly concerning the right to abortion and reproductive autonomy, it is evident that the Youth Network for Abortion Rights in LAC is well-positioned to offer broad and valuable insights into the process.

Specifically, the Youth Network is honored to submit this *amicus curiae* to the IACtHR with the aim of urging the Court to recognize the disproportionate impact that the criminalization of abortion has on young people, constituting a violation of their human rights, particularly the right to equality, as demonstrated in Beatriz's case. Consequently, we request that the international responsibility of El Salvador be established for the human rights violations suffered by Beatriz, especially in relation to her right to life, lived in conditions of dignity and equality, and her right to health and personal integrity as a woman and as a young person in a situation of extreme poverty, rights safeguarded by articles 4, 5, and 24 of the American Convention on Human Rights (ACHR). The Network respectfully urges the IACtHR to consider the international human rights standards concerning abortion as discussed in this document.

In this regard, this document analyzes three interrelated aspects of the case within the framework of El Salvador's obligations under international human rights law: (1) it highlights the particular vulnerability and discrimination faced by young people, (2) articulates the right to abortion from an intersectional perspective, and (3) examines the specific impact that the criminalization of abortion has on young people and the barriers it poses to accessing sexual and reproductive health services.

## III. Discrimination Faced by Young People and Barriers to Exercising Their Rights

Young people face distinct age-based discrimination, which imposes barriers to the full enjoyment of their human rights. Indeed, the transition from childhood to adulthood can see their rights compromised by factors such as socioeconomic contexts, violence, and lack of access to education and health services.

Youth is a fluid and heterogeneous category, defined as a transitional life phase moving from dependence to complete independence and autonomy.<sup>5</sup> More than being age-bound, the youth

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<sup>4</sup> "Youth Network for Abortion Rights in Latin America and the Caribbean," [redjovenes.clacai.org](http://redjovenes.clacai.org).

<sup>5</sup> Lydia Alpízar and Marina Bernal, "The Social Construction of Youth," *Ultima década* 11, no. 19 (November 2003), <https://doi.org/10.4067/S0718-22362003000200008>.



category is heavily influenced by sociocultural and economic contexts, which either facilitate or hinder the independence and autonomy necessary to exercise human rights. As observed by the United Nations High Commissioner for Human Rights (OHCHR):

*The transition from childhood to adulthood, from dependency to autonomy, occurs at different times in relation to different rights. For example, in the labour market, in education and in sexual and reproductive health, independence and autonomy are achieved at different moments, hence the importance of balancing protection needs with empowerment and evolving capacities. At the same time, the establishment of age limits and minimum ages in legislation can lead to inconsistencies and restrictions resulting from the use of different thresholds and may restrict certain rights while not offering enough protection in others.<sup>6</sup>*

Reflecting this variability in the transition from childhood to adulthood, young people encounter specific obstacles in accessing health services and exercising their sexual and reproductive rights.<sup>7</sup> Their autonomy and decision-making capacity are often overlooked, and they are denied the necessary information to understand their sexual and reproductive health needs.<sup>8</sup> This was exemplified in the case of *Manuela v. El Salvador*, as elucidated by this Honorable Court, where the lack of education and information on sexual and reproductive health among young people in El Salvador contributed to Manuela's failure to recognize her intense abdominal pain as a sign of an obstetric emergency.<sup>9</sup>

Therefore, States must adopt measures that strike a balance between the need for protection and the empowerment and development of their capacities, guaranteeing the full exercise of young people's sexual and reproductive rights.<sup>10</sup>

#### **IV. The Right to Abortion from an Intersectional Approach**

Intersectionality has been defined by the Committee on the Rights of Persons with Disabilities (CRPD) as “a situation in which several grounds operate and interact at the same time in a way that they are inseparable and, thereby, expose affected individuals to unique types of disadvantages and discrimination.”<sup>11</sup> In this vein, the IACtHR has clarified that intersectionality of discrimination does

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<sup>6</sup> United Nations High Commissioner for Human Rights, United Nations Human Rights Council. *Report on Youth and Human Rights*. A/HRC/39/33, 28 June 2018, para. 31.

<sup>7</sup> *Ibid.*, para. 47.

<sup>8</sup> *Ibid.*, paras. 50-52.

<sup>9</sup> IACtHR. *Manuela et al. v. El Salvador Case*. Judgment of 2 November 2021 (Preliminary Objections, Merits, Reparations, and Costs), para. 114.

<sup>10</sup> United Nations High Commissioner for Human Rights, United Nations Human Rights Council. *Report on Youth and Human Rights*. A/HRC/39/33, 28 June 2018, para. 31.

<sup>11</sup> Committee on the Rights of Persons with Disabilities (CRPD). *General Comment No. 6 on Equality and Non-Discrimination*, UN Doc. CRPD/C/GC/6, 26 April 2018, para. 19. Also see: IACtHR. *Ramirez Escobar et al. v. Guatemala Case*. Judgment of 9 March 2018 (Merits, Reparations, and Costs). Series C No. 351, paras. 276-277; *Gonzales Lluy et al. v. Ecuador Case*. Judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations, and Costs). Series C No. 298. para. 290.



not merely describe the addition or accumulation of discrimination categories, but "evokes a simultaneous encounter or concurrence of various causes of discrimination. That is, in a single event, discrimination occurs due to the concurrence of two or more prohibited reasons."<sup>12</sup> The intersection of discrimination categories can have a synergistic effect, that is, it exceeds the sum of several forms of discrimination, or it can cause a specific form of discrimination that only operates in the presence of the categories' concurrence. The intersecting factors can include, but are not limited to, race, ethnic origin, religion or beliefs, health status, age, class, sexual orientation, and gender identity.<sup>13</sup>

This approach allows an understanding of the complexity of identity experience, as well as the particularities of discrimination and, in response, to adequately address, remedy, and eliminate situations of exclusion, marginalization, and rights violations.<sup>14</sup> As cautioned by the *Special Rapporteur on violence against women, its causes and consequences*, "the lack of an intersectional approach may reinforce one form of discrimination in an attempt to alleviate another."<sup>15</sup> Therefore, the IACtHR has established that the right to equality implies the obligation to adopt measures to ensure real and effective equality, meaning that States must correct existing inequalities, promote the inclusion and participation of historically marginalized groups, ensure disadvantaged people or groups the effective enjoyment of their rights, and ultimately provide individuals with concrete opportunities to achieve material equality.<sup>16</sup> Likewise, the Human Rights Committee (HRC)<sup>17</sup> and the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>18</sup> have stated that to protect, guarantee, and respect the right to equality and non-discrimination, states must implement legal protections offering specific guarantees against all forms of discrimination, particularly intersectional discrimination. Specifically, the HRC has emphasized that states must consider how discrimination on other grounds affects specific groups and include information on the measures taken to counter these effects.<sup>19</sup>

<sup>12</sup> IACtHR. *Gonzales Lluy et al. v. Ecuador Case*. Judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations, and Costs), Concurring Opinion by Judge Eduardo Ferrer Mac-Gregor Poisot, paras. 10 and 11.

<sup>13</sup> CEDAW Committee. *General Recommendation No. 28 on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 18.

<sup>14</sup> IACtHR. *Case of the Fireworks Factory Employees of Santo Antônio de Jesús and Their Relatives v. Brazil*. Judgment of 15 July 2020 (Preliminary Objections, Merits, Reparations, and Costs). Series C No. 407 188.

<sup>15</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to India*, A/HRC/26/38/Add.1, UN Human Rights Council, 1 April 2014, para. 42.

<sup>16</sup> IACtHR. *Case of the Employees of the Santo Antônio de Jesus Fireworks Factory and their Families Vs. Brazil*. Judgment of 15 July 2020 (Preliminary Objections, Merits, Reparations and Costs). Series C No. 407 188.

<sup>17</sup> HRC. *General Comment No. 36 on Article 6 on The Right to Life*, CCPR/C/GC/36, 3 September 2019, para. 30.

<sup>18</sup> CEDAW Committee. *General Recommendation No. 28 on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para.18. CEDAW/C/GC/28, 16 December 2010.

<sup>19</sup> HRC. *General Comment No. 28 on Article 3 on the Equality of rights between men and women*, CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 30.



Both the IACHR,<sup>20</sup> the Human Rights Committee,<sup>21</sup> and the CEDAW Committee<sup>22</sup> have also identified that women's discrimination is indivisibly linked to other discrimination factors, increasing their risk of suffering acts of violence and other violations of their human rights. The confluence of discrimination factors can affect women primarily, to different extents or in different ways than men and even other women. Consequently, it is necessary to adopt a multiple strategy to respond to the multiplicity of forms of violence against women, as well as the fact that this violence often occurs at the intersection of different types of discrimination.<sup>23</sup>

In the context of sexual and reproductive health, the Committee on Economic, Social and Cultural Rights (CESCR) has identified that individuals belonging to certain groups may be disproportionately affected by intersectional discrimination.<sup>24</sup> Specifically, regarding young people, the CESCR has pointed out that unequal access to sexual and reproductive health services for adolescents constitutes discrimination.<sup>25</sup> In this sense, the CESCR has recommended that when measures are adopted to make effective the right to sexual and reproductive health and to guarantee non-discrimination and substantive equality, the often exacerbated effects produced by intersectional discrimination should be taken into account and attempts should be made to eliminate such effects.<sup>26</sup> In a similar vein of reasoning, the OHCHR has concluded:

*Age is a characteristic that often intersects with discrimination on other grounds, adds to it, and multiplies it. Along with the structural and institutional obstacles that youth also face, these multiple forms of discrimination prevent many young people from enjoying equality of opportunities and substantive equality.<sup>27</sup>*

Specifically, concerning access to abortion, both the HRC<sup>28</sup> and the World Health Organization (WHO)<sup>29</sup> have stated that the denial of abortion is not only a form of discrimination based on sex but also disproportionately affects certain groups of women due to factors such as age and socioeconomic status. Indeed, in the cases *Mellet v. Ireland* and *Whelan v. Ireland*, the HRC found that legislation prohibiting abortion, even in cases of fetal malformations incompatible with extrauterine

<sup>20</sup> IACtHR. *Gonzales Lluy et al. v. Ecuador Case*, Judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 298, para. 288.

<sup>21</sup> HRC. *General Comment No. 28 on Article 3 on the Equality of rights between men and women*, CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 30.

<sup>22</sup> CEDAW Committee. *General Recommendation No. 28 on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 18.

<sup>23</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to India*, A/HRC/26/38/Add.1, UN Human Rights Council, 1 April 2014, para. 49.

<sup>24</sup> CESCR. *General Comment No. 22 on Article 12 of the International Covenant on Economic, Social and Cultural Rights on Sexual and Reproductive Health*, E/C.12/GC/22, 2 May 2016, paras. 30 and 31.

<sup>25</sup> CESCR. *General Comment No. 20 on Article 2, Paragraph 2 of the International Covenant on Economic, Social and Cultural Rights on Non-Discrimination in Economic, Social and Cultural Rights*, E/C.12/GC/20, para. 29.

<sup>26</sup> CESCR. *General Comment No. 22 on Article 12 of the International Covenant on Economic, Social and Cultural Rights on Sexual and Reproductive Health*, E/C.12/GC/22, 2 May 2016, para. 30.

<sup>27</sup> United Nations High Commissioner for Human Rights, United Nations Human Rights Council. *Report on Youth and human rights*. A/HRC/39/33, June 28, 2018, para. 32.

<sup>28</sup> HRC. *Whelan vs. Ireland*. CCPR/C/119/D/2425/2014, 11 July 2017, paras. 7.12;

<sup>29</sup> World Health Organization, *Abortion Care Guideline*, p. 27.

life, creates a disparity between women who can afford to travel abroad for an abortion and those who lack the socioeconomic means.<sup>30</sup> Similarly, the United Nations Working Group on the issue of discrimination against women in law and in practice highlighted the intersectional discrimination based on sex and economic status, noting that in countries with an abortion ban, "safe termination of pregnancy is a privilege of the rich; women with limited resources have no choice but to resort to risky providers and practices."<sup>31</sup>

In the case of Beatriz, the convergence of multiple discriminatory factors was clear; Beatriz was a young mother living in extreme poverty.<sup>32</sup> These discrimination factors made her more vulnerable to suffering violations of her rights to life, in conditions of dignity, as well as to her health and integrity. The confluence of the mentioned factors created a specific form of discrimination, which would have differed if any single factor were absent. Specifically, if Beatriz had not been a woman, she would not have required access to an essential health service that is both prohibited and criminalized. Abortion services are needed exclusively by women and individuals with the capacity to become pregnant.<sup>33</sup> In addition to the fact that there are no essential health services for men or individuals without the capacity to become pregnant that are totally prohibited and penalized, "male patients are not expected to neglect their health needs nor to travel abroad in relation to their reproductive functions."<sup>34</sup> Additionally, being in a state of extreme poverty compounded the discrimination Beatriz faced. If she had had adequate financial resources, she would have had alternatives for safe abortion access,<sup>35</sup> such as traveling to a country where it is permitted. Lastly, being young exposed her to a greater risk of unwanted pregnancies due to a lack of sexual education and a network of references that could facilitate access to a safe abortion. Thus, the combination of gender, poverty, and youth forced Beatriz to continue with a pregnancy that endangered her life and involved a fetus diagnosed with a condition incompatible with life outside the womb.

Furthermore, these factors of discrimination also intensified the harm caused by the denial of access to abortion. The intersection of socioeconomic status, youth, and motherhood meant that the continuation of the pregnancy disproportionately affected Beatriz's rights. The inability to obtain an abortion led to a decline in Beatriz's physical and mental health, resulting in her hospitalization for approximately 81 days,<sup>36</sup> which prevented her from pursuing her life goals and trapped her in a cycle

<sup>30</sup> HRC. *Whelan vs. Ireland*. CCPR/C/119/D/2425/2014, 11 July 2017, para. 7.11.

<sup>31</sup> Human Rights Council. Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/32/44, 8 April 2016, para. 14.

<sup>32</sup> IACHR. Merits Report No. 9/20 case 13.378 Beatriz El Salvador, 3 March 2020, para. 33.

<sup>33</sup> HRC. *Mellet v. Ireland*. Communication No. 2324/13. UN Doc CCPR/C/116/D/2324/2013, 7 November 2016, Concurring Opinion by Committee member Yadh Ben Achour, sections 4. See also: UN Working Group on Discrimination against Women and Girls. *Report of the UN Working Group on the issue of discrimination against women in law and in practice*. A/HRC/32/44, 7 June 2016, paras. 14 – 18; CEDAW Committee. *CEDAW inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. CEDAW/C/OP.8/GBR/1, 6 March 2018, para. 65.

<sup>34</sup> HRC. *Whelan vs. Ireland*. CCPR/C/119/D/2425/2014, 11 July 2017, paras. 7.11 and 7.12.

<sup>35</sup> See, for example: HRC. *Mellet vs. Ireland*. CCPR/C/116/D/2324/2013, 6 June 2016, para. 7.11; HRC. *Whelan vs. Ireland*. CCPR/C/119/D/2425/2014, 11 July 2017, paras. 7.12.

<sup>36</sup> IACHR. *Merits Report No. 9/20, Case 13.378, Beatriz v. El Salvador*, 3 March 2020, paras. 37, 39, 42, 43, 51, 59, 62, and 68.



of poverty at just 22 years of age.<sup>37</sup> Despite her youth, Beatriz could not pursue her life plans or develop her autonomy and identity. Instead, as a young woman of childbearing age, she was reduced to the role of a bearer of a fetus that could not survive outside the womb.<sup>38</sup> The pregnancy also had a disproportionate impact on her role as a mother, as her constant hospitalizations prevented her from caring for her son, causing her profound distress.<sup>39</sup> Beatriz expressed a desire to survive for her child's sake.<sup>40</sup> Each of these factors alone hindered Beatriz's ability to exercise her rights, but their combination made it impossible for her to live a life of dignity.

As demonstrated, the impact of abortion prohibition is not uniform across all individuals, and its effects are particularly severe on women with certain characteristics. Beatriz's ordeal was shaped not only by her status as a young, impoverished mother but also by the legal framework that bans and criminalizes abortion under all circumstances.

## V. The Absolute Criminalization of Abortion and Its Impact on Young People

### 1. The State of El Salvador remains one of the few countries in comparative law that maintains an absolute criminalization of abortion.

Decades ago, the approach to abortion in comparative law was almost exclusively through criminal law. As a general rule, abortion was criminalized in most countries, with common exceptions for penalty reduction based on specific circumstances or the pregnant individual's situation.<sup>41</sup> This led to the progressive consolidation in comparative law of a 'grounds-based' or 'indications-based' model, which became widespread, particularly in Latin American countries since the mid-2000s, typically allowing abortion in cases of risk to the life or health of the pregnant woman, sexual violence, or fetal malformations incompatible with extrauterine life.<sup>42</sup>

Towards the end of the 1960s and, especially, during the 70s and 80s, in the global North, a significant transition towards a greater liberalization of abortion began. On one hand, this progress was due to

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<sup>37</sup> Human Rights Council. *Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*. A/HRC/38/33/Add.1, May 4, 2018, para. 56.

<sup>38</sup> See: IACHR. *Public hearing of the case Beatriz and others v. El Salvador*, 1:10:00, [Youtube.com](https://www.youtube.com/watch?v=...).

<sup>39</sup> IACHR. *Merits Report No. 9/20, Case 13.378, Beatriz v. El Salvador*, 3 March 2020, para. 5.

<sup>40</sup> IACHR. *Merits Report No. 9/20, Case 13.378, Beatriz v. El Salvador*, 3 March 2020, para. 36 citing Diario El Faro "[Yo quiero vivir por mi otro hijo... si este viniera bien, arriesgaría mi vida](https://www.diarioelfaro.com/...)" ["I want to live, for my other child... if this one were well, I would risk my life"] 23 April 2013.

<sup>41</sup> Ariza Navarrete, Sonia, Sandra Formia, Dana Repka, and Agustina Ramón Michel. *Foundations for the care of abortion: pocket guide for nursing staff*. Buenos Aires: REDAAS; 2022, p. 10.

<sup>42</sup> Some of the earliest formal milestones in this direction in the region took place in three countries primarily: Mexico, Brazil, and Colombia. In Mexico, following the "Paulina" case before the IACHR, progress was made from 2003 on the federal regulation of abortion services for rape; in Brazil, the Lula government approved the first guide for abortion care for rape in 2005; and, finally, in Colombia, the Constitutional Court issued the famous ruling C-355 which established the grounds-based model in the country. For more information, see: Bergallo, Paola. "From the failure of the procedural turn to the unfeasibility of the grounds-based model." In P. Bergallo, I.C.J. Sierra and J.M. Vaggione (eds). *Abortion in Latin America: Legal strategies to fight for its legalization and confront conservative resistance*. Buenos Aires: Siglo XXI Editores (2018), p. 155.



the understanding that women and other people with the capacity to become pregnant have the right to autonomously decide when and why to continue or terminate a pregnancy, and that, therefore, States should not force them to carry a pregnancy to term against their will.<sup>43</sup> On the other hand, the evidence of the harmful effects of abortion restriction became impossible to ignore:<sup>44</sup> as indicated by WHO statistics, in countries where abortion is severely restricted, only 1 in 4 abortions is performed safely, compared to almost 9 out of 10 in countries where the procedure is widely legal.<sup>45</sup> Since unsafe abortions are a leading cause of maternal mortality, data indicates that countries with prohibitive abortion laws have had—and continue to have—higher maternal mortality rates compared to those with more permissive laws.<sup>46</sup> In this context, the ineffectiveness of criminalization as a public policy strategy to reduce abortion rates became clear, as it put those undergoing unwanted pregnancies at substantial risk, with catastrophic consequences for individuals and society.<sup>47</sup>

This realization led to a shift toward decriminalization, signifying a move from a criminal law-centered framework to one that addresses abortion as a public health issue. This approach posits that abortion should be available as part of reproductive healthcare for women and others capable of pregnancy.<sup>48</sup> Consequently, States have taken on the responsibility to ensure universal access to information and sexual and reproductive health services, including abortion, to protect both individual and community health and uphold the human rights of women and people with the capacity to become pregnant. Presently, 76 States globally recognize the right to abortion upon request, meaning that approximately 36% of women, girls, and individuals capable of pregnancy live under regulatory frameworks that broadly guarantee their right to abortion and their human rights.<sup>49</sup>

In fact, in Latin America in particular, most States have progressively moved towards regimes that tend to limit the use of criminal law and address abortion as a public health issue, in compliance with such assumed obligations:

- In Colombia, since February 2022, following Sentence C-055 of 2022 from its Constitutional Court, abortion has been decriminalized up to the 24th week of gestation. Beyond this period, legal abortion is permitted without gestational limits in cases of risk to the woman's life, when

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<sup>43</sup> Ariza Navarrete, Sonia, Sandra Formia, Dana Repka, and Agustina Ramón Michel. *Foundations for the care of abortion: pocket guide for nursing staff*. Buenos Aires: REDAAS (2022), p. 10.

<sup>44</sup> According to WHO, unsafe abortions are those performed by individuals lacking the necessary training, in environments that do not meet minimum standards, using a method not recommended, or a combination of these circumstances. Such abortions are common in penalization models that restrict access to abortion. For more information, see: World Health Organization, *Abortion Care Guideline*, p. 2.

<sup>45</sup> Su Mon Latt, Allison Milner, and Anne Kavanagh, “Abortion Laws Reform May Reduce Maternal Mortality: An Ecological Study in 162 Countries,” *BMC Women’s Health* 19, no. 1 (January 5, 2019): 1, <https://doi.org/10.1186/s12905-018-0705-y>.

<sup>46</sup> World Health Organization, *Abortion Care Guideline*.

<sup>47</sup> Sonia Ariza Navarrete, Sandra Formia, Dana Repka, and Agustina Ramón Michel, “Foundations for Abortion Care: Pocket Guide for Nursing Personnel,” *REDAAS*, October 2022, [Repositorio.cedes.org](https://repositorio.cedes.org).

<sup>48</sup> Rebecca J. Cook, “Stigmatized Meanings of Criminal Abortion Law,” in *Abortion Law in Transnational Perspective: Cases and Controversies*, ed. Rebecca J. Cook, Joanna N. Erdman, and Bernard M. Dickens, University of Pennsylvania Press (Philadelphia, 2014), p. 438.

<sup>49</sup> *Ibid.*

the physical, psychological, or social health of the woman is at risk, if the fetus has a pathology incompatible with extrauterine life, or in instances of rape.<sup>50</sup> Subsequently, the Ministry of Health and Social Protection issued Resolution 051 in January 2023, which adopts a comprehensive regulation for the provision of health care services regarding the Voluntary Interruption of Pregnancy, establishing a foundation for quality care for abortion services nationwide.<sup>51</sup>

- In Argentina, Law 27.610, enacted in December 2020, established the right for women and people with the capacity to become pregnant, including adolescents and girls, to voluntarily terminate pregnancies up to and including the 14th week (known as “Voluntary Interruption of Pregnancy” or “IVE” by its Spanish acronym). After the 14-week mark, abortion is permitted in cases where the pregnancy poses a risk to the mother's health or in cases of rape (known as “Legal Interruption of Pregnancy” or “ILE” in Spanish).<sup>52</sup> Recently, the Argentine Ministry of Health updated its Protocol for the comprehensive care of individuals entitled to voluntary and legal pregnancy termination, targeting health teams as the primary audience and integrating the guidelines from the new WHO Directives.<sup>53</sup>
- In Uruguay, Law 18.987 on the Voluntary Interruption of Pregnancy decriminalized abortion up to the 12th week of gestation at the woman's discretion and up to the 14th week in cases of rape. There are no gestational limits in cases where the woman's life is at risk or in cases of fetal malformation incompatible with extrauterine life.<sup>54</sup>
- In Bolivia, Constitutional Sentence 206/14, later regulated by the Ministry of Health through Ministerial Resolution 27/15 in January 2015, specified the technical procedures for health service provision in cases of rape, health and life-threatening conditions.<sup>55</sup>
- In Brazil, in January 2023, the Ministry of Health repealed Ordinance 2.561, which had imposed bureaucratic hurdles that significantly restricted access to legal abortion.<sup>56</sup> These hurdles included a requirement for medical professionals and hospitals to report to the police whenever they performed an abortion in cases of rape.<sup>57</sup> The elimination of these restrictions

<sup>50</sup> Constitutional Court of Colombia. *Judgment C-055/22*, Judgment of 21 February 2022, [Corteconstitucional.gov](#).

<sup>51</sup> Ministry of Health and Social Protection of Colombia. *Resolution 021 of 2023 adopting the single regulation for comprehensive health care in the face of Voluntary Interruption of Pregnancy (IVE) and modifying numeral 4.2 of the Technical and Operational Guideline of the Comprehensive Maternal Perinatal Health Care Path adopted through Resolution 3280 of 2018*, Resolution of 12 January 2023, [Minsalud.gov](#).

<sup>52</sup> Congress of the Argentine Nation. *Law 27.610 on Access to Voluntary Interruption of Pregnancy*, 30 December 2020, [Infoleg.gob](#).

<sup>53</sup> Ministry of Health of Argentina. *Protocol for the comprehensive care of persons with the right to voluntary and legal interruption of pregnancy*. 2022 Update, [Salud.gob](#).

<sup>54</sup> General Assembly of Uruguay. *Law No. 18.987 on Voluntary Interruption of Pregnancy*, 30 October 2012, [lmpo.com](#).

<sup>55</sup> Ministry of Health of Bolivia. *Ministerial Resolution 27/15 approving the technical procedure for the provision of health services within the framework of plurinational constitutional judgment 206/2014*, 29 January 2015, [Clacaidigital.info](#).

<sup>56</sup> Ministry of Health of Brazil. *Office of the Minister Ordinance GM/MS No. 13*, 13 January 2023, [Bvsms.saude.gov.br](#)

<sup>57</sup> Ministry of Health of Brazil. *Portaria 2561 establishing the procedure for justification and authorization of abortion in cases provided for by law*. 23 September 2020, [Brasilsus.com](#).

was part of the Brazilian government's efforts to establish legal certainty for health services and to make criminal reporting no longer a prerequisite for accessing abortion in rape cases.

- In Ecuador, in February 2022, the National Assembly enacted a law that decriminalized abortion in cases of rape, following the Constitutional Court's ruling from the previous year, which declared the prohibition of abortion for rape victims unconstitutional under sentence 34-19-IN/21.<sup>58</sup> On March 4, 2023, the Ministry of Public Health introduced the first Guidelines for Comprehensive Care and Effective Access to Voluntary Termination of Pregnancy in cases of rape, setting out the legal and clinical standards for such care aimed at healthcare providers.<sup>59</sup>
- In Chile, Law 21.030, enacted in 2017, moved away from the absolute criminalization of abortion by recognizing three circumstances under which abortion is legal: when the pregnant woman's life is in danger, when the fetus has a congenital, acquired, or genetic pathology incompatible with extrauterine life, and in instances of rape, with a gestational limit of 12 weeks. For girls under 14, the procedure is permitted up to 14 weeks of gestation.<sup>60</sup>

However, even with such progress taking shape in the region, El Salvador has significantly lagged behind its regional counterparts and the global community: it is one of the few countries that maintains an absolute criminalization of abortion, classifying it as a crime in its articles 133 to 141 (under the title "Crimes related to the Life of the Human Being in Formation") without, therefore, establishing any of the previously mentioned grounds for exemption from criminal liability.

The regulatory decision of the State of El Salvador to uphold an absolute prohibition on abortion is not without consequence. On the contrary, as has been indicated, it inflicts concrete harm that infringes upon the constitutional and international rights of women and people with the capacity for pregnancy, as illustrated by the case of Beatriz.

2. Treaty bodies have identified that the absolute criminalization of abortion endangers the lives of women and other people with the capacity for pregnancy and constitutes a barrier to accessing health services.

The available evidence has been conclusive in demonstrating that the criminalization of abortion does not prevent women and other people with the capacity for pregnancy from terminating unwanted pregnancies. Instead, it only forces them to seek options outside the health system,

<sup>58</sup> Constitutional Court of Ecuador. *Judgment 34-19-IN/21*, Public Action of Unconstitutionality resolved on 28 April 2021, [Portal.corteconstitucional.gob.ec](https://portal.corteconstitucional.gob.ec/).

<sup>59</sup> Ministry of Public Health of Ecuador. *Guidelines for comprehensive care and effective access to voluntary abortion in cases of rape*, 4 February 2023, [Surkuna.org](https://surkuna.org/).

<sup>60</sup> National Congress of Chile. *Law 21.030 regulating the decriminalization of voluntary abortion on three grounds*, 23 September 2017, [Bcn.cl](https://bcn.cl/).



increasing the risk of unsafe and dangerous practices and thereby violating their rights to health, integrity, and life.<sup>61</sup>

Indeed, the criminalization of abortion significantly hinders access to sexual and reproductive health services. The fact that abortion is criminalized creates a stigma around those who seek the service, the providers, and the health service itself. In this regard, the *former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* stated that the penalization of abortion perpetuates discrimination and gives rise to new forms of stigmatization, and explained that:

*... The resulting stigma from penalization creates a vicious cycle. The criminalization of abortion drives women to seek clandestine abortions, possibly under dangerous conditions. The ensuing stigma from an illegal abortion, and therefore from criminal behavior, perpetuates the notion that abortion is an immoral practice and that the procedure is inherently dangerous, which in turn reinforces the continued criminalization of this practice.<sup>62</sup>*

In the specific case of El Salvador, various international organizations have voiced their concerns, particularly regarding the impact of abortion criminalization on the life and health of Salvadoran women. They offer strong statements against the regressive and criminalizing legislation that affects the right of women and other individuals capable of pregnancy in El Salvador to access abortion services. The HRC first warned in 2003:

*The Committee expresses its concern at the severity of the current law against abortion in the State Party, especially since illegal abortions have serious detrimental consequences for women's lives, health and well-being. The State Party should take steps to bring its legislation into line with the Covenant as regards the protection of life..., so that women can be helped to avoid unwanted pregnancies and need not to resort to clandestine abortions that may put their lives in danger.<sup>63</sup>*

Similarly, the CESCR expressed the following concern:

*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... 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*

<sup>61</sup> PAHO. WHO publishes new guidelines. 2022, [Paho.org](https://paho.org).

<sup>62</sup> United Nations Human Rights Council. *Interim Report of the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical & Mental Health to the General Assembly*. UN Doc A/66/254, 2011, paras. 34-35. Similarly, Nina Zamberlin, *The Stigma Associated with Abortion as an Object of Study. The First Steps in Latin America*, 2015, p. 175, [Clacaidigital.info](https://clacaidigital.info).

<sup>63</sup> HRC. *Concluding observations on El Salvador*. CCPR/CO/78/SLV, 22 August 2003, para. 14.

*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.<sup>64</sup>*

Shortly thereafter, the Committee against Torture (CAT) warned that:

*It is also concerned that the current Criminal Code of 1998 penalizes and punishes with imprisonment for periods ranging from 6 months to 12 years all forms of recourse to voluntary interruption of pregnancy, including in cases of rape or incest, which has resulted in serious harm to women.<sup>65</sup>*

In the same instance, the CAT urged the Salvadoran State to take the necessary measures, including legal measures, to effectively prevent, investigate, and punish all acts that seriously harm the health of women and girls, providing the required medical care, strengthening family planning programs, and offering better access to reproductive health information and services.<sup>66</sup>

Similar considerations have been expressed by the CERD,<sup>67</sup> the CRC,<sup>68</sup> and the CRPD;<sup>69</sup> all these human rights treaty monitoring bodies have highlighted the negative impact of abortion criminalization on Salvadoran women and girls and have called for a review of these policies.

### 3. The absolute criminalization of abortion disproportionately impacts young people.

Now, as previously mentioned when discussing the intersectional approach to the right to abortion, the effects of criminalization are not distributed equally. They impact women differently and disproportionately, especially those most vulnerable due to socioeconomic status, rural origins, age, or migratory status, among other factors. The WHO, in its most recent guidelines on abortion, states:

*When prosecutions take place they may be disproportionately pursued against young, unmarried women and those facing financial hardship and with less access to education.<sup>70</sup>*

Regarding young people, this honorable Court has addressed the interplay of various discriminatory factors in the 'Manuela vs. El Salvador' case, highlighting that “Manuela was a young, illiterate woman

<sup>64</sup> CESCR. *Concluding observations on El Salvador*. E/C.12/SLV/CO/3-5, 19 June 2014, para. 22. This paragraph was reiterated in identical terms in its *Concluding observations on El Salvador*, E/C.12/SLV/CO/6, 9 November 2022, para. 58.

<sup>65</sup> Committee Against Torture [CAT], *Concluding observations for El Salvador*. CAT/C/SLV/CO/2, 9 December 2009, para. 23.

<sup>66</sup> *Ibid.*, para. 23.

<sup>67</sup> Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the combined eighteenth and nineteenth periodic reports of El Salvador*, 13 September 2019, CERD/C/SLV/CO/18-19.

<sup>68</sup> Committee on the Rights of the Child. *Concluding observations for El Salvador*, CRC/C/SLV/CO/3-4, 17 February 2010.

<sup>69</sup> CRPD. *Concluding observations on the combined second and third periodic reports of El Salvador*. 1 October 2019, CRPD/C/SLV/CO/2-3.

<sup>70</sup> World Health Organization, *Abortion Care Guideline*, p. 25.



living in poverty.”<sup>71</sup> The Court concluded that this combination of poverty and reproductive age created “a greater vulnerability to specific discrimination,” for which the State of El Salvador was found responsible.<sup>72</sup> Furthermore, the Court noted the particular discrimination faced by young women, especially those lacking formal education, those with communication challenges, or those in isolated circumstances, within the context of El Salvador’s total ban on abortion.<sup>73</sup>

Moreover, numerous empirical studies have demonstrated the severe impact that criminalization has on the lives and rights of young people in vulnerable situations.

In El Salvador, research by the Citizen Group for the Decriminalization of Abortion indicates that from 1998 to 2019, 181 women were prosecuted for abortion or for aggravated homicide when the fetus died in the last months of gestation. Of these women, 50 were aged 18 to 20 years (27.6%), 71 were between 21 to 25 years of age (39.2%), and 28 were between 26 to 30 years (15.5% of the total). Collectively, this means that 82.3% of those prosecuted were young women under 30 years of age, highlighting the impact of laws criminalizing abortion.<sup>74</sup>

This pattern is not unique to El Salvador and is echoed in countries where criminal law regulates abortion. For instance, a study in Honduras on women criminalized for abortion from 2006 to 2019 found that the majority fit a similar profile: young, single women, often students or domestic workers, with or without pay.<sup>75</sup> Specifically, the research indicated that 81% of the cases of criminalization are found in young women between 18 and 29 years; while only 2% of the cases refer to women older than 40 years.<sup>76</sup>

These trends are also seen in countries with partial decriminalization of abortion. According to a 2019 report by The Roundtable for Life and Health of Women, the most prosecuted group for abortion were young women living in rural areas. This points to an “over-criminalization of the most vulnerable women, intensifying injustice within a criminal system that chooses to penalize abortion.”<sup>77</sup>

Similarly, in Argentina, research by the Center for Legal and Social Studies (CELS), the National Campaign for the Right to Legal, Safe and Free Abortion, the San Martín University Center (Cusam), along with professionals María Lina Carrera, Natalia Saralegui Ferrante, and Gloria Orrego-Hoyos,

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<sup>71</sup> IACtHR. *Manuela et al. v. El Salvador Case*. Judgment of 2 November 2021 (Preliminary Objections, Merits, Reparations, and Costs), para. 114.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, párr. 168.

<sup>74</sup> Karina Albertivna Sánchez Shevchuk, “The Criminalization of Obstetric Emergencies in the Context of Absolute Criminalization of Abortion in El Salvador: An Analysis of the Human Rights Violations That Occur and Their Impact” (Tesis de Maestría, 2020, Facultad Latinoamericana de Ciencias Sociales), [Repositorio.flacsoandes.edu](https://repositorio.flacsoandes.edu).

<sup>75</sup> Erika García, Grecia Lozano, and Marcela Arias, *The Criminalization of Women for the Crime of Abortion in Honduras*, Somos Muchas, Optio (Honduras, 2020), [Clacaidigital.com](https://clacaidigital.com).

<sup>76</sup> *Ibid.*

<sup>77</sup> Ana Cristina González Vélez and Carolina Melo Arévalo, eds., *Causa Justa: Arguments for the Debate on the Total Decriminalization of Abortion in Colombia* (Bogotá: The Roundtable for Life and Health of Women, 2019), [Despenalizaciondelaborto.org](https://despenalizaciondelaborto.org).



covered 1532 abortion cases and 37 obstetric events from 2012 to 2020. The findings revealed that most of the cases involved women under 30 years old, with a significant number in the 20 to 24-year age group.<sup>78</sup> These results are consistent with CELS's 2017 study, which identified 15 cases of women who were criminalized following obstetric emergencies. All these women were young, aged between 18 and 22 years old, had limited financial resources, and were placed under police custody after entering the public health system.<sup>79</sup>

In Mexico, particularly in the Yucatán region, it was noted that half of the women criminalized for obstetric events were minors, and the rest were aged between 19 and 27 years.<sup>80</sup> These statistics show that young women face criminalization not only when seeking abortion services but also in instances of obstetric emergencies. Often, they are reported by the health personnel who are supposed to provide them with care and support.

The criminalization of abortion not only directly affects young women who seek quality care for an abortion or obstetric emergency; it also indirectly affects them by discouraging health personnel from providing these services, for fear of being criminalized themselves. This absolute criminalization creates a 'chilling effect' on health personnel, leading to more refusals or delays in providing care.<sup>81</sup>

This adverse effect was starkly evident in the case of Beatriz. The director of the National Maternity Hospital that treated her explained that the criminal law alone barred him from terminating Beatriz's pregnancy without explicit legal permission:<sup>82</sup>

*don't ask me why the criminal law says that, I don't know if those who approved the law were poorly advised or what happened, but the Penal Code was reformed in 1997 and that's why we cannot intervene.*<sup>83</sup>

Additionally, the criminalization of abortion not only raises the risk of prosecution for young women and healthcare providers but also increases the risk of death from unsafe abortions. This pushes women, especially the younger ones who lack sufficient information or a support network, to seek clandestine services out of fear of legal repercussions. In Argentina, studies have shown that over 25% of deaths from clandestine abortions involved women under 25 years old, with 11% under 20

<sup>78</sup> Center for Legal and Social Studies (CELS) et al., *Report: The Criminalization of Abortion and Other Obstetric Events in Argentina*, ed. Vanina Escales and Santiago Nabaes (Buenos Aires, 2020).

<sup>79</sup> Eburne Cardenas, Andrés López Cabello, and Lucía de la Vega, *Unequal Access to Legal Abortion and Selective Criminalization* (Buenos Aires: CELS, 2017), [Clacaidigital.info](http://Clacaidigital.info).

<sup>80</sup> Distintas Latitudes, "When giving birth is a crime: the criminalization of women with obstetric emergencies," Distintas Latitudes, November 10, 2021, [Distintaslatitudes.net](http://Distintaslatitudes.net).

<sup>81</sup> Lidia Casas and Lieta Vivaldi, "Abortion in Chile: The Practice under a Restrictive Regime," *Reproductive Health Matters* 22, no. 44 (January 1, 2014): 70–81, [https://doi.org/10.1016/S0968-8080\(14\)44811-0](https://doi.org/10.1016/S0968-8080(14)44811-0).

<sup>82</sup> IACHR. *Merits Report No. 9/20, Case 13.378, Beatriz v. El Salvador*, 3 March 2020, para. 63.

<sup>83</sup> Translation. Original text: "no me pregunte por qué la ley penal dice eso, no sé si quienes aprobaron la ley fueron mal asesorados o qué fue lo que pasó, pero el Código Penal así fue reformado en 1997 y por eso no podemos intervenir." La Prensa Gráfica Newspaper. *Health: Beatriz can be treated abroad*. 10 May 2013. [La.prensa.gráfica](http://La.prensa.gráfica).



years and 14% aged between 20 and 24 years.<sup>84</sup> The WHO states that the stricter the abortion legislation, the greater the likelihood that unsafe procedures will lead to fatalities.<sup>85</sup> The report from Argentina further notes 49,000 annual hospitalizations in public hospitals due to abortion complications, averaging 135 hospitalizations per day. Of these, 24 adolescents are discharged daily after abortion-related hospitalizations, with 47% aged between 20 and 29 years.<sup>86</sup>

In summary, the experiences of Beatriz and the data presented underscore that in countries like El Salvador, where abortion is criminalized, young women are systematically denied their sexual and reproductive rights. They face the consequences of criminal prosecution, the lack of effective public policies, stigma, and gender discrimination, all perpetuated by public institutions, health services, and the state's punitive mechanisms.<sup>87</sup>

#### 4. Decriminalization is a necessary step to protect young people.

Treaty bodies, United Nations special procedures, and international clinical and public health guidelines have indicated that the criminalization of abortion or other types of restrictions on this service are measures that violate human rights. Consequently, they have recommended the decriminalization of abortion under all circumstances and the repeal of all regulations that prohibit or restrict access to safe abortion services. This is advocated as an effective measure to ensure the protection of human rights and, particularly, the rights to health and to live in conditions of dignity.

The CEDAW Committee,<sup>88</sup> the CESCR,<sup>89</sup> and the HRC<sup>90</sup> have all recommended the decriminalization of abortion in every case and ensuring safe access, specifically “in situations where carrying the pregnancy to term would cause the woman severe pain or suffering, notably in cases of rape or incest, or where the fetus has a significant anomaly.” Similarly, the former *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* recommended in 2011 the total decriminalization of abortion. Indeed, he stated that the most expedient way to protect the right to health was the decriminalization of abortion, accompanied by adequate regulation that ensured the provision of safe and accessible abortion services.<sup>91</sup>

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<sup>84</sup> Amnesty International, *Amnesty International's Contributions to the Debate on the Decriminalization of Abortion* (Buenos Aires: 2018), [Aministia.org](http://Aministia.org).

<sup>85</sup> “Aborto en números: por qué su criminalización afecta más a jóvenes y adolescentes,” *El País Digital*, June 13, 2018, [Elpaisdigital.com](http://Elpaisdigital.com).

<sup>86</sup> Amnesty International, *Amnesty International's Contributions to the Debate on the Decriminalization of Abortion*.

<sup>87</sup> García, Lozano, and Arias, *The Criminalization of Women for the Crime of Abortion in Honduras*. [Clacaidigital.com](http://Clacaidigital.com).

<sup>88</sup> CEDAW Committee, *General Recommendation No. 35: Gender-based violence against women, updating General Recommendation No. 19* CEDAW/C/GC/35, 26 July 2017, paras. 28 and 29(c)(i).

<sup>89</sup> CESCR. *General Comment No. 22 on Article 12 of the International Covenant on Economic, Social and Cultural Rights on Sexual and Reproductive Health*, E/C.12/GC/22, 2 May 2016, paras. 28 and 40.

<sup>90</sup> HRC. *General Comment No. 36 on Article 6 on The Right to Life*, CCPR/C/GC/36, 3 September 2019, para. 30; Human Rights Committee, *Concluding observations on El Salvador*, CCPR/C/SLV/CO/7, 9 May 2018, para. 1.

<sup>91</sup> *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Interim Report to the General Assembly. UN Doc A/66/254, 24 October 2011, para. 65(e).



Echoing this perspective, the WHO, in its 2022 abortion care guidelines, has been explicit in stating that decriminalization is essential:

*Decriminalization is a necessary step... means removing abortion from all penal/criminal laws, not applying other criminal offences (e.g. murder, manslaughter) to abortion, and ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors.<sup>92</sup>*

The latest WHO guidelines advocate for modifying access restrictions so that abortion services are available upon the pregnant person's request, without barriers like gestational limits, mandatory waiting periods, or third-party authorizations from parents or guardians, and without restrictions on providers.<sup>93</sup> In concordance with these guidelines, the International Federation of Gynecology and Obstetrics (FIGO) has also recommended the total decriminalization of abortion to States, citing evidence that criminalization does not reduce the number of abortions but instead increases the number of unsafe procedures.<sup>94</sup>

In international human rights law, there is an emerging consensus against the total criminalization of abortion as a fundamental step to protect the human rights of women and other people with the capacity for pregnancy, particularly those in vulnerable situations who face intersectional discrimination, such as young women. Additionally, international clinical and public health guidelines recommend eliminating the criminal offense of abortion in all cases to ensure the effective realization of the right to health and life.<sup>95</sup>

El Salvador has ratified international human rights treaties that protect the right to life, health, dignity, physical integrity, and freedom of thought and beliefs. These rights are enshrined in the nation's Constitution and must be considered in legal interpretations. The continued prohibition of abortion means that young women and others people with the capacity for pregnancy encounter significant challenges in safeguarding their life, health, and rights, which stands in contradiction to the international protection of these rights.

## VI. Petition

In light of the foregoing, we request the Honorable Court to consider the arguments and standards cited in this document for the effective protection of human rights in this case and, consequently:

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<sup>92</sup> World Health Organization, *Abortion Care Guideline*, p. 21. [Who.int](https://www.who.int).

<sup>93</sup> *Ibid.*

<sup>94</sup> International Federation of Gynecology and Obstetrics (FIGO), "FIGO Calls for the Total Decriminalisation of Safe Abortion" *FIGO*, February 28, 2022, [FIGO.org](https://www.figo.org).

<sup>95</sup> World Health Organization, *Abortion Care Guideline*, p. 21.

- Resolve the international responsibility of El Salvador for the human rights violations against Beatriz, particularly her right to life, her right to conditions of dignity and equality, and her right to health and integrity, as a young woman and mother living in extreme poverty, as enshrined in Articles 4, 5, 24, and 26 of the ACHR, and
- Recognize that the criminalization of abortion, as imposed by the current legislation in El Salvador, serves as a regulatory model that structurally and massively violates the rights to life, health, and integrity of women and others capable of pregnancy, particularly affecting the youngest, in a manner incompatible with the international obligations undertaken by the country.

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