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**REPORT No. 9/20**  
**CASE 13.378**  
REPORT ON MERITS

BEATRIZ  
EL SALVADOR

Approved by the Commission at its session No. 2166 held on March 3, 2020  
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## I. SUMMARY

1. On November 29, 2013, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by several organizations<sup>1</sup> (hereinafter “the petitioner”) alleging the international responsibility of the Republic of El Salvador (hereinafter “the State of El Salvador,” “the State,” or “El Salvador”) to the detriment of Beatriz and her family,<sup>2</sup> due to the lack of access to a legal, early, and timely termination of her pregnancy in 2013, which, it is alleged, put her life at risk and affected her integrity, health, and other rights.

2. The Commission adopted Admissibility Report No. 120/17 on September 7, 2017.<sup>3</sup> On October 10, 2017 the Commission provided notice of the report to the parties, and made itself available for purposes of reaching a friendly settlement. The parties were afforded the prescribed time periods to submit additional observations on the merits. The State did not present observations at the merits stage. All the information received was duly transmitted between the parties.<sup>4</sup>

## II. POSITIONS OF THE PARTIES

### A. The petitioner

3. The petitioner reported that at the time of the events Beatriz was living in poverty and was diagnosed with aggravated systemic lupus erythematosus. It was explained that in early 2013 she was diagnosed with a high risk pregnancy due to her illness and the fact that the fetus was identified as anencephalic.

4. The petitioner asserted that the State violated Beatriz’s rights to life, humane treatment, and health due to the lack of access to a legal, early, and timely termination of her pregnancy. It indicated that this allowed the pregnancy to advance and that just three months after she was treated at the health center, a surgical procedure was performed that placed Beatriz’s life at extreme risk, causing her and her family profound uncertainty and suffering. The petitioner emphasized that Beatriz had full knowledge of the risks to life if she continued with the pregnancy.

5. The petitioner also explained that Beatriz had to go through a prolonged mourning process after learning of the fatal malformation of the fetus, which died five hours after the surgical procedure. The petitioner also stressed the emotional pain that Beatriz endured as a result of the hospitalization that separated her from her first child, who was thirteen months old, the sadness of not being able to make a decision about her own life, the stigmatization she suffered, and her frustration at the insensitivity and unresponsiveness of the authorities in view of the uncertainty of not knowing whether at any moment she could go into crisis and die. It argued that these effects on Beatriz constituted cruel, inhuman, and degrading treatment.

6. The petitioner alleged that the State violated Beatriz’s rights to a fair trial and to judicial protection, by failing to guarantee the existence of adequate domestic remedies to safeguard her rights in a timely manner. It maintained that the absence of a legal or administrative procedure that is prompt, effective, accessible, and able to determine the appropriateness of a legal abortion has also led to arbitrary and abusive interference with her right to privacy.

7. The petitioner additionally contended that the writ of *amparo* [petition for a constitutional remedy] was not effective in protecting Beatriz’s rights, since the final decision was issued in 48 days, which was not a reasonable period of time. This was not a case with complex evidence. Only one person was involved, and at no time was the progress of the *amparo* process hindered. The petitioner also pointed out that the Constitutional

<sup>1</sup> Colectiva Feminista para el Desarrollo Local de El Salvador, la Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico de El Salvador, Ipas Centro América, and the Center for Justice and International Law.

<sup>2</sup> The petitioner requested that the name of the alleged victim be kept confidential and to be only referred by the name “Beatriz.” The petitioner also requested confidentiality with regard to information about her family members.

<sup>3</sup> IACHR. Report No. 120/17. Petition 2003-13, Admissibility, Beatriz, El Salvador, September 7, 2017.

<sup>4</sup> On April 29, 2013, the IACHR granted a precautionary measure related to this case. On May 27, the Commission submitted a request for provisional measures to the Inter-American Court of Human Rights, which was granted two days later. On August 19, 2013, the Court decided to lift the provisional measures. The files on the precautionary and provisional measures have been included in the analysis of this case.

Chamber of the Supreme Court of Justice, in addition to denying the *amparo*, returned responsibility for the decision to Beatriz's treating doctors without removing the barriers to access to the recommended treatment in order to guarantee her health, life and integrity.

8. The petitioner argued that the current criminal law on abortion violates the principle of legality because the Criminal Code does not contain a description of the conduct that constitutes abortion, but provides for various modes and circumstances in which it can be criminalized. The petitioner maintained that such ambiguity allows conduct to be classified under one or more offenses, meaning that a person charged with the crime of abortion can later be charged with aggravated homicide, with the resulting adjustment of penalties. It explained that this created a situation of legal uncertainty in the present case because Beatriz did not know whether she would be prosecuted if she consented to and proceed with the abortion of the anencephalic fetus.

9. The petitioner argued that by maintaining such legislation, the State is in breach of Article 2 of the American Convention insofar as it has the obligation to amend or abolish laws and practices that violate rights, particularly those that support the persistence or tolerance of violence against women. The petitioner further argued that the State violated the principle of equality before the law and the Convention of Belém do Pará insofar as this legislation, as well as State practice with regard to abortion, impose stereotypes and gender roles that amount to a form of discrimination and violence against girls, young women, and women. It explained that in this case Beatriz was forced to continue her pregnancy, carrying an anencephalic fetus with serious consequences on her health and life, based on a stereotype related to her role as a woman and on the instrumentalization of her body.

10. Finally, the petitioner also argued that the current legislation violates Article 26 of the American Convention insofar as it constitutes a regressive measure in view of international State obligations to progressively achieve the full realization of the right to health. In 1997, the Criminal Code was amended to eliminate the grounds for exceptions to the crime of abortion.

## **B. The State**

11. At the admissibility stage, the State alleged that the medical personnel who treated Beatriz acted autonomously at all times, in order to decide on the best treatment to guarantee Beatriz's life, integrity, and health, and to "preserve the life of the fetus." It explained that the latter is consistent with the provisions of the Constitution, which recognizes the right to life from the moment of conception.

12. The State maintained that at all times it reported extensively on the details of the medical care that was provided to Beatriz. It emphasized the ruling of the Inter-American Court that lifted the provisional measures in this matter, indicating that it "viewed positively the appropriate and timely work of the State authorities to comply with the provisional measures ordered on behalf of Beatriz."

13. El Salvador claimed that Beatriz had access to justice mechanisms in the country, as demonstrated by the filing of the writ of *amparo*. It indicated that a precautionary measure was issued in that proceeding, which sought to ensure Beatriz's right to life and health, while also giving weight to the unborn child's right to life. It held that the decisions of the courts were based on existing law and considered Beatriz to be in stable condition. It stated that because the Constitution does not prioritize one life over another, it requires the same standard of protection to be applied to both, unless the circumstances of the particular case dictate otherwise.

14. The State indicated that the decision of the Constitutional Chamber of the Supreme Court of Justice noted that up to that point Beatriz's right to life and health had been properly respected. It therefore decided to acquit the respondent authorities and to reiterate their obligation for the future, which "must give priority to what is advisable in the circumstances and according to medical science." It noted that the principle of contradiction and the parties' right of defense were guaranteed.

15. Finally, the State indicated that it has recognized its obligation to guarantee the human rights of women in its territory and for that reason it has prioritized the implementation of public policies, the enactment of

legislation, and the development of programs that seek to achieve substantive equality for women, as well as the right to a life free of violence and discrimination.

### III. FINDINGS OF FACT

#### A. Context and applicable regulatory framework

16. Preliminarily, the Commission notes that the previous Criminal Code, which entered into force in June 1974, criminalized abortion but excluded “therapeutic, ethical and eugenic” abortion from criminal responsibility.<sup>5</sup> The Commission observes that the current Criminal Code of 1998 defines the crime of abortion without establishing the aforementioned grounds for exclusion from criminal responsibility, as follows:

Art. 133.- Any person who causes an abortion with the consent of the woman or any woman who causes her own abortion or consents to another person performing an abortion on her shall be punished by a term of imprisonment of two to eight years.

Art. 134.- Any person who causes an abortion without the consent of the woman shall be punished by a term of imprisonment of four to ten years.

The same penalty shall be applied to any person who performs the woman’s abortion, having obtained her consent through violence or deceit.

Art. 135.- If the abortion is committed by a doctor, a pharmacist, or a person engaged in ancillary activities of the professions in question, when engaged in such practice, it shall be punished by a term of imprisonment of six to twelve years. The penalty of special disqualification from the practice of the profession or activity shall also be imposed for the same period.

Art. 136.- Any person who induces a woman or provides her with financial or other means for an abortion, shall be punished by a term of imprisonment of two to five years.

If the person who facilitates or induces abortion is the father, the penalty shall be increased by one third of the maximum penalty specified in the preceding paragraph.

Art. 137.- Any person who negligently causes an abortion shall be punished by a term of imprisonment of six months to two years. A negligent abortion caused by the pregnant woman herself, and her attempt to cause her abortion, shall not be punishable.<sup>6</sup>

17. In addition, in the same year that the current Criminal Code was enacted, Article 1 of the Constitution of El Salvador was amended to read: “El Salvador (...) recognizes every human being as a human person from the moment of conception.”<sup>7</sup>

18. The IACHR notes that in November 2007 the Constitutional Chamber of the Supreme Court of Justice dismissed an action challenging the constitutionality of the Criminal Code on the basis that it did not expressly address the grounds for exemption from criminal responsibility for the crime of abortion. The Court found that the Criminal Code was constitutional and that the exclusions from responsibility could be applied under the general provision established in Article 27.<sup>8</sup> In April 2011, the Constitutional Chamber dismissed a new unconstitutionality action, affirming its findings from its previous decision.<sup>9</sup>

<sup>5</sup> Criminal Code, Legislative Decree No. 270 of June 15, 1973. Entry into force: June 15, 1994.

<sup>6</sup> Criminal Code, Legislative Decree No. 1030 of April 26, 1997. Entry into force: April 20, 1998.

<sup>7</sup> Constitution of the Republic of El Salvador. Article 1.

<sup>8</sup> Article 27. The following persons are not criminally responsible: 1) Any person who acts or omits to act in compliance with a legal duty or in the lawful exercise of a right or lawful activity; or 2) Any person who acts or omits to act in defense of his person or rights, or in defense of another person or that person’s rights, provided that the following requirements are met: a) unlawful assault; b) reasonable necessity of the defense used to prevent or repel it; and, c) the assault was not sufficiently provoked by the person defending himself; 3) Any person who acts or omits to act out of a need to safeguard a legally protected interest, whether his own or that of others, from a real, present, or imminent danger, not intentionally caused, harming another interest of lesser or equal value, provided that the conduct is proportional to the danger and that there is no legal duty to confront it; 4) Any person who, at the time of performing the act, is not in a position to understand the unlawfulness of his act or omission or is determined not to have such an understanding, for any of the following reasons: (a) mental derangement; (b) serious disturbance of conscience; and (c) delayed or incomplete psychic development. In such cases, the judge or court may impose on the perpetrator any of the security measures referred to in this Code. However, the confinement measure shall only be applied when the offense is punishable by imprisonment; and, 5) Any person who acts or omits to act under the unenforceability of other conduct, that is, in circumstances where it is not reasonably possible to require conduct other than the conduct he engaged in; and, 6) Any person who acts or omits to act in conflict with duties, that is, when the individual has two duties to perform at the same time, and is only able to perform one of them.

<sup>9</sup> SC-CSJ. Unconstitutionality Action 67-10, Judgment of April 13, 2011.

19. Various international organizations have spoken out on the impact of the criminalization of abortion on Salvadoran women.

20. At the United Nations level, the UN Special Rapporteur on violence against women has said that the outright criminalization of abortion in El Salvador has a direct impact on maternal morbidity and mortality rates. In her 2011 Report, the Rapporteur indicated that without legal, safe, and timely options, many women have to undergo dangerous and even deadly practices; they abstain from seeking medical services; or they have obstetric emergencies without the necessary medical attention.<sup>10</sup>

21. For its part, the United Nations Human Rights Committee expressed in its 2010 observations its concern:

[...] that the current Criminal Code criminalizes all forms of abortion, given that illegal abortions have serious detrimental consequences for women's lives, health and well-being. The Committee remains concerned that women seeking treatment in public hospitals have been reported to the judicial authorities by medical staff who believe they have been involved in abortions, that legal proceedings have been brought against some of these women, and that in some cases these proceedings have resulted in severe penalties for the offence of abortion or even homicide, an offence interpreted broadly by the courts. Even though the Constitutional Chamber of the Supreme Court has ruled that in cases of vital need a woman facing criminal proceedings for abortion can be absolved of criminal responsibility, the Committee is concerned that this legal precedent has not been followed by other courts and that criminal proceedings against women accused of abortion have not been dropped as a result.<sup>11</sup>

22. Because of this, the Human Rights Committee recommended:

[That] the State party should amend its legislation on abortion to bring it into line with the Covenant. The State party should take measures to prevent women treated in public hospitals from being reported by the medical or administrative staff for the offence of abortion. Furthermore, until the current legislation is amended, the State party should suspend the prosecution of women for the offence of abortion. The State party should open a national dialogue on the rights of women to sexual and reproductive health.<sup>12</sup>

23. Similarly, in 2014, the Committee on Economic, Social and Cultural Rights expressed concern about El Salvador for the following reasons:

(...) the 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. [...] The Committee urges the State party to provide quality treatment for complications arising from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution.<sup>13</sup>

24. The Committee on the Elimination of Discrimination against Women also expressed its concern in 2017 over the absolute criminalization of abortion in El Salvador under Article 133 of the Criminal Code, which

<sup>10</sup> Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum, Follow-up Mission to El Salvador, para. 66, (2011).

<sup>11</sup> UN Human Rights Committee. Concluding observations of the Human Rights Committee. El Salvador. ONU DOC. CCPR/C/SLV/CO6, 27 October 2010, para. 10.

<sup>12</sup> UN Human Rights Committee. Concluding observations of the Human Rights Committee. El Salvador. ONU DOC. CCPR/C/SLV/CO6, 27 October, para. 10.

Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>13</sup> United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, Doc. de la ONU E/C.12/SLV/CO/3-5, 19 June 2014, para. 22.

results in women often resorting to unsafe methods of abortion, thus facing a serious risk to their health and life. In addition, it was concerned about the disproportionate criminal penalties applied to them, including in the case of miscarriage, and about the imprisonment of women immediately after going to the hospital to seek medical care, because health personnel report them for fear of being penalized themselves.<sup>14</sup>

25. In this same vein, upon completion of his mission to El Salvador in 2017, the United Nations High Commissioner for Human Rights made the following statement:

I am appalled that as a result of El Salvador's absolute prohibition on abortion, women are being punished for apparent miscarriages and other obstetric emergencies, accused and convicted of having induced termination of pregnancy. (...) I have rarely been as moved as I was by their stories and the cruelty they have endured. It only seems to be women from poor and humble backgrounds who are jailed, a telling feature of the injustice suffered. (...) I call upon 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. (...) To establish compliance, my Office has proposed that such a review could be established by presidential decree and be carried out by an expert executive committee composed of national and international members. (...) More broadly, I took the opportunity in my meeting with President Sánchez Cerén and the Legislative Assembly to recall that El Salvador should comply with its international human rights obligations and lift the absolute prohibition on abortion.<sup>15</sup>

26. The Committee against Torture has also expressed its concern over the fact that the current Criminal Code “penalizes and punishes with imprisonment for periods ranging from 6 months to 12 years all forms of recourse to voluntary interruption of pregnancy [...], which has resulted in serious harm to women, including death.”<sup>16</sup>

27. The United Nations Special Rapporteur on Extrajudicial Executions, after her visit to El Salvador in February 2018, stated that:

87. El Salvador is one of the few countries in the world that maintains an absolute ban on abortion. There have been cases of women who, after having gone through an obstetric emergency, even in danger of death, or having suffered a spontaneous abortion, have been unjustly accused of having induced a pregnancy interruption. More than 20 women have been charged with aggravated homicide in connection with such situations and sentenced to up to 40 years in prison. According to data provided by civil society, since October 2017, at least 159 women have been imprisoned in application of the provisions of the Penal Code related to abortion.

(...) 89. The human rights mechanisms of the United Nations and inter-American organizations have repeatedly called for the decriminalization of abortion to safeguard a woman's right to life, health, autonomy, and well-being. In February 2017, the Committee for the Elimination of Discrimination against Women expressed concern about the absolute criminalization of abortion and that women had to resort to unsafe abortion methods, and called for a review of the legislation in matter and a moratorium on its application be introduced (see CEDAW/C/SLV/CO/8-9, para. 36). 90. The Special Rapporteur recalls that when the death of a woman can be medically linked to the deliberate denial of potentially life-saving medical care due to the absolute prohibition of abortion by law, the fact will not only constitute a violation of the right to life and an arbitrary deprivation of life, but also an arbitrary execution based on gender, at the hands of the State, suffered only by women, due to discrimination established by law. 91. There is no unified or updated information on how many women have undergone unsafe abortions or how many of them have been arbitrarily deprived of their lives due to obstetric complications. According to the information received, between 2011 and 2015, 14 women died from complications related to abortion, 13 from ectopic pregnancy, and 36

<sup>14</sup> Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of El Salvador, CEDAW/C/SLV/CO/8-9, p. 12.

<sup>15</sup> UNHCHR. Declaraciones del Alto Comisionado de las Naciones Unidas para los Derechos Humanos Zeid Ra'ad Al Hussein al final de su misión en El Salvador. Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador. November 17, 2017.

<sup>16</sup> United Nations Committee against Torture, Concluding observations of the Committee against Torture: El Salvador, 9 December 2009, para. 23. Doc. CAT/C/SLV/CO/2.

from pregnancy complications. Although the maternal mortality rate has decreased significantly in recent years, there is a high rate of suicide among pregnant women. According to civil society, 57% of women who committed suicide in 2016 were pregnant (69 out of 121).<sup>17</sup>

28. In addition, within the Organization of American States, the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention reiterated in 2014 the need to repeal any type of provision in El Salvador that criminalizes a woman's abortion in cases of sexual violence and therapeutic abortion. In this regard, the Committee has underscored the seriousness and impact of the criminal laws regulating this matter on women's right to life, especially as illegal abortions increase maternal mortality rates.<sup>18</sup>

29. The Working Group on the Protocol of San Salvador also expressed deep concern about the absolute criminalization of termination of pregnancy under the Salvadorian criminal code and the infringement of a woman's right to decide; in particular, it noted that in addition to specifically undermining women's rights, the lack of official statistics on the number of induced or illegal abortions, makes it less likely that more attention will be brought to this public health issue and that it will be taken into account by the authorities. Thus, the Working Group recommended that El Salvador carry out a thorough review of its sexual and reproductive health policy, and urged it to bring its legislation, which makes abortion a crime in absolute terms, in line with human rights standards on the subject matter.<sup>19</sup>

30. Finally, the Inter-American Commission on Human Rights has also addressed the total ban on abortion in El Salvador. In 2018, after its working visit to El Salvador, the IACHR noted that the prevalence of violence and discrimination against women is reflected in the total criminalization of abortion. The IACHR stated that the absolute criminalization of abortion has direct consequences on maternal morbidity and mortality figures.<sup>20</sup>

31. Similarly, the IACHR expressed its concern over the fact that, even though the Criminal Code provides for sentences of up to 12 years for abortion, many women who suffer obstetric complications or miscarriages are convicted of aggravated homicide and sentenced to up to 40 years in prison, based on the suspicion of having induced an abortion and in possible violation of their right to due process. In the same way, the law on which these sentences are based appears to be in clear contradiction to the right to medical privacy, what would restrain health professionals from having the necessary conditions of legal certainty to be able to properly exercise their responsibility to ensure their patients' health.<sup>21</sup>

32. The Commission reiterated the impact of the absolute criminalization of abortion in El Salvador, indicating that, by placing a disproportionate burden on the exercise of the rights of women and girls and creating a context that facilitates unsafe abortions, it ignores the State's international obligations to respect, protect, and guarantee women's rights to life, health, and integrity.<sup>22</sup>

## **B. Personal and medical history of Beatriz**

33. The petitioner reported that Beatriz was born on October 30, 1990, and that at the time of the events she was living in extreme poverty in Canton La Noria Tierra Blanca, in the municipality of Jiquilisco. That

<sup>17</sup> General Assembly of the United Nations Organization, Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding her mission to El Salvador, 33rd session, June 18 to July 6, 2018, para. 87, 89-91.

<sup>18</sup> Follow-up Mechanism of the Convention of Belém do Pará (MESECVI), Report on the Recommendations Made by the CEVI, Second Round, El Salvador, OEA/Ser.L/II.7.10 MESECVI/I-CE/doc.16/14, October 2, 2014, para. 16.

<sup>19</sup> Working Group on the Protocol of San Salvador. Review of the Reports submitted by the States Parties on the First Group of Rights of the Additional Protocol to the American Convention (Articles 9, 10 and 13). Concluding observations on the Republic of El Salvador, OAS/Ser.L/XXV.2.1GT/PS/doc.22/April 17, 2017, para. 31.

<sup>20</sup> IACHR Concludes Working Visit to El Salvador, January 29, 2018.

<sup>21</sup> IACHR Concludes Working Visit to El Salvador, January 29, 2018.

<sup>22</sup> IACHR Urges El Salvador to End Total Criminalization of Abortion, March 7, 2018.



information was not controverted by the State. When she was 20 years old, she was diagnosed with systemic lupus erythematosus,<sup>23</sup> lupus nephropathy, and rheumatoid arthritis (hereinafter “underlying illness”).<sup>24</sup>

34. Beatriz became pregnant in July 2011.<sup>25</sup> According to a medical report from the Rosales National Hospital, the pregnancy was considered “high risk” due to her underlying illness, and therefore she was transferred to the Dr. Raúl Arguello Escolán National Maternity Hospital (hereinafter “National Maternity Hospital”).<sup>26</sup> According to various medical reports from the National Maternity Hospital, Beatriz was hospitalized on two occasions during her pregnancy due to anemia and “exacerbation of lupus symptoms with episodes of dyspnea caused by community-acquired pneumonia and bilateral pleural effusion.”<sup>27</sup>

35. According to the National Maternity Hospital, on March 2, 2012 she went into labor (...) and was found to have severe hypertension, which was classified as severe pre-eclampsia in addition to lupus (...) and therefore a cesarean section was performed on March 4 (...) in which the patient did not agree to be sterilized. Beatriz’s son spent 38 days in that hospital when he was diagnosed as “preterm newborn + respiratory distress syndrome and necrotizing enterocolitis.”<sup>28</sup>

36. The IACHR observes that on May 2, 2012 a doctor from the National Maternity Hospital informed her that “she could not get pregnant again,” and scheduled her for a “surgical sterilization” for May 27.<sup>29</sup> According to Beatriz’s testimony, she decided not to undergo this surgery because she was afraid of what might happen to her and because she might consider “having children later.”<sup>30</sup>

### C. What happened to Beatriz

37. Beatriz was 22 years old at the time of the events. On February 18, 2013, she visited Rosales National Hospital for a consultation and was diagnosed with an eleven-week pregnancy.<sup>31</sup> Due to her underlying illness, she remained hospitalized for three days.<sup>32</sup> According to a medical report, Beatriz’s pregnancy was considered “high risk” due to her underlying illness.<sup>33</sup>

38. On March 7, 2013 Beatriz went to the hospital for a medical appointment and received the diagnosis that “no skullcap is observed, and the image is typical of an anencephalic fetus.”<sup>34</sup> The doctors at the hospital informed Beatriz that there was a “congenital malformation” of the fetus and that, if the “diagnosis of

<sup>23</sup> According to the report of a scientific group of the World Health Organization, systemic lupus erythematosus (SLE) “is a chronic, progressive, multisystemic disease. The most common features of SLE are a rash (butterfly-shaped) on the bridge of the nose and cheeks, capillaritis on the hands, non-erosive polyarthritis, exudative polyserositis, and lymphadenopathy. Other findings may also include glomerulonephritis (which may lead to nephrotic syndrome), central and peripheral nervous system involvement, pneumonitis, myositis, Raynaud’s phenomenon, systemic vasculitis, and cytopenias.” WHO, Rheumatic Diseases. Technical Report Series, 1992. Available in Spanish at: <https://bit.ly/2sjO8gY>.

<sup>24</sup> Annex 1. August 22, 2013 certification of Clinical File No. 21274-09 from Rosales National Hospital pertaining to Ms. Beatriz, page 48. Attached to petitioner’s brief of November 29, 2013.

<sup>25</sup> Annex 1. August 29, 2013 certification of Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Ms. Beatriz, page 2. Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>26</sup> Annex 1. Medical Summary of the Rheumatology Service, p. 25 (662 electronic) Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Ms. Beatriz, page 2. Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>27</sup> Annex 1. March 22, 2013 Medical Summary of Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Ms. Beatriz, p. 54 (108 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>28</sup> Annex 1. March 22, 2013 Medical Summary of Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Ms. Beatriz, p. 54 (108 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>29</sup> Annex 1. March 22, 2013 Medical Summary of Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Ms. Beatriz, p. 54 (108 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>30</sup> Newspaper El Faro “Yo quiero vivir, por mi otro hijo... si este viniera bien, arriesgaría mi vida” [“I want to live, for my other son... if this one turned out well, I’d risk my life”], April 23, 2013. Available at: <https://www.elfaro.net/es/201304/noticias/11789/>

<sup>31</sup> Annex 1. February 21, 2013 Medical Certification of Clinical File No. 21274-09 from Rosales National Hospital pertaining to Ms. Beatriz, p. 76 reverse (electronic 155). Attached to petitioner’s brief of November 29, 2013. Annex 9.

<sup>32</sup> Annex 1. August 8, 2013 Medical Summary of Clinical File No. 21274-09 from Rosales National Hospital pertaining to Ms. Beatriz, p. 118 (electronic 238). Attached to petitioner’s brief of November 29, 2013. Annex 9.

<sup>33</sup> Annex 1. February 21, 2013 Medical Certification of Clinical File No. 21274-09 from Rosales National Hospital pertaining to Ms. Beatriz, p. 95 reverse (electronic 193). Attached to petitioner’s brief of November 29, 2013. Annex 9.

<sup>34</sup> Annex 1. March 7, 2013 Medical Certification of Clinical File No. 21274-09 from Rosales National Hospital pertaining to Beatriz, p. 111 (electronic 225). Attached to petitioner’s brief of November 29, 2013. Annex 9.

anencephaly” persisted, her case would be taken to the Medical Committee “to reach a consensus on when the pregnancy should be interrupted because anencephaly is incompatible with life.”<sup>35</sup>

39. On March 12, 2013, Beatriz was transferred and admitted to the National Maternity Hospital. According to the hospital documentation, two ultrasound studies confirmed the diagnosis of anencephalic fetus.<sup>36</sup> Two days later, the doctors told to Beatriz that the “fetus had no chance of surviving,” and explained the complications that would arise in her pregnancy, taking into account her underlying illness and the history of complications in her previous pregnancy. According to the medical report, Beatriz asked for her pregnancy to be terminated due to what she had been informed. However, she was told that “it is not legally permitted in the country.”<sup>37</sup>

40. On March 14, 2013 the Medical Committee at the National Maternity Hospital, made up of fifteen doctors, pointed out that at the current stage of gestation the termination of pregnancy posed fewer risks for maternal complications, but that if the pregnancy were to progress there was a likelihood of maternal death, among other risks. The Committee further indicated that, “due to gestational age, it is feasible to perform a vaginal abortion, but if it progresses, it would require termination through the abdomen, which would increase the risk of bleeding.”<sup>38</sup>

41. In the following days, Beatriz again presented symptoms related to her underlying illness<sup>39</sup> and her pregnancy, and therefore decided to take her case before the Medical Committee.<sup>40</sup> On March 20, 2013, the Medical Committee decided to request an opinion from the hospital’s Legal Unit and the Life Unit of the Attorney General of the Republic, and to report the situation to the Ministry of Health.<sup>41</sup>

42. On March 22, 2013, the Head of the Legal Unit of the National Maternity Hospital sent a communication to the Coordinator of the Board for the Protection of Children and Adolescents, stating that “It is vitally important to perform a medical procedure [on Beatriz]; otherwise, there is a strong likelihood of maternal death because she is carrying a thirteen-week fetus with anencephaly, which is a major anomaly incompatible with life outside the womb.”<sup>42</sup> On the same day, Beatriz was discharged from the hospital for “improvement with a diagnosis of pregnancy at 15 weeks” and it was requested that she be readmitted in three weeks.<sup>43</sup>

43. On April 2, 2013, Beatriz was once again admitted to the National Maternity Hospital due to her underlying illness. The record reflects that a doctor told her that a “surgical plan for fetal evacuation” was necessary.<sup>44</sup> The following day, the Medical Committee informed Beatriz that it was awaiting the observations of the Attorney General of the Republic on the case.<sup>45</sup> On April 4, 2013, Beatriz was discharged with a “spontaneous obstetric development plan.”<sup>46</sup>

<sup>35</sup> Annex 1. Clinical File 18674-11 (pp. 356-641) from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Beatriz, p. 364 reverse (electronic 555). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>36</sup> Annex 1. March 13, 2013 certification of Clinical File No. 18674-11 from Dr. Raúl Arguello Escolán National Maternity Hospital pertaining to Beatriz, P. 354 (electronic 4). Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>37</sup> Annex 1. “Perinatal analysis of Beatriz’s case,” July 26, 2013, Ortiz Avendaño, Guillermo Antonio, Slide 17. Attached to petitioner’s brief of November 29, 2013. Annex 12.

<sup>38</sup> Annex 1. “Perinatal analysis of Beatriz’s case,” July 26, 2013, Ortiz Avendaño, Guillermo Antonio, Slide 23. Attached to petitioner’s brief of November 29, 2013. Annex 12.

<sup>39</sup> Annex 1. March 22, 2013 Medical Summary of Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Ms. Beatriz, p. 22. Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>40</sup> Annex 1. March 20, 2013 Certification of Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, p. 348 (17 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>41</sup> Annex 1. March 22, 2013 Certification of Clinical File No. 18674-11 from the National Hospital pertaining to Beatriz, p. 10 (20 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>42</sup> Annex 1. March 22, 2013 Certification of Clinical File No. 18674-11 from the National Hospital pertaining to Beatriz, p. 10 (20 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>43</sup> Annex 1. March 22, 2013 certification of Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, p. 330 (13 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 10-B.

<sup>44</sup> Annex 1. April 3, 2013 certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, pp. 394; 396; 399-400 reverse (electronic 485). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>45</sup> Annex 1. April 3, 2013 certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 392 (electronic 501). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>46</sup> Annex 1. April 5, 2013 certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 399 (electronic 487). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

44. On April 9, 2013, the Board for the Protection of Children and Adolescents issued a report stating that:

The aforementioned events do not fall within the territorial jurisdiction of this Protection Board, as the events originally occurred in Canton La Noria (...). However, this Board was the first to have knowledge of the case, and because of the proximity of the hospital (...) this Board is able to ascertain the situation of the rights of the unborn more immediately (...). As previously stated, recognizing the right to life of the UNBORN CHILD does not entail disregarding the mother's right to life—who, according to the doctors, is in delicate health—as a human right. This Board acknowledges (...) that one fundamental right cannot be placed above another (...) and in that regard, Article 27 of the Criminal Code in some way regulates a possible legal answer to the dilemma arising from the conflict. (...) Notice shall be provided to the Office of the Attorney General of the Republic, in order for it to appoint an attorney to represent the interests of the UNBORN CHILD, and to assert a technical defense in the present case.<sup>47</sup>

45. The following day, the Assistant Attorney General of El Salvador provided her report, as follows:

It is my opinion that there would be no opposition to the young woman Beatriz (...) undergoing a surgical procedure that the medical professionals, who are aware of the state of her health, consider proper and appropriate, and suitable to guarantee her fundamental right to life.<sup>48</sup>

46. On April 11, 2013, Beatriz's attorney filed a writ of *amparo* with the Constitutional Chamber of the Supreme Court of Justice against the Director, the Head of the Legal Unit, and the Head of the Perinatology Service of the National Maternity Hospital. The petition asked the Court to order the hospital authorities to terminate Beatriz's pregnancy in order to save her life. It was documented that, due to her underlying illness, the continuation of the pregnancy posed a serious risk to her life, and that the fetus was anencephalic.<sup>49</sup>

47. On April 12, 2013, the Medical Committee considered that "there is no chance of fetal survival in the short and medium term given the diagnosis, and the potential for major fetal malformations consistent with anencephaly is high" and that Beatriz's condition "will worsen as gestation progresses." Based on this, it stated that "early termination of pregnancy is necessary." It added that in spite of the above, "we are all subject to the laws of the country and as hospital professionals we cannot break the law."<sup>50</sup>

48. On April 16, 2013, the Minister of Health addressed the Chief Justice of the Supreme Court in order to submit the technical analysis in which the doctors of the National Maternity Hospital indicated that "[Beatriz's] condition is deteriorating with the progression of the pregnancy, considering that the fetus is not viable."<sup>51</sup> That same day, Beatriz's legal counsel filed a complaint with the Human Rights Ombudsperson, alleging the "violation of the right to life caused by the failure to act" on the part of the authorities of the National Maternity Hospital.<sup>52</sup>

49. On April 17, 2013, the Constitutional Chamber admitted the writ of *amparo* "because the omissions and lack of diligence of [the respondent authorities] allegedly violated the petitioner's right to life and health. It recognized that there was a real danger, and therefore determined the "need to expedite the processing of this case." It also issued a precautionary measure ordering the respondent authorities to "guarantee the life

<sup>47</sup> Annex 1. Decision of the Board for the Protection of Children and Adolescents of San Salvador, April 9, 2013, in Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, p. 203 (402 electronic). Attached to petitioner's brief of November 29, 2013. Annex 18-A.

<sup>48</sup> Annex 1. Decision of the Assistant Attorney General, April 10, 2013, in Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, p. 20. Attached to petitioner's brief of November 29, 2013. Annex 18-A.

<sup>49</sup> Annex 1. *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, pp. 1-15. Attached to petitioner's brief of November 29, 2013. Annex 18-A.

<sup>50</sup> Annex 1. Decision of the Medical Committee, April 12, 2013, in Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, pp. 4-5. Attached to petitioner's brief of November 29, 2013. Annex 18-A.

<sup>51</sup> Annex 1. Letter from the Minister of Health, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, pp. 16-24. Attached to petitioner's brief of November 29, 2013. Annex 18-A.

<sup>52</sup> Annex 1. Complaint filed by Beatriz's legal representatives with the Office of the Attorney for the Defense of Human Rights (Ombudsperson), April 16, 2013. Attached to petitioner's brief of November 29, 2013. Annex 20.

and health—physical and mental—of Ms. [Beatriz], providing the necessary and appropriate medical treatment for the preservation of those rights, while this *amparo* is being litigated.”<sup>53</sup>

50. On the same day, the petitioner asked the Office of the Prosecutor General of the Nation for a technical legal opinion on Beatriz’s situation, as she was in a state of necessity according to Article 27.3 of the Criminal Code of 1998.<sup>54</sup> It also asked the Inter-American Commission on Human Rights to issue precautionary measures “to safeguard Beatriz’s health, humane treatment, and life.”<sup>55</sup>

51. The petitioner reported that on April 18, 2013 Beatriz was readmitted to the National Maternity Hospital.<sup>56</sup> She underwent a psychological evaluation in which she stated that due to her situation, she had “suicidal ideas, thoughts, and intent a few months ago.” The hospital psychologist stated that Beatriz’s emotional state was affected by the separation from her eldest son and that she was very anxious about her prognosis and the fetal anomaly.<sup>57</sup>

52. On April 24, 2013, the Office of the Prosecutor General ruled on the petitioner’s request for a technical opinion, stating that it is not authorized to issue a technical opinion “preventively or in hypothetical situations.”<sup>58</sup>

53. The Commission notes that between April 16 and 25 the Constitutional Chamber received the following reports as part of the *amparo* case:

The National Bioethics Commission (CNBES) recommended “to proceed immediately in accordance with the opinion of the medical team of the National Specialized Maternity Hospital, in order to guarantee the fundamental human right to life and health of the patient (...) and in compliance with the ethical precepts established for the practice of the medical profession.”<sup>59</sup>

The Human Rights Ombudsperson issued an opinion in favor of performing the medical procedure in order to save Beatriz’s life.<sup>60</sup>

The Minister of Health stated that “There are no protocols in our country, because no kind of abortion is legally permitted; however, upon submitting the relevant consultations to international organization [sic], they send us international care protocols, which could be applied if this practice is allowed in our country.”<sup>61</sup>

The Attorney General of the Republic (PGR) noted that critically important elements such as anencephaly, which rules out the viability of the unborn child’s life outside the womb, must be weighed. She stated that “We should assess, as a lawful possibility, a position in where no action is taken to undermine the mother’s rights to health and life itself, but also where the mother’s pregnancy is not terminated, thereby avoiding the violation of our domestic laws (...) the appropriateness of causing ‘the early labor or induction of childbirth’ should be assessed.”<sup>62</sup>

The National Board for the Protection of Children and Adolescents indicated that it was not competent to issue a technical opinion and attached the resolution of April 9, 2013, which it sent to the hospital authorities.<sup>63</sup>

<sup>53</sup> Annex 1. Order admitting the claim, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 28, Whereas Clause V.4, P. 7. Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>54</sup> Annex 1. Request for a Technical Opinion from the Office of the Prosecutor General, April 18, 2013, Attached to petitioner’s brief of November 29, 2013. Annex 22-A.

<sup>55</sup> Annex 2. Request for Precautionary Measures, April 18, 2013. Attached to petitioner’s brief of November 29, 2013. PDF Annex.

<sup>56</sup> Communication submitted by the petitioner, November 29, 2013.

<sup>57</sup> Annex 1. Psychological Report of April 19, 2013. Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 429 (electronic 427). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>58</sup> Annex 1. Evaluation of petition Ref. 2404413, April 24, 2013, Whereas Clause 1, pp. 1-2. Attached to petitioner’s brief of November 29, 2013. Annex 23.

<sup>59</sup> Annex 1. Response of the CNBES, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 61. Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>60</sup> Annex 1. Response of the Human Rights Ombudsperson, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, pp. 45-21. Attached to petitioner’s brief of November 29, 2013. Annex 18-A.

<sup>61</sup> Annex 1. Response of the Minister of Health, April 23, 2013, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 249. Attached to petitioner’s brief of November 29, 2013. Annex 18-B.

<sup>62</sup> Annex 1. Response of the PGR, April 25, 2013, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 310. Attached to petitioner’s brief of November 29, 2013. Annex 18-B.

<sup>63</sup> Annex 1. Response of the National Board for the Protection of Children and Adolescents, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, pp. 311-319. Attached to petitioner’s brief of November 29, 2013. Annex 18-B.

54. On April 26, 2013, the Constitutional Chamber affirmed the precautionary measure adopted and ordered: i) the respondent authorities to report the specific actions they have taken; and ii) the Institute of Forensic Medicine (hereinafter “IML”) to provide an expert opinion on Ms. Beatriz’s medical condition.<sup>64</sup>

55. On April 29, 2013 the IACHR granted precautionary measures on behalf of Beatriz, in the following terms:

The IACHR considers it appropriate to grant precautionary measures pursuant to Article 25(2) of its Rules of Procedure to protect the life, humane treatment, and health of [Beatriz], specifically in view of the recommendations of the Medical Committee of the Specialized National Maternity Hospital; the circumstance that she is carrying an anencephalic fetus; the lack of a decision by the Supreme Court of Justice to expeditiously adjudicate the writ of *amparo* filed on April 11, 2013; and the effects that the passage of time on [Beatriz’s] rights. Consequently, the Inter-American Commission calls on the State of El Salvador to:

Take the necessary measures to carry out the treatment recommended by the Medical Committee of the Dr. Raúl Arguello Escalón National Specialized Maternity Hospital, with the objective of safeguarding [Beatriz’s] life, humane treatment, and health.<sup>65</sup>

56. On May 2, 2013, the respondent authorities in the *amparo* proceeding (the Director, the Head of the Perinatology Unit, and the Legal Advisor of the National Maternity Hospital) submitted the report requested by the Constitutional Chamber, in which they stated:

As pregnancy progresses, the risk increases (...). At this stage of the pregnancy a premature cesarean delivery would have to be performed (...). The risk of complication is greater in a lupus patient, and there will be more bleeding, which increases the risk of a poor outcome. We are waiting for (...) legal authorization to perform a premature cesarean delivery while the patient remains in stable condition and before she enters a new crisis.<sup>66</sup>

57. On the same day, the United Nations Resident Coordinator for El Salvador sent the following reports to the Constitutional Chamber for inclusion in the *amparo* case: i) a report by the Pan American Health Organization’s Office of Gender, Diversity, and Human Rights on the importance of pregnancy termination protocols; ii) a statement issued by his office on April 17, 2013 calling on the Salvadoran authorities to “take the necessary measures as soon as possible to protect [Beatriz’s] right to life,” and; iii) a statement issued on April 26, 2013, by three special rapporteurs and a United Nations international expert on Beatriz’s situation, which indicated the following:

(...) We urge the Government of El Salvador to take all necessary measures to ensure the protection and full enjoyment of Beatriz’s right to life, and the highest attainable standard of health in accordance with international human rights standards.<sup>67</sup>

58. On May 3, 2013, an interview with Beatriz was published in the newspaper *El País*, in which she stated: “What I want is to live, I want to be with my child, with my family (...). I hope [the State] will do something (...) that they will fight for me.”<sup>68</sup>

<sup>64</sup> Annex 1. Decision of April 26, 2013, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 347. Attached to petitioner’s brief of November 29, 2013. Annex 18-B.

<sup>65</sup> Annex 1. IACHR. PM 11-13 “B”. Note of April 29, 2013 from Deputy Executive Secretary Elizabeth Abi-Mershed, granting precautionary measures in the case of Beatriz. Annex 26-E.

<sup>66</sup> Annex 1. Respondents’ response, May 2, 2013, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, P. 430. Attached to petitioner’s brief of November 29, 2013. Annex 18-C.

<sup>67</sup> Annex 1. Statement of April 17, 2013, United Nations, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 768. Attached to petitioner’s brief of November 29, 2013. Annex 18-D.

<sup>68</sup> Newspaper El País. “*Yo lo que quiero es vivir*” [“What I want is to live”], May 3, 2013. Available at: [https://elpais.com/sociedad/2013/05/02/actualidad/1367521175\\_478080.html](https://elpais.com/sociedad/2013/05/02/actualidad/1367521175_478080.html)

59. According to the clinical file, the National Maternity Hospital authorized Beatriz's discharge on May 3, 2013, but she was again hospitalized two days later.<sup>69</sup> On May 7, 2013, the Institute of Forensic Medicine filed the requested opinion with the Constitutional Chamber, concluding as follows:

At this time, Ms. Beatriz is clinically stable, which means that there is no imminent risk of death (...). There is no medical justification at the moment for terminating the pregnancy and doing so will NOT reverse her chronic illnesses, nor will it prevent complications that may arise from them (...). At this time there is no clinical or laboratory evidence of any imminent, real, or present circumstance that puts [Beatriz's] life in danger; so inducing childbirth today would be a disproportionate, unnecessary, and inappropriate measure.<sup>70</sup>

60. The following day, Beatriz's legal counsel asked the Constitutional Chamber, based on the evidence on the record and due to the urgency of the case and the danger to Beatriz's life, to dispense with the evidentiary stage of the trial and proceed directly to the verdict.<sup>71</sup> It also requested that the expert opinion provided by the Institute of Forensic Medicine not to be admitted as this institution was assisted by professionals belonging to medical associations that had already publicly spoken out against the termination of Beatriz's pregnancy.<sup>72</sup> Her lawyer added that the doctors who interviewed Beatriz asked her in terms she did not understand.<sup>73</sup> A letter from Beatriz was also filed with the court requesting the termination of her pregnancy because of the fatal prognosis of the fetus and her desire to be able to continue caring for her one-year-old son.<sup>74</sup>

61. On May 9, 2013, the IACHR reiterated the request for precautionary measures on behalf of Beatriz and submitted a request for information to the State of El Salvador. The Commission requested the following:

The Inter-American Commission considers it necessary to reiterate the precautionary measures granted on April 29, 2013, so that "B" can receive the treatment recommended by the Medical Committee (...) with the purpose of safeguarding her life, humane treatment, and health. Accordingly, Your Excellency's Government is asked to submit any observations it deems relevant within 48 hours (...). In particular, provide information on the actions taken to comply with the precautionary measures in question.<sup>75</sup>

62. The IACHR notes that on May 9, 2013 Beatriz was again authorized to temporarily leave the hospital. Four days later she was admitted to the National Maternity Hospital.<sup>76</sup>

63. On May 10, 2013, the newspaper *La Prensa Gráfica* published an article in which the Director of the National Maternity Hospital stated that they needed legal authorization to treat Beatriz because the Criminal Code defines abortion as inducing childbirth at any stage.<sup>77</sup> He said, "don't ask me why the criminal law says that, I don't know whether the lawmakers were poorly advised or what happened, but the Criminal Code was amended in 1997 and for that reason we cannot intervene."<sup>78</sup>

<sup>69</sup> Annex 1. April 3, 2013 certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 433 (electronic 419). Attached to petitioner's brief of November 29, 2013. Annex 10-A.

<sup>70</sup> Annex 1. Report of the Institute of Forensic Medicine (IML), *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 870. Attached to petitioner's brief of November 29, 2013. Annex 18-E.

<sup>71</sup> Annex 1. Petitioner's brief, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, pp. 877-881. Attached to petitioner's brief of November 29, 2013. Annex 18-E.

<sup>72</sup> Annex 1. Petitioner's brief, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 882. Attached to petitioner's brief of November 29, 2013. Annex 18-E; Digital Newspaper *elsalvador.com* "*La Comisión de Bioética gubernamental pide aborto*" "[Governmental Bioethics Commission calls for abortion]", April 23, 2013, available at: <https://www.elsalvador.com/noticias/nacional/104824/la-comision-de-bioetica-gubernamental-pide-aborto/>

<sup>73</sup> Annex 1. Petitioner's brief, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 882. Attached to petitioner's brief of November 29, 2013. Annex 18-E.

<sup>74</sup> Annex 1. Letter from Beatriz, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 886. Attached to petitioner's brief of November 29, 2013. Annex 18-E; video "*Beatriz, la negación del derecho a la salud*" ["Beatriz, the denial of the right to health"], Available at: <https://vimeo.com/65681838>

<sup>75</sup> Annex 1. Reiteration of precautionary measures, May 9, 2013, IACHR. Attached to petitioner's brief of November 29, 2013. Annex 26 I.

<sup>76</sup> Annex 1. May 9, 2013 certification of Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, p. 431 (reverse). Attached to petitioner's brief of November 29, 2013. Annex 10-A.

<sup>77</sup> Newspaper *La Prensa Gráfica*. "*Salud: Beatriz puede ser atendida afuera*" ["Health: Beatriz may receive care abroad"]. May 10, 2013. Available at: <https://www.laprensagrafica.com/elsalvador/Salud-Beatriz-puede-ser-atendida-afuera-20130511-0052.html>

<sup>78</sup> Newspaper *El Faro*. "*Maternidad aclara que no interrumpe embarazo de Beatriz por prohibición de ley*" ["Maternity Hospital clarifies that it will not terminate Beatriz's pregnancy due to legal prohibition"], May 13, 2013. Available at: <https://www.laprensagrafica.com/elsalvador/Salud-Beatriz-puede-ser-atendida-afuera-20130511-0052.html>

64. On May 13, 2013, the Constitutional Chamber dismissed Beatriz's motions due to the need to challenge the available evidence. It added that there was also no defect in the Institute of Forensic Medicine's provision of the expert's opinion.<sup>79</sup>

65. On May 14, 2013, the Chief of Perinatology at the National Maternity Hospital stated that there were "small uterine contractions that are not progressing" and indicated that "support from the Medical Committee will be requested for a definitive management plan." On the same day, Beatriz's mother said, "My daughter wants to live for her one-year-old baby; she doesn't want to leave him alone. As a mother, I don't want my daughter to die."<sup>80</sup>

66. On the same day, the IACHR reiterated its request for information from the State in view of its failure report on the measures taken to safeguard Beatriz's life, humane treatment, and health.<sup>81</sup>

67. In addition, the Constitutional Chamber held the evidentiary hearing and heard closing arguments, in which it took the following statements:

- Beatriz stated that she is 23 weeks pregnant, that she is "slightly well" but at times she feels sick and tired, and that when she breathes her ribs and back hurt. She said she wants to live so that she can take care of her child and always be with him (...).
- The Director of the IML stated that "there is no clinical or laboratory evidence of any imminent, real, and present circumstance that puts B.C.'s life in danger, so inducing childbirth would be disproportionate, unnecessary, and inappropriate." He asserted that Ms. B.C. suffers from a reactive anxious state in which she considers her life to be at imminent risk, that in his opinion she is obsessed with this condition, that she has reached the point of having a quasi-obsessive phenomenon, making her think this is inevitable and that something is going to happen to her if the child does not come out.
- The Department Chief of the IML's Forensic Clinic stated that "When it comes to physical health, carrying an anencephalic fetus does not affect the health of the woman. Many pregnancies reach full term with this type of pathology, which has no negative impact, but it is a question that should be asked of a gynecologist (...). If Ms. B.C. continues with the pregnancy this disease can worsen, but it all depends on the lupus (...). There is no clinical or laboratory evidence of any imminent, real, or present circumstance that puts Ms. B.C.'s life in danger."
- The IML's Clinical Department Coordinator stated, among other things, that the underlying illness "does have an effect on pregnancy, because there is a greater risk of complications such as intrauterine growth restriction and increased blood pressure (...) which could cause her health to deteriorate."
- The forensic gynecologist declared that this was not a normal pregnancy and that the "complications could include severe pre-eclampsia, embolism, thrombus embolism, deep venous thrombosis, lupus activation, fetal suffering, premature delivery, immature delivery, and miscarriage." The expert replied in the affirmative to the question of whether the fact that "that most patients with lupus do not reach full term" was conducive to the termination of pregnancy.
- Dr. Ortiz Avendaño, an obstetric gynecologist, said that although his job as a perinatologist is to ensure the survival of both the patient and the newborn, in the present case could do nothing to improve the prognosis of the child's life, so the only thing left to do was to ensure the health of the mother. He stated that his recommendation and that of fifteen other specialists at the National Maternity Hospital was to operate at eighteen weeks, while there was still time for a vaginal procedure rather than a cesarean section. He affirmed that for Beatriz's health the date of the extraction would make a notable difference because it would reduce the risks of complication, including pre-eclampsia.
- The Director of the Hospital stated that they did not act out of fear of criminal prosecution, that the code does not differentiate clinically as to when the evacuation takes place, but rather classifies everything as an abortion. He indicated that Beatriz has not formally undergone an evacuation because she was in the abortion phase, that there is medical certainty that the unborn child will not survive (...) that although we have the right to life, the unborn child will not be able to exercise that right (...) that it is not so much the anencephaly but rather the lupus that can have an effect, that the anencephaly can

<sup>79</sup> Annex 1. Ruling, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 1003. Attached to petitioner's brief of November 29, 2013. Annex 18-E.

<sup>80</sup> Newspaper El Salvador. "Madre de Beatriz pide autoricen aborto a su hija," ["Beatriz's mother asks for her daughter's abortion to be authorized"], May 14, 2013, Available at: <https://www.elsalvador.com/noticias/nacional/106833/madre-de-beatriz-pide-autoricen-aborto-a-su-hija/>

<sup>81</sup> Annex 1. Reiteration of precautionary measures, May 9, 2013, IACHR. Attached to petitioner's brief of November 29, 2013. Annex 26-K.

become a problem during gestation (...) there is excess volume of fluid because the baby has no brain, is urinating constantly, and does not swallow amniotic fluid (...) which can lead to uterine atony at the time of childbirth, which is when the uterus fails to contract properly following delivery, potentially leading to postpartum hemorrhaging.<sup>82</sup>

68. The IACHR notes that on May 17, 2013, the National Maternity Hospital granted Beatriz permission to leave the hospital. She was again hospitalized five days later.<sup>83</sup>

69. On May 20, 2013, the Vice-Minister of Health Sector Policies told a media outlet that Beatriz was developing complications in her pregnancy and stated that it was important to intervene as soon as possible. He said that “the Court should rule as soon as possible, which is what everyone is waiting for, because with each day of delay, there is a real chance of a complication and Beatriz’s death (...). The doctors who are going to perform the procedure face the threat of imprisonment or penalties, so the Court’s interpretation must be made correctly.”<sup>84</sup> That same day, the petitioner asked the Commission to request provisional measures before the Inter-American Court. This was due to the State’s failure to adopt the precautionary measures.<sup>85</sup>

70. On May 24, 2013, the Chief of Perinatology at the National Maternity Hospital issued a report stating the following:

- Do not intervene surgically at the moment as the uterine segment has not formed and hysterotomy is more difficult technically.
- Plan to terminate the pregnancy at 28 weeks since at this stage the uterine segment begins to form, which reduces the surgical risk.
- Intervention will take place before this gestational age [for]: a) worsening of lupus symptoms; b) any obstetric complication or event such as polyhydramnios, pre-eclampsia, placental abruption, uterine rupture, or rupture of membranes.<sup>86</sup>

71. On May 27, 2013, the IACHR filed a request with the Inter-American Court of Human Rights for the adoption of provisional measures on behalf of Beatriz. The Commission indicated that:

- a) The State of El Salvador has not agreed to the measures that allow Ms. B. to have access to the termination of pregnancy. As stated previously, the fetus has no possibility of survival outside the womb and the pregnancy, together with her illness, constitutes an imminent risk to her life, humane treatment, and health.
- b) The main obstacle that has prevented Ms. B. from accessing such treatment is the absolute criminalization of abortion in the State of El Salvador.
- c) This request for provisional measures does not require the Inter-American Court to make a determination as to whether such criminalization is compatible with the American Convention.
- d) In the State of El Salvador, the law that has blocked Ms. B.’s access to the treatment she needs aims to protect the life of the fetus even in exceptional circumstances such as the present case. First, the life of the protected fetus is not viable outside the womb, a situation that is consistent with scientific evidence on this matter and that has not been disputed by the State or by the report of the Institute of Forensic Medicine. In addition, the mother is facing serious risk to her life, humane treatment, and health, which can be prevented by terminating her pregnancy.
- e) The State of El Salvador has not been able to provide an immediate and effective response to guarantee such access without fear of reprisals. It is for this reason that the Commission considers it essential to stress in the present request the need for the Inter-American Court to address this central obstacle, clearly stating that, pursuant to the provisional measures, it may not be subject to any exercise of punitive power by the State.<sup>87</sup>

<sup>82</sup> Annex 1. Ruling in *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 1003. Attached to petitioner’s brief of November 29, 2013. Annex 18-F.

<sup>83</sup> Annex 1. April 17 Medical Certification of Clinical File No. 18674-11 from the National Maternity Hospital pertaining to Beatriz, pp. 490 & 574 (305 electronic). Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>84</sup> Annex 1. Report aired on Radio YSUCA, May 20, 2013 (Compact Disk). Attached to petitioner’s brief of November 29, 2013. Annex 8.

<sup>85</sup> Annex 1. Request of May 20, 2013. Attached to petitioner’s brief of November 29, 2013. Annex 26.

<sup>86</sup> Annex 1. May 16, 2013 Medical Certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 573. Attached to petitioner’s brief of November 29, 2013. Annex 10-A.

<sup>87</sup> Annex 2. Provisional Measure of the Inter-American Court of Human Rights referring to the Commission’s request for measures, May 29, 2013.



72. On May 28, 2013, the Constitutional Chamber dismissed the writ of *amparo* on the grounds that there had been no omission on the part of the respondent authorities that had seriously endangered Beatriz's right to life and health. The Constitutional Chamber found that the respondent officials provided Beatriz with adequate medical assistance, since they were able to stabilize her health condition by providing her with treatment to control the exacerbated lupus symptoms she was experiencing. It maintained that, notwithstanding the above, the fact that Beatriz is currently stable does not mean that the risk inherent to her clinical condition has disappeared. This is due to her underlying illness, the biological changes that her body may undergo during the final stages of pregnancy, and the anencephaly of the fetus, which could cause obstetric complications in the future. Accordingly, the Constitutional Chamber stated the following:

The respondent health authorities are compelled to continue monitoring the petitioner's health status and provide her at all times with the medical treatment that is appropriate to her medical condition, as well as to implement procedures that, according to medical science, are deemed essential to address future complications that may arise. (...) In short, specialists in the field of medicine are the only ones with the knowledge and experience necessary to determine, according to the circumstances of each particular case, the most suitable measure to alleviate the conditions and complications experienced by patients. (...) This Court holds that the rights of the mother cannot be prioritized over those of the unborn and vice versa; moreover, there is an absolute impediment to authorizing the practice of an abortion because it contravenes the constitutional protection granted to the human person 'from the moment of conception.' (...) Under such imperatives, the circumstances that allow for medical intervention, and the appropriate time for it, are decisions that belong strictly to the medical professionals. They are the ones who must assume the risks involved in the practice of the profession and decide, based on their updated scientific knowledge and the analysis of the patient's records, examinations, and physical state, what is clinically appropriate to guarantee the life of both the mother and the unborn child.<sup>88</sup>

73. The IACHR notes that Constitutional Court Justice Florentin Meléndez wrote a dissenting opinion. He stated that the respondent authorities refused to terminate the pregnancy claiming to require prior legal authorization, when what they and Beatriz were requesting was the performance of a lawful medical procedure and not an abortion.<sup>89</sup>

74. On May 30, 2013 the Inter-American Court granted provisional measures "in order to prevent irreparable harm to [Beatriz's] rights to life, humane treatment, and health." With regard to the requirements that must be met in order for provisional measures to be granted, the Court stated the following:

On the first requirement [seriousness], all the medical studies have emphasized the seriousness of Ms. B.'s health condition. In fact, the illness that Ms. B. suffers, plus the other medical conditions she presents, added to the fact that she is pregnant, can lead to a number of medical complications and even death. (...).

With regard to the urgency, the Court notes that information was presented indicating that Ms. B. is currently stable and responding to the medical treatment currently being provided to her (...). Nevertheless, the Court underscores that on May 2, 2013 Ms. B.'s treating physician stated that "despite the fact that the patient is stable in terms of her illness, (...) due to the physiological changes inherent in pregnancy, combined with the natural history of the underlying illness, a crisis could arise at any moment, making it impossible to predict when she might have a medical emergency." Similarly, in its judgment of May 28, 2013, the Constitutional Chamber stressed that, "The fact that Ms. [B.] is currently stable does not mean that the risk inherent to her clinical condition (...) has disappeared, as the unpredictable behavior of her underlying illness—SLE—and the biological changes that her body may undergo during the final stages of pregnancy they increase the likelihood that the medical complications that she experienced during her first pregnancy, or other complications, will occur." Precisely the fact that it is not possible to predict whether Ms. B. will remain stable or if at any time there may be a crisis leading to a medical emergency proves that it is urgent and necessary to take measures to prevent affecting her rights to life and humane treatment. In addition, the passage of time could have an effect on the risk to Ms. B.'s life and humane treatment, bearing in mind that the Constitutional Chamber found

<sup>88</sup> Annex 1. Judgment in *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 1204. Attached to petitioner's brief of November 29, 2013. Annex 18- F.

<sup>89</sup> Annex 1. Judgment, concurring opinion in *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 1200. Attached to petitioner's brief of November 29, 2013. Annex 18- F.

that “the clinical record” indicates that “as the pregnancy advances, the patient may suffer exacerbated SLE symptoms and the obstetric complications mentioned above, her clinical condition being aggravated by fetal anencephaly that could cause other conditions,” and that the Pan American Health Organization indicated that “the physiological changes inherent in pregnancy may accelerate and aggravate Ms. B.’s disease,” and even “trigger a number of obstetric complications that were already present in her first pregnancy, including pre-eclampsia.”

In relation to the alleged irreparable harm that might occur if the necessary measures are not taken, the Court emphasizes that Ms. B.’s treating physicians have concluded that her illness, combined with carrying a fetus with “anencephaly, a major anomaly incompatible with extrauterine life,” could pose risks to her health such as severe obstetric hemorrhaging, aggravation of lupus, worsening renal failure, and severe pre-eclampsia, including complicated forms of it such as hypertensive crisis, cerebral hemorrhage, arterial and venous thrombosis, pulmonary thromboembolism, postpartum infections, and maternal death (...). The Court emphasizes that her mental health may also be endangered (...). It was indicated that “[t]he patient’s emotional state is also affected by her feelings about the possibility of suffering the consequence of imprisonment (...) another situation that causes tension in the patient is her necessary separation from the family due to her current hospitalization.” The Institute of Forensic Medicine concluded that “[t]hese situations have led to the appearance of psychosomatic symptoms consistent with a state of emotional stress.” For this reason, the Court considers that the risk of irreparable harm to Ms. B.’s life and mental and physical integrity have been proven in this case.<sup>90</sup>

75. According to the medical file, on June 3, 2013, Beatriz was assessed and it was found that “there is slight uterine contraction” and that “if she goes into labor, [the uterus] will be evacuated.” A slight increase in amniotic fluid was also detected, and a cesarean section was indicated as a plan. On the same day, she underwent surgery: “surgery begins, skin incisions are made in layers until they reach the cavity; an incision is made in the uterus and (...) Dr. Ortiz (...) extracts a single product (...)” It was indicated that “the infant presented a total absence of skullcap and brain tissue” and died five hours later. The record also shows that Beatriz was sterilized at her request.<sup>91</sup>

76. The Director of the Maternity Hospital of San Salvador gave assurances in a press conference that the court rulings did not influence the decision to operate on Beatriz. He maintained that this was due to “the evolution of the patient’s condition.”<sup>92</sup>

77. On 4 June 2013, the Office of the United Nations High Commissioner for Human Rights issued a report indicating that the three previously mentioned special rapporteurs “strongly condemned the decision of the Constitutional Chamber (...) which denied a young woman’s request to terminate a life-threatening pregnancy.” They stated that “the court’s decision is in clear contravention of El Salvador’s human rights obligations, including article 12 of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right to the highest attainable standard of physical and mental health and article 12 of the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] to which El Salvador is party.” They added that having obliged Beatriz to continue with the pregnancy could amount to cruel, inhumane and degrading treatment. Finally, they called on the Salvadoran State to “reconsider the serious consequences on women’s rights of the abortion legislation and practice in El Salvador, and to afford the legal protection that all women in the country deserve.”<sup>93</sup>

78. The next day, Beatriz’s mother told the media, “they have made my daughter suffer too much. This should have ended sooner. They didn’t have to get to this point.” Beatriz also stated the following:

<sup>90</sup> Annex 1. Granting of provisional measures, May 30, 2013, Inter-American Court of Human Rights. Attached to petitioner’s brief of November 29, 2013. Annex 27-A

<sup>91</sup> Annex 1. May 16, 2013 Medical Certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 484. Attached to petitioner’s brief of November 29, 2013. Annex 10-A

<sup>92</sup> Newspaper El Mundo (Spain), “*El calvario de Beatriz... es por ser ‘una paciente pobre’*” [“Beatriz’s ordeal... is because she is a ‘poor patient’”], June 5, 2013. Available at: <https://www.elmundo.es/america/2013/06/05/noticias/1370441064.html>

<sup>93</sup> OHCHR: Press Release: UN experts urge El Salvador to reconsider abortion legislation, citing ruling against ill woman. 4 June 2013. Available at: <https://news.un.org/en/story/2013/06/441352>

This should have happened sooner (...). I am sad because [the fetus] died, but they had already said it was not going to live (...). I told them it was better to take it out of me, but they waited a long time and it was worse (...). I don't want anyone to go through this (...). If it happens to someone else, she will die.<sup>94</sup>

79. On June 5, 2013, the legal advisor to the Ministry of Health stated that his country's abortion laws "are quite rigid" and agreed with the Constitutional Chamber's ruling that "there should be an out-of-court procedure" that allows doctors to act "without criminal responsibility" in certain cases. He stated that "the medical team was even willing to submit to a judicial proceeding."<sup>95</sup> The Minister of Health said, "ideally, the law should change (...) the less economic and legal power a person has, the greater the chances he or she has of being the victim of unfair legislation."<sup>96</sup>

80. Between June 7 and 9, 2013, Beatriz experienced some health complications, so she was given a higher dose of antihypertensive medications and a transfusion of red blood cells.<sup>97</sup> The doctors discharged her on June 10, 2013.<sup>98</sup> According to the State, during the month of June, Beatriz attended medical check-ups to monitor her health status.<sup>99</sup>

81. On July 3, the Human Rights Ombudsperson admitted the complaint that had been filed in April. She indicated that if the alleged facts were true, they would constitute violations of the rights "to health, to humane treatment, and to differentiated medical treatments, with the resulting impact on life due to a lack of medical care."<sup>100</sup> The Commission has no information on the outcome of this case.

82. In connection with the provisional measures granted by the Inter-American Court, on July 16, 2013, the IACHR filed a brief stressing that it was important for the Court to request additional information from the Salvadoran State on Beatriz's health status, including information related to reported kidney failure following the cesarean section.<sup>101</sup> On August 19, 2013, the Court issued a ruling to lift the provisional measures ordered on Beatriz's behalf, stating the following:

On the requirement of extreme seriousness, the Court notes that the medical procedure that terminated Ms. B.'s pregnancy was performed on 3 June 2013 (...). In this regard, the Court considers it important to emphasize that it views positively the appropriate and timely work of the State authorities to comply with the provisional measures ordered on behalf of Ms. B. The Court also observes that after the cesarean section Ms. B. was said to be stable. (...) In the light of the foregoing, the Court finds that the potential risks to her life and to humane treatment arising from the continuation of her pregnancy are no longer present. (...) The Court does not have sufficient information to determine that Ms. B. is currently in an extremely serious situation, and even more so considering that the factual situation that gave rise to these provisional measures no longer exists. Since one of the requirements indicated in Article 63 of the

<sup>94</sup> Newspaper El País. "*Han hecho sufrir demasiado tiempo a Beatriz' dice su madre*" ["They've made Beatrice suffer too long,' says her mother"], June 5, 2013.

Available at: [https://elpais.com/sociedad/2013/06/04/actualidad/1370382023\\_425957.html](https://elpais.com/sociedad/2013/06/04/actualidad/1370382023_425957.html). Newspaper El País "*No quiero que nadie pase por esto*" ["I don't want anyone else to go through this"], June 8, 2013.

Available at: [https://elpais.com/sociedad/2013/06/08/actualidad/1370714307\\_974930.html?rel=mas](https://elpais.com/sociedad/2013/06/08/actualidad/1370714307_974930.html?rel=mas)

<sup>95</sup> "*La Cesárea que terminó en polémica*" ["The C-section that ended in controversy"], Available at: <https://www.pagina12.com.ar/diario/sociedad/3-221581-2013-06-05.html>

<sup>96</sup> Listin Newspaper. "*Beatriz se recupera luego de terminar su embarazo*" ["Beatriz recovers after ending her pregnancy"], <https://listindiario.com/las-mundiales/2013/6/4/279537/Beatriz-se-recupera-luego-de-terminar-su-embarazo>

<sup>97</sup> Annex 1. Perinatal analysis of Beatriz's case, July 26, 2013, Guillermo Antonio Ortiz Avendaño, pp. 36-37. Attached to petitioner's brief of November 29, 2013. Annex 12. Annex XX. May 16, 2013 Medical Certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Beatriz, p. 563. Attached to petitioner's brief of November 29, 2013. Annex 10-A.

<sup>98</sup> Annex 1. May 16, 2013 Medical Certification of Clinical File 18674-11 (pp. 356-641) from the National Maternity Hospital pertaining to Ms. Beatriz, p. 559. Attached to petitioner's brief of November 29, 2013. Annex 10-A.

<sup>99</sup> Annex 1. I/A Court H.R., Matter of B. regarding El Salvador. Note 965, Acknowledgement of receipt and forwarding of the observations of the IACHR and the report of the Salvadoran State, p. 6. Attached to petitioner's brief of November 29, 2013 Annex 27 C. Annex 1. I/A Court H.R., Matter of B. regarding El Salvador. Note 1258, I/A Court H.R., Decision of August 19, 2013. Attached to petitioner's brief of November 29, 2013 Annex 27-I.

<sup>100</sup> Annex 1. Certification of Case File, *Amparo* 310-2013, Constitutional Chamber of the Supreme Court of Justice of El Salvador, p. 2433. Annex 18 L.

<sup>101</sup> Annex 1. I/A Court H.R., Decision of July 18, 2013. Attached to petitioner's brief of November 29, 2013. Annex 27-G.

Convention is not met, the Court deems it necessary to lift the provisional measures adopted on her behalf.<sup>102</sup>

83. In a communication dated November 8, 2017, the petitioner reported that on October 8, 2017, Beatriz died “from complications in her delicate state of health, after a traffic accident.”<sup>103</sup> In its communication of February 19, 2018 the petitioner maintained that immediately after the accident, in which she had been travelling on a motorcycle with a relative, she was taken to the National Hospital of Jiquilisco. The petitioner explained that she had been hospitalized for “mild head trauma.”

84. The petitioner reported that she was transferred to the Usulután National Hospital and that after further medical examinations, it was determined that she “had no fracture” and was therefore discharged. The petitioner added that two days later Beatriz presented respiratory difficulties and was transferred to the National Hospital of San Miguel where she suffered two cardiac arrests. This was “a product of the nosocomial pneumonia that she had acquired because, having systemic lupus erythematosus, her defenses were low.” The petitioner maintained that they have not had access to Beatriz’s medical file, although the Institute of Forensic Medicine “determined that the cause of Beatriz’s death was nosocomial pneumonia and systemic lupus erythematosus.”<sup>104</sup> The State did not submit any information on the matter.

#### IV. ANALYSIS OF LAW

##### A. Rights to life, personal integrity, health, privacy, and reproductive autonomy (articles 4(1),<sup>105</sup> 5(1), 5(2),<sup>106</sup> 11(2)<sup>107</sup>, 11(3)<sup>108</sup> and 26.<sup>109</sup> of the American Convention, in conjunction with articles 1(1) and 2 of the Convention)

##### 1. General considerations

85. The Commission and the Inter-American Court have held that the right to life is fundamental, as the exercise of the other rights depend on its protection.<sup>110</sup> Based on this, States have the obligation to guarantee the creation of the conditions required for its full enjoyment and exercise.<sup>111</sup> Likewise, the Court has found that compliance with Article 4 of the American Convention, in relation to Article 1(1) of the Convention, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.<sup>112</sup> Specifically, it includes States’ duty to adopt the measures necessary to deter any threat to the right to life.<sup>113</sup> As for this right, the Commission also recalls the holding of the Inter-American Court in the case of *González Lluy et al v. Ecuador*, in

<sup>102</sup> Annex 1. I/A Court H.R., Lifting of provisional measures, August 19, 2013. Attached to petitioner’s brief of November 29, 2013. Annex 27-J.

<sup>103</sup> Communication from the petitioner, November 8, 2017.

<sup>104</sup> Communication from the petitioner, February 19, 2018.

<sup>105</sup> Article 4(1): Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>106</sup> Article 5(1): Every person has the right to have his physical, mental, and moral integrity respected.

<sup>107</sup> Article 11(2): No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

<sup>108</sup> Article 11(3): Everyone has the right to the protection of the law against such interference or attacks.

<sup>109</sup> Article 26: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

<sup>110</sup> IACHR. Report No. 25/18. Case 12.428. Admissibility and Merits. Employees of the Fireworks Factory in Santo Antonio de Jesus and their relatives. Brazil. March 2, 2018, para. 91. Inter-American Court. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 78.

<sup>111</sup> Inter-American Court. *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala*, Merits. Judgment of November 19, 1999. Series C No. 63, para. 144.

<sup>112</sup> Inter-American Court. *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of September 4, 2012. Series C No. 196, para. 74.

<sup>113</sup> Inter-American Court. *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298. Par. 169.

terms of potential infringement of the right to life as a result of the risk to which a person was exposed because of an act or omission by the State, even though said risk never materialized.<sup>114</sup>

86. With respect to the right to life of pregnant women, the IACHR deems it appropriate to note that the Human Rights Committee of the United Nations recently held that although States may adopt measures designed to regulate voluntary termination of pregnancy, those measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant, such as the prohibition of cruel, inhuman or degrading treatment or punishment. Thus, statutory restrictions on the ability of women or girls to seek abortion must not, *inter alia*, jeopardize their lives or subject them to physical pain or suffering. The Committee expressly noted that States parties must provide safe access to abortion where the life and health of the pregnant woman or girl is at risk, as well as in situations in which carrying the pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable. In the view of the Human Rights Committee, States may not regulate pregnancy or abortion in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortion. For example, they should not apply criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing so, since taking such measures compels women and girls to resort to unsafe abortion. States should remove existing barriers to access to safe and legal abortion, as well as protect the lives of women and girls against the mental and physical health risks associated with unsafe abortions.<sup>115</sup>

87. With regard to the right to humane treatment, the Court has found that States have a duty to take the necessary measures to address threats to the physical integrity of persons.<sup>116</sup> Likewise, the duty to guarantee the right to humane treatment extends to psychological and moral integrity. The IACHR has emphasized that the American Convention prohibits the use of torture and of cruel, inhuman, or degrading treatment against people in any circumstance.<sup>117</sup>

88. The IACHR has repeatedly addressed the interrelation and interdependence between the rights to life and humane treatment and the right to health.<sup>118</sup> In this regard, both bodies of the inter-American system have, for the purposes of interpreting the rights to life and humane treatment as they interact with the right to health, taken into account the contents of the American Declaration of the Rights and Duties of Man<sup>119</sup> and the Additional Protocol to the American Convention on Human Rights on Economic, Social, and Cultural Rights (Protocol of San Salvador).<sup>120</sup>

<sup>114</sup> IA Court of HR. Case of Gonzales Lluy et al v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298. para. 191.

<sup>115</sup> Human Rights Committee. General Comment No. 36, General No. 36, CCPR/C/GC/36, September 3, 2019, par. 8.

<sup>116</sup> Inter-American Court. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 128.

<sup>117</sup> IACHR. Report No. 24/18. Case 12.982. Merits. Azul Rojas Marín *et al.* Peru. February 24, 2018, para. 92.

<sup>118</sup> IACHR. Report No. 102/13. Case 12.723. Merits. TGGL. Ecuador. November 5, 2013. IACHR. Report: Access to Maternal Health Services from a Human Rights Perspective. June 7, 2010. Section II.

<sup>119</sup> Article XI of the American Declaration of the Rights and Duties of Man establishes: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

<sup>120</sup> Ratified by the State of Guatemala on October 5, 2010. Article 10 of the Protocol of San Salvador establishes that:

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
  - a. Primary health care, that is, essential health care made available to all individuals and families in the community;
  - b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
  - c. Universal immunization against the principal infectious diseases;
  - d. Prevention and treatment of endemic, occupational and other diseases;
  - e. Education of the population on the prevention and treatment of health problems, and
  - f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

89. Specifically, the Inter-American Court has repeatedly found that the rights to life and personal integrity are directly and immediately linked to attention to human health,<sup>121</sup> and that the “absence of adequate medical care” can lead to its violation.<sup>122</sup> The Commission finds that this approach, in turn, constitutes a clear expression of the interdependence and indivisibility of civil and political rights with economic, social, and cultural rights.<sup>123</sup> In the words of the Court, both groups of rights should be “understood integrally as human rights without any specific ranking between them, and as rights that can be required in all cases before those authorities with the relevant competence.”<sup>124</sup>

90. As for the right to health as an autonomous protected right under Article 26 of the ACHR, according to consistent legal precedents of the Commission, examination of a concrete case in light of Article 26 of the American Convention must be conducted at two levels. First, it is necessary to establish whether the law relevant to the case at hand is derived from “the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States,” as indicated in the text of Article 26. That is to say, it is Article 26 of the American Convention on Human Rights that cites the OAS Charter as the direct source of rights, characterizing as human rights such provisions in the treaty as may be discerned therein. Given that the object of the OAS Charter was not to single out rights but to establish an international organization, it is necessary to resort to ancillary texts to identify the rights emanating from the provisions of this instrument, including most fundamentally the American Declaration and other important provisions of the international *corpus juris*.

91. In application of the above parameters, both bodies of the Inter-American system have found autonomous violations of the right to health under Article 26 of the American Convention<sup>125</sup>, without detriment to the corresponding conclusions with regard to the rights to life and humane treatment. Regarding protection of content of Article 26 of the American Convention, the Court ruled on the matter in its most recent case as follows:

The Court notes that a literal, systematic, and teleological interpretation leads to the conclusion that Article 26 of the American Convention protects the rights derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter. The scope of these rights must be understood in conjunction with the other provisions of the American Convention. They are therefore subject to the general obligations contained in articles 1(1) and 2 of the Convention and can be subject to supervision by this Court, pursuant to the terms of article 62 and 63 of the Convention. This conclusion is not based solely on formal argumentation: it is the result of the interdependence and indivisibility of civil and political rights with economic, social, cultural, and environmental rights, as well as their compatibility with the objective and aim of the Convention, which is to protect the fundamental rights of human beings.<sup>126</sup>

92. Once that has been established, it is a matter of determining whether the State in question fulfilled its obligation to “progressively achieve” the full realization of such and such a right or those general obligations to respect and guarantee it. At this second level of examination, it is necessary to take into consideration the

<sup>121</sup> Inter-American Court. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 130; and Case of Vera Vera *et al.* v. Ecuador. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 226, para. 43.

<sup>122</sup> Inter-American Court. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 130; Case Tibi v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, para. 157, and Case of Vera Vera *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2011. Series C No. 226, para. 44.

<sup>123</sup> IACHR. Report No. 2/16. Case 12.484. Merits. Luis Rolando Cuscul Pivaral and other persons with HIV/AIDS. Guatemala. April 13, 2016, para. 105.

<sup>124</sup> Inter-American Court. Case of Acevedo Buendía *et al.* (“Discharged and Retired Employees of the Comptroller”) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 101. Also, see: UN. Committee on Economic, Social and Cultural Rights. General Comment No. 9, para. 10.

<sup>125</sup> See, inter alia, IACHR, Report No. 110/18, Case 12.678 Merits. Paola del Rosario Albarracín Guzmán and Relatives. October 5, 2018; IACHR. Report No. 153/18. Case 13.069. Merits. Manuela and Family. El Salvador, December 7, 2018; IA Court of HR. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349. Para. 110; IA Court of HR. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359. Para. 99.

<sup>126</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 97.

nature and scope of the obligations enforceable upon a State under Articles 1.1, 2 and 26 of the Convention, as well as the content of the right concerned, as shall be done hereafter.

93. Specifically, with regard to the scope of the demandable obligations, the Inter-American Court has found that Article 26 of the Convention incorporates both immediate obligations and progressive implementation. Among the immediate obligations, the Commission has highlighted that they include: (i) general obligations to respect and guarantee, (ii) application of the principle of nondiscrimination to economic, social, and cultural rights; (iii) obligations to take steps or adopt measures to make it possible to enjoy the rights included in that article; and (iv) obligations to provide suitable and effective remedies for protecting those rights. Additionally, a correlative ban on regressive implementation follows from the obligation of progressive implementation set forth in Article 26 of the American Convention, both of which are subject to jurisdictional review by the organs of the Inter-American system, which will be examined in a separate section of the instant report.

94. As for the self-executing components of the obligation to take steps, adopting measures in itself is not qualified by or contingent upon other considerations; therefore, although the effective and full realization of these rights may be achieved progressively, steps toward this end must be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. The State also has core obligations to ensure satisfying minimum essential levels of each of the rights that are not subject to progressive realization but are self-executing.<sup>127</sup>

95. In this context, the Court has recognized that health is a fundamental human right, that is essential to the adequate exercise of the other human rights, and every human being has the right to the highest attainable standard of health to provide for a decent life, with health defined not only as the absence of illness or disease, but also as complete physical, mental and social wellbeing, as a result of the ability to attain a fully balanced life.<sup>128</sup>

96. Thus, in order to both analyze the potential violations of the rights to life and humane treatment related to health, and to determine the autonomously demandable obligations under the right to health protected by Article 26 of the Convention, the Commission and the Court have taken into consideration the principles of availability, accessibility, acceptability, and quality of the medical services rendered, indicating that these obligations must be oriented toward satisfying these principles,<sup>129</sup> which were conceptualized by the Committee on Economic, Social and Cultural Rights as “essential and interrelated.” Given that this case involves the alleged lack of access to a reproductive and sexual health to the detriment of the rights of Beatriz, and based on the circumstances of the case, the IACHR underscores the following relevant content:

*Accessibility.* Health facilities, goods, information and services related to sexual and reproductive health care should be accessible to all individuals and groups without discrimination and free from barriers (...).  
*Acceptability.* All facilities, goods, information and services related to sexual and reproductive health must be respectful of the culture of individuals, minorities, peoples and communities and sensitive to gender, age, disability, sexual diversity and life-cycle requirements. However, this cannot be used to justify the refusal to provide tailored facilities, goods, information and services to specific groups.<sup>130</sup>

97. In that context, the IACHR notes that the right to health also encompasses the protection of individuals' sexual and reproductive health; specifically, this area includes the right to make free and responsible decisions and choices concerning sexual and reproductive health, as well as unhindered access to sexual and reproductive health facilities, goods, services and information.<sup>131</sup> According to the Programme of Action of the

<sup>127</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant), 1990. Also see: IACHR. Report on Poverty and Human Rights in the Americas OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

<sup>128</sup> IA Court of HR. *Case of Cuscul Pivaral et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 105.

<sup>129</sup> Inter-American Court. *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261.

<sup>130</sup> United Nations Committee on Economic, Social and Cultural Rights. General Comment Number 22, E/C.12/GC/22, May 2, 2016, paras. 15 and 20.

<sup>131</sup> United Nations Committee on Economic, Social and Cultural Rights. General Comment Number 22, E/C.12/GC/22, May 2, 2016, paras. 5 and 6

International Conference on Population and Development, approved by consensus in Cairo, “Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. [...] reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. [...] It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”<sup>132</sup> For its part, the Beijing Platform for Action further asserts that: “The rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”<sup>133</sup>

98. In the view of the IACHR, poverty, social inequality, and different forms of discrimination, such as sex, age and gender-based discrimination, have a direct bearing on the extent to which the right to health, in general, and to sexual and reproductive health, specifically, are realized. In other words, social inequality and different forms of discrimination are social determinants of effective enjoyment of sexual and reproductive health. Hence, it is the duty of States to address such social determinants in their institutional framework, legislation and practices in order to ensure effective enjoyment of the right to the sexual and reproductive health of individuals and, particularly, of women, because they tend to be disproportionately affected as a result of their reproductive capacity. In this context, as will be further explained hereafter, under the principle of equality and non-discrimination, which applies to all provisions of the Convention, and the autonomous right to equal protection of the law, with respect to the right to health, States must provide adequate health services to women based on their life-cycle requirements and taking into account their particular needs. Additionally, States must ensure that laws, policies or practices in this sphere are aimed at overcoming the disadvantages experienced by women in exercising their right to sexual and reproductive health.<sup>134</sup>

99. Finally, regarding Article 11.2 of the American Convention, the Commission observes that the Inter-American Court has indicated in its jurisprudence that:

[...] although this norm is entitled “Protection of Honor and Dignity”, its content includes, among other things, the protection of private life. Private life is a broad concept that is not susceptible to exhaustive definitions and includes, among other protected areas, sexual life and the right to establish and develop relationships with other human beings.<sup>135</sup>

100. In the case of *Artavia Murillo v. Costa Rica*, the Inter-American Court indicated that:

[...] the right to private life is related to: i) reproductive autonomy, and ii) access to reproductive health services, which involves the right to access the medical technology necessary to exercise that right. The right to reproductive autonomy is also recognized in Article 16 (e) of the Convention for the Elimination of All Forms of Discrimination against Women, according to which women enjoy the right “to freely and responsibly decide the number of their children and the interval between births and to have access to information, education and the means that allow them to exercise these rights.”<sup>136</sup>

101. In this way, the IACHR considers that the present case deals, in addition to the existence of risks to the right to life, of a particular combination of different aspects that is directly and immediately related to the joint protection of the rights to personal integrity, private life, and health, both physical and mental.

<sup>132</sup> UN. International Conference on Population and Development. A/CONF.171/13, October 18, 1994, paras. 7.2 and 7.3.

<sup>133</sup> UN. Report of the Fourth World Conference on Women, A/CONF.177/20/Rev.1, September 4-15, 1995, para. 96.

<sup>134</sup> United Nations Committee on Economic, Social and Cultural Rights. General Comment Number 22, E/C.12/GC/22, May 2, 2016, paras. 22-32

<sup>135</sup> IA Court of HR. Case of *Atala Riffo and girls v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 162; and Case of *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257, para. 143.

<sup>136</sup> IA Court of HR. Case of *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257, para. 146.



## 2. Pronouncements of international human rights law and comparative law on pregnancy termination in cases of risk to the health, life, and integrity of the woman and/or a fetus incompatible with life outside the womb

102. In view of the foregoing general standards on the rights allegedly violated to the detriment of Beatriz, the Commission views it as appropriate, before beginning its analysis of the specific case, to provide an overview of a series of pronouncements in international human rights law on the issue under equal or similar circumstances to those facing Beatriz—that is, a situation of risk to the health, life, and integrity of the woman and/or a fetus that was incompatible with life outside the womb.

103. In the universal human rights system, two treaty supervision bodies with competence to hear individual cases have ruled on this issue. In 2005, the Human Rights Committee ruled in the case of *K.L. v. Peru*, on a girl pregnant with an anencephalic fetus who was not able to access a termination of her pregnancy.. The Committee noted that “in Peru there is no administrative remedy which would enable a pregnancy to be terminated on therapeutic grounds, nor any judicial remedy functioning with the speed and efficiency required to enable a woman to require the authorities to guarantee her right to a lawful abortion within the limited period, by virtue of the special circumstances obtaining in such cases.”<sup>137</sup>

104. The Committee concluded that K.L. “was exposed to a life-threatening risk.” This was due to the existence of a gynecological-obstetric medical report indicating that because of K.L.’s age and the fact that the fetus was anencephalic, continuing with the pregnancy would endanger her life. The Committee found that the authorities’ refusal to terminate the pregnancy “may have endangered [K.L.]’s life.”<sup>138</sup>

105. The Committee also concluded that the “pain and distress” that K.L. suffered as a result of the medical authorities’ refusal to perform an abortion and her awareness regarding the non-viability of the fetus because it was anencephalic “could have been foreseen.” It added that along with this was the suffering she experienced when giving birth and “seeing her daughter’s marked deformities and knowing that her life expectancy was short.” The Committee concluded that the State violated the right to humane treatment established in Article 7<sup>139</sup> of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”) because the State’s failure to terminate the pregnancy was “the cause of the suffering she experienced.”<sup>140</sup> The Committee also concluded that the State violated K.L.’s right to privacy, as established in Article 17<sup>141</sup> of the ICCPR.

106. The same Committee also found that the fact that an action or prohibition is passed off as legal under domestic law, does not mean there has not been any infringement of the relevant international treaty; in other words, statutory or constitutional prohibition cannot be an excuse to not meet international obligations emanating from the treaty. In this context, the Committee found that preventing the termination of pregnancy, despite the unviability of the fetus and even though it was prohibited under law, constituted unreasonable interference in the woman’s decision about the best way to bear her pregnancy in such circumstances. In this particular situation, the aforementioned Committee held that the State’s decision to give priority to protecting the fetus over the rights of women could not be justified.<sup>142</sup> Moreover, in the case of *L.M.R v. Argentina*, the same Committee found that denying legal abortion in a case of rape of a person with disability caused physical and mental suffering in the victim and, thereby, violated her right to not be subjected to torture or cruel, inhuman or degrading punishment.<sup>143</sup>

107. In 2011, the Committee on the Elimination of Discrimination against Women reached a decision in the case of *L.C. v. Peru*, regarding a girl who had become pregnant as the result of a rape. Because of that situation, L.C. suffered from anxiety and depression, and after she tried to commit suicide, she needed urgent surgery and

<sup>137</sup> Human Rights Committee. *K.L. v. Peru*. Communication No. 1153/2003. CCPR/C/85/D/1153/2003, November 22, 2005, para. 5.2.

<sup>138</sup> Human Rights Committee. *K.L. v. Peru*. Communication No. 1153/2003. CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.2-6.3.

<sup>139</sup> Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

<sup>140</sup> Human Rights Committee. *K.L. v. Peru*. Communication No. 1153/2003. CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.3.

<sup>141</sup> Article 17: (...) Everyone has the right to the protection of the law against such interference or attacks.

<sup>142</sup> Human Rights Committee. *Whelan v. Ireland*, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, March 17, 2017. paras. 7.4-7.9.

<sup>143</sup> Human Rights Committee. *L.M.R. v. Argentina*, Communication No. 1608/2007. Decision of March 29, 2011. Paras. 9.2-10 .

was at risk of permanent disability. The doctors decided not to operate on L.C. because it could cause a therapeutic abortion, which was prohibited by domestic legislation.<sup>144</sup>

108. With regard to this, the Committee found that, pursuant to Article 12 of the Convention on the Elimination of Discrimination against Women (hereinafter “the CEDAW”), States must “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” It added that “It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.” The Committee concluded as follows:

In view of the foregoing, the Committee considers that, owing to her condition as a pregnant woman, L. C. did not have access to an effective and accessible procedure allowing her to establish her entitlement to the medical services that her physical and mental condition required. Those services included both the spinal surgery and the therapeutic abortion. This is even more serious considering that she was a minor and a victim of sexual abuse, as a result of which she attempted suicide. The suicide attempt is a demonstration of the amount of mental suffering she had experienced. The Committee therefore considers that the facts as described constitute a violation of the rights of L.C. under article 12 of the Convention. The Committee also considers that the facts reveal a violation of article 5 of the Convention, as the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother.<sup>145</sup>

109. In 2016 and 2017, the Human Rights Committee issued opinions in two cases against Ireland. In both matters, the Committee analyzed the situation of two women who had become pregnant, but their fetuses had a “[congenital] condition and would in all likelihood die in utero or shortly after birth.” These individuals could not seek surgery to terminate their pregnancies because the law prohibited abortion.

110. The Committee concluded that the fact that the abortion prohibition was legal nationally did not mean that it could not be in violation of the ICCPR, specifically of the right to humane treatment established in Article 7 of that instrument.<sup>146</sup> The Committee concluded that the State’s denial of a termination of a pregnancy in which the fetus would not be able to survive “subjected the author to conditions of intense physical and mental suffering.” It underscored that the situation of knowing that the pregnancy was not viable, as well as “the shame and stigma associated with the criminalization of abortion of a fatally ill fetus” led the person to experience “physical and mental anguish.” To this was added the State’s refusal “to provide her with the necessary and appropriate post-abortion and bereavement care.” The Committee therefore concluded that these facts constituted cruel and degrading treatment.<sup>147</sup>

111. It added that the State restricted the right to privacy of the victims, specifically their reproductive freedom. This was the result of the victim having decided to not continue with her pregnancy but the State refusing to perform a surgical procedure to terminate it.<sup>148</sup> The Committee found that this restriction was arbitrary because “the balance that the State party has chosen to strike between protection of the fetus and the rights of the woman in the present case cannot be justified” in a context in which the pregnancy was not viable.<sup>149</sup>

112. The Committee also observed that “women pregnant with a fetus with a fatal impairment, who nevertheless decide to carry the fetus to term continue to receive the full protection of the public health-care system.” It held that, by contrast, “women who choose to terminate a non-viable pregnancy must rely on their own financial resources to do so entirely outside the public health-care system. They are denied health insurance coverage for that purpose (...) and they are denied post-termination medical care and bereavement

<sup>144</sup> Human Rights Committee. *L.C v. Peru*. Communication No. 22/2009. CEDAW/C/50/D/22/2009, November 4, 2011.

<sup>145</sup> Human Rights Committee. *L.C v. Peru*. Communication No. 22/2009. CEDAW/C/50/D/22/2009, November 4, 2011, paras. 8.11 and 8.15.

<sup>146</sup> Human Rights Committee. *The author v. Ireland*. Communication No. 2425/2014. CCPR/C/119/D/2425/2014, July 11, 2017, para. 7.4.

<sup>147</sup> Human Rights Committee. *The author v. Ireland*. Communication No. 2324/2013. CCPR/C/116/D/2324/2013, November 17, 2016, paras. 7.4-7.6.

<sup>148</sup> Human Rights Committee. *The author v. Ireland*. Communication No. 2425/2014. CCPR/C/119/D/2425/2014, July 11, 2017, para. 3.4.

<sup>149</sup> Human Rights Committee. *The author v. Ireland*. Communication No. 2324/2013. CCPR/C/116/D/2324/2013, November 17, 2016, paras. 7.7-7.8.

counselling they need.”<sup>150</sup> Therefore, the Committee found that “the differential treatment to which the author was subjected in relation to other similarly situated women failed to adequately take into account her medical needs and socioeconomic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose.” The Committee concluded that the State’s refusal to terminate the nonviable pregnancy was discriminatory because it violated the right established in article 26<sup>151</sup> of the ICCPR.

113. In 2018 CEDAW, after an investigation carried out on the United Kingdom of Great Britain and Northern Ireland, held that criminal legislation that “obliges women in cases of serious fetal malformation, including fetal anomalies incompatible with life, and the victims of rape or incest, to carry the pregnancy to term, thereby subjecting them to serious mental and physical anguish, constitutes gender violence against women.”<sup>152</sup> As summarized by the Special Rapporteur on violence against women, its causes and consequences, the Committee concluded “that this restriction on making reproductive decisions, which only affected women, forced them to carry almost all pregnancies to term.”, caused mental or physical suffering, constituted an act of violence against women and amounted to torture or cruel, inhuman and degrading treatment (...).<sup>153</sup>

114. Likewise, the Special Rapporteur on violence against women, its causes and consequences has used the term “obstetric violence” to refer to the violence suffered by women during delivery care in health centers and has indicated how one of the forms of abuse “that, in many legal systems, the interest of the fetus prevails over the rights of the pregnant woman, which gives rise to situations in which women are deliberately not consulted regarding the decision to give birth or not to the child by caesarean section.”<sup>154</sup> Likewise, it has referred to the structural problems that give rise to this type of violence, recommending “[repealing] the laws that criminalize abortion in all circumstances, eliminating punitive measures for women who undergo an abortion, and at least, legalize abortion in cases of sexual assault, rape, incest, and when continuing with the pregnancy poses a risk to the physical and mental health or life of the woman, and facilitate access to safe and secure post-abortion care quality”.<sup>155</sup>

115. In the European system, the European Court of Human Rights (hereinafter “the ECHR”) has also ruled on cases of pregnancy termination where the pregnant woman’s life or integrity were at risk as well as situations in which the fetus is incompatible with life.

116. With regard to the first situation, the ECHR has ruled in two cases. In 2007, the ECHR heard the case of *Tysic v. Poland*, in which the State denied the victim an abortion even though the pregnancy could have caused grave harm to her integrity of person—specifically, by detaching her retina and possibly causing her to lose her sight.<sup>156</sup> In 2010, the ECHR ruled in the case of *A, B, and C v. Ireland*.<sup>157</sup> In that matter, three impoverished women who had serious health problems were not able to have abortions in Ireland because it was prohibited.

117. In both cases, the ECHR analyzed the situation in the framework of article 8 of the European Convention, which establishes the right to privacy. The ECHR emphasized that privacy is a broad concept that includes, among other things, the right to personal autonomy and personal development. This includes issues such as

<sup>150</sup> Human Rights Committee. *The author v. Ireland*. Communication No. 2324/2013. CCPR/C/116/D/2324/2013, November 17, 2016, para. 7.10.

<sup>151</sup> Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>152</sup> Committee on the Elimination of Discrimination against Women, *Inquiry into 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: Report of the Committee*, CEDAW/C/OP.8/GBR/1, para. 83 a).

<sup>153</sup> General Assembly of the United Nations Organization, *Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to abuse and violence against women in reproductive health services, with special emphasis on delivery care and obstetric violence*. Seventy-fourth session, A/74/137, July 11, 2019, para. 58.

<sup>154</sup> General Assembly of the United Nations Organization, *Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to abuse and violence against women in reproductive health services, with special emphasis on delivery care and obstetric violence*. Seventy-fourth session, A/74/137, July 11, 2019, para. 24.

<sup>155</sup> General Assembly of the United Nations Organization, *Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to abuse and violence against women in reproductive health services, with special emphasis on delivery care and obstetric violence*. Seventy-fourth session, A/74/137, July 11, 2019, para. 81r).

<sup>156</sup> ECHR. *Case of Tysic v. Poland*. Judgment of September 24, 2007, para. 104.

<sup>157</sup> ECHR. *Case of A, B, and C v. Ireland*. Judgment of December 16, 2010.

gender identification, sexual orientation and sex life, the physical and psychological integrity of a person, and decisions on whether to have children.<sup>158</sup>

118. The ECHR also underscored that legislation regulating pregnancy termination touches on the sphere of a woman's privacy. It added that article 8 of the European Convention cannot be interpreted to mean that the pregnancy and its termination pertain only to a woman's privacy, because as long as a woman is pregnant, her privacy is closely linked to the developing fetus. It was therefore necessary to analyze the restriction on the woman's privacy in conjunction with the other conflicting rights and freedoms that were invoked, including those of the fetus.<sup>159</sup>

119. The ECHR added that while the abortion regulations adopted by States involve the traditional balance between privacy and the public interest, in the case of a therapeutic abortion, States must take into account their positive obligations to protect the physical integrity of the pregnant woman. It also found that in these cases, States must provide detailed and transparent information to the medical staff on the procedures that must be followed to terminate a pregnancy. This also means that legislation must be sufficiently clear in these situations in order to avoid confusion among the medical staff with regard to any possible sanctions.<sup>160</sup>

120. When considering whether the restriction on a woman's privacy was arbitrary and therefore incompatible with the European Convention, it indicated that a ban on therapeutic abortion can have a legitimate purpose, having to do with protecting the life of the fetus. It also noted that a majority of the States Party to the European Council were in consensus that abortion should not be prohibited where the life or health of the woman were at risk. It added that in Ireland, the law did not spell out a procedure on the possibility of conducting a therapeutic abortion, causing uncertainty for the woman and the medical staff.<sup>161</sup>

121. The ECHR also held that in this scenario, the Constitutional Court would not be an effective measure for protecting the woman's right to privacy and determining whether a woman qualified for a legally-available abortion in a State. It held that this process would be equivalent to requiring constitutional courts to establish, on a case-by-case basis, the legal criteria through which the relevant risk to the life of the woman would be measured, using evidence largely of a medical nature. The Court noted that the Constitutional Court itself had underscored that this should not be its function. It added that it would likewise be inappropriate to require women to undergo such complex constitutional processes when their underlying constitutional right to an abortion in the case of a qualified risk to life was not in question.<sup>162</sup>

122. In the first case, the ECHR concluded that the State's legislation did not provide effective mechanisms capable of determining whether the conditions had been met to obtain a legal abortion in her case. It concluded that this caused, for the victim, a situation of prolonged uncertainty. The Court underscored that as a result, the victim suffered severe anxiety and distress when contemplating the potential negative health consequences of her pregnancy and delivery. Therefore, the ECHR found the State internationally responsible for violating the right to privacy.<sup>163</sup>

123. In the second case, the ECHR found that neither the medical consultations nor the litigation options offered procedures that were effective and accessible in terms of enabling one of the victims to exercise her right to a legal abortion in Ireland. It added that the State had failed to comply with its positive obligation to effectively guarantee the victim's right to privacy due to the absence of a legislative or regulatory regime for implementation offering an accessible and effective procedure through which the victim could have established whether she qualified for a legal abortion in Ireland.<sup>164</sup>

<sup>158</sup> ECHR. Case of A, B, and C v. Ireland Judgment of December 16, 2010, para. 212.

<sup>159</sup> ECHR. Case of A, B, and C v. Ireland. Judgment of December 16, 2010, para. 213.

<sup>160</sup> ECHR. Case of Tysic v. Poland. Judgment of September 24, 2007, paras. 107 and 116.

<sup>161</sup> ECHR. Case of A, B, and C v. Ireland. Judgment of December 16, 2010, paras. 227, 235, 257.

<sup>162</sup> ECHR. Case of A, B, and C v. Ireland. Judgment of December 16, 2010, paras. 257-266.

<sup>163</sup> ECHR. Case of Tysic v. Poland. Judgment of September 24, 2007, para. 124.

<sup>164</sup> ECHR. Case of A, B, and C v. Ireland. Judgment of December 16, 2010, para. 267.

124. Regarding the second situation, the ECHR ruled in 2011 in the case of *R.R. v. Poland*. The matter involved a pregnant woman who was prevented from receiving the necessary medical exams to determine whether the fetus was "malformed." The ECHR underscored that the State's acts and omissions in the framework of providing healthcare to a pregnant woman, in particular to determine "genetic disorder or development problems" could violate article 3 of the European Convention, which bans torture and cruel, inhuman, or degrading treatment. In particular, the ECHR emphasized the pain and suffering experienced by a pregnant woman when i) she knows that the fetus could have a "malformation" and not be compatible with life; and ii) the health staff do not take the measures necessary to properly diagnose the fetus, determine its potential for survival, and ensure the woman can make an informed decision as to whether to terminate her pregnancy.<sup>165</sup>

### 3. Legislation of the region on termination of pregnancy

125. The Inter-American Commission observes that, in the region, it has been progressively legislated in relation to the regulation of termination of pregnancy, and that in some countries it is allowed in some circumstances, such as a situation of risk to the health, life, and integrity of the woman and/or a fetus that was incompatible with life outside the womb. Regarding the laws of the States of the region, the Commission observes for example that in Argentina, according to the National Criminal Code, abortion performed by a doctor with the consent of the pregnant woman is not punishable "if it has been done with in order to avoid a danger to the life or health of the mother and if this danger cannot be avoided by other means."<sup>166</sup> In Barbados, according to the Law of Medical Termination of Pregnancy, its interruption is allowed in case of incompatibility of the fetus with extrauterine life.<sup>167</sup>

126. In Bolivia, according to the Criminal Code, it will not be punishable "if the abortion has been performed in order to avoid a danger to the life or health of the mother."<sup>168</sup> In Costa Rica, under the Criminal Code, abortion will not be punishable "if it has been done in order to avoid a danger to the life or health of the mother."<sup>169</sup> In Brazil, according to the Criminal Code, abortion is not punishable if "there is no other way to save the pregnant woman's life".<sup>170</sup> In Chile, according to the Health Code, the termination of pregnancy is authorized when "the woman is at vital risk, so that the termination of pregnancy avoids a danger to her life", as well as when "the embryo or fetus suffers a acquired congenital or genetic pathology, incompatible with independent extrauterine life, in any case of a lethal nature".<sup>171</sup>

127. In Ecuador, under the Criminal Code, abortion will not be punishable "if it has been performed to avoid a danger to the life or health of the pregnant woman."<sup>172</sup> In Guatemala, according to the Criminal Code, abortion will not be punishable "if performed without the intention of directly procuring the death of the product of conception and for the sole purpose of preventing duly established danger to the life of the mother after exhausting all scientific and technical means."<sup>173</sup> In Mexico, according to the Criminal Code of Mexico City, it is considered as exclusive of responsibility when "if the abortion does not occur, the pregnant woman is in danger of serious damage to her health" or when "there is sufficient reason to diagnose that the product it presents genetic or congenital alterations that can result in physical or mental damage, to the limit that may put the survival of the same at risk, provided that the pregnant woman has the consent".<sup>174</sup> In Panama, according to the Criminal Code, abortion will not be punishable when "it is carried out, with the consent of the woman, for serious causes of health that endanger the life of the mother or the product of conception".<sup>175</sup> In Paraguay, according to the Criminal Code, "any of these who will justify having caused the abortion indirectly will be

<sup>165</sup> ECHR. Case of *R.R. v. Poland*. Judgment of November 26, 2011, para. 152-159.

<sup>166</sup> Argentina, National Criminal Code, Article 86.

<sup>167</sup> Barbados, Law of Medical Termination of Pregnancy.

<sup>168</sup> Bolivia, Criminal Code, Article 266.

<sup>169</sup> Costa Rica, Criminal Code, Article 121.

<sup>170</sup> Brazil, Criminal Code, Article 128.

<sup>171</sup> Chile, Health Code, article 119.

<sup>172</sup> Ecuador, Criminal Code, Article 150.

<sup>173</sup> Guatemala, Criminal Code, Article 137.

<sup>174</sup> Mexico, Criminal Code of Mexico City, Article 148.

<sup>175</sup> Panama, Criminal Code, Article 144.

exempt from liability, with the purpose of saving the life of the woman endangered by pregnancy or childbirth."<sup>176</sup>

128. In Peru, according to the Criminal Code, it is not punishable "abortion performed by a doctor with the consent of the pregnant woman (...) when it is the only means to save the life of the pregnant woman or to avoid in her health an evil serious and permanent."<sup>177</sup> In Uruguay, according to Law No. 18.987 - Voluntary termination of pregnancy, this procedure can be performed, among other reasons, when i) "pregnancy involves a serious risk to the health of women"; or ii) when "a pathological process is verified, causing malformations incompatible with extrauterine life."<sup>178</sup> In Venezuela, according to the Criminal Code, "the doctor who causes abortion will not incur any penalty as an indispensable means to save the life of the parturient."<sup>179</sup>

#### **4. High Court ruling of the region on termination of pregnancy in cases of risk to the health, life and integrity of the woman and / or fetus incompatible with life outside the womb**

129. Next, the Commission will review the decisions of the high courts of some States in the region that could be relevant to the analysis of this case.

130. In Argentina, the Supreme Court of Justice of the Nation ruled in March 2012 on a case in which an abortion was requested after the rape of a child. The Supreme Court found that, pursuant to article 86 of its Penal Code, abortions performed in order to prevent danger to the life or health of the woman and abortion in cases of rape are not punishable.<sup>180</sup>

131. In Brazil, the Federal Supreme Court in 2012 adopted its decision ADPF-44/DF by means of which it confirmed the unconstitutionality of the interpretation according to which the interruption of the pregnancy of an anencephalic fetus is a conduct typified by the Penal Code. As indicated by the reporting judge, it would not be consistent based on the principle of proportionality "to protect only one of the beings in the relationship, to privilege those who, in the case of anencephaly, do not even have an extrauterine life expectancy, annihilating, on the other hand, the rights of women". In this regard, it indicated that "the state imposition of maintaining the pregnancy, the final result of which will be the death of the fetus, irremediably goes against the basic principles of the constitutional system, more precisely the dignity of the human person, freedom, self-determination, to health, to the right to privacy, to recognition. full sexual and reproductive rights of thousands of women."<sup>181</sup>

132. Also in Brazil, the Superior Court of Justice issued a decision in November 2016 in the framework of a writ of habeas corpus filed by five health specialists detained after being accused of carrying out an abortion. The Court indicated that the criminalization of voluntary abortion when it is carried out in the first trimester of pregnancy was unconstitutional. This in view of the fact that it violates i) the autonomy of women; ii) the physical and mental integrity of the woman; iii) the sexual and reproductive rights of women; iv) gender equality; and v) generates social inequality.<sup>182</sup>

133. The Court also concluded that the criminalization of abortion was not effective at protecting the right to life of the fetus. This was because the abortion rate in countries where the procedure is legal is similar to the rate in countries where it is illegal. The Court also held that the measure was not necessary because there were measures available for protecting the rights of the fetus that were less harmful than criminalizing abortion. The Court pointed to practices in other States, which include counseling with experts for at least three days before a decision to have an abortion, creating a support network for the pregnant woman, and access to daycare and social assistance. It emphasized that a portion of unplanned pregnancies are related to a lack of information on

<sup>176</sup> Paraguay, Criminal Code, Article 352.

<sup>177</sup> Peru, Criminal Code, Article 119.

<sup>178</sup> Uruguay, Law No. 18.987- voluntary termination of pregnancy, Article 6.

<sup>179</sup> Venezuela, Criminal Code, Article 435.

<sup>180</sup> Supreme Court of Justice of the Nation of Argentina, F., A.L. on precautionary measures, March 13, 2012.

<sup>181</sup> Federal Supreme Court, Arguição de Descumprimento de Preceito Fundamental no. 54, Vote of Minister Marco Aurélio Mello, April 12, 2012, p. 37.

<sup>182</sup> Brazil. Superior Court of Justice, Habeas Corpus 124.306, November 29, 2016, paras. 24-31.

and access to contraceptive methods, which could be addressed with family-planning programs, distribution of free contraceptives, specialized support for the pregnant mother, and sex education.

134. The Court added that the measure was also not strictly proportional in that criminalizing abortion leads to significant restrictions on the rights of women, with an even greater impact on women in poverty.<sup>183</sup> It also remarked that it had been found that criminalizing abortion decreases the level of protection of the rights of the fetus, particularly because the law had not reduced abortion rates.

135. In Canada, the Supreme Court found in January 1988, in the case of *R. v. Morgentaler*, that the criminalization of abortion under the Criminal Code was unconstitutional because it violated the right to security of the person, as recognized in the Canadian Charter of Rights and Freedoms.<sup>184</sup>

136. In Chile, the Constitutional Court ruled in August 2017 on a constitutional challenge filed against Bulletin 9895-11, developing the decriminalization of “therapeutic and eugenic” abortion, as well as abortion in cases of rape. In its judgment, the Court underscored that protection of the fetus “cannot be provided without due consideration of the rights of the woman.” It added that “protecting the unborn is not justification for abandoning the woman,” for which reason “the judge must seek the formula for the yet unborn individual to be able to be born.” Based on this, it found that “the rights of the woman must take precedence.”<sup>185</sup>

137. In Colombia, the Constitutional Court issued a judgment in May 2006 finding that the decriminalization of abortion was constitutional, as follows:

(...) when, with the consent of the woman, the pregnancy is terminated in the following cases: i) when continuing the pregnancy would constitute a danger to the life or health of the woman, as certified by a physician; ii) when the fetus suffers from a serious malformation that makes its life unviable, as certified by a physician; and, iii) when the pregnancy is the result of conduct, duly alleged, constituting non-consensual or abusive sexual contact or acts, non-consensual artificial insemination or transfer of a fertilized egg, or incest.”<sup>186</sup>

138. The Court indicated that human dignity included both decisions associated with reproductive freedom and the guarantee of its moral intangibility, translated into a prohibition of stigmatizing gender roles or the deliberate imposition of moral suffering. Consequently, the Court held that when adopting criminal laws applicable to women, the judge could not “consider her and convert her into a simple instrument for reproduction of the human species, or force her, against her will, to serve as a tool effectively useful for procreation.”<sup>187</sup>

139. It indicated that although “protection of the unborn child through criminal measures was not disproportionate (...) The criminalization of abortion under all circumstances would make one of the legal rights in question—the life of the unborn child—completely preeminent, subsequently sacrificing all the fundamental rights of the pregnant woman, which would without question and clearly be unconstitutional.”<sup>188</sup>

140. In Costa Rica, the Constitutional Chamber of the Supreme Court of Justice issued an order in 2004 reaffirming that, pursuant to the Criminal Code, therapeutic abortion cannot be punished. The Court found as follows:

Is in no way incorrect, and much less unconstitutional, for the judge to have declined to punish the choice made based on the health of the mother if the mother would have been seriously harmed by the pregnancy to the point of grave violation of her dignity as a human being and, eventually, her life.

<sup>183</sup> Brazil. Superior Court of Justice, habeas corpus 124,306, November 29, 2016, para. 39-47.

<sup>184</sup> Canada. Supreme Court of Canada, *R. v. Morgentaler*, January 28, 1988.

<sup>185</sup> Chile. Constitutional Court, August 28, 2017, para. 79.

<sup>186</sup> Colombia, Constitutional Court, C-355/06, May 10, 2016, pg. 301.

<sup>187</sup> Colombia, Constitutional Court, C-355/06, May 10, 2016, pgs. 258-259.

<sup>188</sup> Colombia, Constitutional Court, C-355/06, May 10, 2016, pgs. 284.

Therefore, this Chamber finds that the text of the law being challenged and the notions of constitutional law applicable to the punitive function of the State are reconciled (...).<sup>189</sup>

141. In the United States, the Supreme Court issued a judgment in 1973 in the case of *Roe v. Wade* on the constitutionality of laws criminalizing or restricting access to an abortion. The Supreme Court found that access to an abortion during the first trimester of her pregnancy was legal, recognizing that the Constitution protected a woman's right to privacy and to decide on whether to terminate her pregnancy.<sup>190</sup>

## 5. Analysis of the specific case

142. In this case, the IACHR observes that it is not in dispute that the State did not offer Beatriz a procedure to terminate her pregnancy. It is extensively demonstrated in the case file that Beatriz had a grave illness that endangered her life, health, and personal integrity should she continue with her pregnancy, and that also, the fetus resulting from the pregnancy was anencephalic, and therefore incompatible with life outside the womb. It is also proven that, as a consequence of the circumstances, a series of doctors and boards of doctors determined that the termination of the pregnancy was necessary, while at the same time, Beatriz decided to request termination of the pregnancy in the exercise of her right to personal autonomy or free development of his personality..

143. The Commission observes that even though before the IACHR, through the ruling of the Constitutional Chamber of the Supreme Court of Justice, the State has remained ambivalent regarding certain aspects of the case, the common thread of its position is that its legal system “recognizes every human being as a human person from the moment of conception,” and that therefore, abortion is a criminal offense defined in its Penal Code and applicable to Beatriz as well as to any healthcare personnel who would perform the abortion. The result of this legal framework and the delays in the efforts made by Beatriz to access a termination of her pregnancy in the circumstances described above meant that the pregnancy progressed significantly, to the point that labor began spontaneously and a cesarean section was needed, followed shortly afterward by the death of the baby born from the pregnancy. The case file indicates that, in addition to the permanent risk to her health, life, and integrity of person to which she was exposed as a result of the lack of timely access to the termination of her pregnancy, Beatriz’s mental health and psychological integrity were severely impacted, which was necessarily exacerbated by having to bear an unviable pregnancy and experience the birth of a fetus under those conditions, with its foreseeable death occurring practically immediately.

144. The IACHR will proceed to assess whether the protection of life from the moment of conception, as argued by the State and implemented through the criminalization of abortion, could constitute a justification for said harm that is acceptable under the Convention. That is, the IACHR must determine whether the intervention of the punitive power of the State absolutely prohibiting voluntary termination of pregnancy is compatible with the framework of protection of international human rights law and existing safeguards from the perspective of the Convention regarding Beatriz’s human rights.

145. To do so, the IACHR will weigh proportionality by evaluating: (i) the existence of a legitimate aim; (ii) the suitability or means-to-an-end relationship between the means and the end; (iii) the need or nonexistence of less harmful and equally suitable means; and (iii) strict proportionality—that is, balancing the interests in question against the degree of sacrifice.

146. As regards the first point, the IACHR finds that protecting life from the moment of conception is a legitimate aim. However, the authorized interpretation of the Inter-American Court regarding the scope and content of the protection set forth in Article 4(1) of the American Convention must be recalled. In the case of *Artavia Murillo et al. (in vitro fertilization) v. Costa Rica*, the Court found that “‘conception’ in the sense of Article 4(1) occurs at the moment when the embryo becomes implanted in the uterus.” Likewise, with regard to the expression “in general” contained in that provision, the Court found the following:

<sup>189</sup> Costa Rica. Constitutional Chamber of the Supreme Court of Justice. Order 2004-02792, March 17, 2004, grounds, section VII.

<sup>190</sup> United States. Supreme Court of the United States, *Roe v. Wade*. January 22, 1973.



[I]t can be concluded from the words ‘in general’ that the protection of the right to life under this provision is not absolute, but rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible.<sup>191</sup>

147. Applying this standard to pregnancy termination, the Commission emphasizes that in States that have decided to ban and/or criminalize it, it is not exempt from an analysis of proportionality based on the rights of the woman that could be affected. In this regard, although gradually and incrementally protecting life from conception can constitute a legitimate aim, this protection can violate the Convention if it is not suitable for achieving that aim, if it is not necessary, and if—on being absolute—it disproportionately affects the other rights in play.

148. Regarding the suitability of the measure, the Commission recalls that in this case, two particular situations converge in Beatriz’s pregnancy. First, the diagnosis of the unviability of the fetus; and second, Beatriz’s illness, which posed a serious risk to her health, life, and integrity of person should she continue with the pregnancy. The Commission finds that the criminalization of pregnancy termination even when the fetus is incompatible with life outside the womb and with this being the woman’s motive for choosing termination does not satisfy the requirement of suitability. It is the Commission’s understanding that the unviability of fetal life breaks the means-to-an-end relationship between the criminalization and the objective supposedly sought, inasmuch as the protected interest, the fetal life, will unfailingly be unable to actually materialize despite the criminal prohibition of the conduct. This consideration is sufficient for the IACHR to establish that the State’s justification violates the Convention in situations in which the fetus is unviable, and therefore renders, in this particular situation, the analysis of the following stages of the proportionality test unnecessary.

149. Without prejudice to this, and taking into account that Beatriz’s case also involves a risk to life, integrity of person, and health due to her underlying illness, as well as the importance of fully revealing the severe impact of continuing with a pregnancy that is incompatible with life outside the womb, the IACHR views it as pertinent to address strict proportionality, which, as indicated, involves weighing the sacrifice of the right restricted or with which the State’s measure is interfering against the benefits in terms of achieving the aims sought.<sup>192</sup> This, however, does not mean that in circumstances in which the life, physical integrity and health of the woman are in jeopardy, the criminal prohibition under analysis necessarily meets the test of suitability and necessity described above.

150. The IACHR observes that from the moment Beatriz’s pregnancy was diagnosed, the medical staff at the Rosales National Hospital and then the National Maternity Hospital described it as “high risk.” This is because of her underlying illness and the health complications that arose during her first pregnancy. The Commission notes that the Medical Committee itself and the Legal Unit of the National Maternity Hospital issued a number of reports indicating that if the pregnancy was not interrupted soon, there was a likelihood of “maternal death.” The IACHR also notes the aforementioned medical reports indicating that throughout Beatriz’s pregnancy, she experienced grave physical suffering. As evidence of this, she was essentially admitted to the National Maternity Hospital throughout her pregnancy, and each time she was released, she was again admitted days later for another physical ailment. It is likewise noted that after giving birth, she experienced complications affecting her health, causing her to be admitted for a week following the surgical procedure.

151. Along with the harm to her physical integrity and health, Beatriz’s mental and physical integrity was affected during the pregnancy. According to a psychological report prepared during her pregnancy at the National Maternity Hospital, Beatriz had “suicidal ideation and thoughts,” and her emotional state was affected by the outlook for her health, the anencephalic fetus and its unviability, the State’s denial of a pregnancy termination, and being apart from her first child while she was admitted to the hospital. Under these circumstances, which clearly indicate the severity of the harm experienced by Beatriz and risks she faced as a consequence of her inability to access a termination of her pregnancy, the Commission finds that, for the same

<sup>191</sup> Inter-American Court. Case of Artavia Murillo et al. (*in vitro* fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 264.

<sup>192</sup> IACHR. Report No. 85/10. Case 12.361. Merits. Artavia Murillo et al. (*in vitro* fertilization) v. Costa Rica. July 14, 2010, para. 112.

reasons, the interference with her privacy and reproductive freedom by preventing her from following through on her decision in view of the confluence of circumstances confronting her was especially intense.

152. Based on the foregoing, the Commission concludes that the harm and risk to the rights to life, health, integrity of person, and reproductive freedom resulting from the lack of access to a pregnancy termination—a result of the criminalization of abortion without exceptions—attained the highest level of severity.

153. In contrast, and taking into account the above, in this specific case, the aim sought—protecting the life of the fetus—was attained not at all, as the fetus’s anencephaly made it incompatible with life outside the womb. This was clear from the initial diagnosis and confirmed by its death hours after birth as the result of Beatriz going into spontaneous labor. In any case, taking into account that another element of this matter is the risk to Beatriz’s health, life, and integrity of person as a consequence of her illness, the IACHR concludes that even if the fetus had not been anencephalic, protection of life from conception—due to its gradual and incremental nature—cannot be given equal weight when there is a risk to life or heightened risk to health or integrity of person.

154. Although the IACHR understands that prenatal life, as a legal interest protected by the State, is necessarily dependent upon the continuation of gestation, and in this regard the punitive provision may be considered suitable, should it achieve the necessary protection being sought, because less harmful alternatives to restricting the rights of women in such a situations were not observed; these elements must be nuanced and analyzed by taking into account, for example, the actual preventive effectiveness of the existing criminal restriction as opposed to continuing with high rates of termination of pregnancy outside of said statutory prohibition. The IACHR notes that the absolute prohibition of abortion may lead in its most intense expressions to submission of women and girls to interruption of pregnancy in clandestine, dangerous and unsafe conditions, and even to suicide, not only with the consequent loss of the *nasciturus*, but by causing serious injury and death to the mother.<sup>193</sup>

155. The Commission notes that criminalization of abortion, particularly when it is prohibited in every circumstance without exception, not only may compel women to resort to illegal and unsafe abortions, but inevitably jeopardizes their physical health and even their very life, as well as their mental health, especially, that of women living in poverty or who are most vulnerable. Specifically, this absolute prohibition has a direct and negative effect on a woman’s mental health, in addition to undermining this right, because it puts her at risk of being criminally prosecuted for legitimately exercising her right to reproductive health. There is also a high likelihood she will suffer from depression, anxiety and stress in the face of the uncertainty she will experience because of the lack of accessible and adequate sexual and reproductive health treatments for her medical condition. This type of legislation and policy, in turn, directly restricts women’s right to reproductive autonomy and, in short, undermines women’s ability to realize their right to personal development as free and equal human beings in terms of dignity and rights. Thus, the Committee on Economic Social and Cultural Rights emphasized that: “Violations of the obligation to respect occur when the State, through laws, policies or actions, undermines the right to sexual and reproductive health. Such violations include State interference with an individual’s freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard. They also occur when the State removes or suspends laws and policies that are necessary for the enjoyment of the right to sexual and reproductive health.”<sup>194</sup>

156. Based on the foregoing, the IACHR concludes that the State, in seeking to provide absolute protection to the *nasciturus* by criminalizing abortion without exception and without weighing the severe infringements of

<sup>193</sup> In this regard, see: World Health Organization. *Aborto sin riesgos: guía técnica y de políticas para sistemas de salud*, 2da edición Safe Abortion: Technical and Policy Guidance for Health systems (2012); Ganatra, Bela et al. *Global, regional, and sub-regional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model*. The Lancet, Vol. 390, No. 10110, November 25, 2017.

<sup>194</sup> United Nations Committee on Economic, Social and Cultural Rights. General Comment Number 22, E/C.12/GC/22, May 2, 2016, para. 56. The United Nations Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health have also addressed the content of the right to sexual and reproductive health in similar terms. In this regard, see: UN. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. E/CN.4/2004/49, February 16, 2004; UN. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. A/66/254, August 3, 2011; and UN. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. A/HRC/35/21, March 28, 2017.

Beatriz's right involved, engaged in conduct that is disproportionate and contrary to the guarantees provided by the Convention, which in the instant case constituted violations of the right to life, physical integrity, private life and both the physical and mental health of Beatriz, under Articles 4.1, 5.1, 11.2, 11.3 and 26 of the American Convention. In turn, these same facts entailed a violation of the right to the personal autonomy of Beatriz, particularly in the reproductive sphere, based on the combined analysis of the rights provided for in Articles 5.1, 11.2, 11.3 and 26 of the ACHR, all in connection with Articles 1.1 and 2 of said instrument. The IACHR also finds that the pain and suffering endured by Beatriz from the time she sought the termination of pregnancy and even subsequent to the birth and death, constituted cruel, inhuman and degrading treatment and, therefore, the State violated Article 5.2 of the American Convention, in connection with Article 1.1 thereof, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

**B. The State's obligation of progressive implementation regarding the right to health (Article 26 of the American Convention, in conjunction with Article 1(1) of the Convention)**

157. The Court reiterates the standards in the foregoing section analyzing the right to health based on Article 26 of the American Convention. In this case, the petitioner alleged that the State also violated Article 26 of the American Convention because the Criminal Code of El Salvador—in contrast with the previous one—criminalizes abortion absolutely, with no exceptions. The petitioner added that it constitutes a regressive measure with regard to women's right to health, in violation of the aforementioned provision.

158. In this regard, the Court has found that the diverse obligations derived from Article 26 of the American Convention include “a duty—although a conditional one—of nonregression, that should not always be understood as a ban on measures restricting the exercise of a right.”<sup>195</sup> The Committee on Economic, Social and Cultural Rights has indicated that “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the [International Covenant on Economic, Social and Cultural Rights] and in the context of the full use of the maximum available [State] resources.”<sup>196</sup>

159. Likewise, the IACHR has found that in order to evaluate whether a regressive measure is compatible with the American Convention, it must be “determine[d] if it was justified by strong reasons.”<sup>197</sup> In view of this, the Court has underscored that “it should be noted that this facet of the principle of progressivity is applicable when dealing with economic, social, cultural, and environmental rights.”<sup>198</sup>

160. In this case, the Commission notes that the previous Criminal Code of El Salvador had a provision that excluded “therapeutic, ethical and eugenic” abortion from criminal responsibility. However, this provision was removed with the approval of the current Criminal Code. In practice, this has meant—as many international bodies have indicated, as described in the Context section—that abortion is criminalized without exceptions. The Commission takes note of what those bodies indicated to the effect that, with no possibility of exemption from criminal responsibility in the scenarios described, pregnant women who wish to terminate their pregnancies have had to subject themselves to dangerous and even deadly practices. Some women have even been arrested and prosecuted for the crime of abortion, even though their cases included the grounds for exemption as previously indicated. Other international bodies have also noted that the majority of women who have been affected by the absolute criminalization of abortion are women experiencing poverty.

161. Thus, the IACHR finds that the State not only failed to comply with its immediate obligations on the right to health in the event of a risk to a woman's life and integrity of person in the terms described herein, but also failed to comply with its obligation to refrain from adopting regressive measures that impose legal obstacles on a health service that was available in El Salvador under certain circumstances. It should be noted this

<sup>195</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 143.

<sup>196</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), December 14, 1990, para. 10.

<sup>197</sup> Admissibility and Merits Report No. 38/09, Case 12,670, National Association of Ex-employees of the Peruvian Social Security Institute *et al.* v. Peru, issued by the Inter-American Commission on Human Rights on March 27, 2009, paras. 140 to 147.

<sup>198</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 143.

regressive measure does not meet the parameters established by the CDESCR and HRC and cited herein. It is based on providing absolute protection to the *nasciturus*, which is not compatible with the American Convention, given that, as established in the previous section, it caused and continues to cause disproportionate and arbitrary harm to the rights of women.

162. By virtue of the foregoing, the Commission concludes that the State is responsible for the violation of the obligation of nonretroactivity contained in Article 26 of the Convention with regard to the right to health, in conjunction with the obligations established in articles 1(1) and 2 of the Convention.

**C. Principle of legality and nonretroactivity (Article 9<sup>199</sup> of the American Convention, in conjunction with articles 1(1) and 2 of the Convention)**

163. The principle of legality constitutes one of the pillars of the rule of law. The Inter-American Court has held that “someone can only be punished for what they have done, never for who the perpetrator is,” and therefore, the principle of legality and the principle of non-retroactivity of criminal law derived from it must be respected by all State bodies and their respective competencies, especially when it comes to the exercise of their punitive power.<sup>200</sup>

164. The Court has held that the correct definition of criminal offenses must always include clear definitions of the illicit conduct that establish its objective and subjective elements so as to enable a distinction to be drawn between punishable conduct and other illicit conduct that may be sanctioned with noncriminal measures. In order to apply each of these criminal offenses, they must be outlined as clearly and distinctly as possible, explicitly, precisely, exhaustively, and beforehand.<sup>201</sup> Likewise, the IACHR has found that criminal legislation must be formulated without ambiguities, in terms that are strict, precise, and unambiguous, that clearly define the conduct classified as punishable crimes, precisely establishing its elements and the factors that distinguish them from other behavior that does not represent punishable crimes or that are punishable as other crimes.<sup>202</sup>

165. It is the Commission’s understanding that in determining the conduct to be classified as criminal offenses and with regard to which the State’s punitive power is activated, the State is responsible from the start in the exercise of its criminal policy, based on its historical, social, and other particularities.<sup>203</sup> However, certain elements are derived from Article 9 of the American Convention that must be observed by States when exercising the power to define criminal offenses. In this regard, the prevention and repression of crime must be performed within limits and pursuant to procedures that enable the preservation of both public security and the full respect for the human rights of those who are subject to this jurisdiction.<sup>204</sup>

166. In this case, it is an undisputed fact that articles 133 through 137 of the current Penal Code codify abortion as a criminal offense and establish a variety of punishments, from six months to eight years in prison. In this regard, the IACHR observes that, according to the documentation provided by the parties, the medical personnel that was in charge of providing care to Beatriz concluded that even though it was necessary to terminate her pregnancy because of the risk she faced, they could not perform any procedure because doing so was a crime under domestic law.

<sup>199</sup> Article 9. No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

<sup>200</sup> Inter-American Court. *Case of Pollo Rivera et al. v. Peru*. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319, para. 218, and *Case of Mohamed v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2012, Series C No. 255, para. 130.

<sup>201</sup> Inter-American Court. *Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations, and Costs. Judgment of May 29, 2014. Series C No. 279, para. 162.

<sup>202</sup> IACHR, Report on Citizen Security and Human Rights. OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225.

<sup>203</sup> IACHR. Report No. 8/14. Case 12.617. Merits. Luis Williams Pollo Rivera. Peru. April 2, 2014, para. 302.

<sup>204</sup> Inter-American Court. *Case of Pollo Rivera et al. v. Peru*. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319, para. 215.

167. The Commission has already established in this report that the absolute criminalization of abortion without exceptions on the grounds of the fetus's incompatibility with life outside the womb or risk to the woman's life, health, or integrity is disproportionate, and therefore it is incompatible with the Convention.

168. Additionally, the IACHR notes that, according to the international bodies referenced in the Context section, the criminal law on abortion is neither clear nor precise. Neither does it explicitly describe the way in which medical staff must proceed in cases involving obstetric emergencies. Thus, the law itself produces a situation of uncertainty for doctors with regard to what is legal, with a corresponding impact on women's access to medical services in those circumstances.

169. Therefore, the Commission finds that the codification of abortion as a criminal offense in the Criminal Code of El Salvador violates the principle of legality established in Article 9 of the American Convention, in conjunction with articles 1(1) and 2 of the Convention.

**D. Rights to a fair trial and judicial protection (Articles 8(1)<sup>205</sup> and 25(1)<sup>206</sup> of the American Convention, in conjunction with Article 1(1) of the Convention), and Article 7 of the Convention of Belém do Pará<sup>207</sup>**

**1. On the right to an adequate, quick, and effective remedy, and the use of a gender perspective**

**1.1. General standards**

170. The IACHR has held in its caselaw that, pursuant to articles 8 and 25 of the American Convention, States are required to provide effective judicial remedies to victims of human rights violations that meet the requirements of the rules of legal due process.<sup>208</sup> Thus, States must guarantee the existence of an adequate and effective remedy.<sup>209</sup>

171. In this regard, a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.<sup>210</sup> This may take place when, for example, its uselessness has been demonstrated in practice; when the Judicial Branch lacks the necessary independence to rule impartially or does not have the means to execute its decisions; or because

<sup>205</sup> Article 8(1). Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>206</sup> Article 25(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>207</sup> Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

b. apply due diligence to prevent, investigate and impose penalties for violence against women;

c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures.

g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

<sup>208</sup> IACHR Report No. 21/17, Case 11.738, Elba Clotilde Perrone and Juan Jose Preckel, Argentina, March 18, 2017, para. 71; IACHR. *Access to Justice as a Guarantee of Economic, Social and Cultural Rights*. OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 177.

<sup>209</sup> Inter-American Court. Case of Mejia Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011, Series C No. 228, para. 91.

<sup>210</sup> Inter-American Court. *Case of López Lone et al. v. Honduras*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 247.

of another situation in which justice is denied, as is the case of an unjustified delay in the decision; or when, for any other reason, the alleged victim does not have access to the judicial remedy.<sup>211</sup>

172. Likewise, the remedy should enshrine the right of all individuals to be heard by an independent and impartial judge or tribunal within a reasonable time period and with all due guarantees, with the subsequent issuance of a well-founded decision.<sup>212</sup> Regarding the duty to provide a well-founded decision, the Inter-American Court has found that it entails “the exteriorization of the reasoned justification that allows a conclusion to be reached.”<sup>213</sup>

173. The duty to state grounds is therefore a guarantee linked to the proper administration of justice, protecting the right of citizens to be tried for the reasons provided by law, and giving credibility to the legal decisions adopted in the framework of a democratic society.<sup>214</sup> The Court has added that the requirement for a decision to be well-founded is not equivalent to requiring an analysis of the merits of the matter, which is not always required in determining the effectiveness of the remedy.<sup>215</sup> However, the reasoning of a judgment must make it possible to learn the facts, motives, and laws on which the authority is basing its decision in order to rule out any possibility of arbitrariness.<sup>216</sup>

174. With regard to remedies of constitutional protection (*amparo*), the Court has indicated it is “a simple and prompt remedy designed for the protection of all of the rights recognized by the constitutions and laws of the States Parties and by the Convention.”<sup>217</sup> Based on this, the Court has found that a State has an obligation to establish expedited procedures and prevent any delays in their resolution to prevent the right in question from being affected.<sup>218</sup>

175. The Commission also views it as important to note that in certain cases, because of the interest being litigated, the population affected, or the risk of irreparable damage, a standard of “exceptional diligence” is expected of the State involved in resolving a remedy. Among these matters, the IACHR underscores situations in which there is risk to the integrity and health of the individuals involved.<sup>219</sup>

176. States must also refrain from using or invoking gender stereotypes, as they distort perceptions and open the door to decisions that are based on prejudicial beliefs and myths rather than facts. This can lead to denial of justice, including the revictimization of complainants.<sup>220</sup> Thus, the Court has recognized that personal prejudices and gender stereotypes affect the objectivity of the State officials in charge of investigating the complaints brought before them.<sup>221</sup>

177. Regarding this, the Court has held as follows:

<sup>211</sup> Inter-American Court. Judicial Guarantees in States of Emergency (arts. 27(2), 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

<sup>212</sup> IACHR Report No. 26/09, case 12,440, Wallace de Almeida, Brazil, March 20, 2009, para. 119.

<sup>213</sup> Inter-American Court. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 107.

<sup>214</sup> Inter-American Court. Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227, para. 118.

<sup>215</sup> Inter-American Court. Case of Castañeda Gutman v. United Mexican States. Preliminary Objections, Merits, Reparations and Costs, Judgment of August 6, 2008, Series C No. 184, para. 94.

<sup>216</sup> IACHR. Report No. 21/17. Case 11.738. Elba Clotilde Perrone and Juan Jose Preckel. Argentina. March 18, 2017, para. 85.

<sup>217</sup> Inter-American Court. Habeas corpus in Emergency Situations (Arts. 27(2), 25, and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 20, 1987. Series A No. 8, para. 32.

<sup>218</sup> Inter-American Court. Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment June 30, 2009. Series C No. 197, para. 74.

<sup>219</sup> IACHR. Report No. 27/09. Case 12.249. Jorge Odir Miranda Cortez et al. El Salvador. March 20, 2009, para. 52; and Report 2/16. Case 12.484. Luis Rolando Cuscul Pivaral and other persons with HIV/AIDS. Guatemala. April 13, 2016, para. 149. Inter-American Court. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 20, 2016, para. 364.

<sup>220</sup> Inter-American Court. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 24, 2017. Series C No. 339, para. 173. Citing: Committee on the Elimination of Discrimination against Women. General Recommendation 33 on women’s access to justice, 2015, para. 26.

<sup>221</sup> Inter-American Court. Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 24, 2017. Series C No. 339, para. 173.

[P]rotecting the rights of women through access to timely, adequate, and effective remedies to address these violations comprehensively and prevent such actions from occurring again in the future is extremely relevant considering that today, in the area of medical care and access to health services, women continue to be vulnerable to violations of their sexual and reproductive rights, with the majority of cases through discriminatory practices that are the result of the application of prejudicial stereotypes against them.<sup>222</sup>

178. In particular, in keeping with the holdings of the ECHR, the IACHR deems it fitting to note that it is not the duty of the decision-making body to question medical or clinical determinations regarding the seriousness of the medical condition of the patient; furthermore, it would not be appropriate either to speculate, based on contradictory medical findings or a lack of any findings, about how a particular medical condition may jeopardize certain human rights. In this same vein, for the purpose of examining the obligations of the State regarding human rights in these specific circumstances, it is enough to corroborate a fear or reasonable belief of the person whose health or life are in jeopardy in light of the facts and context of the case, provided that it is not irrational, disproportional or objectively incorrect.<sup>223</sup>

## 1.2. Analysis of the case

179. The Commission observes that Beatriz made her first request for a pregnancy termination on March 14, 2013, when she was approximately 13 weeks pregnant, to the medical staff of the Maternity Hospital, who told her that it was not legally allowed. This was despite the fact that the medical staff members themselves confirmed that continuing with the pregnancy would endanger Beatriz's life and health due to her underlying illness and the fact that the fetus was anencephalic and incompatible with life.

180. As a result of the consistent refusal of the medical staff, on April 11, the petitioner filed a writ of *amparo* before the Constitutional Chamber of the Supreme Court of Justice requesting a termination of the pregnancy because it: i) posed a serious risk to Beatriz's life and health; and ii) the fetus was anencephalic. The IACHR notes that the final decision of the Constitutional Chamber was handed down 48 days after it dismissed the *amparo*.

181. Without prejudice to the analysis on reasonability of the time period that will be made in the next section, the Commission underscores that the State had an obligation of exceptional diligence in order to provide an adequate, quick, and effective remedy in response to Beatriz's request. This obligation of exceptional diligence arises from her situation of health and risk to her life, as well as from the extreme psychological impact that her awareness of the fetus's anencephaly and therefore nonviability was having on her. The Commission finds that the actions of the Constitutional Chamber were clearly not compatible with its duty to act with exceptional diligence.

182. Regarding the content of the Constitutional Chamber's decision, the Commission finds that the remedy was not effective in a context in which that judicial authority was responsible for performing Convention enforcement and adopting a decision to protect Beatriz's rights from a legal framework that ran contrary to the Convention. On the contrary, despite the fact that during the *amparo* process, the Constitutional Chamber received multiple reports and opinions from a variety of public institutions, as well as from international bodies such as the United Nations and the Pan-American Health Organization, it limited its ruling to indicating that "specialists in the field of medicine are the only ones with the knowledge (...) necessary to determine (...) the most suitable measure to alleviate the conditions and complications experienced." The Chamber also found that "the medical professionals (...) are the ones who must assume the risks involved in the practice of the profession and decide (...) what is clinically appropriate to guarantee the life of both the mother and the unborn child."

183. In this regard, the Commission concludes that rather than providing a solution to the legal problem it was being called on to resolve, the Constitutional Chamber took a confusing and evasive position, reiterating

<sup>222</sup> Inter-American Court. *Case of I.V. v. Bolivia: Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 299.

<sup>223</sup> ECHR. *Case of Tysiąc v. Poland*. Judgment of September 24, 2007, para. 119.

that, on one hand, the current legal framework protected the life of the fetus, but on the other, the issue is the responsibility of the medical staff, which was required to assume the risks of the decisions it made. It added that it was their responsibility to take the measures necessary to protect the life of the mother and the fetus. The Commission finds that this decision of the Constitutional Chamber validated and confirmed the legal obstacle preventing Beatriz from accessing the medical treatment she needed, which also had a chilling effect on the medical staff. Additionally, the Constitutional Chamber seems to have concluded that the legal rights involved could at all times be compatible or accommodated so as to guarantee both of them. However, this was impossible in Beatriz's situation. In this regard, the Constitutional Chamber employed a formula that appeared to protect the rights and interests in play, but in reality, by failing to explicitly establish that Beatriz had the right to access a pregnancy termination, what it did was prioritize protecting the life of the fetus over her life, which, as described previously, violates a series of rights under the circumstances of this case.

184. Additionally, the Commission notes that the Institute for Legal Medicine, whose report and pleadings at the hearing were taken into account by the Constitutional Chamber, included a series of statements regarding Beatriz's situation that were based on stereotypes and were re-victimizing. Thus, for example, it stated that the fact that she was pregnant with an anencephalic fetus did not endanger the victim's health, focusing on her physical health, without taking into consideration or assessing the severe impact on a woman's integrity and mental health from knowing about the situation and being forced to carry a pregnancy that would inevitably result in the death of the fetus once it was born, in addition of being incompatible with other reports that established a health disease for Beatriz. Also, the pejorative statements made by the State institution on the psychological harm experienced by Beatriz are extremely grave. This had a particularly negative impact on respect for the procedural safeguards of due process, in view of the fact that the report was used by the Constitutional Chamber as a key piece of evidence in issuing its decision. The IACHR emphasizes that, in this type of case, expert medical assessments and reports must be performed and authored by properly composed groups of totally independent experts specialized in the field, using rigorous methods of medical science, and to guarantee that the experts can properly perform their job, the courts must make sure that these requirements are met.

185. The Commission therefore finds that both the process and the decision of the Constitutional chamber placed Beatriz in a situation of defenselessness and did not provide an adequate or effective remedy to the effects on her rights to life, health, integrity, privacy, and reproductive freedom. Also, not only did the Court failed to adopt a gender approach when issuing its decision impacting her real access to justice, it took into consideration reports from an institution that included stereotyping and revictimizing statements against the victim. Therefore, the IACHR finds that the State is responsible for the violation of the rights to fair trial and protection established in articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) of the Convention and Article 7(b) of the Convention of Belém do Pará.

## **2. Regarding the guarantee of a reasonable period of time**

186. According to Article 8(1) of the American Convention, one of the elements of due process is that courts must decide on cases brought before them within a reasonable period of time.<sup>224</sup> Furthermore, the Court has indicated that a prolonged delay can, in certain cases, constitute in itself a violation of the right to a fair trial. In this regard, evaluation of the reasonable period of time must be conducted for each specific case, taking into account the total length of the process, from the first procedural action until the issuance of the final judgment.<sup>225</sup>

187. For the purposes of determining whether the State complied with this guarantee, the Commission and the Court have considered four elements: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of judicial authorities; and iv) the effect the legal situation has had on the person involved in the process.<sup>226</sup>

<sup>224</sup> IACHR. Report No. 21/17, Case 11.738, Elba Clotilde Perrone and Juan Jose Preckel, Argentina, March 18, 2017, para. 77.

<sup>225</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Judgment of August 23, 2018. Series C No. 359, para. 180.

<sup>226</sup> IACHR. Report 25/18, Case 12.428. Employees of the Fireworks Factory in Santo Antonio de Jesús and their relatives. Brazil. March 2, 2018, para. 157.



188. Regarding the first element, the Court has established different criteria for determining the complexity of a process: complexity of the evidence, the number of processes, the quantity of victims, the time passed since the facts, the characteristics of the remedy provided for under domestic legislation, and the context in which the impact took place.<sup>227</sup> In this case, the Commission observes that in the framework of the *amparo* process, the only appellant was Beatriz, who submitted a variety of reports from medical staff describing the urgent need to terminate her pregnancy because of the risk to her life and health. Likewise, she also submitted medical information indicating that the fetus was anencephalic, and therefore incompatible with life after the pregnancy. Given these circumstances, the IACHR concludes that the Constitutional Chamber was not justified in the way in which it complicated the analysis of the merits of the matter to the point of taking 48 days to rule on a remedy that, as already established, demanded exceptional diligence.

189. Regarding the procedural activity of the parties involved, the Commission notes that Beatriz and her representatives were active in moving the process forward, and the case file gives no indication that the delay could be attributable to them.

190. With regard to the judicial conduct of the authorities, the Commission finds that following the initial *amparo* petition, the petitioner asked the Constitutional Chamber to skip the presentation of evidence stage and issue a judgment. This was due to the urgency and danger facing Beatriz. However, this request was not granted. The IACHR also observes that, in the framework of the precautionary measures issued by this body, the judicial authorities also failed to fast-track the resolution of the remedy. The Commission notes that on the day after it asked the Court to adopt provisional measures, the Constitutional Chamber issued a judgment in the case, dismissing the *amparo* action.

191. With regard to the fourth element, the Court has found that to determine the reasonableness of the term, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account, bearing in mind, among other elements, the matter in dispute. Thus, the Court has indicated that “if the passage of time is relevant to the individual’s legal situation, the procedure will need to be carried out with greater swiftness in order to ensure the case is addressed quickly.”<sup>228</sup>

192. The Commission deems it necessary to recall that in this case, the *amparo* sought by Beatriz sought termination of a pregnancy with an anencephalic fetus and to prevent a serious risk to her life and health, all of which triggered an enhanced obligation to respect and guarantee her rights. The IACHR reiterates that in these types of cases, judicial authorities must act with exceptional diligence to resolve the case in order to avoid violating the rights of the individual involved. In these circumstances the delay of 48 days in resolving the *amparo* remedy was an open violation of this duty.

193. Therefore, the Commission concludes that the State violated the right to a decision within a reasonable period of time in the framework of the *amparo* remedy, established in Article 8(1) of the American Convention, in conjunction with Article 1(1) of the Convention.

**E. Women’s right to a life free from violence and discrimination (Article 24<sup>229</sup> of the American Convention, in conjunction with Article 1(1) of the Convention) and Article 7 of the Convention of Belém do Pará**

194. The Court has found that the fundamental principle of equal protection and nondiscrimination, which is a *jus cogens* standard, springs directly from the oneness of the human family and is linked to the essential dignity of the individual. Therefore, it cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority; it is equally irreconcilable with that notion to

<sup>227</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 182.

<sup>228</sup> Inter-American Court. Case of Cuscul Pivaral *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 185.

<sup>229</sup> Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.<sup>230</sup>

195. The Commission also recalls that States must abstain from any action that may, in any way, be directly or indirectly aimed at creating situations of *de jure* or *de facto* discrimination. States are required to adopt positive measures to reverse or change existing discriminatory situations in their societies that cause harm to certain groups of persons.<sup>231</sup>

196. As regards the situational discrimination faced by women, the Convention of Belém do Pará establishes that violence against women is “a manifestation of the historically unequal power relations between women and men” and recognizes that the right of all women to a life free from violence includes the right to be free from all forms of discrimination. Thus, the treaty reflects the universal concern throughout the hemisphere regarding the grave problem of violence against women, its relationship to historic discrimination, and the need to adopt comprehensive strategies to prevent it, punish it, and eradicate it.<sup>232</sup>

197. Along these same lines, the Committee on the Elimination of Discrimination against Women has indicated that under the CEDAW, discrimination against women “includes gender-based violence, that is, violence that it directed against a woman [i] because she is a woman or [ii] that affects women disproportionately.” It added that “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” and includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>233</sup>

198. Additionally, the Commission emphasizes that one of the forms of discrimination against women is through stereotypes. In this regard, the Court has found in its caselaw that gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women, and that subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes. Thus, the creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women. This situation is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the State authorities.<sup>234</sup>

199. In the realm of women’s sexual and reproductive health rights, the Court has found that it has historically been limited, restricted, or annulled based on gender stereotypes.<sup>235</sup> One of those stereotypes has been the role of mother forced on women, regarding which the Court has indicated that “although the role and condition of women in society must not be defined solely by their reproductive capacity, femininity is often defined by maternity.”<sup>236</sup> Without prejudice to this, the Court has also emphasized that motherhood is an essential part of the free development of a woman’s personality,<sup>237</sup> placing it in the realm of decision-making autonomy for that group.

200. The European Court of Human Rights has also ruled on the problem of stereotyping women, finding that it prevents individual evaluation of their capacities and needs. It added that presuming that a woman’s sexuality is associated exclusively with maternity ignores the other relevant dimensions in which they realize their personhood.<sup>238</sup>

<sup>230</sup> Inter-American Court. Case of Ramírez Escobar *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 24, 2017. Series C No. 339, para. 270.

<sup>231</sup> IACHR. Report No. 4/16. Case 12.690. Merits. V.R.P. and V.P.C., Nicaragua, April 13, 2016, para. 130.

<sup>232</sup> IACHR. Report No. 53/13. Case 12.777. Merits. Claudina Isabel Velásquez Paíz *et al.* Guatemala. November 4, 2013, para. 89.

<sup>233</sup> Committee on the Elimination of Discrimination against Women, General Comment 19: Violence against Women, 1992, paras. 1 and 6.

<sup>234</sup> Inter-American Court. Claudina Isabel Velásquez Paíz *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 19, 2015, Series C No. 307, para. 180.

<sup>235</sup> Inter-American Court. Case of *I.V. v. Bolivia*: Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329, para. 243.

<sup>236</sup> Inter-American Court. Case of Artavia Murillo *et al.* (*in vitro* fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 296.

<sup>237</sup> Inter-American Court. Case of Artavia Murillo *et al.* (*in vitro* fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 143.

<sup>238</sup> ECHR. Carvalho Pinto De Sousa Morais v. Portugal. Judgment of October 25, 2017, paras. 46 and 52.

201. The Court has also recognized that certain groups of women can be subject to discrimination based on more than one factor combined with their sex, increasing their risk of suffering from acts of violence and other human rights violations.<sup>239</sup> In this context, the Inter-American Court of Human Rights has defined the concept of intersecting discrimination as being when different causes of discrimination converge or simultaneously occur, interacting in a synergetic way, thus giving rise to a specific form of discrimination with its own combined effects and making the discrimination experienced by the affected person completely different.<sup>240</sup> The IACHR notes that sex, age and economic status are causes of discrimination prohibited under Article 1.1 of the American Convention and, consequently, when rights are restricted on the grounds of such categories, the State must meet stringent requirements to prove that such a restriction did not have a discriminatory intent or effect.<sup>241</sup>

202. The UN Special Rapporteur on violence against women, its causes and consequences has established that “[d]iscrimination based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition and other realities often intensifies acts of violence against women.”<sup>242</sup> Regarding discrimination based on social status, the Court has found that situations of poverty can have an impact on adequate access to healthcare.<sup>243</sup>

203. The IACHR observes that in the case of Beatriz, multiple factors of vulnerability and risk of discrimination based on her status as a woman and as an individual living in poverty converged with an intersectional effect.

204. First, the IACHR notes that the total criminalization of abortion and its classification as a criminal offense have a disproportionately negative impact on women. The Commission recalls from the Contacts section that multiple international bodies have indicated that the absolute criminalization of abortion leads to high mortality rates among women.

205. The Commission also finds that the legal framework developed on the absolute criminalization of abortion in El Salvador is based on stereotypes against women, particularly based on their role as mothers and reproductive function. The IACHR underscores that Beatriz was forced to remain pregnant with an anencephalic fetus incompatible with life that posed a real risk to her life—despite her request for an abortion—based on El Salvador’s legal framework and State policies.

206. The Commission recalls that in the case of L.C. before the Human Rights Committee, it found that it is discriminatory to deny a request for termination of pregnancy in a case in which the fetus is anencephalic and there is a risk to the pregnant woman. In particular the Committee consider the stereotype of giving priority to the reproductive function of women as a duty.<sup>244</sup> The Commission observes that this case involves a similar situation of influence from stereotypes that comes from the absolute prohibition itself to Beatriz in this case in which the State gave absolute priority to protecting the anencephalic fetus, without considering Beatriz’s grave situation of life, integrity, and health.

207. Second, the total criminalization of abortion and its classification as a criminal offense have a disproportionately very negative impact on women facing poverty. Regarding this, the United Nations Working Group on the issue of discrimination against women in law and in practice has stated as follows:

<sup>239</sup> Inter-American Court. *Case of I.V. v. Bolivia: Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 136.

<sup>240</sup> IA Court of HR. *Case of Ramírez Escobar et al v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, paras. 276-277; IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298. para. 290.

<sup>241</sup> IA Court of HR. *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329. Judgment of May 25, 2017. Series C No. 336. para. 244

<sup>242</sup> United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May 2, 2011, para. 67.

<sup>243</sup> Inter-American Court. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2015. Series C No. 298, para. 290.

<sup>244</sup> Human Rights Committee. *L.C v. Peru*. Communication No. 22/2009. CEDAW/C/50/D/22/2009, November 4, 2011, para. 7.7 and 8.15.

In countries where induced termination of pregnancy is restricted by law and/or otherwise unavailable, safe termination of pregnancy is a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers and practices. This results in severe discrimination against economically disadvantaged women, which the Working Group has highlighted during its country visits.<sup>245</sup>

208. The various international bodies that have issued opinions on the specific situation of El Salvador have joined this, as described in the section on Context. The Commission finds that there is a uniform criterion that the absolute criminalization of abortion in El Salvador has had a greater impact on women experiencing poverty, as they cannot cover the expenses of seeking a pregnancy termination in private clinics or even in other countries. Furthermore, the IACHR underscores that the situation can also lead women to fall into a cycle of poverty. Thus, the UN Special Rapporteur on extreme poverty and human rights has held that:

Low-income women who would like to exercise their constitutional, privacy-derived right to access abortion services face legal and practical obstacles, such as mandatory waiting periods and long driving distances to clinics. This lack of access to abortion services traps many women in cycles of poverty.<sup>246</sup>

209. In this case, it is not in dispute that Beatriz was living in poverty and did not have sufficient economic resources to access a pregnancy termination (through other means, such as by leaving the country) and sanitary conditions that would protect her integrity, health, life, and reproductive freedom. In the view of the IACHR, the treatment given in the instant case by the different Salvadorian authorities cannot be viewed separately from Beatriz's status as a woman and her situation of poverty, inasmuch as all of these factors together in practice made her more vulnerable, aggravating the injury endured by her and causing her to enjoy her rights in a different way. The IACHR notes that instead of protecting her rights, the institutions involved reinforced misogynist attitudes, validating and thereby encouraging improper practices to continue at State institutions. This violence and institutional discrimination, in turn, prevented society as a whole from bringing its behavior and attitudes about women's sexual and reproductive health in line with international standards.

210. Based on the foregoing, the Commission finds that because of the criminal laws, policies and practices in force in El Salvador, as well as the failure of authorities to act, Beatriz endured discrimination and violence as a consequence of her status as a woman living in poverty, in violation of Articles 24 and 1.1 of the American Convention, in connection with Article 2 of the same instrument. For the same reasons, the Commission concludes that the State violated Article 7 of the Convention of Belém do Pará.

#### **F. Right to humane treatment of family members (Article 5.1 of the American Convention in connection with Article 1.1 of the same instrument)**

211. The Court has repeatedly held that the family members of victims of human rights violations can be victims themselves. On this score, the Court has understood the right to psychological and emotional integrity of some of the victim's family members to be violated because of the additional suffering endured by them as a result of the specific circumstances of violations perpetrated against their loved ones and because of subsequent conduct or omissions of State authorities in response to the events,<sup>247</sup> taking into account, for example, efforts to obtain justice and close family ties.<sup>248</sup>

212. The Court has also found a violation of this right because of the suffering caused by the acts perpetrated against loved ones.<sup>249</sup> Additionally, it has held that the State's contribution to creating or aggravating the situation of vulnerability of a person has a significant impact on the integrity of the persons surrounding him

<sup>245</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, April 8, 2016, para. 14.

<sup>246</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>247</sup> IA Court of HR. *Case of Cuscul Pivaral et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 23, 2018. Series C No. 359, para. 191.

<sup>248</sup> IA Court of HR. *Case of Poblete Vilches et al v. Chile*. Merits, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, para. 208.

<sup>249</sup> IA Court of HR. *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, paras. 162 and 163.

or her, especially close family members who face uncertainty and insecurity as a result of the violation of their nuclear or close family.<sup>250</sup>

213. In the instant case, the IACHR notes that the physical and psychological suffering endured by Beatriz had an impact on her next of kin.<sup>251</sup> Concretely, the Commission notes that Beatriz's next of kin has experienced grief, anguish and uncertainty because of violations of the right to life, health, humane treatment and reproductive autonomy due to the lack of access to abortion. Furthermore, her family members were prevented from being in constant contact with Beatriz because she was hospitalized for protracted periods of time. These family members also witnessed the deterioration of Beatriz's health as a result of the State's negligence. In addition, Beatriz's situation was widely covered in the media, due to the absolute criminalization of abortion. She endured discrimination and violence because of her status as a woman living in poverty. The Commission understands this situation to be stigmatizing for her next of kin.

214. Accordingly, taking into consideration the circumstances of the instant case, the IACHR concludes that the State is responsible for violation of Article 5.1 of the American Convention, in connection with Article 1.1 to the detriment of Beatriz's family members, who are mentioned in the instant report.

## V. CONCLUSIONS AND RECOMMENDATIONS

215. The Commission concludes that the State of El Salvador is responsible for the violation of the rights to life, humane treatment, fair trial, privacy, equal protection, judicial protection, and health established in articles 4(1), 5(1), 5(2), 8(1), 9, 11(2), 11(3) 24, 25(1), and 26 of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention. The Commission also finds the State has violated articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, as well as Article 7 of the Convention of Belém do Pará.

216. Based on the above conclusions,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF EL SALVADOR,

1. Provide full reparation for the human rights violations declared in the instant report, of both a pecuniary and non-pecuniary nature. The State shall take measures of economic compensation and satisfaction. In light of Beatriz's death, these measures are to be implemented to the benefit of the immediate family members and coordinated with their representatives.

2. Provide comprehensive physical and psychological health care to Beatriz's family members for any suffering that could have resulted from the absolute lack of access to justice for Beatriz.

3. Adopt the necessary legislative measures to establish the possibility of termination of pregnancy at least in situations of fetal unviability or fetal incompatibility with extra-uterine life, as well as risk to the life and serious risk to the health and physical integrity of the mother.

4. Adopt all necessary measures, including public policies, protocols and guidance frameworks to ensure the access to the termination of pregnancy, as consequence of the reform of the legal framework, is effective in practice and that no obstacles of fact or law affect its implementation. This must include the adequacy of the services provided through sanitary facilities, the correct medical performance and due access to information for women in these situations. These measures must ensure compatibility with international human rights law standards, for which it is necessary to ensure thorough consultations with persons and institutions specialized in these matters from a medical and human rights approach. Likewise, technical protocols or standards should be adopted to ensure the availability of termination of pregnancy under the

<sup>250</sup> IA Court of HR. *Case of Poblete Vilches et al v. Chile*. Mertis, Reparations and Costs. Judgment of March 8, 2018. Series C No. 349, para. 205.

<sup>251</sup> The petitioning party identified Beatriz's next of kin, however, they requested that their names be kept confidential in this report.

terms indicated in this report, which includes the obligation of doctors and the protection of medical personnel who perform such procedures

5. While the process of amending the law is ongoing, the Salvadorian State shall impose a moratorium on criminal prosecution for crimes related to termination of pregnancy in light of the facts of the instant case and review any cases opened on the basis of this law, inasmuch as it violates the principle of and right to legality mentioned above. In particular, all judicial authorities of the State must determine compatibility with the Convention pursuant to the standards established in the instant report on the merits, which should be disseminated to all relevant authorities nationwide.