

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES**

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**MANUELA AND FAMILY**

**v.**

**EL SALVADOR**

**Petition 424-12**

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**BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

*Presented by*

Philip Alston, U.N. Special Rapporteur on Extreme Poverty and Human Rights;  
The Allard K. Lowenstein International Human Rights Clinic, Yale Law School; The Global Justice  
Clinic, New York University School of Law; The Human Rights and Gender Justice Clinic, City  
University of New York School of Law; Ibis Reproductive Health; The International Action Network  
for Gender Equity and Law; The International Human Rights Clinic, Loyola Law School, Los Angeles;  
The International Justice and Human Rights Clinic, Peter A. Allard School of Law, University of  
British Columbia; The International Women's Human Rights Clinic, Georgetown University Law  
Center; MADRE; National Advocates for Pregnant Women; Women's Link Worldwide;  
Oscar A. Cabrera; Rebecca J. Cook; Dr. Joanne Csete; Joanna Erdman; Dr. Aníbal Faúndes;  
Laurel E. Fletcher; Deena R. Hurwitz; Jocelyn Getgen Kestenbaum; Bert Lockwood;  
Dr. Benjamin Mason Meier; Michelle Oberman; Rebecca B. Reingold; Alicia Ely Yamin.

Alyson M. Zureick  
Reproductive Justice Clinic  
New York University School of Law  
245 Sullivan Street, 5<sup>th</sup> Floor  
New York, NY 10012  
Telephone: (212) 992-7280

Amber Khan  
National Advocates for Pregnant Women  
875 Sixth Avenue, Suite 1807  
New York, NY 10001  
Telephone: (212) 255-9252

Reproductive Justice Clinic Legal Interns:  
Angeline Chen  
Astrid Reyes

**ATTORNEYS FOR *AMICI CURIAE*  
PRESENTED JANUARY 23, 2018**

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<http://www.who.int/gender-equity-rights/knowledge/9789241563857/en/> ..... 23

## I. INTEREST OF AMICI

*Amici curiae* are national and international women's and human rights organizations, international law clinics, international law professors, and public health and human rights experts dedicated to advancing women's equality and human rights around the world.<sup>1</sup> *Amici* are committed to ensuring that women are not deprived of their human rights simply because they are capable of pregnancy, and recognize that states must address conditions of entrenched poverty, inequality, and discrimination that often undermine women's full equality and citizenship.

*Amici* present this brief, which draws on collective expertise in the fields of public health, gender equality, and human rights, in favor of Petitioners. The brief aims to inform the Inter-American Commission on Human Rights' understanding of the environment in which poor and rural women and girls exist in El Salvador, and how the total prohibition of abortion has a particularly detrimental and discriminatory impact on their health and rights. Specifically, the brief provides information about the punitive treatment experienced by women and girls who seek care at public hospitals for pregnancy complications, miscarriages, stillbirths, and other pregnancy-related conditions, as a result of El Salvador's complete ban on abortion, and how this contravenes El Salvador's international responsibility to respect, protect, and fulfill human rights for women and girls without discrimination and on a basis of equality.

## II. SUMMARY OF ARGUMENT

This case concerns human rights violations arising from El Salvador's prohibition and criminalization of abortion in all circumstances and manifested in the case of Manuela: a poor and uneducated woman living in a rural community, who was prosecuted and convicted of murder simply for experiencing a miscarriage. Petitioners in this case have presented information to the

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<sup>1</sup> Descriptions of the individual *amici* are included in the attached Appendix.

Inter-American Commission on Human Rights (“IACHR” or “the Commission”) that demonstrates the extent to which El Salvador’s criminal abortion regime creates an environment in which women are scrutinized and criminally punished for a range of pregnancy outcomes, including miscarriages and obstetric emergencies, in violation of numerous human rights guaranteed to them under the American Convention on Human Rights (“the American Convention”) and other human rights instruments. *Amici* agree with the arguments advanced by Petitioners and submit this brief to highlight both the inherently discriminatory nature of a legal regime that criminalizes women’s health outcomes, and the disproportionate impact the criminal abortion ban has on women and girls, like Manuela, who come from socioeconomically vulnerable backgrounds with already limited access to healthcare and few or no means to protect their rights.

Women are human beings with the capacity for pregnancy. The fact is that children would not exist nor would the species survive but for women who become pregnant and, at significant risks to their own lives and health, give birth and bring forth life.<sup>2</sup> It is the nature of pregnancy that no one—not women, doctors, or the state—can guarantee that a particular pregnancy will continue and result in a healthy birth outcome. Despite this reality, El Salvador has created and fostered a criminal regime that transforms essential healthcare into the site of criminal investigations;

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<sup>2</sup> Although pregnancy and childbirth have become significantly safer around the world in recent years, they still present serious dangers for many women. According to the World Health Organization, about 830 women died from complications of pregnancy and childbirth every day in 2015. World Health Organization, *Global Health Observatory (GHO) Data: Maternal mortality*, [http://www.who.int/gho/maternal\\_health/mortality/maternal\\_mortality\\_text/en/](http://www.who.int/gho/maternal_health/mortality/maternal_mortality_text/en/) (last visited Dec. 14, 2017). Maternal mortality rates vary widely between rich and poor, urban and rural areas, and between and within countries. *Id.* In 2015, El Salvador’s maternal mortality rate was about 38 per 100,000 live births, compared to 15 per 100,000 live births in the most developed countries. *Compare Global, regional, and national levels of maternal mortality, 1990–2015: a systematic analysis for the Global Burden of Disease Study 2015*, 388 LANCET 1775, 1784 (Oct. 8, 2016), available at [https://ac.els-cdn.com/S0140673616314702/1-s2.0-S0140673616314702-main.pdf?\\_tid=5ab45008-c936-11e7-a75d-00000aab0f26&acdnat=1510662274\\_349b3562a31cf20af281edb12b716917](https://ac.els-cdn.com/S0140673616314702/1-s2.0-S0140673616314702-main.pdf?_tid=5ab45008-c936-11e7-a75d-00000aab0f26&acdnat=1510662274_349b3562a31cf20af281edb12b716917), with *id.* at 1787.

exposes women to prosecution for their pregnancy outcomes, whether voluntary or involuntary; labels them criminals; and subjects them to potentially decades in prison.

This brief highlights the particularly severe effect that El Salvador's criminal abortion regime has on women and girls who experience intersecting forms of discrimination, on the basis of both their gender and their socioeconomic vulnerabilities, which makes them most susceptible to abuses of the state's police power. This pattern is made clear by the fact that Manuela and most of the women convicted under this law came from disenfranchised and impoverished communities where the state had failed to ensure the realization of their human rights. These women and girls face multiple vulnerabilities that are often a result of the state's systemic failure to ensure their access to healthcare, education, freedom from violence, and special protections owed to marginalized communities. The state's failures in this regard undermine women and girls' physical and mental health and increase their risks of pregnancy complications and negative pregnancy outcomes. Further, when these individuals seek medical care for pregnancy complications in public healthcare facilities, they come under scrutiny from their healthcare providers; face being reported to the authorities for a suspected abortion; often receive poor quality medical care; and may face substantial abuse from their physicians, the very people tasked with protecting their health and physical integrity. In short, under the criminal abortion regime, El Salvador essentially criminalizes women for health outcomes that result from a lifetime of gender and economic-based marginalization while depriving them of their rights to life, health, personal integrity and dignity, and medical privacy.

*Amici* recognize that the total abortion ban is based on and perpetuates patriarchal and discriminatory notions about the role of women and girls in society, and as such amounts to invidious gender discrimination under the American Convention. This brief contends, however,

that the discriminatory nature of this legal regime can only be fully understood through an intersectional lens, which reveals the law's invidious and discriminatory operation against the most marginalized and disenfranchised women in El Salvador. The state has failed to fulfill the special obligations it owes to these women and girls and has enacted a regime that intensifies their vulnerabilities and further violates their human rights. Ultimately, in its effort to punish women and prevent all abortions, El Salvador is leaving a trail of broken families, destroyed futures, cyclical poverty, and, in the case of Manuela, a void that her family can never fill again.

### III. STATEMENT OF FACTS

In the late 1990s, El Salvador amended its Penal Code and Constitution to severely restrict women's reproductive rights. In 1997, the Salvadoran government replaced Article 169 of the Penal Code, which permitted abortion in cases of rape or sexual relations with a minor, fetal abnormalities, or where the woman's life was at risk,<sup>3</sup> with Article 133, which completely outlaws abortion under all circumstances and carries a punishment of two to eight years' imprisonment for women who undergo the procedure.<sup>4</sup> Under Article 135 of the Penal Code, medical professionals may be punished with six to twelve years in prison should they participate in an abortion.<sup>5</sup> The following year, El Salvador amended Article 1 of the Constitution to establish that life begins at the moment of conception.<sup>6</sup> This has resulted in a system where women can be prosecuted not only for alleged abortions, but also for aggravated homicide, which carries a penalty of thirty to

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<sup>3</sup> Center for Reproductive Rights & Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico, *Marginalized, Persecuted, and Imprisoned: The Effects of El Salvador's Total Criminalization of Abortion*, at 18 (2014), available at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/El-Salvador-CriminalizationOfAbortion-Report.pdf> [hereinafter *Marginalized, Persecuted, and Imprisoned*].

<sup>4</sup> Penal Code of El Salvador, Legis. Decree 1030 of June 10, 1997, Tit. I, Chap. II, Art. 133 [hereinafter Penal Code (1997)].

<sup>5</sup> Penal Code (1997), Tit. I, Chap. II, Art. 135.

<sup>6</sup> Constitution of the Republic of El Salvador, 1983, Art. 1 (amended 2003).

fifty years' imprisonment.<sup>7</sup> Since then, El Salvador's total abortion ban has been used to criminally punish dozens of women, including the woman whose case is at issue here—"Manuela."<sup>8</sup>

Manuela was a poor and illiterate woman from the countryside of Morazán, El Salvador who, due to the state's egregious departure from its international human rights commitments, suffered a tragedy that consumed the last few years of her young life. Manuela was the mother of two children, whom she raised alone because her husband had left her.<sup>9</sup> In 2006, she began to experience severe health-related problems, including tumors and other symptoms, which remained undiagnosed and largely untreated despite visits to her local clinic and the hospital.<sup>10</sup> Despite her serious pain and other symptoms, the medical providers never informed Manuela of the importance of undergoing medical examinations and did not provide any assistance for her to get to the hospital, which was financially and logistically difficult for her to access from her rural community.<sup>11</sup>

In 2007, Manuela became pregnant. On February 26, 2008, in the seventh month of her pregnancy, she suffered a serious fall while doing laundry in the river. The next day Manuela was rushed to San Francisco Gotera National Hospital after suffering an obstetric emergency at home that rendered her unconscious and hemorrhaging.<sup>12</sup> At the hospital, instead of receiving the care and compassion she required, Manuela was confronted by a hostile treating physician who filed a police report accusing her of having induced an abortion for the purpose of hiding a pregnancy resulting from an "extramarital relation."<sup>13</sup>

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<sup>7</sup> Penal Code (1997), Tit. I, Chap. I, Art. 129.

<sup>8</sup> Inter-Am. Comm'n H.R., Report No. 29/17. Petition 424.12. Admissibility. Manuela and Family. El Salvador. Mar. 18, 2017, at 1 n.1 ("The petitioners requested to keep the alleged victim's name confidential and to refer to her by the name of 'Manuela.'").

<sup>9</sup> *Id.* ¶ 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* ¶ 3.



During this period, and while still recovering from the physical and emotional trauma of her miscarriage, Manuela was interrogated by police officers and without an attorney. She was handcuffed to her bed and was not privy to the proceedings that were happening against her.<sup>14</sup> On March 2, 2008, an arrest warrant was issued; even though Manuela was illiterate and had no defense counsel, no one verbally explained the charges to her.<sup>15</sup> Her parents, who were also illiterate, were harassed and coerced into denouncing their own daughter.<sup>16</sup> In fact, Manuela's father was forced to sign a document that he could not read or understand, which was used to file a complaint against Manuela and later used as evidence against her in her criminal trial. The criminal proceedings against Manuela were plagued by serious procedural irregularities; indeed, the court held the first hearing without Manuela even being present.<sup>17</sup>

On July 31, 2008, the Trial Court of San Francisco Gotera convicted Manuela to 30 years in prison for aggravated murder.<sup>18</sup> Manuela's health continued to decline in prison but she did not receive medical attention again until February 2009, when she was diagnosed with nodular sclerosis Hodgkin's lymphoma and prescribed chemotherapy. However, the prison staff often refused to take her to her chemotherapy appointments.<sup>19</sup> Manuela passed away on April 30, 2010 at age 33, less than two years after her conviction and while still in the custody of the Salvadoran state.<sup>20</sup>

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<sup>14</sup> *Id.* ¶¶ 4–5.

<sup>15</sup> *Id.* ¶ 4.

<sup>16</sup> *Id.* ¶ 3.

<sup>17</sup> *Id.* ¶¶ 3–5.

<sup>18</sup> *Id.* ¶ 5.

<sup>19</sup> *Id.* ¶ 6.

<sup>20</sup> Center for Reproductive Rights, *Manuela Toolkit*, at 1 (2014), available at [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP\\_Manuela\\_Toolkit\\_English\\_FINALE.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/GLP_Manuela_Toolkit_English_FINALE.pdf) [hereinafter CRR, *Manuela Toolkit*].

#### IV. ARGUMENT

El Salvador is required under human rights law to protect marginalized individuals and groups from discrimination and to ensure equal protection under its domestic laws. El Salvador's criminal abortion ban violates these obligations in numerous ways. The ban itself is based on and perpetuates impermissible gender-based stereotypes and singles out women and girls for criminal punishment on the basis of their health outcomes without an objective and reasonable justification. At the same time, the discriminatory impact of El Salvador's abortion laws cannot be understood on the basis of gender alone. This regime, in fact, operates with particular intensity on women and girls who are also marginalized on the basis of their social conditions, including poverty, rural isolation, lack of education, and exposure to systemic violence. El Salvador owes special protections to these vulnerable communities. Yet the state has failed to address the environmental conditions that expose these women and girls to poor health and negative pregnancy outcomes while criminalizing the medical care they need to preserve their lives and health. This regime, as such, violates the state's obligations of non-discrimination and equality with regard to women and girls from the most vulnerable communities and undermines the full realization of their human rights on a basis of equality.

##### **A. EL SALVADOR'S CRIMINAL ABORTION BAN IMPERMISSIBLY DISCRIMINATES AGAINST WOMEN AND GIRLS AND FAILS TO EQUALLY ENSURE THEIR RIGHTS TO HEALTH, LIFE, PERSONAL INTEGRITY AND DIGNITY, AND PRIVACY.**

The principles of equal and effective protection of the law and of non-discrimination are fundamental *jus cogens* norms, from which no derogation is permitted.<sup>21</sup> Under the American

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<sup>21</sup> Case of YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 127, ¶¶ 184–85 (June 23, 2005); Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 101 (Sept. 17, 2003) (“...no legal act that is in conflict with this fundamental principle [of equal protection and non-discrimination] is acceptable...”).

Convention on Human Rights, El Salvador is required to respect and guarantee “free and full exercise” of all rights and freedoms protected under the Convention “without any discrimination”<sup>22</sup> on the grounds, *inter alia*, of race, color, sex, economic status, or “any other social condition,”<sup>23</sup> and to ensure that all persons are treated “equal[ly] before the law.”<sup>24</sup> States are required under the Convention to “abstain from producing discriminatory regulations or those with discriminatory effects on ... different groups ... when exercising their rights.”<sup>25</sup> Discrimination on the basis of sex is explicitly prohibited and “very weighty reasons [must] be put forward to justify a distinction based solely” on this ground.<sup>26</sup>

**1. *The criminal abortion ban perpetuates gender-based stereotypes and unlawfully discriminates against women and girls in El Salvador.***

El Salvador’s criminal abortion ban prohibits a medical procedure that only women need and criminalizes women for health outcomes—including miscarriages and stillbirths—that only they experience. By targeting women’s healthcare for criminal surveillance and their medical conditions for punishment, El Salvador impermissibly singles out women and girls for differential treatment under the law without objective and reasonable justification.<sup>27</sup> While El Salvador’s

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<sup>22</sup> The American Convention on Human Rights does not explicitly define “discrimination.” The Inter-American Court, however, has adopted a definition based on the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination against Women, namely: “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” Case of Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 285 n.438 (Nov. 28, 2012).

<sup>23</sup> Organization of American States, American Convention on Human Rights, adopted on Nov. 22, 1969, art. 1(1), S.S.T. No. 36, OEA/Ser.L/V/II.23, doc. 21 rev. 6 (in force since July 18, 1978) [hereinafter American Convention].

<sup>24</sup> *Id.* art. 24 (“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”).

<sup>25</sup> Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica, *supra* note 22, ¶ 286.

<sup>26</sup> María Eugenia Morales de Sierra v. Guatemala, Case 11.625, Inter-Am. Comm’n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev ¶ 36 (2001) (internal quotations omitted).

<sup>27</sup> See YATAMA v. Nicaragua, *supra* note 21, ¶ 185 (“A distinction that lacks objective and reasonable justification is discriminatory.”). Indeed, many human rights bodies and experts recognize that criminal abortion bans like El Salvador’s discriminate against women in girls in violation of states’ international human rights obligations. See, e.g., U.N. Committee on the Elimination of All Forms of Discrimination Against Women, *General recommendation*

criminal abortion ban is presumably aimed, at least in part, at protecting prenatal life, studies show that these laws do not actually reduce abortion rates but simply make abortion less safe.<sup>28</sup> Furthermore, El Salvador’s abortion laws elevate protection of embryos and fetuses over the rights of women and girls in all circumstances. Under its human rights obligations, however, El Salvador’s desire to “protect[] prenatal life” cannot “justify the total negation of other rights”<sup>29</sup> and “must be harmonized with the fundamental rights of other individuals,” especially the woman.<sup>30</sup>

The abortion ban, in application, also extends beyond regulation of abortion and punishes women for poor pregnancy outcomes that are outside of their control, as in the case of Manuela and many others who were prosecuted for homicide on the basis of miscarriages and obstetric emergencies.<sup>31</sup> The abortion ban fosters the dangerous and medically inaccurate myth that pregnancy outcomes and child health are solely or even primarily the result of what any individual

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*No. 33 on women’s access to justice*, ¶ 47, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015) (a state discriminates against women by “[c]riminalizing forms of behaviour that can be performed only by women, such as abortion”); U.N. Office of the High Commissioner for Human Rights, *El Salvador: UN experts urge Congress to allow termination of pregnancy in specific circumstances* (May 8, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21595&LangID=E> [hereinafter OHCHR, *UN experts urge Congress to allow termination of pregnancy*].

<sup>28</sup> Gilda Sedgh et al., *Abortion incidence between 1990 and 2014: global, regional, and subregional levels and trends*, 388 LANCET 258, 263 (July 2016), available at [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(16\)30380-4.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)30380-4.pdf) (finding that abortion rates are slightly higher in countries where abortion is illegal in all circumstances or legal only to save a woman’s life). See also U.N. Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and practice*, ¶ 82, U.N. Doc. A/HRC/32/44 (Apr. 8, 2016) [hereinafter U.N. Human Rights Council, *Report on discrimination against women*]; U.N. General Assembly, *Report of the U.N. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 25, U.N. Doc. A/66/254 (Aug. 3, 2011) (“The rate of unsafe abortions and the ratio of unsafe to safe abortions both directly correlate to the degree to which abortion laws are restrictive and/or punitive.”) [hereinafter U.N. Special Rapporteur on the right to health, *Criminalization of sexual and reproductive health*].

<sup>29</sup> *Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica*, *supra* note 22, ¶ 258. See also Human Rights Committee, *Commc’n No. 1153/2003, K.L. v. Peru*, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) (finding that the state’s refusal to allow girl to have abortion, even though the fetus had a fatal anomaly and would not survive after birth, violated multiple rights under the International Covenant on Civil and Political Rights).

<sup>30</sup> *Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica*, *supra* note 22, ¶ 260; *accord* ¶ 264.

<sup>31</sup> See Amnesty Int’l, *On the Brink of Death: Violence Against Women and the Abortion Ban in El Salvador*, at 34–37 (2014), available at [https://www.amnestyusa.org/files/el\\_salvador\\_report\\_-\\_on\\_the\\_brink\\_of\\_death.pdf](https://www.amnestyusa.org/files/el_salvador_report_-_on_the_brink_of_death.pdf).

pregnant woman does. Yet, as further explained in Part IV.B, the state’s failure to promote the health of its most vulnerable populations only increases the risk that women will experience a negative pregnancy outcome. Public health experts have found that “the physical and social environments within which individuals function need to be safe, clean, affordable, socially supportive and adequately resourced in order to maximize every woman’s potential to deliver a full-term and healthy infant.”<sup>32</sup> El Salvador’s criminal abortion regime, however, punishes women and girls for these negative pregnancy outcomes rather than providing them with the resources and support they need to lead healthy lives. For all these reasons, the ban lacks an objective and reasonable justification and cannot meet the heightened standard of justification demanded of laws that differentiate on the basis of sex.

The criminal abortion ban further discriminates against women and girls because it is based on and perpetuates harmful gender stereotypes.<sup>33</sup> The Inter-American Court of Human Rights (the “Inter-American Court”) has recognized that state actions based on gender stereotypes are illegitimate and discriminatory,<sup>34</sup> including those, like El Salvador’s abortion ban, that are “influenced by the stereotype that protection of the fetus should prevail over the health of the

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<sup>32</sup> Am. Pub. Health Ass’n, *Reducing Racial/Ethnic and Socioeconomic Disparities in Preterm and Low Birthweight Births*, Policy No. 20062 (Nov. 8, 2006), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/18/10/01/reducing-racial-ethnic-and-socioeconomic-disparities-in-preterm-and-low-birthweight-births>.

<sup>33</sup> Case of González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 401 (Nov. 16, 2009) (noting that “gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women”). See also REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* 20 (2010).

<sup>34</sup> See, e.g., Case of Atala Riffo & Daughters v. Chile, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239, ¶¶ 111, 145–46 (Feb. 24, 2012) (finding that domestic court decision awarding custody of lesbian woman’s daughters to their father was based on stereotypes about LGBT persons and was impermissible discrimination under the American Convention); González et al. (“Cotton Field”) v. Mexico, *supra* note 33, ¶ 401 (violence against women constituted discrimination where “the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in [state] policies and practices....”).

mother.”<sup>35</sup> Although states are required under the American Convention to “dismantl[e]...stereotypes and practices that perpetuate discrimination,”<sup>36</sup> El Salvador actually *enforces* these stereotypes through harsh criminal punishment of women and girls who transgress their “traditional” roles as mothers and child-bearers, either through accessing an abortion or simply losing a pregnancy, including labeling these women as murderers.<sup>37</sup> The ban’s reliance on these stereotypes also results in heightened scrutiny and abuse of women seeking healthcare. In Manuela’s case, for example, her doctors accused her of aborting a pregnancy resulting from an “extramarital relation,” reported her to the police, and shackled her as she was recovering from hemorrhaging and severe preeclampsia.<sup>38</sup> Despite her serious health condition, including extreme blood loss, Manuela’s physicians, law enforcement, and the courts all treated her as if she could have done more to save the fetus. Indeed, the judge who presided over her trial found that “her maternal instincts should have prevailed” and “that she should have protected the fetus.”<sup>39</sup> In short, because Manuela did not fit the stereotype of the all-sacrificing “good mother,” she was treated as a criminal on the basis of her health condition and her right to receive compassionate healthcare was disregarded.

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<sup>35</sup> *Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica*, *supra* note 22, ¶ 297 (Costa Rica’s prohibition on in vitro fertilization was impermissibly based on “the influence of stereotypes, in which [the state] gave absolute prevalence to the protection of the fertilized eggs without considering the situation of disability of some of the women”); *id.* ¶ 302 (noting that “these gender stereotypes are incompatible with international human rights law and measures must be taken to eliminate them”).

<sup>36</sup> *Atala Riffo & Daughters v. Chile*, *supra* note 34, ¶ 267. *See also* Convention on the Elimination of All Forms of Discrimination Against Women, adopted on Dec. 18, 1979, arts. 2(f), 5(a), G.A. Res. 34/180, UN GAOR (34th Sess.), Supp. No. 46, at 193, U.N. Doc. A/34/46, 1249 S.S.T. 13 (entered into force Sept. 3, 1981) (requiring states parties to take “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women” in an effort to eliminate practices that “are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”) [hereinafter CEDAW].

<sup>37</sup> *See supra* Part III.

<sup>38</sup> Inter-Am. Comm’n H.R., Report No. 29/17. Petition 424.12. Admissibility. Manuela and Family. El Salvador. Mar. 18, 2017, ¶¶ 3–4.

<sup>39</sup> *See CRR, Manuela Toolkit*, *supra* note 20, at 13 (quoting Roberto Flores, *El Salvador enfrenta nueva demanda en CIDH*, *Diario Colatino* (Mar. 22, 2012)).

**2. *El Salvador’s enforcement of the criminal abortion ban discriminates against women and girls by undermining their rights to life, health, privacy, personal integrity, and dignity.***

El Salvador’s criminal abortion regime operates in large part through the healthcare system. This situation undermines women and girls’ access to healthcare and discriminates against them in the realization of their right to health, life, personal integrity and dignity, and privacy, in violation of El Salvador’s commitments under the American Convention.<sup>40</sup> The Inter-American Court recognizes that the right to health is protected by Article 4 of the American Convention, which guarantees that “[e]very person has the right to have his life respected,”<sup>41</sup> and Article 5, which guarantees personal integrity and human dignity.<sup>42</sup> Article 10 of the Protocol of San Salvador—to which El Salvador is a party—also explicitly protects the right to health, defined as the enjoyment of the “highest level of physical, mental, and social well-being,” and requires states to provide healthcare as a public good.<sup>43</sup> States also owe special measures of protection to pregnant women, who face particular vulnerabilities with regard to their lives and health.<sup>44</sup>

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<sup>40</sup> Article 1(1) of the American Convention on Human Rights requires states to respect and guarantee all rights protected under the Convention without discrimination. Thus, “any treatment that can be considered to be discriminatory with regard to the exercise of any of the rights guaranteed under the Convention” amounts to a violation of both article 1(1) and the substantive right. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 182, ¶ 209 n.223 (Aug. 5, 2008).*

<sup>41</sup> American Convention, *supra* note 23, art. 4.

<sup>42</sup> *Id.* art. 5(1) (“Every person has the right to have his physical, mental, and moral integrity respected.”); *Case of Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 171, ¶ 117 (Nov. 22, 2007)* (“...the rights to life and humane treatment are directly and immediately linked to human health care”).

<sup>43</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador,” adopted on Nov. 17, 1988, art. 10, S.S.T. No. 69, reproduced in Basic Documents of the Inter-American Human Rights System, OEA/Ser.L.V/11.82 doc. 6 rev.1 p. 67 (1992) (in force since November 16, 1999) (“(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...”).

<sup>44</sup> *Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica, supra* note 22, ¶ 222 (noting that Article 7 of the American Declaration “establishes the right of all women, during pregnancy, to special protection, care, and aid”); *Xákmok Kásek Indigenous Cmty. v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 233 (Aug. 24, 2010).*

El Salvador’s criminal abortion ban violates these rights in a discriminatory manner, first, by penalizing and, in many cases, closing the door to certain medical care that only women and girls need to preserve their lives, health, personal integrity, and dignity. The Inter-American Court has found that “penalizing a medical activity, which is not only an essential lawful act, but which is also the physician’s obligation to provide” violates states’ human rights obligations.<sup>45</sup> El Salvador’s ban explicitly prohibits a medically necessary procedure—abortion—and also deters physicians from providing other life- or health-saving medical treatment like removal of ectopic pregnancies out of fear that they could be prosecuted for illegal abortion or homicide.<sup>46</sup>

The Inter-American Court has recognized this discriminatory aspect of El Salvador’s abortion ban: In 2013, the Court ordered the Salvadoran state to allow a young, pregnant woman, “Beatriz,” to obtain a life-saving abortion of a non-viable fetus and acknowledged that, in cases like Beatriz’s, an absolute bar to abortion could cause “damage ... irreparable to the rights to [] life, personal integrity and health.”<sup>47</sup> Despite the Court’s order, however, the Salvadoran state continued to deny Beatriz treatment until she was 27 weeks pregnant and the fetus could be delivered via caesarean section, putting Beatriz’s health at further risk and forcing her to undergo an invasive surgical procedure. Beatriz’s daughter was born without a brain and died only five hours after her birth.<sup>48</sup>

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<sup>45</sup> Case of De la Cruz Flores v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser C.) No. 115, ¶ 102 (Nov. 18, 2004).

<sup>46</sup> Amnesty Int’l, *On the Brink of Death*, *supra* note 31, at 23 (quoting a medical doctor at a public hospital maternity ward during a 2013 interview: “Even though we know that we must intervene [in a case of ectopic pregnancy], we can’t because the embryo is still alive.... Some colleagues will note on ultrasound scans.... ‘remember, it is illegal to do this.’ And the patient is even more confused.”). Women and doctors are often forced to wait until a woman’s fallopian tube has ruptured, causing hemorrhaging that can lead to the woman’s death. *Id.* at 23–24.

<sup>47</sup> Matter of B. v. El Salvador, Provisional Measures, Order of the Court, “Considering That,” ¶ 17 (Inter-Am. Ct. H.R. May 29, 2013), available at [http://www.corteidh.or.cr/docs/medidas/B\\_se\\_01\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/B_se_01_ing.pdf).

<sup>48</sup> *Baby Born to El Salvador Woman Denied Abortion Dies after C-Section*, THE GUARDIAN (June 4, 2013), <https://www.theguardian.com/world/2013/jun/04/baby-el-salvador-woman-abortion-dies>.



El Salvador further undermines the health and human rights of women and girls by conscripting their medical providers to serve as the first line of enforcement and primary source of evidence against them in cases of suspected abortion. On one hand, Salvadoran law contains a robust professional confidentiality provision, which requires physicians to protect information revealed to them in the professional relationship, at the threat of imprisonment.<sup>49</sup> However, the Salvadoran penal code also requires heads of public and private medical centers to report injured or ill persons in their care who are suspected of a criminal offense within eight hours of intake or face prosecution.<sup>50</sup> The conflicting legal duties place medical professionals in a precarious position, particularly in emergency situations where there is a tension between their duties to their patients and the requirements of the abortion ban.<sup>51</sup> The law's harsh penalties also incentivize medical professionals to report obstetric emergencies as suspected abortions, either out of an abundance of caution<sup>52</sup> or active hostility toward their patients.<sup>53</sup>

This scheme exposes women and girls experiencing pregnancy loss and other complications to increased scrutiny by their medical care providers and revelation of their confidential medical information, in violation of their rights to privacy under both Salvadoran law and human rights law. The American Convention guarantees the right to be free from “arbitrary or abusive interference with [one’s] private life” and the protection of the law against such

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<sup>49</sup> Penal Code (1997), Tit. VI, Chap. II, Art. 187.

<sup>50</sup> Penal Code (1997), Tit. XV, Chap. I, Art. 312. *See also* CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 8 n.1.

<sup>51</sup> *See* Amnesty Int’l, *On the Brink of Death*, *supra* note 31, at 33.

<sup>52</sup> *See id.* at 22 (quoting a medical doctor in a maternal health unit during a 2013 interview: “We’re not discussing a medical question, but a purely legal one. We all know what needs to be done, but we go back to the fact that we all have our hands tied by what is written in the law.”).

<sup>53</sup> The physician who tended to Manuela in the hospital not only accused her of having induced an abortion, but also shamed her for supposedly having an “extramarital relation” and inquired whether her husband knew what she had done. *Supra* Part III. In another case, “María” said about her arrival at the hospital during her medical emergency: “I remember that a doctor saw me...and began to treat me badly and said, ‘Because of what you came for,’ he told me, ‘forget about leaving here and going back home.’” CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 26.

interference.<sup>54</sup> Privacy in one’s medical information is a key component of the right to private life,<sup>55</sup> and, as this Commission has recognized, is particularly important for the realization of women and girls’ sexual and reproductive health.<sup>56</sup> Under international law, such confidentiality may only be breached in exceptional circumstances to benefit the patient or to guarantee the public health, and private medical information may not be used as evidence against a patient in criminal proceedings.<sup>57</sup> In El Salvador, women’s medical information is routinely used against them in criminal prosecutions for alleged abortion-related crimes, as happened in Manuela’s case. The requirement that physicians report suspected abortion, including negative pregnancy outcomes, to the authorities also harms women’s health and the public health by deterring women and girls from seeking medical care after an abortion or in cases of obstetric emergency or miscarriage.<sup>58</sup> Inability to access care can have devastating effects on women’s health in these circumstances, including

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<sup>54</sup> American Convention on Human Rights, *supra* note 23, art. 11.

<sup>55</sup> See *De la Cruz Flores v. Peru*, *supra* note 45, ¶ 101; U.N. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, at 360 ¶ 12(d), in U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).

<sup>56</sup> Inter-Am. Comm’n H.R., *Access to information on reproductive health from a human rights perspective*, ¶ 76, OAS/Ser.L/V/II, doc. 61 (Nov. 22, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/womenaccessinformationreproductivehealth.pdf> (“Confidentiality is a duty of healthcare professionals who receive private information in a medical environment, and maintaining the confidentiality or privacy of information they obtain from their patients is of critical interest in sexual and reproductive health.”) [hereinafter IACHR, *Information on reproductive health*].

<sup>57</sup> See Carolina Loayza Tamayo & Ysabel Marin Sandoval, *El derecho de las médicas y los médicos al Secreto Profesional en la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, 5 (PROMSEX: 2010), <http://promsex.org/images/docs/Publicaciones/derechomedicoSentencialacruz.pdf>; cf. Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 65, U.N. Doc. HR/P/PT/8/Rev.1 (Aug. 9, 1999) (“The duty of confidentiality is not absolute and may be ethically breached in exceptional circumstances where failure to do so will foreseeably give rise to serious harm to people or a serious perversion of justice. Generally, however, the duty of confidentiality covering identifiable personal health information can be overridden only with the informed permission of the patient.”); accord ¶¶ 68–69.

<sup>58</sup> IACHR, *Information on reproductive health*, *supra* note 56, ¶ 81 (“The IACHR notes that issues related to sexuality and reproduction are extremely sensitive, and thus the fear that confidentiality will not be respected can have the effect of women not seeking the medical care they need.”). See also U.N. Human Rights Council, *Report on discrimination against women*, *supra* note 28, ¶ 82 (“[R]estrictions on access to information on termination of pregnancy and services can deter women from seeking professional medical attention, with detrimental consequences for their health and safety.”); U.N. Special Rapporteur on the right to health, *Criminalization of sexual and reproductive health*, *supra* note 28, ¶¶ 41–42; World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, at 68, 94 (2012), available at [http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1).

life-long disabilities, infertility, and even loss of life.<sup>59</sup> In fact, numerous human rights bodies have recognized that criminal abortion laws like El Salvador's deter women from medical care, exposing them to serious health risks, and have urged El Salvador to reform its law.<sup>60</sup>

Women and girls also face the very real threat of harassment, abuse, and sub-standard medical care when they report to medical facilities after experiencing an obstetric emergency, miscarriage, or abortion. This treatment has serious consequences for their physical and mental health, both of which are components of the right to health.<sup>61</sup> Manuela, for example, suffered an obstetric emergency that required urgent and humane medical care but instead was interrogated by her doctors who reported her to the police and handcuffed her to her convalescent bed. The potential causes of her miscarriage, including her history of tumors and other serious untreated health problems, appear to have received little attention from her doctors who were focused on interrogating and denouncing her.<sup>62</sup> Other women prosecuted for suspected criminal abortion have received similar abusive treatment at the hands of physicians who actively participate in the law's enforcement.<sup>63</sup> By requiring medical professionals' involvement in enforcing the ban, El Salvador

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<sup>59</sup> See United Nations Population Fund, *Providing Obstetric and Newborn Care*, at 2 (last updated Dec. 2012), <https://www.unfpa.org/sites/default/files/resource-pdf/EN-SRH%20fact%20sheet-Urgent.pdf>.

<sup>60</sup> See U.N. Office of the High Commissioner for Human Rights, *Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador* (Nov. 17, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E>; U.N. Committee on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of El Salvador*, ¶¶ 36–37, U.N. Doc. CEDAW/C/SLV/CO/8-9 (Mar. 3, 2017); U.N. Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the combined third, fourth, and fifth periodic reports of El Salvador*, ¶ 22, U.N. Doc. E/C.12/SLV/CO/3-5 (June 19, 2014); U.N. Human Rights Committee, *Concluding Observations: El Salvador*, ¶ 10, U.N. Doc. CCPR/C/SLV/CO/6 (Nov. 18, 2010); OHCHR, *UN experts urge Congress to allow termination of pregnancy*, *supra* note 27. See also European Parliament resolution on El Salvador: the cases of women prosecuted for miscarriage, EUR. PARL. DOC. 2017/3003(RSP), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bMOTION%2bP8-RC-2017-0695%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>.

<sup>61</sup> See Protocol of San Salvador, *supra* note 43, art. 10(1) (recognizing that the right to health includes the “highest level of physical, mental, and social well-being” (emphasis added)).

<sup>62</sup> *Supra* Part III.

<sup>63</sup> See, e.g., Sara García & María Teresa Ochoa, *¿Por qué me pasó esto a mí?: La criminalización del aborto en El Salvador*, at 21–22, 26, Ipas Centroamérica (2013), <https://agrupacionciudadana.org/download/por-que-me-paso-esto-a-mi-la-criminalizacion-del-aborto-en-el-salvador/?wpdmdl=537> (available in Spanish only) (describing the

has created and sanctioned a system that exposes women and girls to violence in healthcare settings, including shackling and other abuses,<sup>64</sup> and violates their inter-dependent rights to privacy, mental and physical integrity, dignity, health, and reproductive freedom.<sup>65</sup>

In sum, El Salvador's criminal abortion regime deprives women and girls of equal protection of the law and actively undermines the realization of their human rights, including the rights to health, privacy, life, and personal integrity and dignity, on a discriminatory basis. As argued below, this discriminatory regime has particularly punitive effects on women and girls from the most marginalized communities in El Salvador, further compounding the violations of their human rights.

**B. EL SALVADOR'S CRIMINAL ABORTION BAN HAS A PARTICULARLY DISCRIMINATORY EFFECT ON WOMEN AND GIRLS FROM POOR AND MARGINALIZED BACKGROUNDS.**

El Salvador's total abortion ban not only discriminates on the basis of gender by criminalizing healthcare that only women and girls require, but it also disparately impacts women and girls who already suffer intersecting forms of vulnerability. Salvadoran women and girls who live in poverty or rural isolation; experience violence; and lack access to comprehensive healthcare and education, are more susceptible to poor health outcomes and greater scrutiny by state-run

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experiences of Esperanza and Natalia, both of whom were reproached by medical professionals during their obstetric emergencies).

<sup>64</sup> The interaction between the criminal abortion ban and the perpetuation of violence against women in El Salvador is beyond the scope of this brief. *Amici*, however, recognize 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.” U.N. Committee on the Elimination of All Forms of Discrimination Against Women, *General Recommendation 19: Violence against women*, ¶ 1, U.N. Doc. A/47/38 (1992). El Salvador is obligated to refrain from engaging in any act or practice of violence against women and has due diligence obligations to prevent, prosecute, and redress violence against women. *See* Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará,” adopted on June 9, 1994, art. 7 (in force since March 5, 1995); González et al. (“Cotton Field”) v. Mexico, *supra* note 33, ¶ 258. *Amici* urge the Commission to consider these issues further in reviewing the parties’ submissions.

<sup>65</sup> *Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica*, *supra* note 22, ¶ 147 (recognizing that the realization of personal autonomy, reproductive freedom, and physical and mental integrity are closely connected); *see also id.* (“The lack of legal safeguards that take reproductive health into consideration can result in a serious impairment of the right to reproductive autonomy and freedom.”).

medical institutions. Further, El Salvador has failed to address serious structural barriers that undermine the right to health of marginalized women and girls, in violation of its obligations under human rights law. The application of the abortion ban to these women and girls further compounds these existing rights violations. Consequently, poor and marginalized women and girls shoulder a significant burden under a law that broadly criminalizes women’s reproductive health, including health outcomes that are beyond their control, in contravention of El Salvador’s duty to promote their social inclusion and protect their human rights.

The Inter-American Court has increasingly recognized that discrimination does not just exist along a single axis, such as gender, but that certain populations experience heightened discrimination based on a confluence of factors, such as the intersection of gender with poverty, youth, racial and ethnic discrimination, and rural isolation, among others.<sup>66</sup> Under the American Convention, states parties are required to both refrain from enacting discriminatory laws and to take positive measures to “eliminate regulations of a discriminatory nature, to combat [discriminatory] practices . . . , and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual.”<sup>67</sup> These affirmative duties are heightened with regard to populations suffering from historic marginalization and discrimination, and states

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<sup>66</sup> See, e.g., *Caso Trabajadores de la Hacienda Brasil Verde v. Brasil*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 318, ¶¶ 337, 340–41 (Oct. 20, 2016) (recognizing states’ affirmative obligations to persons in situations of extreme poverty) (opinion not available in English); *Xákmok Kásek Indigenous Cmty. v. Paraguay*, *supra* note 44, ¶¶ 233–34 (finding state responsibility for violations of the right to life in relation to article 1(1) of the American Convention where state did not take adequate steps to address extreme poverty and lack of adequate medical care for vulnerable and pregnant indigenous women) (noting that “pregnant women require special measures of protection”); *González et al. (“Cotton Field”) v. Mexico*, *supra* note 33, ¶ 408 (noting states’ special obligations to victims of gender-based violence “owing to their condition as girls who, as women, belong to a vulnerable group”). See also CEDAW, *supra* note 36, art. 14(2) (requiring states parties to take “all appropriate measures” to eliminate discrimination against rural women).

<sup>67</sup> *YATAMA v. Nicaragua*, *supra* note 21, ¶ 185. See also *Case of the Girls Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 141 (Sept. 8, 2005) (“[S]tates must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.”); *Atala Riffo & Daughters v. Chile*, *supra* note 34, ¶ 80 (Feb. 24, 2012) (same).

must enact special protections to address structural discrimination and ensure that they are able to realize their human rights on a basis of equality.<sup>68</sup> The American Convention also prohibits states parties from enacting laws that have the purpose or effect of discriminating against persons in the realization of their human rights on the basis of economic status, which includes situations of poverty.<sup>69</sup>

Women and girls living in poverty and facing rural isolation, lack of economic and educational opportunities, and violence already face heightened structural barriers to the realization of their interrelated rights to life, health, dignity, and privacy. The imposition of the criminal abortion ban compounds these vulnerabilities and further undermines the realization of rights. In fact, publicly available information indicates that women from poor and marginalized backgrounds are more likely to be prosecuted under El Salvador's criminal abortion regime. Between 2000 and 2011, at least 129 women in El Salvador were prosecuted for the crimes of abortion or aggravated homicide connected to alleged abortion.<sup>70</sup> Like Manuela, these women were mostly young, living in poverty, had low levels of education, had difficulty accessing basic health services, and were reported to the authorities when seeking medical care for serious obstetric

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<sup>68</sup> Caso Trabajadores de la Hacienda Brasil Verde v. Brasil, *supra* note 66, ¶ 338; *see also* Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica, *supra* note 22, ¶ 292 (“Anyone in a situation of vulnerability is subject to special protection owing to the special duties that the State must comply with in order to satisfy the general obligation to respect and guarantee human rights.”); Case of the Yakye Axa Indigenous Cmty. v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 125, ¶ 162 (June 17, 2005) (“[T]he State has the duty to take positive, concrete measures geared toward fulfillment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.”).

<sup>69</sup> *See* American Convention, *supra* note 23, art. 1(1); Caso Trabajadores de la Hacienda Brasil Verde v. Brasil, *supra* note 66, ¶¶ 340–41; Artavia Murillo (“In Vitro Fertilization”) v. Costa Rica, *supra* note 22, ¶¶ 286–87, 303–04 (recognizing that the American Convention prohibits state action that has a discriminatory *effect* even when it lacks a discriminatory intent).

<sup>70</sup> CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 49. The overall number of 129 cases does not represent the total number of women accused of crimes related to suspected abortion because many accusations are dismissed without prosecution. The figure also does not reflect the number of minors prosecuted, as their case files are confidential. *Id.* at 38. Of the 129 women identified, 23 were convicted of illegal abortion and 26 were convicted of homicide. *Id.*

emergencies.<sup>71</sup> Numerous human rights experts and international bodies, including the U.N. High Commissioner for Human Rights, have expressed concern at the disproportionate application of the criminal abortion laws to vulnerable women and girls.<sup>72</sup>

A number of factors expose vulnerable women and girls to heightened scrutiny and punishment under the abortion ban. Conditions of poverty, adolescent pregnancy, and gender-based violence all contribute to negative pregnancy outcomes like miscarriage and stillbirth,<sup>73</sup> meaning that vulnerable Salvadoran women who live at the intersection of these social conditions have an increased risk of being caught up under the criminal abortion law regardless of whether they sought an abortion. Additionally, El Salvador has relatively high rates of negative birth outcomes: According to a 2006 report, El Salvador's stillbirth rate was double the rate in developed regions.<sup>74</sup> Risk of stillbirth is particularly high among vulnerable women who experience low

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<sup>71</sup> Inter-Am. Comm'n H.R., *Legal Standards: Gender Equality and Women's Rights*, at 139–40, ¶ 54 (2015), available at <https://www.oas.org/en/iachr/reports/pdfs/legalstandards.pdf> (describing testimony presented to the Commission during the hearing on the situation of human rights of women and girls in El Salvador, held on March 16, 2013); CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 49 (“Of the women prosecuted, 68.22% were between the ages of 18 and 25; 3.1% had some university education; 1.55% have technical training; 11.63% had a high school education; 17.83% had finished grade school; 22.48% have had fewer than nine years of education; 6.98% of the women are illiterate; 73.64% were single; 51.16% receive no income; and 31.78% have very low-paying jobs. The data indicates that the majority of women prosecuted were impoverished.”).

<sup>72</sup> The U.N. High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, on his mission to El Salvador in November 2017, visited women who were imprisoned for aggravated homicide after experiencing obstetric emergencies and observed that, “[i]t only seems to be women from poor and humble backgrounds who are jailed, a telling feature of the injustice suffered” under the law. U.N. Office of the High Commissioner for Human Rights, *Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador* (Nov. 17, 2017),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E>. See also European Parliament resolution on El Salvador: the cases of women prosecuted for miscarriage, EUR. PARL. DOC.

2017/3003(RSP), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bMOTION%2bP8-RC-2017-0695%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN> (noting that most women convicted of abortion-related crimes were “young, poor, with limited education, and from remote communities”).

<sup>73</sup> Salvadoran women have been prosecuted for both miscarriages and stillbirths. For example, “Teodora” was sentenced to 30 years in prison for a stillbirth that was prosecuted as “aggravated homicide.” Amnesty Int’l, *El Salvador: Court fails to release woman unfairly jailed after suffering a stillbirth* (Dec. 8, 2017),

<https://www.amnesty.org/en/latest/news/2017/12/el-salvador-court-fails-to-release-woman-unfairly-jailed-after-suffering-a-stillbirth/>.

<sup>74</sup> World Health Organization, *Neonatal and Perinatal Mortality: Country, Regional and Global Estimates*, at 21, 30 (2006), [http://apps.who.int/iris/bitstream/10665/43444/1/9241563206\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43444/1/9241563206_eng.pdf).

socioeconomic status, poor nutrition, and limited access to skilled healthcare.<sup>75</sup> El Salvador has high rates of poverty—in 2015, 41% of households lived below the poverty line, including 10% which live in extreme poverty<sup>76</sup>—and relatively low rates of human development, defined as people’s access to a long and healthy life, knowledge, and a decent standard of living.<sup>77</sup> In rural areas, where about 37% of the population lives, Gross Domestic Product (“GDP”) per capita is one third of that in urban areas, life expectancy is six years shorter, and there is double the rate of chronic and global malnutrition.<sup>78</sup> And rural women continue to face particular challenges to accessing skilled medical attention, all exposing them to the risk of poor pregnancy outcomes and scrutiny under the criminal abortion regime.<sup>79</sup>

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<sup>75</sup> Elizabeth M. McClure & Robert L. Goldenberg, *Stillbirth in Developing Countries: A review of causes, risk factors and prevention strategies*, 22 J. MATERNAL FETAL NEONATAL MED. 183, 186 (2014).

<sup>76</sup> The World Bank, *El Salvador*, <http://www.worldbank.org/en/country/elsalvador/overview> (last visited Dec. 4, 2017). The World Bank defines extreme poverty as living on \$1.90 USD a day or less. The World Bank, *Poverty Overview*, <http://www.worldbank.org/en/topic/poverty/overview> (last visited Dec. 4, 2017). Amici recognize, however, that extreme poverty is a multidimensional phenomenon that “involves a lack of income, a lack of access to basic health services, and social exclusion.” See U.N. Special Rapporteur on Extreme Poverty and Human Rights, *Introduction*, <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx> (last visited Dec. 4, 2017).

<sup>77</sup> El Salvador is ranked 117 out of 188 countries and territories on the Human Development Index (HDI). United Nations Development Programme, *Briefing Note for Countries on the 2016 Human Development Report – El Salvador*, at 2 (2016), [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/SLV.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/SLV.pdf); see also *id.* at 5 (noting that in 2015 El Salvador experienced a 22% loss in human development due to inequality).

<sup>78</sup> Global Health Workforce Alliance, *Mid-level health workers for delivery of essential health services: A global systematic review and country experiences*, at 173, annex 11 (Nov. 2013), available at <http://www.who.int/workforcealliance/knowledge/resources/mlp2013/en/>.

<sup>79</sup> In 2009, El Salvador undertook a new national health strategy with the goal of expanding access to universal primary healthcare. See Mary A. Clark, *The New Left and Health Care Reform in El Salvador*, 57 J. LATIN AM. POL. & SOC. 97, 104–05 (2015). Despite some important successes from this program, poor and rural women continue to face barriers to healthcare. Many women in rural areas, for example, continue to live far from the nearest health center, making health care both more difficult to physically access and potentially cost-prohibitive. See Amnesty Int’l, *Aborto en El Salvador: La Delgada Línea entre Médicos y Policías* (Dec. 1, 2015), <https://www.amnesty.org/es/latest/news/2015/12/aborto-en-el-salvador-la-delgada-linea-entre-medicos-y-policias/> (describing a young pregnant woman from the rural zone who arrived at a hospital hemorrhaging and in shock after having traveled an hour and a half). Nationally only 13.9% of health professionals are located in rural communities. Pan-American Health Organization, *Health in the Americas: El Salvador – Leading Health Challenges*, <http://www.paho.org/salud-en-las-americas-2017/?p=4023> (last visited Dec. 11, 2017).



Girls aged 10 to 19 account for nearly a third of all pregnancies in El Salvador,<sup>80</sup> and in 2015 alone there were 1,445 reported cases of pregnant girls who were between 10 and 14 years old.<sup>81</sup> Adolescents face greater risks of pregnancy complications and poor pregnancy outcomes than adults. In fact, adolescents in low and middle-income countries like El Salvador have a 50% higher risk of experiencing a stillbirth or neonatal death than women between 20-29 years of age,<sup>82</sup> increasing the risk that adolescent girls in El Salvador will come under scrutiny for a suspected abortion based on these pregnancy outcomes.<sup>83</sup> The criminalization of girls' pregnancy outcomes places another burden on girls who are already socially disadvantaged and abused: High rates of teenage pregnancy are linked to inadequate access to comprehensive, quality sex education, particularly in rural areas<sup>84</sup> and high rates of sexual assault.<sup>85</sup> Sexual assault and unplanned

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<sup>80</sup> Dr. Eduardo Espinoza, Vice-Minister of Health Policy, El Salvador Ministry of Health, *Mapping teenage pregnancy using administrative records*, at 2, [https://www.unfpa.org/sites/default/files/event-pdf/FINAL-El\\_Salvador\\_-\\_Mapping\\_teenage\\_pregnancy\\_using\\_administrative\\_records.pdf](https://www.unfpa.org/sites/default/files/event-pdf/FINAL-El_Salvador_-_Mapping_teenage_pregnancy_using_administrative_records.pdf); United Nations Population Fund, *Teen Pregnancies, and Attendant Health Risks, a Major Concern in El Salvador* (Aug. 3, 2017), <http://www.unfpa.org/news/teen-pregnancies-and-attendant-health-risks-major-concern-el-salvador> (citing statistics from the Salvadoran Ministry of Health).

<sup>81</sup> See European Parliament resolution on El Salvador: the cases of women prosecuted for miscarriage, EUR. PARL. DOC. 2017/3003(RSP), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bMOTION%2bP8-RC-2017-0695%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>.

<sup>82</sup> World Health Organization, *Fact Sheet: Adolescent Pregnancy* (last updated Sept. 2014), <http://www.who.int/mediacentre/factsheets/fs364/en/>.

<sup>83</sup> For example, Evelyn Beatriz Hernandez Cruz, a young rural woman, became pregnant at 18 as the result of repeated sexual abuse and was convicted and sentenced to 30 years in prison for murder after experiencing a stillbirth. Nina Lakhani, *El Salvador teen rape victim sentenced to 30 years in prison after stillbirth*, THE GUARDIAN (July 6, 2017), <https://www.theguardian.com/global-development/2017/jul/06/el-salvador-teen-rape-victim-sentenced-30-years-prison-stillbirth>. The number of prosecutions against minors for abortion-related crimes is unknown because the criminal files of minors are confidential. CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 38.

<sup>84</sup> See U.N. Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the combined third, fourth, and fifth periodic reports of El Salvador*, ¶ 23, U.N. Doc. E/C.12/SLV/CO/3-5 (June 19, 2014); U.N. Human Rights Council, *Report of the Special Rapporteur on Violence Against Women: Follow-up Mission to El Salvador*, ¶ 67, U.N. Doc. A/HRC/17/26/Add.2 (Feb. 14, 2011) (noting that “high levels of teenage pregnancy could be significantly reduced if sex education and family planning were generally and openly addressed in school curricula”). Access to clinics and reproductive healthcare is also challenging for young people living in rural areas, who find that, even when they do manage to get to a clinic, providers stigmatize them for seeking sexual health services. See Int’l Planned Parenthood Fed’n, *Over-protected and under-served: A multi-country study on legal barriers to young people’s access to sexual and reproductive health services—El Salvador Case Study* 17 (2014), [https://www.ippf.org/sites/default/files/ippf\\_coram\\_el\\_salvador\\_report\\_eng\\_web.pdf](https://www.ippf.org/sites/default/files/ippf_coram_el_salvador_report_eng_web.pdf).

<sup>85</sup> Anastasia Moloney, *Rape, Abortion Ban Drives Pregnant Teens to Suicide in El Salvador*, REUTERS (Nov. 12, 2014), <https://www.reuters.com/article/us-el-salvador-suicide-teens/rape-abortion-ban-drives-pregnant-teens-to>

pregnancies have such devastating impacts that, in El Salvador, three out of eight maternal deaths are the result of suicide among pregnant girls under the age of nineteen.<sup>86</sup>

Violence during pregnancy is further associated with an increased risk of both miscarriage and stillbirth.<sup>87</sup> In 2015, El Salvador was considered the most violent country in the Western Hemisphere,<sup>88</sup> and currently ranks third in the world for rates of violent deaths of women and girls.<sup>89</sup> An estimated ten Salvadoran women are subjected to violence and sexual assault each day.<sup>90</sup> As the U.N. Special Rapporteur on the Right to Health has observed, violence and human rights violations are both “often rooted in the deprivation and discrimination of individuals and communities,” and addressing violence is key to achieving the right to health.<sup>91</sup>

While socioeconomic and environmental factors increase the risk of poor pregnancy outcomes among marginalized women and girls, their relationship to the public healthcare system further subjects them to social monitoring, reporting, and ultimately prosecution. First, many poor and rural women and girls cannot easily access medical care, which exposes them to scrutiny under El Salvador’s laws. In fact, many of the 129 women who were prosecuted between 2000 and 2011 came to the attention of law enforcement because they lived in remote communities and their

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suicide-in-el-salvador-idUSKCN0IW1YI20141112 (“There’s a correlation between sexual violence and the high rates of suicides among adolescents—that’s the reality. Pregnancy is a determining factor behind teenage suicides.”).

<sup>86</sup> *Id.*; Carlos Ayala Ramírez, *Suicidio en el embarazo*, RADIO YSUCA (Apr. 17, 2012), <http://www.uca.edu.sv/noticias/texto-1357>.

<sup>87</sup> World Health Organization, *Women & Health: Today’s Evidence Tomorrow’s Agenda*, at 42 (2009), <http://www.who.int/gender-equity-rights/knowledge/9789241563857/en/>.

<sup>88</sup> Pan-American Health Organization, *Health in the Americas: El Salvador*, <http://www.paho.org/salud-en-las-americas-2017/?p=4023> (last visited Dec. 11, 2017).

<sup>89</sup> Small Arms Survey, *A Gendered Analysis of Violent Deaths*, at 2 (Nov. 2016), [http://www.smallarmsurvey.org/fileadmin/docs/H-Research\\_Notes/SAS-Research-Note-63.pdf](http://www.smallarmsurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-63.pdf).

<sup>90</sup> Catalina Lobo-Guerrero, *In El Salvador, ‘Girls Are a Problem’*, N.Y. TIMES (Sept. 2, 2017), <https://www.nytimes.com/2017/09/02/opinion/sunday/el-salvador-girls-homicides.html>.

<sup>91</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 101, U.N. Doc. A/HRC/29/33 (Apr. 2, 2015).

families or neighbors asked the local police to transport them to the closest health facility when they experienced an obstetric emergency.<sup>92</sup>

If and when women actually reach a public health facility, they appear to be at an especially high risk of being reported to the authorities. Of the 129 abortion-related cases prosecuted between 2000 and 2011, approximately 57% originated from public hospitals or the Salvadoran Social Security Institute.<sup>93</sup> The absence of any publicly known criminal cases originating from the private health sector also suggests there are closer ties between law enforcement and public medical institutions.<sup>94</sup> Anecdotally, women understand that they will be subject to increased scrutiny of their pregnancies solely by virtue of going to a public hospital as opposed to a private one.<sup>95</sup> This situation is especially pernicious because, since 2009, El Salvador has invested in expanding its public healthcare system, including in poor and rural areas, and encouraged women to seek obstetric and prenatal care and give birth at public hospitals.<sup>96</sup> Thus, while El Salvador has taken steps to improve access to healthcare for poor and rural women, it has also undermined this goal by enacting a criminal regime that targets these women and girls through that very healthcare system.

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<sup>92</sup> CRR, *Marginalized, Persecuted, and Imprisoned*, *supra* note 3, at 42.

<sup>93</sup> *Id.* at 42–43.

<sup>94</sup> La Agrupación Ciudadana por La Despenalización del Aborto Terapéutico, Ético y Eugenésico, *Del Hospital a la Cárcel: Consecuencias para las mujeres por la penalización sin excepciones, de la interrupción del embarazo en El Salvador*, at 34 (2012), <http://www.clacaidigital.info:8080/xmlui/bitstream/handle/123456789/487/Del-hospital-a-la-carcel-ElSalvador2013.pdf?sequence=1&isAllowed=y> (available in Spanish only).

<sup>95</sup> Amnesty Int'l, *On the Brink of Death*, *supra* note 31, at 31 (quoting Cristina, a woman who had a miscarriage and was accused of aggravated homicide: “Of course, if I’d been the daughter of a politician, none of this would have happened to me. To start with, I would never have gone to a public hospital, because [I would have enough] money to go to a private one. Me, a poor woman, where am I going to go to give birth? Where everyone goes. They violate people’s rights, and even more so women’s rights, because a man is never going to have a miscarriage.”); *see also* Nina Lakhani, *El Salvador: Where Women May Be Jailed for Miscarrying*, BBC (Oct. 18, 2013), <http://www.bbc.com/news/magazine-24532694> (quoting a woman stating that she “would be terrified to go [to] a public hospital as there is no benefit of doubt given to young women”).

<sup>96</sup> *See* Clark, *The New Left and Health Care Reform in El Salvador*, *supra* note 79, at 104–05; Diana Valcárcel, *El Salvador’s Health Reform: The Right Path to Reduce Maternal Mortality*, Pan-American Health Organization (Mar. 24, 2015), [http://new.paho.org/hq/index.php?option=com\\_content&view=article&id=10608&Itemid=39620&lang=en](http://new.paho.org/hq/index.php?option=com_content&view=article&id=10608&Itemid=39620&lang=en).

The operation of the criminal ban further intensifies the vulnerabilities that women and girls from poor, rural, and otherwise marginalized communities face, exposes them to worse health outcomes, and thus discriminates against them in the realization of their right to health and its component rights. These dynamics are clear in cases such as Manuela's: Manuela, who was from a poor, rural community, suffered from increasingly poor health, but her condition remained undiagnosed at the time she became pregnant, despite her efforts to access the limited medical care available to her. When she experienced a precipitous and unexpected end to her pregnancy and sought emergency medical attention, her physician at the public hospital reported her to the authorities rather than accepting her statement that she had experienced a miscarriage. Manuela then faced abuse while she was held at the hospital and the state took advantage of her family's illiteracy to distort her parents' account of her obstetric emergency. The state was so focused on prosecuting and imprisoning her that it was not until a year after her miscarriage—and while she was in prison—that she received subsequent medical care and was diagnosed with nodular sclerosis Hodgkin's lymphoma. This disease ultimately led to her death in state custody less than two years after being imprisoned for her miscarriage.<sup>97</sup>

The particular impact poor and marginalized women experience under the total abortion ban is a continuation of the systemic discrimination they are exposed to as part of vulnerable communities. Many of these women essentially are criminalized for the state's failure to provide them with consistent and meaningful access to education, healthcare, and other crucial resources throughout their lives. As the U.N. Special Rapporteur on the Right to Health has recognized, laws that criminalize women for their health outcomes or statuses are "particularly perverse" where the

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<sup>97</sup> See *supra* Part III.

state has failed to provide the conditions necessary for good health outcomes.<sup>98</sup> In other words, criminal laws like El Salvador’s “effectively shift the burden of realizing the right to health away from States onto pregnant women, punishing women for the lack of effective provision of health-care goods, services and education by the Government.”<sup>99</sup> The effect of such discriminatory laws is that women who are often struggling to simply keep their families afloat in a country that has failed them on multiple levels are removed from their loved ones, leading to the continuing cycle of poverty in their communities.<sup>100</sup>

El Salvador owes special obligations of protection to women and girls who are socially marginalized due to the interaction of poverty, youth, rural isolation, and gender-based violence, among other factors.<sup>101</sup> Instead of fulfilling its positive obligations to ensure equal realization of these women and girls’ human rights, El Salvador has imposed a barrier to their equal citizenship in the form of a criminal abortion ban that appears to be disproportionately applied to them and that has particularly detrimental effects on their health and lives. As such, El Salvador’s criminal abortion ban amounts not only to impermissible gender discrimination, but also contravenes the state’s obligation to eliminate laws that have a discriminatory effect on persons living in poverty and other situations of marginalization, and to take affirmative steps to ensure the realization of their right to health and the related rights to life, privacy, and personal integrity and dignity on the basis of equality.

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<sup>98</sup> U.N. Special Rapporteur on the right to health, *Criminalization of sexual and reproductive health*, *supra* note 28, ¶ 43 (“As availability of, and access to, health-care goods and services is the responsibility of States, it is particularly perverse that the criminal law has the potential to punish women for the inadequacy of the Government in this respect.”).

<sup>99</sup> *Id.*

<sup>100</sup> See Amnesty Int’l, *Separated Families, Broken Ties* (2015), <https://www.amnesty.org/en/documents/amr29/2873/2015/en/>.

<sup>101</sup> See *supra* notes 66–69.

## V. CONCLUSION

El Salvador's criminal abortion law amounts, at the very least, to a violation of the state's obligations to ensure equal protection of its laws to all and to respect, protect, and fulfill the rights to life, health, personal integrity and dignity, and privacy without discrimination. It is also a systemic violation of El Salvador's obligations to provide special protections to women and girls like Manuela who have already been marginalized and neglected by the state. *Amici* urge the Commission to find that El Salvador has violated its duties under Articles 1(1), 4(1), 5, 11, and 24 of the American Convention on Human Rights, among other provisions, and recommend that El Salvador immediately take action to remedy these violations by eliminating its complete criminal ban on abortion, and providing additional remedies to the women and families, like Manuela's, whose rights have been so grossly violated under this regime. Specifically, *amici* urge the Commission to recommend El Salvador provide adequate monetary compensation to Manuela's family to remedy the human rights violations they have sustained; to vacate the criminal sentence for every person convicted pursuant to the abortion ban; and to suspend any pending criminal prosecutions brought pursuant to the ban.

Further, El Salvador must make every effort to meet its obligations under the American Convention and to ensure the human rights of women and girls are protected. As such, the Commission should recommend that El Salvador review its laws, procedures, and policies to ensure all women and girls, especially those who are impoverished and live in rural communities, have equal access to comprehensive and confidential healthcare as well as quality sex education as a part of school curricula. El Salvador must take every necessary measure to guarantee that human rights violations like those suffered by Manuela never recur.

## APPENDIX I

### STATEMENTS OF INTEREST FOR AMICI CURIAE

#### INSTITUTIONAL AMICI

**Philip Alston, U.N. Special Rapporteur on extreme poverty and human rights**, was appointed by the Human Rights Council in June 2014. The Special Rapporteur is an independent expert who undertakes the following main tasks: (1) conducting research and analysis to be presented in separate thematic reports to the Human Rights Council and the General Assembly; (2) undertaking country visits and reporting on the situation in those countries in relation to the concerns of the mandate and; (3) sending letters to governments and other relevant entities in situations in which violations of human rights of people living in extreme poverty are alleged to have taken place. The Special Rapporteur's mandate was established to give greater prominence to the plight of those living in extreme poverty and to highlight the human rights consequences of the systematic neglect to which they are all too often subjected.

Professor Alston is an international law scholar and human rights practitioner who has served the U.N. in various capacities since the 1980s. He was the first Rapporteur of the U.N. Committee on Economic, Social, and Cultural Rights from 1987 until 1990, and then chaired the Committee for eight years until the end of 1998. During this period, he played a central role in efforts to reform and streamline the U.N. treaty body system and to ensure the long-term effectiveness of the U.N. human rights treaty bodies. Between 2002 and 2007, he served as Special Adviser to the U.N. High Commissioner for Human Rights on the Millennium Development Goals, and between 2004 and 2010, as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. He was also UNICEF's legal adviser throughout the process of drafting the

Convention on the Rights of the Child. Professor Alston is currently the John Norton Pomeroy Professor of Law at New York University School of Law.

**The Allard K. Lowenstein International Human Rights Clinic**, Yale Law School, is a Yale Law School course through which students gain first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes a number of litigation, research, and advocacy projects each term on behalf of human rights organizations and individual victims of human rights abuses. The Clinic has prepared briefs and other submissions for this Commission and the Inter-American Court of Human Rights, as well as the European Court of Human Rights, the African Commission on Human and Peoples' Rights, various bodies of the United Nations, and national courts, including courts in the United States and other countries in the Americas. The Clinic has a longstanding commitment to the protection of women's human rights and, in particular, their reproductive rights and has a significant interest in the resolution of this case.

**The Global Justice Clinic** is a human rights clinic at New York University School of Law ("NYU"). The Clinic has been actively engaged in work to protect the rights to life, personal security, and health, as well as women's equality, since its inception. This work includes direct representation, advocacy on behalf of communities, partnership with NGOs, and policy analysis. The Clinic has engaged with the Inter-American Commission on Human Rights through hearings, amicus briefs, and contentious cases. The Global Justice Clinic is part of NYU's nonprofit clinical entity, Washington Square Legal Services, Inc.

**The Human Rights and Gender Justice Clinic ("HRGJ")** (formerly the International Women's Human Rights Clinic) at the City University of New York ("CUNY") School of Law is devoted to defending and implementing the rights of women under international law and ending



all forms of discrimination. HRGJ is part of the nonprofit clinical program, Main Street Legal Services, Inc. at CUNY School of Law. Since its inception in 1992, HRGJ has given particular attention to the development of women's and gender rights in the inter-American system. HRGJ directors participated in the first meeting of experts that drafted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará") and in the advisory group of the first Special Rapporteur on Women of the Inter-American Commission on Human Rights ("the Commission"). Experts from HRGJ have provided testimony to the Inter-American Court of Human Rights ("the Court") for *González v. Mexico* ("*Cotton Field*"), *Herrera Monreal v. Mexico*, and *Ramos Monarrez v. The United Mexican States*.

**Ibis Reproductive Health** is an international nonprofit organization with a mission to improve women's reproductive autonomy, choices, and health worldwide. Ibis Reproductive Health's core activity is clinical and social science research on issues receiving inadequate attention in other research settings and where gaps in the evidence exist. Its agenda is driven by women's priorities and focuses on increasing access to safe abortion, expanding contraceptive access and choices, and integrating HIV and comprehensive sexual and reproductive health services. Ibis Reproductive Health partners with advocates and other stakeholders who use our research to improve policies and delivery of services in countries around the world.

**The International Action Network for Gender Equity and Law ("IANGEL")** is a non-governmental organization dedicated to advancing gender equity and protecting the human and civil rights of women and girls, through peaceful legal means. IANGEL advances its mission by connecting the lawyers and legal associations willing to donate their skills and energy to organizations working to promote the cause of gender equality locally, nationally, and globally,

and by advocating for laws, policies, and practices that prevent all forms of gender discrimination. Since its founding in 2013, IANGEL has promoted gender equality through education, action, and engagement. One of its core focus areas is reproductive health. IANGEL has joined other organizations numerous times to advocate for law and policies that protect and promote safe, available reproductive health care for all women and girls.

**The International Human Rights Clinic** at Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons, and seeks to maximize the use of international and regional human rights bodies through litigation, advocacy, and capacity-building. The Clinic has conducted extensive advocacy related to the criminalization of abortion, specifically in the context of the right to enjoy the benefits of scientific progress.

**The International Justice and Human Rights Clinic** at the Peter A. Allard School of Law (University of British Columbia) gives upper-year law students the opportunity to work on pressing human rights and global justice concerns through hands-on work on international cases and projects. Students gain experience in the year-long clinic applying international human rights law, international criminal law, and/or international humanitarian law working on cases and projects with a range of international justice organizations, including international criminal courts and tribunals, United Nations human rights bodies, and non-governmental organizations. The Allard IJHR Clinic is directed by international human rights lawyers Nicole Barrett (J.D., Columbia Law School, M.I.A., School of International and Public Affairs, Columbia University; B.A. Stanford) and Julie Hunter (J.D. Yale, M.Sc. in International Relations, London School of Economics, B.A. Harvard).

**The International Women's Human Rights Clinic ("IWHRC")** at Georgetown University Law Center works with NGO partners in sub-Saharan Africa to challenge laws and

practices that discriminate against women through strategic litigation, fact finding, and statutory and policy reform. Since its establishment in 1998, the IWHRC has worked on a number of important women's rights issues, including FGM, child marriage, marital rape, polygamy, bride price, domestic violence, workplace discrimination, pregnancy discrimination, sexual harassment and sexual violence, and unequal inheritance, property, and citizenship laws. The Clinic has also worked actively to protect women's reproductive rights through projects seeking comprehensive sexual and reproductive rights education in schools, access to contraception and safe abortion, and an end to pregnancy discrimination against school girls and working women.

**MADRE** is an international women's human rights organization that partners with community-based women's groups worldwide facing war and disaster to advance women's human rights. For over 30 years MADRE has partnered with grassroots women's organizations to provide vital services to their community and help them build new skills and step up as leaders, while advancing the human rights framework through international advocacy to make international law accountable to the people it is meant to serve. MADRE and our partners know that strong communities start with healthy people, and we meet often overlooked long-term needs for family planning, sexual and reproductive health, and maternal care. MADRE believes that in order to build resilient communities, women should have access to life-saving reproductive healthcare, not punished for choosing the right thing for themselves and their families.

**National Advocates for Pregnant Women ("NAPW")** is a non-governmental organization with international consultative status with the United Nations that advocates for the rights, health, and dignity of all women, focusing particularly on pregnant and parenting women, and those who are most vulnerable to state control and punishment, including women living in poverty. Through litigation, representation of leading medical and public health organizations as

amicus, and through public education, NAPW works to ensure women do not lose their human rights as a result of pregnancy. NAPW has also organized and submitted international human rights amicus briefs in various cases, including in U.S. federal court to oppose the shackling of pregnant prisoners during childbirth as a form of cruel and unusual punishment. NAPW supports policies that promote appropriate, accessible, and confidential healthcare for all people, and promotes evidence-based laws that actually protect maternal, fetal, and child health. NAPW believes pregnancy outcomes should be addressed through healthcare, and not be treated as crimes.

**Women's Link Worldwide** uses the power of the law to promote social change that advances the human rights of women and girls, especially those facing multiple inequalities. Women's Link Worldwide is an international organization with regional offices in Latin America and Europe, and expanding partnerships across East Africa. Since opening in 2001, Women's Link Worldwide has been successfully advocating and litigating for new standards to advance the human rights of women and girls. Women's Link Worldwide has become known for opening new frontiers, developing legal theories and strategies, particularly those that bring attention to women's rights violations that are undocumented or neglected. Women's Link Worldwide works tirelessly to ensure that, ultimately, any advances made on paper translate into a meaningful difference in people's lives. Women's Link Worldwide works across borders, building partnerships and alliances with advocates from all over the world. They study the terrain, design strategies, write legal briefs, and stand before the judiciary in national, regional, and international courts. Women's Link Worldwide's work includes representing clients, mentoring, training, promoting professional exchanges, and offering practical tools.

### INDIVIDUAL AMICI\*\*

**Oscar A. Cabrera, Abogado (JD equivalent), LLM**, is the Executive Director of the O'Neill Institute for National and Global Health Law and a Visiting Professor of Law at Georgetown University Law Center. He is a foreign-trained attorney who earned his law degree in his home country of Venezuela, and his Master of Laws (LL.M.), with concentration in Health Law and Policy, at the University of Toronto. Before starting his Masters Degree program, Oscar worked as an Associate at a Venezuelan law firm (d'Empaire Reyna Bermúdez). Oscar has worked on projects with the World Health Organization, the Centers for Disease Control and Prevention, and the Campaign for Tobacco Free Kids, among other organizations.

**Rebecca J. Cook, MPA, JD, LLM, JSD**, is Professor Emerita in the Faculty of Law, the Faculty of Medicine and the Joint Centre for Bioethics, and Co-Director, International Reproductive and Sexual Health Law Program, University of Toronto. She is the ethical and legal issues co-editor of the *International Journal of Gynecology and Obstetrics*. Professor Cook is a Member of the Order of Canada, a Fellow of the Royal Society of Canada, the recipient of the Ludwik and Estelle Jus Memorial Human Rights Prize, and the Certificate of Recognition for Outstanding Contribution to Women's Health by the International Federation of Gynecology and Obstetrics. Her most recent co-edited volume, *Abortion Law in Transnational Perspective* (UPenn Press, 2014), is available in Spanish.

**Joanne Csete, PhD**, focuses her research and teaching on health and human rights, particularly the impact of criminalization and gender-based subordination on access to health services for people who use drugs, sex workers, and others vulnerable to HIV. At Human Rights Watch and the Canadian HIV/AIDS Legal Network, she documented and engaged in advocacy on

human rights abuses against marginalized people facing severe health risks in more than 20 countries. Dr. Csete has worked on HIV/AIDS and other health and nutrition programs and policies in Africa for over 10 years, including in complex emergency situations. She was the lead author of the report of the Lancet Commission on Drug Policy and International Public Health (2016).

**Joanna Erdman, JD, LLM**, is the MacBain Chair in Health Law and Policy at Schulich School of Law, Dalhousie University, where she also serves as the Associate Director of the Health Law Institute. Professor Erdman's primary research concerns sexual and reproductive health law in a transnational context. She has published extensively in leading international journals on topics such as harm reduction in safe abortion and the regulation of emergency contraception. She has served as a third-party intervener before numerous courts and human rights bodies, including the European Court of Human Rights; the Supreme Court of Mexico; the Supreme Court of Justice, Nicaragua; the Constitutional Court of Colombia; and the U.N. Committee on the Elimination of Discrimination Against Women.

**Aníbal Faúndes, MD, PhD**, is an obstetrician and gynecologist who graduated in 1955, at the Universidad de Chile. He was Full Professor of Obstetrics, Faculty of Medicine, Universidad de Chile, since 1971, and Coordinator of the Women's Health Program of the National Health Service of Chile, 1970-1971. He left Chile after the 1973 military coup and became a consultant of the Maternal Health and Family Planning Program in the Dominican Republic, from 1974 to 1976, and then Senior Associate and Representative of the Population Council in Brazil, from 1976 to 1995. He was Director of the University General Hospital at Universidade Estadual de Campinas (UNICAMP) from 1983 to 1984, and of the Women's Hospital, UNICAMP, from 1991 to 1995, full Professor of Obstetrics, Faculty of Medical Science at UNICAMP, from 1987 to 2001, and President of the Center for Research on Women's Reproductive Health (CEMICAMP), from 1989

to 2002. Internationally, he was Chair of the WHO Committee of Resources for Research, President of the International Association for Maternal and Neonatal Health (IAMANEH), and of the Latin American Association of Researchers in Reproductive Health (ALIRH). At the International Federation of Gynecology and Obstetrics (FIGO), he has been member of several committees, including Chair of the Committee on Women's Sexual and Reproductive Rights 2005-2007, and since 2008 he is the Chair of the Working Group on Prevention of Unsafe Abortion. He has published over 440 scientific articles and a similar number of abstracts and book chapters. He has published several books, the best known, written with José Barzelatto, is "The Human Drama of Abortion", which is printed in Portuguese, Spanish, and English.

**Laurel E. Fletcher, JD**, is Clinical Professor of Law at UC Berkeley, School of Law where she directs the International Human Rights Law Clinic. Fletcher is active in the areas of human rights, humanitarian law, international criminal justice, and transitional justice. As director of the International Human Rights Law Clinic, she utilizes an interdisciplinary, problem-based approach to human rights research, advocacy, and policy. Fletcher has advocated on behalf of victims before international courts and tribunals, and has issued numerous human rights reports on topics ranging from sexual violence in armed conflict to human rights violations of tipped workers in the U.S. restaurant industry. She also has conducted several empirical human rights studies, including of the impact of detention on former detainees who were held in U.S. custody in Afghanistan and Guantanamo Bay, Cuba. She served as co-Editor-in-Chief of the *International Journal of Transitional Justice* (2011-2015).

**Deena R. Hurwitz, JD**, is director of the Atrocity Prevention Legal Training ("APLT") Project at the Benjamin N. Cardozo School of Law. The Project works with law school faculty to integrate atrocity prevention in the curriculum by designing teaching modules for doctrinal

courses. Atrocity prevention is an interdisciplinary concept that encompasses frameworks, policies and mechanisms to combat systemic discrimination and improve societal resilience to resist the advent of mass violence. Professor Hurwitz has taught international human rights in law school clinics and other courses since 2000, and has been involved in various forms of practice before the IACHR.

**Jocelyn Getgen Kestenbaum, JD, MPH**, is Assistant Clinical Professor of Law at the Benjamin N. Cardozo School of Law where she directs the Human Rights and Atrocity Prevention Clinic and the Cardozo Law Institute in Holocaust and Human Rights. In the Clinic, students gain legal skills through work on human rights projects and cases on issues related to: the prevention of genocide and other mass atrocities; the protection of vulnerable populations, including asylum-seekers and victims of torture and sexual violence; and accountability for those responsible for war crimes, crimes against humanity, and genocide. Getgen Kestenbaum has developed and expanded clinical projects, including in-depth fact-finding on issues of sexual and gender-based crimes, persecution as a crime against humanity, and early warning risk analysis, on four continents and in more than twelve countries. She holds a JD from Cornell Law School and an MPH from the Johns Hopkins Bloomberg School of Public Health.

**Bert Lockwood, JD, LL.M.**, is The Distinguished Service Professor of Law and the Director of the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law. Since 1982 he has been Editor-in-Chief of *Human Rights Quarterly*, a multi-disciplinary academic journal published by The Johns Hopkins University Press. He is also the Series Editor of *Pennsylvania Studies in Human Rights*, a book series published by the University of Pennsylvania Press. Over 140 books have been published in the series. Professor Lockwood teaches Constitutional Law and a series of international human rights seminars, including



International Women's Rights. He also teaches in the summer human rights program at the China University of Political Science and Law in Beijing.

**Benjamin Mason Meier, JD, LLM, PhD**, is an Associate Professor of Global Health Policy and the Zachary Taylor Smith Distinguished Chair in Public Policy at the University of North Carolina at Chapel Hill. Dr. Meier's interdisciplinary research—at the intersection of global health, international law, and public policy—examines rights-based approaches to health. Working collaboratively across UNC's Department of Public Policy and Gillings School of Global Public Health, Dr. Meier has conducted extensive research over the past fifteen years on the development, evolution, and application of human rights in global health. As an advisor on the implementation of human rights in health policy, Dr. Meier serves additionally as a Scholar at Georgetown Law School's O'Neill Institute for National and Global Health Law and as a consultant to international organizations, national governments, and nongovernmental organizations.

**Michelle Oberman, JD, MPH**, is the Katharine and George Alexander Professor of Law at Santa Clara University School of Law. Professor Oberman is an internationally recognized scholar on the legal and ethical issues surrounding adolescence, pregnancy, and motherhood. Her background in public health and law, as well as her long years of work with doctors in health care settings, gives her a unique perspective on women's health issues arising at the intersection of health law and criminal law. In recent years, Professor Oberman has studied reproductive health and abortion regulation in countries with widely divergent abortion laws. Her work in El Salvador, along with other countries and a range of U.S. jurisdictions, informs her forthcoming book (*Her Body, Our Laws: On the Frontlines of the Abortion War from El Salvador to Oklahoma*, Beacon Press, 2018) about what will and won't happen if abortion becomes illegal in the U.S. She has

written numerous law review articles exploring the legal system's limitations when endeavoring to respond to issues such as abortion, rape, and infanticide. She has co-authored two groundbreaking books on the subject of maternal filicide: *When Mothers Kill: Interviews from Prison* (2008) and *Mothers who Kill their Children* (2001).

**Rebecca B. Reingold, JD**, is an Institute Associate at the O'Neill Institute for National and Global Health Law and an Adjunct Professor of Law at Georgetown Law. Rebecca's work at the O'Neill Institute focuses primarily on health and human rights, sexual and reproductive rights, and violence against women and girls. Prior to joining the O'Neill Institute, Rebecca served as an Advocacy Coordinator at International Planned Parenthood Federation/Western Hemisphere Region. There, she advocated for the advancement of sexual and reproductive rights in global and regional United Nations processes and provided technical assistance to NGO partners from Latin America and the Caribbean.

**Alicia Ely Yamin, JD, MPH**, is a Visiting Professor of Law at Georgetown University Law Center and the Program Director of the Health and Human Rights Initiative. She is also an adjunct lecturer on Law and Global Health at the Harvard TH Chan School of Public Health and a Global Fellow at the Center on Law and Social Transformation in Norway. In 2016, the UN Secretary General appointed Yamin to the Independent Accountability Panel for the Global Strategy on Women's, Children's and Adolescents' Health ("EWEC"). Yamin is known globally for her pioneering scholarship and advocacy in relation to economic and social rights and rights-based approaches to health. She has contributed to and consulted on the drafting of multiple General Comments by UN treaty bodies, as well as UN Human Rights Council resolutions. She regularly leads judicial colloquia and strategic litigation courses for practitioners, as well as

advising on specific cases, submitting amicus curiae petitions, and providing expert testimony relating to the application of international and constitutional law to health issues.

\*\* Individuals have joined as amici in their personal capacities; institutional affiliations are noted for identification purposes only.