[Unofficial translation]

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF BEATRIZ ET AL. V. EL SALVADOR

JUDGMENT OF NOVEMBER 22, 2024
(Merits, Reparations, and Costs)

CONCURRING AND PARTIALLY DISSENTING OPINION OF

JUDGE HUMBERTO ANTONIO SIERRA PORTO.

With the customary respect for the decisions of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal"), this opinion seeks to express my disagreement with the reasoning used to establish the international responsibility of the State of El Salvador (hereinafter "the State" or "El Salvador") for the violation of the rights to personal integrity, health, private life, judicial guarantees, and judicial protection to the detriment of Beatriz. It also addresses the scope of the guarantee of non-repetition involving the creation of medical care protocols. Specifically, I believe the Court failed to analyze the most significant human rights violations in the case and to order effective reparative measures to prevent their recurrence, thereby inadequately addressing the victims' demand for justice.

1. The judgment focuses on three decisions by the Medical Committee of the National Maternity Hospital, which, according to the Tribunal, concluded that the termination of Beatriz's pregnancy, given her medical condition and that of the fetus (non-viability of extrauterine life), was necessary to avoid risks to her personal integrity. The judgment also mentions the decision of the Constitutional Chamber, which indicated that if the treatment was carried out, the medical practitioners would have to assume the legal consequences arising from the criminalization of abortion. Based on these facts, the Court concluded that El Salvador must establish protocols allowing medical professionals to proceed with appropriate treatment in high-risk pregnancy cases. In their absence, it found violations of the rights to health, personal integrity, private life, and the prohibition of violence against women.

2. As I will explain below, I believe the Court should have concluded that El Salvador was internationally responsible for violating the rights to personal integrity, liberty, private life, and equality and non-discrimination, in relation to the right to health and the obligation to eradicate violence against women under the Belém do Pará Convention. These violations were caused by the criminalization of abortion in cases of risk to the mother and non-viability of the fetus's extrauterine life. Furthermore, the Court should have concluded that such prohibition and its consequences for medical care violated Beatriz's right to life and reproductive autonomy. Consequently, it should have declared violations of Articles 2 of the American Convention on Human Rights (hereinafter "the Convention" or "ACHR") and Article 7(e) of the Belém do Pará Convention, due to the existence of provisions that prevent the exercise of sexual and reproductive rights, and ordered legislative measures to ensure that incidents like this case do not recur.

3. To support this position, this opinion is divided into two sections: (i) the Court's jurisprudence on sexual and reproductive rights and its failure to apply this to the specific case, and (ii) the criminalization of voluntary termination of pregnancy in cases of risk to the mother and non-viability of the fetus's extrauterine life and the use of medical protocols in El Salvador. Regarding my dissent from the arguments used to justify the justiciability of the right to health in this case, I find it unnecessary to reiterate the profound logical and legal inconsistencies of this jurisprudential position. For these purposes, I refer to my previous opinions on this matter.

The Inter-American Court's Jurisprudence On Sexual And Reproductive Rights And Its Failure To Apply It To The Specific Case

4. Sexual and reproductive rights are protected under the American Convention, particularly by Articles 4, 5, 7, 11, and 24 in relation to Articles 1.1 and 26 of the Convention. The Court has recognized this since the *Artavia Murillo v. Costa Rica* case and in several subsequent cases, where it has emphasized the scope and content of state obligations related to personal integrity, liberty, private life, access to information, equality and non-discrimination, health, and education, especially regarding women's rights. This important jurisprudential interpretation was openly ignored in the present judgment, despite the fact that the facts and alleged violations were directly related to its protective scope. In this sense, I must highlight that, to address sexual and reproductive rights in this case, the Court did not need to invoke the principle of *iura novit curia*. It only needed to analyze the observations of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") and the victims' claims. It is inconceivable that in other cases, the Court analyzes rights violations not alleged and even tangentially related to the facts, yet in this case, involving women's rights that challenge gender stereotypes and entrenched violent and discriminatory practices in the region, the Court chose to dilute and modify the literal arguments of the parties and the Commission, which were at the heart of the specific case.

5. As the Commission indicated in its Merits Report, the case was related to "violations of the rights of Beatriz and her family due to the absolute prohibition of voluntary termination of pregnancy, which prevented the victim from accessing a legal, early, and timely termination in a situation of risk to life, grave risk to health and personal integrity, and the fetus's non-viability for extrauterine life." Thus, at the center of this case was a state action (absolute prohibition of voluntary termination of pregnancy) that prevented Beatriz from exercising her reproductive autonomy and from receiving adequate health care as a pregnant woman. This endangered her life and personal integrity and constituted an act of discrimination and violence against women.

6. Indeed, the evidence in the case shows that Beatriz was a young woman diagnosed with systemic lupus erythematosus, lupus nephropathy, and rheumatoid arthritis, living in poverty at the time of the events. In 2011, she had her first pregnancy, which was considered high-risk due to her underlying conditions and was complicated by severe preeclampsia during delivery. Her son was born prematurely in March 2012 and was diagnosed with acute respiratory distress syndrome and necrotizing enterocolitis. In 2013, Beatriz had a second pregnancy, considered high-risk due to her underlying conditions, her first pregnancy and delivery's history, and the diagnosis of a fetus with anencephaly. It is undisputed that the fetus from this second pregnancy was non-viable for extrauterine life.

7. Beatriz sought medical care at the National Maternity Hospital "Dr. Raúl Argüello Escolán" (hereinafter also "National Maternity Hospital"), where her case was reviewed by the Medical Committee on three occasions. The physicians agreed on the need to terminate the pregnancy to protect Beatriz's life and integrity. Beatriz also expressed her desire to terminate the pregnancy early to safeguard her life, considering the fetus's non-viability and her responsibilities as the mother of a one-year-old baby. However, the procedure was not carried out due to the legal implications for the healthcare professionals resulting from the criminalization of voluntary termination of pregnancy under El Salvador's abortion laws. Both the physicians and Beatriz sought administrative and judicial authorization for the procedure, but neither the Attorney General's Office, the Ministry of Health, nor the Constitutional Chamber issued a decision that protected Beatriz's rights.

8. In light of the above, this section reconstructs the Court's jurisprudence on sexual and reproductive rights and identifies the aspects that, despite being part of the Court's precedent, were blatantly ignored in this judgment to the detriment of Beatriz's rights.

A. The Jurisprudence of the Inter-American Court on Sexual and Reproductive Rights

10. In an initial phase of its jurisprudence, the Court referred to sexual and reproductive rights by emphasizing individual autonomy. Thus, in the *Artavia Murillo v. Costa Rica* case regarding the prohibition of in vitro fertilization, the Court noted that Articles 7 and 11 of the Convention protect the possibility of every human being to self-determine, freely choose the options that give meaning to their existence, and the way they want to project themselves and relate to others, according to their own choices and convictions.[7] In this sense, the Tribunal stated that the decision to be or not to be a mother or father (reproductive autonomy) is protected by the right to private life and by the right to personal liberty.[8] Consequently, it maintained that, within the framework of the Convention, individuals have the right "to decide freely and responsibly the number of their children and the spacing of births and to have access to information, education, and means that allow them to exercise these rights." Additionally, the Tribunal recognized that the right to reproductive autonomy includes access to reproductive health services,[10] understood as "the right of men and women to obtain information and family planning methods of their choice, as well as other methods for regulating fertility that are not legally prohibited, and access to safe, effective, affordable, and acceptable methods, the right to receive adequate health care services that ensure pregnancies and deliveries without risk and give couples the greatest possibilities of having healthy children."[11]

11. This position was more broadly developed in the *I.V. v. Bolivia* case, regarding the non-consensual sterilization of a woman during childbirth. On this occasion, the Court affirmed that informed consent is a *sine qua non* requirement for medical practice, especially in matters of women's sexual and reproductive health.[12] To reach this conclusion, it stated that Articles 7 and 11 of the ACHR recognize the principle of human dignity and personal autonomy, by virtue of which any action that turns the individual into a means for purposes unrelated to their choices about their own life, body, and full development of their personality is prohibited.[13] Additionally, the Court indicated that the right to health, as an integral part of the right to personal integrity, encompasses "the freedom of each individual to control their health and body and the right to be free from interference [...]."[14] Finally, the Tribunal maintained that Article 13 recognizes the right to seek and receive information of all kinds, which imposes, in matters of health, an active duty of transparency.[15]

12. Along with the above, the Court affirmed that sexual and reproductive health, as an expression of the right to personal integrity, has particular implications for women. Specifically, it recognized that their freedom and autonomy in this matter have been historically limited, restricted, or annulled based on negative and harmful gender stereotypes.[16] Furthermore, by appropriately using the gender perspective, the Court considered that this limitation on women's rights "is due to the fact that men have been socially and culturally assigned a predominant role in making decisions about women's bodies and that women are seen as the reproductive entity par excellence."[17] For this reason, the Tribunal emphatically stated that the Convention protects "reproductive autonomy and freedom, in terms of the right to make autonomous decisions about one's life plan, body, and sexual and reproductive health, free from violence, coercion, and discrimination. On the other hand, access to both reproductive health services and information, education, and means that allow them to exercise their right to decide freely and responsibly the number of children they wish to have and the spacing of births."[18] Likewise, the Court maintained that the lack of recognition of these components of sexual and reproductive health through non-consensual sterilization constituted a form of violence against women that contravenes Article 7(a) of the Belém do Pará Convention.[19]

13. In a second phase, focused on the recognition of the justiciability of economic, social, cultural, and environmental rights (hereinafter "ESCR"), the Court developed the scope and content of sexual and reproductive rights in relation to the rights to health and education. Thus, in the *Manuela v. El Salvador* case regarding the detention, trial, and sentencing of the victim in the context of an obstetric emergency, the Court held that the lack of dignified, respectful, appropriate, and non-discriminatory treatment in reproductive health services disregarded the rights to personal integrity, private life, health, equality, and non-discrimination, as well as the right to live a life free from violence. In this sense, the Tribunal resumed the emphasis of the *Artavia Murillo* and *I.V.* cases concerning reproductive autonomy and the particular needs of women in sexual and reproductive matters. Additionally, it considered that sexual and reproductive health was part of the right to health (Article 26),[20] and that failures in medical care, caused by the lack of regulation of professional secrecy in the context of the absolute criminalization of voluntary termination of pregnancy, constituted an act of intersectional discrimination and violence against women.[21]

14. Regarding the failures in care due to the ambiguity in legislation, the Tribunal stated that in the presence of contradictory norms (duty to maintain professional secrecy and duty to report a possible case of abortion or homicide), and "[i]n cases of obstetric emergencies, where the life of the woman is at stake, the duty to maintain professional secrecy must be privileged."[22] Although the Tribunal recognized that the information patients share with their treating physicians may sometimes be disclosed, this must be done legitimately and proportionally, which does not occur in cases of obstetric emergency care.[23]

15. Regarding failures in care as an act of discrimination, the Tribunal stated that "the obligation to provide medical care without discrimination implies that it takes into account that women's health needs are different from those of men and that appropriate services are provided for women."[24] It also indicated that women have the right to receive dignified and respectful treatment in reproductive health services and obstetric care without being subjected to discrimination or violence.[25] The Tribunal stated that this is materialized in a special duty of state protection in events where structural disadvantages converge, such as being a woman, of low income, illiterate, and a resident of a rural area.[26] Considering these criteria, the Court stated that "the ambiguity of the legislation regarding the professional

secrecy of doctors and the obligation to report the crime [of abortion] existing in El Salvador disproportionately affects women due to their biological capacity for pregnancy," especially those who lack economic resources to access private hospitals.[27]

16. Regarding failures in care as an act of violence against women, the Tribunal considered that the shortcomings in the medical care received by Manuela constituted an act of violence against women prohibited by the Belém do Pará Convention since the ambiguity in the legislation on professional secrecy allowed criminalization to take precedence over medical care. Additionally, the Court found that the State must take immediate measures to eradicate gender stereotypes that operate in cases like Manuela's, which "condition the value of a woman to being a mother and, therefore, assume that women who decide not to be mothers are less valuable than others, or are undesirable individuals. In this sense, it also imposes on women the responsibility to, regardless of the circumstances, prioritize the well-being of their children, even over their own well-being."[28]

17. In the *Brítez Arce et al. v. Argentina* case, concerning the dehumanizing treatment and denial of complete information regarding the health status and treatment options for a pregnant woman, the Court recognized that sexual and reproductive rights include specialized care during pregnancy, childbirth, and postpartum.[29] Moreover, the Tribunal established that "dehumanizing, disrespectful, abusive, and negligent treatment of pregnant women; [...] denial of treatment and complete information about health status and applicable treatments; [...] forced or coerced medical interventions, and [...] the tendency to pathologize natural reproductive processes, among other threatening manifestations in the context of health care during pregnancy, childbirth, and postpartum" constitute a form of gender-based violence called obstetric violence.[30]

18. To reach this conclusion, the Tribunal reiterated, as it had affirmed in Advisory Opinion 29/21 concerning the rights of women deprived of liberty, that "States have the obligation to provide adequate, specialized, and differentiated health services during pregnancy, childbirth, and a reasonable postpartum period, to ensure the mother's right to health and prevent maternal mortality and morbidity."[31] Furthermore, the Court asserted that among the minimum international obligations guiding health care, the State must ensure full and accurate information to pregnant individuals, postpartum individuals, and nursing individuals about their medical condition. It must guarantee access to accurate and timely reproductive and maternal health information at all stages of pregnancy, which must be based on scientific evidence, delivered without bias, and free from stereotypes and discrimination.[32]

19. This interpretation was reiterated by the Tribunal in the *María et al. v. Argentina* case, concerning the irregular adoption of a child whose mother was 13 years old. In this case, the Court held that the conditions in which María was forced to give birth, without sufficient information and without her mother's presence, as well as the manner in which she was coerced into giving her consent for adoption, constituted obstetric violence. Likewise, "in accordance with the provisions of Article 7 of the Belém do Pará Convention, the Court recalled that States have the duty to prevent, punish, and eradicate violence against women, which includes refraining from engaging in acts constituting gender-based violence, including those that occur during access to reproductive health services."[33]

20. Similarly, in the *Rodríguez Pacheco et al. v. Venezuela* case, concerning the lack of investigation into acts of medical malpractice during a cesarean section, the Court addressed the scope of the right to access justice in matters of sexual and reproductive

health. Following the approach in the *Brítez Arce* and *María* cases regarding obstetric violence, the Court affirmed that "the protection of women's rights through access to timely, adequate, and effective remedies to comprehensively address these violations and prevent their recurrence in the future is highly relevant. This is especially true considering that, today, in the context of medical care and access to health services, women remain vulnerable to violations of their sexual and reproductive rights, often through discriminatory practices resulting from the application of stereotypes to their detriment."[34]

21. In conclusion, the Court has established a solid line of jurisprudence recognizing that sexual and reproductive rights are protected under Articles 1.1, 4, 5, 7, 11, 24, and 26 of the American Convention. Additionally, it has pointed out that the failure to comply with the obligations of respect and guarantee regarding these rights may constitute an act of discrimination and gender-based violence contrary to the Belém do Pará Convention. Particularly in the *Artavia Murillo* and *I.V.* cases, the Court developed the notion of reproductive autonomy and its differentiated scope concerning women, which includes their right to a life free from violence and the obligation of States to implement differentiated actions for its respect and guarantee. For its part, the *Manuela* case represented progress in recognizing the special needs for emergency obstetric care and the obligation to eradicate stereotypes associated with motherhood and discriminatory practices in access to sexual and reproductive health in the context of the criminalization of voluntary termination of pregnancy. Finally, the *Brítez Arce*, *María*, and *Rodríguez Pacheco* cases recognized for the first time the concept of obstetric violence as a form of violence against women and reiterated the special obligations in matters of sexual and reproductive health for pregnant women. As will be discussed below, despite its quality and consistency, these standards were blatantly disregarded in the present judgment, to the detriment of the protection deserved by Beatriz.

B. The Lack of Analysis of Sexual and Reproductive Rights in Beatriz's Case

22. The jurisprudence of the Inter-American Court of Human Rights on sexual and reproductive rights was openly ignored in this case, as the Court chose to analyze it exclusively from the perspective of the right to health. The judgment does not acknowledge or refer to Beatriz's reproductive autonomy, nor does it mention the risks that the pregnancy posed to her life or the particular content of her rights as a young woman living in poverty. It also fails to analyze the obligation to eradicate stereotypes associated with motherhood and discriminatory practices regarding access to sexual and reproductive health in the context of the criminalization of voluntary termination of pregnancy. Furthermore, the concept of obstetric violence was incorrectly applied in the judgment, which further endangers women like Beatriz as well as the medical professionals treating them.

23. As I will explain in this section, the failure to apply precedents on sexual and reproductive rights is not merely a formal or symbolic deficiency; it had profound implications for the way the Court established international responsibility and the reparative measures ordered. Consequently, it affected the protection that the Court was obligated to provide to Beatriz, as well as to other women and girls in similar situations in El Salvador and other countries in the region, who will be impacted by this harmful precedent.

24. In the judgment, the Court noted that "[t]he medical circumstances of Beatriz imposed a special duty of protection in her favor, obliging the treating physicians to provide diligent and timely care, with special consideration for the fact that her health condition could worsen over time. However, the lack of legal certainty regarding the approach to Beatriz's

situation forced her case to be bureaucratized and judicialized, first through various requests to different state bodies that provided contradictory responses [...] and later through a writ of amparo" (paragraph 138). Thus, in summarizing the legal issue of the case, the Tribunal ignored the fact that the diligent and timely treatment required in this case to protect Beatriz's life and integrity was expressly requested by her. As a result, this lack of care violated, in addition to the rights declared as infringed, her rights to life, dignity, and personal autonomy.

25. Regarding the right to autonomy, particularly reproductive autonomy, which is notably absent from the judgment, it is important to highlight that since the Artavia Murillo and I.V. cases, the Court has recognized this right as a central component of the rights to personal integrity, liberty, and private life. Additionally, it indicated that the protection of this component under Articles 5, 7, and 11 of the ACHR is particularly relevant in the case of women due to their biological capacity for motherhood. Nevertheless, despite its close relevance to Beatriz's case, these precedents were grossly omitted in the judgment, as the Court chose to address the matter as merely a question of medical negligence, prioritizing the scientific perspective over individual volition. In my view, and according to established precedent, the Tribunal should have concluded that the absolute criminalization of voluntary termination of pregnancy in this case allowed Beatriz to be instrumentalized and turned into a means to ends unrelated to her choices about her own life, body, and full personal development.[35] These choices were further supported by medical criteria indicating risks to her life and personal integrity if the treatment was not performed. Following the interpretation that prioritizes autonomy in making decisions about one's own body, health, and reproduction, the main duty that the State failed to fulfill was to prevent Beatriz from exercising her right to make a decision about the fate of a pregnancy involving a fetus incompatible with extrauterine life, which posed risks to her life and her role as a mother to her one-year-old child.

26. In this regard, I must draw attention to the Court's grave failure to consider Beatriz's written statement presented to the Constitutional Chamber on May 7, 2013, in which she stated:

27. *"I have a high-risk pregnancy, and knowing that the baby will not live, I want to ask you to please help me terminate the pregnancy. Everyone knows that I have a one-year-old child, and I believe you wouldn't want that child to be left without a mother. I want to live for him, to always be there for him and care for him. Right now, while I feel well, I want you to help me, not when I am much sicker."*[36]

28. Moreover, the Tribunal overlooked a crucial analysis regarding the adequacy of the information and resources that would have enabled Beatriz to exercise her right to freely and responsibly decide the number of children she wanted to have and the spacing of their births, given her circumstances and those of the fetus. Specifically, it failed to analyze her statements recorded in the social worker's report, conducted on behalf of the Office of the Attorney General of the Republic, which indicated that Beatriz was aware of her situation and, during the interview, expressed agreement with the medical recommendation to terminate her pregnancy.[37]

29. In this context, it is unacceptable that the Tribunal only considered Beatriz's will to terminate the pregnancy as expressed through the testimony of a doctor (paragraph 143). The Court should have considered that during the pregnancy, despite her desire to be a mother, and while less invasive methods for termination were still possible, she expressed to the Office of the Attorney General and the Constitutional Chamber her decision for an

early termination of her pregnancy, as well as her fears, concerns for her life, and the protection she wanted to provide to her already-born child. These entities were the only ones, as reiterated by the doctors, that could authorize the treatment, as the healthcare professionals would not proceed knowing the legal risks they might face due to the absolute criminalization of abortion. Indeed, after the second Medical Committee meeting, they stated: "Despite the above and our agreement with proceeding based on medical knowledge, we are all subject to the country's laws, and as professionals at the hospital, we cannot break the law" (paragraph 53)

30. In addition to the above, it is unacceptable that the judgment failed to conduct a gender-sensitive analysis. As a human rights tribunal that has recognized the discriminatory and violent practices affecting women and girls in the Americas, the Court should have reiterated its precedent established in the I.V. v. Bolivia case, which held that the scope of women's sexual and reproductive rights differs from that of men and that these rights have historically been limited for women due to negative or harmful stereotypes. Similarly, the Court should have considered, as it did in the Manuela v. El Salvador case, that the lack of adequate medical care during pregnancy or childbirth in public hospitals and within the context of criminalization of abortion in that state constitutes an act of discrimination. However, contrary to the protective role it usually assumes in its contentious function, the Court ignored that, due to her condition as a mother of a 13-month-old child and as a pregnant woman, Beatriz faced multiple stereotypes and societal burdens that imposed on her the duty to prioritize these roles over her own life and integrity.

31. Furthermore, the Tribunal did not take into account that this inability to make decisions about her own body, particularly when it was necessary to protect her life and integrity and knowing the fetus's inviability, is a burden not imposed on women who seek care at private hospitals in El Salvador. In this sense, the State's arguments claiming that the fetus should have special protection because it was a disabled female child are unacceptable.[38] While, under the gradual and incremental protection of the right to life, the fetus had some degree of protection, this is not comparable to that of a disabled female child, given the unquestionable incompatibility of the fetus with extrauterine life (paragraph 47).

32. Regarding obstetric violence, the Court was imprecise in applying its precedent established in the Brítez Arce case and reiterated in the María and Rodríguez Pacheco cases, thereby setting a harmful precedent for women and physicians in the region. In the judgment, the Court stated that "Beatriz was not adequately cared for to safeguard her health, considering her underlying illness, the risk factors she accumulated, and the inviability of extrauterine life of the fetus due to the diagnosis of anencephaly. These circumstances imposed a special duty of protection requiring the State to provide diligent and timely care. However, the context of legal uncertainty resulted in Beatriz being subjected to waiting periods to make decisions about her treatment, which were subordinated to obtaining administrative or judicial authorizations" (paragraph 149). Thus, while it is clear that Beatriz suffered dehumanizing, disrespectful, and negligent treatment during her pregnancy and was denied the treatment required to protect her life and integrity, the Court did not sufficiently explain the cause of such treatment

33. Since the Brítez Arce case, the Court has stated that obstetric violence is a form of gender-based violence "exercised by healthcare providers on pregnant individuals during access to health services occurring during pregnancy, childbirth, and postpartum."[39] In the Beatriz case, the Tribunal reiterated this standard (paragraph 148), leading to the conclusion that the perpetrators of obstetric violence were her treating physicians. I believe this is a grave

error, as the violence in this case stemmed from actions and omissions by other state agents. This is not merely a legal technicality without material relevance but could have profound negative effects on medical practice. In this case, the healthcare providers indicated on three occasions that, according to their scientific judgment, the appropriate treatment to protect Beatriz's life and integrity was the termination of the pregnancy. Moreover, considering that abortion is criminalized in El Salvador, they turned to the relevant administrative and judicial bodies to request authorization for the treatment. Therefore, to suggest, as the judgment seems to imply, that healthcare professionals were negligent and provided dehumanizing treatment to Beatriz, is an unfounded accusation that could have a deterrent effect on medical professionals in future cases. In my view, the obstetric violence in this case was caused by the legislation and actions of the judiciary in El Salvador, which, by maintaining an absolute prohibition on voluntary termination of pregnancy and failing to conduct a conventionality review when deciding on the amparo action, prevented Beatriz from freely making decisions about her motherhood and prevented physicians from fulfilling their duty to protect their patient's life and integrity.

34. Indeed, within the context of the criminalization of voluntary termination of pregnancy, which prevented medical personnel from performing the recommended treatment, on April 11, 2013, Beatriz's legal representation filed an amparo action before the Constitutional Chamber requesting the State to "issue an immediate provision to the authorities of Hospital Dr. Raúl Arguello Escalón" to intervene immediately to save her life, which was in grave danger."[40] However, Beatriz did not receive a response that considered the need to protect her rights under the terms of the American Convention. Instead, the fetus's life was prioritized, despite its inviability. In fact, the Constitutional Chamber held that "there is an absolute impediment to authorizing the practice of an abortion as it contravenes the constitutional protection granted to human beings 'from the moment of conception,' art. 1(2) Cn. Under such imperatives, the circumstances enabling medical intervention and the opportune time for it are strictly decisions for medical professionals, who, on the other hand, must assume the risks involved in exercising their profession."[41] Thus, to declare the occurrence of obstetric violence in this case, the Court should have evaluated the actions of the Constitutional Chamber, which in this case caused the dehumanizing, disrespectful, and negligent treatment Beatriz experienced during her pregnancy and denied her the treatment required to protect her life and integrity.

35. Furthermore, I must point out that, although it was not recognized by the Court, the State also violated Beatriz's right to life. On the one hand, it was sufficiently demonstrated that Beatriz's life was at risk due to the pregnancy, and consequently, the lack of medical attention constituted a danger to her life attributable to the State. Indeed, as indicated in the judgment, the medical report of March 22, 2013, stated that "[i]n view of the severe maternal illness with a high probability of maternal death [...] the perinatology department, through its head, requests the opinion of the legal medical committee of this hospital to address the legal medical problem of the case and seek a resolutive measure to safeguard the mother's life" (paragraph 48). Moreover, the State itself, in the proceedings before the Commission, acknowledged that the Hospital's Medical Committee recognized the risk to her life, specifically stating that "[...] the termination of the pregnancy, even at the time when the Committee was conducting its evaluation – 13 weeks – implied a risk, albeit lower, of medical and surgical complications that could lead to death due to the progression of the disease she suffers from."[42]

36. While in the context of the amparo process, the Institute of Legal Medicine held a different opinion, specifically that "there is no clinical or laboratory evidence of any imminent, real,

or current circumstance that places [Beatriz's] life at risk" (paragraph 139), this should have been analyzed alongside the opinions of the treating physicians. In particular, the Court should have considered that, in his statement during the public hearing, Dr. Ortiz indicated that after undergoing the physiological changes of pregnancy, it was necessary to perform a biopsy and other tests to assess the impact on Beatriz's integrity and the risk to her life. However, these tests were not conducted.[43] Therefore, it was not possible to give precedence to the opinion of the Institute of Legal Medicine, especially when the necessary medical analyses were not performed and there were allegations of due process violations in the context of that expert opinion.[44]

37. On the other hand, the judgment ignores the precedent according to which, when the "State does not take appropriate measures to prevent the risks of maternal mortality, it clearly impacts the right to life of pregnant and postpartum women."[45] It was absolutely clear that the State violated the right to life in this case because, in addition to Beatriz's life being at risk, it failed to implement measures to ensure that the criminalization of voluntary termination of pregnancy did not prevent the medical treatment required to avert her potential death. This omission by the Court is unacceptable, as it appears to suggest that violations of the right to life only occur when the victim has died, and not when there is sufficient evidence to demonstrate that the State failed to implement measures to prevent a clear risk to this right. I find this approach highly objectionable, not only because the obligation to guarantee the right to life includes the duty to implement preventive measures, particularly in the face of maternal mortality risks, but also because it is contradictory to other cases. Indeed, I find it inconsistent for the Court to declare a violation of the right to life solely for the lack of investigation into homicide cases not attributable to the State[46] but in cases like Beatriz's, involving proven life risks and a lack of prevention attributable to the State, to reduce the scope of protection of that right.

38. In conclusion, the lack of analysis of the standards on sexual and reproductive rights in this case is inadmissible, as there are no arguments to justify the marginal treatment the Court gave to women's rights in this case. Contrary to what was done in the judgment, I believe the case should have declared the international responsibility of El Salvador for the violation of the rights to life, personal integrity, liberty, private life, and equality and non-discrimination, because the absolute prohibition of voluntary termination of pregnancy, ratified by the Constitutional Chamber, prevented Beatriz from exercising her reproductive autonomy, put her life at risk, caused profound harm to her physical and mental integrity, and constituted an act of discrimination and obstetric violence. By failing to do so, the Court abandoned its jurisprudence on sexual and reproductive rights and omitted to apply a gender perspective. In doing so, the Tribunal disregarded Beatriz's rights and set a harmful precedent by diluting the special protection that the Tribunal has granted to women. This decision contrasts with its expansive logic of extending competence both temporally and substantively.[47]

The Criminalization of Voluntary Termination of Pregnancy in Cases of Risk to the Mother and the Use of Medical Protocols in El Salvador.

39. Since the Artavia Murillo v. Costa Rica case, the Court has maintained that, within the framework of the American Convention, the protection of life from conception cannot be absolute; it allows for exceptions and, in any case, must be gradual and incremental.[48] Specifically, the Tribunal has indicated that "[t]he Court has employed various methods of interpretation, which have led to consistent results in the sense that the embryo cannot be understood as a person for the purposes of Article 4.1 of the American Convention.

Likewise, after analyzing the available scientific bases, the Court concluded that 'conception,' in the sense of Article 4.1, occurs from the moment the embryo is implanted in the uterus, and thus, before this event, Article 4 of the Convention would not apply. Additionally, it can be concluded from the words 'in general' that the protection of the right to life under this provision is not absolute, but gradual and incremental depending on its development, as it does not constitute an absolute and unconditional duty but implies recognizing the admissibility of exceptions to the general rule."[49] I believe that, from this interpretation of the right to life, along with the rights to personal integrity, liberty, private life, and ultimately as a principle of protecting human dignity, it follows that no one can be forced to prioritize the life of another over their own. This includes pregnant women whose lives are at risk due to pregnancy.

40. In the judgment, the Court stated that "[l]egal uncertainty inhibited the actions of health personnel, as they were afraid of incurring criminal liability, leading them to seek authorization from different entities. For their part, Beatriz's representatives had to file an amparo action for the same purpose. However, this fruitless bureaucratization and judicialization of the medical treatment to be provided [...] far from being effective, hindered the proper and timely protection of Beatriz's rights to integrity and health, which constituted a violation of Article 2 of the Convention" (paragraph 154). Ultimately, the Court concluded that the lack of clear action protocols for a case like Beatriz's was the cause of the violation of her rights to health and integrity (paragraph 155). I believe this analysis overlooked that the cause of the violation of Beatriz's rights was the absolute criminalization of abortion in El Salvador, ratified by the Constitutional Chamber, which prevented measures from being taken to protect her autonomy, life, and personal integrity.

41. Abortion is punishable in El Salvador without exception. Article 133 of the Penal Code states: "[a]nyone who induces an abortion with the woman's consent, or any woman who induces her own abortion or consents to another person performing it, shall be punished with imprisonment of two to eight years." Furthermore, Article 135 imposes a harsher penalty for medical professionals engaging in this conduct: "[i]f the abortion is performed by a doctor, pharmacist, or persons carrying out auxiliary activities in these professions, when they engage in such practice, they shall be punished with imprisonment of six to twelve years. They shall also be disqualified from practicing their profession or activity for the same period."[50] While general grounds for excluding liability exist (Article 27 of the Penal Code),[51] these do not negate the criminal nature of the actions and therefore do not eliminate the intimidating effect of criminal law.

42. In this regard, the first argument that must be dismissed is the justification, as the State attempted to do and the Court implicitly accepted in the judgment, that the concepts of legitimate defense and state of necessity were sufficient to address cases like Beatriz's. This stance ignores basic concepts of criminal law and the Court's own jurisprudence on the chilling effect. Indeed, according to the Court's majority position, the use of criminal law to impose subsequent liabilities for harm to honor is proscribed by the American Convention when dishonorable statements concern public officials performing their duties, due to its intimidating effect on the right to freedom of expression.[52] This includes not only the imposition of criminal penalties but also the initiation of investigative procedures and even the mere criminalization of certain behaviors, such as defamation or slander.[53]

43. When a behavior is criminally prohibited (typical conduct), it means that, due to its violation of the most significant legal rights, it is reproached by the State. Consequently, when it is demonstrated that someone has engaged in such behavior, they must be punished.

However, when it is impossible to demand a different behavior from the person who committed the act, criminal law allows for the possibility that, although typical, the conduct is not sanctioned. This occurs in cases of legitimate defense, when a person violates the legal rights of others as a necessary and reasonable reaction to repel an unlawful aggression, or in a state of necessity, when a person engages in typical conduct to safeguard their own or others' legal rights in the face of real, present, or imminent danger. This means that, even if they presumptively acted in legitimate defense or state of necessity, individuals have engaged in typical conduct and can therefore be prosecuted. During the investigation, or sometimes during the trial, they must demonstrate compliance with the strict requirements for excluding liability to avoid conviction or receive a reduced sentence.

44. In light of the obligations contained in the American Convention, it is erroneous to consider that the conduct (abortion in cases of risk to the mother's life or the fetus's inviability) can be typical. There are no elements justifying the State's reproach of conduct that constitutes necessary medical treatment to safeguard the life or personal integrity of women. On the contrary, it is a necessary means for the exercise and protection of multiple rights protected by the American Convention, supported by strict medical-scientific criteria. It is also invalid to ignore the intimidating effect of criminalization on the argument that an exclusionary cause of liability can be demonstrated. As the Court held in its most recent case, *Capriles v. Venezuela,*[54] the mere existence of the criminal provision has an inhibitory effect on the exercise of rights. This effect was evident in this case, as doctors refrained from performing the treatment for fear of prosecution, affecting Beatriz's rights to life and integrity. I consider this disparate treatment between freedom of expression and the rights to life and integrity to be unjustified, especially as it results in significant underprotection of women's rights.

45. As was indicated by the Medical Committee and the Constitutional Chamber, despite the fact that those responsible for providing healthcare knew that terminating Beatriz's pregnancy was necessary to protect her life and integrity, and that the fetus's extrauterine life was unviable, they did not proceed due to fear of being criminally prosecuted. The existence of exclusionary causes of liability was not sufficient for them to decide to perform the medical treatment, as, in the event that they failed to demonstrate the occurrence of the requirements of legitimate aggression or real, present, or imminent danger, they risked penalties of up to 12 years in prison and the loss of their license to practice medicine. This could indeed have occurred in Beatriz's case, as during the judicial process, the Institute of Legal Medicine considered that there was no "real, present, or imminent" danger to her life, even though the Hospital's doctors believed there was a risk to Beatriz's life, without delving into the legal qualifiers of immediacy or present danger that do not pertain to their professional practice or ethical mandate to protect the life of their patient.

46. Precisely to avoid the described circumstances, it is contrary to the American Convention to criminalize abortion in cases of risk to the mother or inviability of the fetus's extrauterine life. An analysis that considered these elements was grossly omitted by the Court. The decision of a woman to terminate a pregnancy when her life or integrity is endangered by continuing it or when the fetus's extrauterine life is unviable is legitimate, and it is unreasonable to initiate criminal proceedings with the threat of penal sanctions. The contrary stance, adopted by the Tribunal in this case, disregards women's rights to life, integrity, liberty, private life, and, ultimately, the protection of their dignity and their right to live free from violence and discrimination.

47. Firstly, the notion of gradual and incremental protection of life under the American Convention demands prioritizing the mother's rights when her life or personal integrity is at risk due to the pregnancy,[55] or when the fetus's extrauterine life is unviable, without fear that she may be penalized for protecting her life and integrity and exercising her autonomy. Requiring women to prioritize the fetus's life over their own or to carry a pregnancy to term for a fetus whose life is unviable imposes excessive suffering and anguish—which can amount to cruel, inhuman, or degrading treatment[56]—, is disproportionate, and constitutes an arbitrary interference in private life when the mother's will to terminate the pregnancy has been expressed.

48. On this matter, the Human Rights Committee, in its General Comment on Article 6 of the International Covenant on Civil and Political Rights, stated that "[a]lthough States Parties may adopt measures to regulate the voluntary termination of pregnancy, such measures must not violate the right to life of the pregnant woman or girl or the other rights recognized in the Covenant. Restrictions on women's or girls' ability to access abortion must not, among other things, jeopardize their lives, subject them to physical or mental pain or suffering that violates Article 7 of the Covenant, or result in discrimination against them or arbitrary interference with their privacy. States Parties must provide safe, legal, and effective access to abortion where the life or health of the pregnant woman or girl is at risk, or where carrying the pregnancy to term would cause substantial pain or suffering to the pregnant woman or girl, especially when the pregnancy is the result of rape or incest, or when it is not viable."[57]

49. Similarly, the Committee of Experts of MESECVI, the Follow-Up Mechanism to the Belém do Pará Convention, has stated that "forcing a woman to continue with her pregnancy, especially when it is the result of rape, or when the life or health of the woman is at risk, constitutes a form of institutional violence and may constitute a form of torture, in violation of Article 4 of the Convention."[58] It has also reiterated "its deep concern about the restrictive abortion laws in place in the States Parties to the Convention and insists that restricting access to sexual and reproductive rights puts the human rights of women and girls at grave risk. For all these reasons, the Committee insists that States should decriminalize abortion in the aforementioned cases and implement care protocols to guarantee the life and health of women who decide to terminate their pregnancy, whether they are victims of sexual violence or for therapeutic reasons."[59] This recommendation, in addition to being based on the interpretation of the Belém do Pará Convention, and contrary to the warnings of some during the Beatriz case, reflects a regional consensus in the Americas.[60]

50. Secondly, the inability to perform voluntary termination of pregnancy in the two mentioned circumstances constitutes an act of discrimination and, consequently, a form of violence against women, of which Beatriz was a victim.[61] This measure imposes excessive burdens on pregnant women and girls that disregard their human rights and instrumentalize them as reproductive entities rather than beings with autonomy and dignity. On this issue, the CEDAW Committee has stated that "a State Party's refusal to provide certain reproductive health services to women in legally permissible conditions is discriminatory."[62] Furthermore, as noted, the Court had already recognized the harmful effect of gender stereotypes associated with motherhood, which operate in cases of abortion criminalization in El Salvador, particularly the prohibition of imposing on women the responsibility of prioritizing their children's welfare under all circumstances.[63]

51. Furthermore, the Tribunal had held that penalizing this conduct has a differentiated effect on women in conditions of vulnerability, especially for socioeconomic reasons, as most abortion-related criminal complaints come from public hospitals.[64] In this sense, although unlike the Manuela case, Beatriz was not prosecuted, the criminalization of abortion was the reason her will was not respected, nor was she provided with the healthcare required to protect her life and integrity, which likely would not have happened had she been able to access a private hospital. In this regard, I consider it necessary to highlight that voluntary termination of pregnancy puts the most vulnerable women at particular risk. Thus, "[u]nsafe abortion ranks third among the leading causes of maternal mortality worldwide. When abortion is restricted by law, maternal mortality increases because women are forced to resort to clandestine abortions in dangerous and unhygienic conditions."[65]

52. In this regard, in its General Recommendation 35, the CEDAW Committee recommended legislative measures to advance the eradication of violence and discrimination against women, including "[...] c) Repealing, including in customary, religious, and indigenous laws, all legal provisions that discriminate against women and thereby enshrine, encourage, facilitate, justify, or tolerate any form of gender-based violence. In particular, it recommends repealing the following: [...] provisions criminalizing abortion [...] or any other penal provisions that disproportionately affect women, particularly those that result in the discriminatory application of the death penalty to women."[66]

53. Finally, criminalizing conduct recognized by international medical standards as an essential sexual and reproductive health service contradicts the obligation to guarantee the rights to life and personal integrity in connection with the right to health, affecting Beatriz.[67] Indeed, as the Court has stated, the medical act, understood as the diagnostic and treatment acts performed by a doctor in the comprehensive care of patients, is not only "an essentially lawful act but also a duty of a doctor to provide it."[68] Women have the right to receive adequate, specialized, and differentiated healthcare "during pregnancy, childbirth, and a reasonable period postpartum to guarantee the mother's right to health and prevent maternal mortality and morbidity,"[69] which includes, not only in my view but also that of United Nations specialized bodies, the possibility of terminating a pregnancy when necessary to protect the woman's life and integrity or when the fetus's extrauterine life is unviable.[70]

54. Specifically regarding the relationship between criminalization and healthcare, the United Nations Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health has stated that this "[...] restricts women's ability to make full use of available sexual and reproductive health goods, services, and information; denies their full participation in society, and distorts the perceptions of health professionals, who as a result may obstruct their access to healthcare services."[71] This chilling effect of criminal law has been recognized on multiple occasions by the Court as a means of protecting rights through the prevention of conduct that violates them,[72] and as a mechanism to discourage conduct that should be protected, for example, in the context of freedom of expression.[73] This case is no different. Under the Convention, the existence of norms that discourage women and health professionals from prioritizing the rights of the unborn over the woman's rights should not be permitted. On the contrary, measures should exist to ensure that all pregnant women and girls can access all necessary measures to guarantee their rights to life and health, which requires that voluntary termination of pregnancy in cases of risk to the mother or inviability of the fetus's extrauterine life not be penalized, as happened to Beatriz.

55. For all the above, it is unacceptable that the Tribunal declared a violation of Article 2 of the ACHR solely due to the lack of medical protocols, without considering the obligation contained in Article 7(e) of the Belém do Pará Convention, which states that States must "take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that support the persistence or tolerance of violence against women." In this case, El Salvador needed to amend the law criminalizing abortion to guarantee Beatriz's rights to life, personal integrity, liberty, private life, and equality, and to fulfill its obligation to eradicate violence against women.

56. In this sense, I believe that by ordering as a reparative measure the adoption of "all necessary normative measures to provide guidelines and directives for medical and judicial personnel in situations of pregnancies that put the life and health of women at risk," the Court made a grave mistake in stating that "[t]he State can fulfill this measure by adapting existing protocols [...], issuing a new protocol or any other normative measure that guarantees legal certainty in addressing situations such as the present case" (paragraph 212). As has been extensively explained, the cause of the violations suffered by Beatriz was the absolute criminalization of abortion. Therefore, it is clear that the existence of medical protocols is insufficient to overcome the chilling effect of the criminal law and its consequences on maternal healthcare. It is a basic issue of the hierarchy of legal norms. In cases of conflict between the law (Penal Code) and the regulation (protocol), the law prevails. Thus, the existence of medical care protocols, while relevant, is insufficient to resolve the violation of Article 2 of the ACHR in this case. The Court should have ordered El Salvador to amend the penal provision on abortion so that, through a rule of the same or higher rank, the criminalization of voluntary termination of pregnancy in cases of risk to the mother or inviability of the fetus's extrauterine life would be eliminated. In my opinion, stating that the State can comply with this measure by adapting existing protocols does not in any way guarantee that in a similar case, medical professionals will be certain they can act according to the protocol without facing legal consequences stemming from the absolute criminalization of abortion.

57. Moreover, the decision adopted by the majority fails to recognize that, in many cases, "women and girls face considerable obstacles to accessing legal abortion services due to administrative and bureaucratic barriers, the refusal of healthcare professionals to respect medical protocols that guarantee legal rights, as well as negative attitudes and official incompetence or indifference."[74] Thus, the order to issue protocols without revising the regulations that absolutely criminalize termination of pregnancy in extreme cases such as risk to the mother's life and the incompatibility of the fetus with extrauterine life, in my view, does not constitute a true guarantee of non-repetition. On the contrary, it could be erroneously interpreted as the Court's authorization of the absolute criminalization of abortion, which disregards the scope and content of conventional obligations and leaves women in the region in a situation of grave risk.

58. In conclusion, I dissent from the reasoning used by the Court in this case because I consider that it committed inadmissible omissions by softening the concrete scope of women's rights and adopting a restrictive approach to conventional guarantees without justification. As I have extensively demonstrated, the criminalization of voluntary termination of pregnancy in cases of risk to the mother's life or integrity or the inviability of the fetus's extrauterine life is contrary to the American Convention, as it translates into an absolute prioritization of the fetus at the cost of sacrificing all the rights of the pregnant woman.

59. Consequently, I must state that in this case, the Court did not fulfill its duty to carry out a systematic and gender-sensitive interpretation of the American Convention, which would have led it to conclude that El Salvador was responsible for the violation of the rights to personal integrity, liberty, private life, and equality and non-discrimination, in relation to the right to health and the obligation to eradicate violence against women, contained in the Belém do Pará Convention, caused by the criminalization of abortion in cases of risk to the mother and the inviability of the fetus's extrauterine life. Furthermore, it should have held that the prohibition and its consequences on medical care violated Beatriz's right to life and her reproductive autonomy. As a result, the Tribunal should have declared the violation of Articles 2 of the American Convention on Human Rights and 7(e) of the Belém do Pará Convention due to the existence of provisions that prevent the exercise of sexual and reproductive rights, and should have ordered legislative measures to ensure that incidents like the present case do not recur.

60. Finally, regarding the treatment the Inter-American Court has given to Beatriz's case, I must express that decisions by the Courts on these issues cannot be made based on circumstantial considerations tied to more or less progressive political projects. The positions of governments and interest groups in the region should not determine the focus of the Court's decisions. I hope that in future cases, the Tribunal will return to its guiding principle of protecting human rights, based exclusively on its competencies and obligations as the guarantor and highest interpreter of the American Convention on Human Rights.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary

ENDNOTES:

1. It should not be overlooked that the legal reasoning based on the literal wording of Article 26 of the Convention differs from the alternatives for protecting economic, social, and cultural rights through the concepts of connectedness and interdependence. I believe that in this case, there were violations of the right to health in connection with the rights to life and personal integrity, and using arguments about the justiciability of economic, social, cultural, and environmental rights only further weakens the Court's decision. For a detailed analysis of my position on this matter, see: *Case of Gonzales Lluy et al. v. Ecuador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298. Concurring Opinion of Judge Humberto Antonio Sierra Porto; *Case of Poblete Vilches et al. v. Chile.* Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349. Concurring Opinion of Judge Humberto Antonio Sierra Porto; *Case of Cuscul Pivaral et al. v. Guatemala.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 23, 2018. Series C No. 359. Concurring Opinion of Judge Humberto Antonio Sierra Porto; *Case of Hernández v. Argentina.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 22, 2019. Series C No. 395. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto.

2. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, paras. 141-150.

3. See *Case of Gonzales Lluy et al. v. Ecuador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298; *Case of I.V. v. Bolivia.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329; *Case of Manuela et al. v. El Salvador.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021. Series C No. 441; *Case of Brítez Arce et al. v. Argentina.* Merits, Reparations, and Costs. Judgment of November 16, 2022. Series C No. 474; *Case of María et al. v. Argentina.* Merits, Reparations, and Costs. Judgment of August 22, 2023. Series C No. 494; *Case of Rodríguez Pacheco and Another v. Venezuela.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2023. Series C No. 504.

4. Similarly, the Committee on Economic, Social, and Cultural Rights has stated, "The right to sexual and reproductive health is also indivisible and interdependent with other human rights. It is closely linked to civil and political rights that underpin the physical and mental integrity of individuals and their autonomy, such as the rights to life; to liberty and security of person; to not be subjected to torture or other cruel, inhuman, or degrading treatment; to privacy and respect for family life; and to non-discrimination and equality." Committee on Economic, Social, and Cultural Rights. General Comment No. 22 (2016), para. 10.

5. For recent examples: *Case of Pérez Lucas et al. v. Guatemala.* Merits, Reparations, and Costs. Judgment of September 4, 2024. Series C No. 536, para. 134 [right to truth]; *Case of Capriles v. Venezuela.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 10, 2024. Series C No. 541, paras. 145 and 189 [right to freedom of expression, equality before the law, and defense]; *Caseof Huilcamán Paillama et al. v. Chile.* Merits, Reparations, and Costs. Judgment of June 18, 2024. Series C No. 527, para. 249 [right to assembly and self-determination of indigenous and tribal peoples].

6. Merits Report (Merits file, p. 2).

7. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, paras. 142-143.

8. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, para. 341. Similarly, see: Article 16(e) of the Convention on the Elimination of All Forms of Discrimination Against Women: "The same rights to freely and responsibly decide on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights."

9. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, para. 146.

10. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, para. 150.

11. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, para. 148.

12. See *Case of I.V. v. Bolivia*, supra, para. 186. Specifically, the Court stated that "the power relationship between the doctor and the patient can be exacerbated by the unequal power relations that have historically characterized men and women, as well as by socially dominant and persistent gender stereotypes that consciously or unconsciously form the basis of practices that reinforce women's position as dependent and subordinate."

13. See *Case of I.V. v. Bolivia*, supra, para. 150.

14. See *Case of I.V. v. Bolivia*, supra, para. 154.

15. See *Case of I.V. v. Bolivia*, supra, para. 156.

16. See *Case of I.V. v. Bolivia*, supra, para. 143.

17. See *Case of I.V. v. Bolivia*, supra, para. 143.

18. See *Case of I.V. v. Bolivia*, supra, para. 157.

19. See *Case of I.V. v. Bolivia*, supra, para. 255.

20. See *Case of Manuela et al. v. El Salvador*, supra, para. 192.

21. See *Case of Manuela et al. v. El Salvador*, supra, para. 254.

22. See *Case of Manuela et al. v. El Salvador*, supra, para. 224.

23. See *Case of Manuela et al. v. El Salvador*, supra, para. 202.

24. See *Case of Manuela et al. v. El Salvador*, supra, para. 193.

25. See *Case of Manuela et al. v. El Salvador*, supra, para. 252.

26. See *Case of Manuela et al. v. El Salvador*, supra, para. 253.

27. See *Case of Manuela et al. v. El Salvador*, supra, para. 254.

28. See *Case of Manuela et al. v. El Salvador*, supra, para. 144.

29. See *Case of Brítez Arce et al. v. Argentina*, supra, paras. 81 and 85.

30. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 81.

31. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 68. This issue was also addressed by the Court in light of Article 5. For example, in the *Xákmok Kásek* case, the Court held: "States must provide adequate health policies that allow for assistance with properly trained personnel for childbirth care, policies to prevent maternal mortality through adequate prenatal and postpartum controls, and legal and administrative instruments in health policies to properly document cases of maternal mortality." *Case Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010. Series C No. 214, para. 214.

32. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 73.

33. See *Case of María et al. v. Argentina*, supra, para. 161.

34. See *Case of Rodríguez Pacheco and Another v. Venezuela*, supra, para. 107.

35. See *Case of I.V. v. Bolivia*, supra, para. 150.

36. Written statement by Beatriz before the Constitutional Chamber (evidence file, folio 160).

37. By means of Official Letter No. 261 of April 10, 2013, the Deputy Attorney for San Salvador reported that a Social Worker from the institution had been assigned to conduct the social investigation of the case and that it concluded that "from the interviews conducted with the young [Beatriz] and the presumed father of the unborn baby [...] both expressed being aware of and agreeing with the medical procedure to be performed, namely the termination of the pregnancy" (*Office of the Attorney General of the Republic. Deputy Attorney for San Salvador. Official Letter No. 261 of April 10, 2013, evidence file, folios 44 to 46*).

38. See Written Response by the State (Merits file, folio 541).

39. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 81.

40. Written submission of the amparo petition filed on behalf of Beatriz before the Constitutional Chamber of the Supreme Court of Justice, April 11, 2013 (evidence file, folios 48 to 52).

41. Judgment of the Constitutional Chamber of the Supreme Court of Justice in the context of amparo 310-2013 of May 28, 2013 (evidence file, folio 220).

42. Report submitted by the State of El Salvador to the Inter-American Commission on Human Rights regarding the petition "Beatriz," dated February 29, 2016 (evidence file, folio 7696).

43. Declaration of Guillermo Ortiz in the public hearing of March 22, 2023.

44. "In the preparation of the expert report, individuals lacking neutrality participated; the involvement of a perinatology specialist was absent, which was deemed necessary by at least two of the experts involved in the examination; the examination conducted was superficial, and one of the individuals involved in the examination was forced to sign the report despite disagreeing with its conclusions." (*Brief of submissions, arguments, and evidence, Merits file, folio 338*).

45. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 70.

46. See *Case of Digna Ochoa and Family v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2021. Series C No. 447, paras. 141-149.

47. Not far off, the jurisprudence on ESCR (Economic, Social, Cultural Rights) lacks explicit grounding in the Convention and has given an almost unrestricted scope to indigenous community rights. See: *Case of Huilcamán Paillama et al. v. Chile.* Merits, Reparations, and Costs. Judgment of June 18, 2024. Series C No. 527, paras. 249 et seq. Additionally, a recent example related to the concept of life project: *Case of Pérez Lucas et al. v. Guatemala.* Merits, Reparations, and Costs. Judgment of September 4, 2024. Series C No. 536, paras. 178-186.

48. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, paras. 256, 264, and 315.

49. See *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, supra, para. 264.

50. The above is an example of the situation identified by the CEDAW Committee, the specialized body of the Convention on the Elimination of All Forms of Discrimination Against Women, which in its General Recommendation No. 24 stated that "[t]he denial of access to certain reproductive health services by States Parties is a discriminatory act" (emphasis added). General Recommendation No. 24 of the CEDAW Committee, para. 14. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by El Salvador on August 19, 1981.

51. Article 27. - No criminal responsibility: 1) Those who act or omit in compliance with a legal duty or in the legitimate exercise of a right or lawful activity. 2) Those who act or omit in defense of themselves or their rights, or in defense of another person or their rights, provided the following requirements are met: a) Unlawful aggression; b) Reasonable necessity of the defense employed to prevent or repel it; and c) The aggression has not been sufficiently provoked by the person exercising the defense. 3) Those who act or omit out of necessity to safeguard a legal interest, their own or another's, from a real, current, or imminent danger not intentionally caused, harming another interest of lesser or equal value than the one safeguarded, provided the conduct is proportional to the danger and there is no legal duty to confront it.

52. See *Case of Baraona Bray v. Chile.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2022. Series C No. 481, para. 109.

53. See *Case of Capriles v. Venezuela,* supra, Concurring Opinion of Judge Humberto Sierra Porto.

54. See *Case of Capriles v. Venezuela,* supra, Concurring Opinion of Judge Humberto Sierra Porto.

55. On this matter, the United Nations Human Rights Committee, in the *K.N.L.H. v. Peru* case, held that the denial by a state hospital to allow the therapeutic abortion of an anencephalic fetus caused profound suffering to the author, which constituted a violation of Article 7 of the Covenant on Civil and Political Rights regarding the prohibition of torture and cruel, inhuman, or degrading treatment. Human Rights Committee, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, November 22, 2005. Subsequently, in the *Siobhán Whelan v. Ireland* case, the Committee found it sufficiently proven "that the author was in a situation of great vulnerability after receiving the news that her much-desired pregnancy was not viable. As documented in the psychological reports presented to the Committee, her physical and mental condition was exacerbated by the circumstances [...] arising from Ireland's legislative framework and the treatment she received from some healthcare professionals in Ireland [...]. The Committee considers that the author's suffering was further aggravated by the obstacles she faced in obtaining information from the healthcare professionals she trusted about appropriate medical options [...]." Based on this, the Committee concluded "that the author suffered a high level of distress caused by a combination of acts and omissions attributable to the State party, which amounts to a violation of the prohibition of cruel, inhuman, or degrading treatment under Article 7 of the Covenant." Human Rights Committee, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, July 11, 2017, paras. 7.5, 7.6, and 7.7.

56. On this matter, the United Nations Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has stated that "[t]he existence of highly restrictive laws prohibiting abortion even in cases of incest, rape, fetal impairment, or when the life or health of the mother is at risk violates women's right not to be subjected to torture or ill-treatment.

However, some States continue to restrict access to legal and safe abortion through absolute prohibitions. Restricting access to voluntary termination of pregnancy leads to unnecessary deaths among women." Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 43.

57. See Human Rights Committee. General Comment No. 36 (2019) on Article 6 of the International Covenant on Civil and Political Rights, regarding the right to life, para. 8.

58. See Second Follow-up Report on the Implementation of Recommendations by the Committee of Experts of MESECVI, Mechanism to Follow Up on the Implementation of the Belém do Pará Convention (MESECVI), para. 109.

59. See Second Follow-up Report on the Implementation of Recommendations by the Committee of Experts of MESECVI, Mechanism to Follow Up on the Implementation of the Belém do Pará Convention (MESECVI), para. 118.

60. Indeed, most States that have ratified the contentious jurisdiction of the Court have decriminalized abortion in cases of risk to the mother's life and/or inviability of the fetus's extrauterine life. See: Argentina, Law 27.610 of 2020; Barbados, Abortion Act of 1983; Bolivia, Penal Code, Article 266; Brazil, Penal Code of 1940, Article 128; Chile, Law No. 21.030 of 2017; Colombia, Constitutional Court, Judgment C-355 of 2006; Costa Rica, Penal Code, Article 121; Guatemala, Penal Code, Article 137; Mexico, Supreme Court of Justice, Action of Unconstitutionality 148/2017; Uruguay, Law No. 18.987 of 2012; Paraguay, Penal Code, Article 109; Peru, Penal Code, Article 119.

61. The CEDAW Committee has stated that "The definition of discrimination against women in Article 1 of the Convention includes gender-based violence, that is, violence directed against a woman because she is a woman or that disproportionately affects women. This includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty. Violence against women may violate specific provisions of the Convention, regardless of whether they explicitly mention violence." CEDAW Committee, General Recommendation No. 19, January 29, 1992, para. 1.

62. CEDAW Committee, General Recommendation No. 24, February 2, 1999, para. 11.

63. See *Case of Manuela et al. v. El Salvador*, supra, para. 144.

64. See *Case of Manuela et al. v. El Salvador*, supra, para. 254.

65. Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 43.

66. CEDAW Committee, General Recommendation No. 35, July 26, 2017, para. 29.

67. See WHO. *Abortion Care Guidelines.* 2022.

68. See *Case of De La Cruz Flores v. Peru.* Merits, Reparations, and Costs. Judgment of November 18, 2004. Series C No. 115, para. 102.

69. See *Case of Brítez Arce et al. v. Argentina*, supra, para. 68.

70. See Committee on Economic, Social, and Cultural Rights. General Comment No. 22 (2016), para. 28: "The realization of women's rights and gender equality, both in law and practice, requires the repeal or amendment of discriminatory laws, policies, and practices in the sphere of sexual and reproductive health. All barriers to women's access to comprehensive sexual and reproductive health services, goods, education, and information must be removed. Reducing maternal mortality and morbidity requires emergency obstetric care and skilled birth attendance, particularly in rural and remote areas, as well as measures to prevent unsafe abortions. Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to ensure access to affordable, safe, and effective contraceptives, and comprehensive sexuality education, particularly for adolescents; liberalize restrictive abortion laws; ensure women's and girls' access to safe abortion services and high-quality post-abortion care, especially by training health service providers; and respect women's autonomy in making decisions about their sexual and reproductive health."

71. United Nations General Assembly. Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover. A/66/254, August 3, 2011, para. 17.

72. See *Case of Velásquez Rodríguez v. Honduras.* Merits. Judgment of July 29, 1988. Series C No. 04, para. 166.

73. See *Case of Baraona Bray v. Chile,* supra, para. 109.

74. Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 44.