



IT COULD BE ME



FOR HEALTH WITHOUT FEAR

**REGIONAL
REPORT**

**HEALTH WITHOUT
FEAR**

Content



REGIONAL REPORT | HEALTH WITHOUT FEAR

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IT COULD BE ME: Stories About the Criminalization of Abortion

Julieta

GUATEMALA



A 26-year-old mother of three children, took medication to treat abdominal pain, unaware that she was pregnant. When her condition did not improve, she went to a health center to seek medical care. The medical staff determined that Julieta was experiencing bleeding consistent with a miscarriage. According to the physician, a substance found inside her vagina was believed to have caused the abortion. Healthcare staff reported Julieta to the police, who arrested her, charged her with self-induced abortion, and placed her in police custody. Police officers took a photo of her while she was on a recovery stretcher at the health center and shared it on social media, which was then picked up by the media. While receiving medical care, Julieta spent the entire day without food and handcuffed to a stretcher. Her partner was not allowed to give her water, and her phone and belongings were taken away. One of the nurses said, "Let her die of thirst; she doesn't deserve to be a woman." During the trial, it was proven that the substance found in Julieta's vagina was not misoprostol or any other medication that could have caused the abortion. The case remains open.

Ysabel

PERU



At 25 years old, lived with her aunt and siblings, helping with household chores while she studied. She describes herself as a humble person and the sole breadwinner for her family. One day, she experienced severe stomach pain and went to the emergency room, where she was diagnosed with a "threatened abortion." Ysabel stated that she was unaware she was pregnant since "I didn't feel any symptoms, and besides, I got my period normally every month." Hospital police were notified, and Ysabel gave statements without the presence of legal counsel, both at the hospital and during her first summons to the police station two months later. In both her first and second statements, Ysabel stated that she went to a pharmacy where "I told them about the pain I was feeling, and they asked me if I was pregnant; I told them no, that the pain was from my period." They prescribed two pills to regulate her menstrual cycle, but "since I didn't have any money, I only bought one, and they told me to insert it vaginally." The Public Prosecutor's Office requested that Ysabel be sentenced to seven months of imprisonment and ordered to pay nearly 300USD (1,000 Peruvian soles) in damage to society for the crime of self-induced abortion. After three years of criminal proceedings, and despite having no prior criminal record, Ysabel was convicted of "self-abortion against society." She was sentenced to report to the court once a month for one year, refrain from committing any new offense, and pay approximately half of the amount requested by the prosecution as civil damages.

Emma

CHILE



A 13-year-old girl who became pregnant after being sexually assaulted, was referred from the clinic to the hospital to undergo an abortion, as her case fell within the legally permitted grounds. However, the hospital director filed a complaint against her for abortion. Although the case was later closed, Emma faced a revictimizing process that treated her as a suspect in a crime rather than as a victim of sexual violence.





The stories of **Julieta, Ysabel and Emma**, among so many others examined in this report—are not exceptional but rather representative of the **criminalization of abortion in Latin America and the Caribbean.**

Health Without Fear is a regional initiative aimed at changing the way abortion is regulated in Latin America and the Caribbean by eliminating or significantly reducing the use of criminal law. Using a multi-country, multi-dimensional approach, this initiative investigates, exposes, and raises awareness on how criminalization violates human rights, deepens inequality, and further entrenches gender stereotypes. By producing empirical and comparable evidence, **Health Without Fear** aims not only to strengthen national strategies for expanding abortion access but provide the region with a reference that encourages a broader and more informed conversation with decision-makers, stakeholders, and civil society organizations on health, access to justice, and equity when it comes to providing an essential health service. In this regard, the initiative aims to contribute to transforming legal approaches and institutional practices by placing human rights and public health at the center of national, regional, and global discourse.



1

I. EXECUTIVE SUMMARY

This report is part of the regional Health Without Fear initiative and presents the main findings documented with respect to the implications of using criminal law to regulate abortion in six countries in the region: Brazil, Chile, Guatemala, Peru, the Dominican Republic, and Uruguay. This was made possible thanks to the collective efforts of the initiative's partner organizations: Anis (Brazil), Corporación Miles (Chile), Crisálidas (Guatemala), Proyecta Igualdad (Peru), Cladem (Dominican Republic), and Mujer y Salud en Uruguay – MYSU (Uruguay).

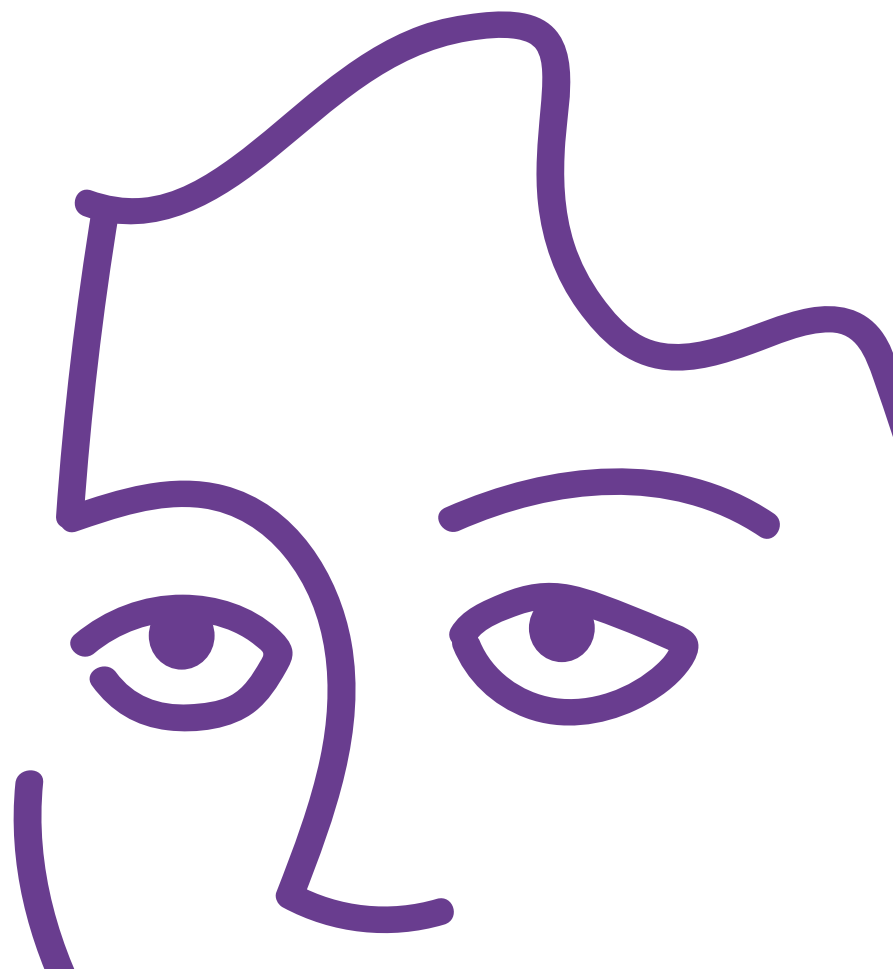
This report marks a milestone in the study of the criminalization of abortion in Latin America and the Caribbean on being the first to carry out a comparative analysis of how women and specific groups of women are criminally prosecuted for seeking an abortion. Unlike previous studies—more than fifteen conducted in various countries across the region—this study uses a standardized mixed-methods approach (quantitative and qualitative), which made it possible to compare findings across six countries and over more than a decade, while taking into account the diversity of abortion regulations in the countries included in the study. The investigation combines statistical data on legal proceedings and the profiles of the criminalized persons with qualitative evidence gleaned from case files, judgments, interviews, and news reports.

Specifically, the study delves into 611 cases to reconstruct what happens to women from the moment they seek care up through their criminal prosecution for abortion. The evidence is then analyzed based on applicable human rights standards and the violations are classified as violations of the human rights to health, access to justice, equal protection, and non-discrimination.

In that regard, the report presents three main findings. The first finding concerns cases that demonstrate that hospitals are often the gateway to criminalization, with specific implications for the protection of professional secrecy and confidentiality in healthcare, as well as increased vulnerability to certain forms of abuse and gender-based violence that take place in the context of healthcare under these circumstances. The second finding identifies the due process guarantees that are impacted during prosecutions for the crime of self-induced abortion—specifically, the right to an adequate defense, the guarantee of the right to silence, and the use of evidence that should not be admitted, as well as the imposition of arbitrary punishments, measures to restrict liberty, and other rights as a result of processes that violate human rights. The third finding examines, from a cross-cutting perspective, the presence of gender stereotypes, as well as differentiated impacts on specific groups of women (women with disabilities, migrant women, and adolescents), as a manifestation of the array of tensions between the criminalization of abortion and the right to equal protection and non-discrimination. An additional finding relates to the right of access to information, given the restrictions domestic researchers had to deal with when seeking access to official data.

Based on the foregoing, this report establishes the concept of the “abortion criminalization pathway” as the Health Without Fear initiative’s contribution to raising awareness on the common elements of how abortion criminalization works in practice and the ways in which it amounts to a discriminatory policy. In this regard, aside from the fact that criminalization is not the best way to prevent abortions, this report shows the devastating effect that criminalizing abortion has on human rights, thus providing an additional argument for moving the abortion regulation paradigm away from criminal law. The report gives six sets of recommendations regarding its findings, with the aim of making **Health Without Fear** a reality.

We hope this report contributes to raising awareness on the violations of the human rights of women facing prosecution for self-induced abortion in the region, along with a more empathetic and informed understanding of the experiences of those facing the consequences of the criminalization of abortion. We also hope to contribute to the discussions and processes involved in changing the legal frameworks and institutional practices applicable to health systems and justice in order to guarantee people have effective access to essential reproductive health services, along with women’s right to a life free from violence and discrimination.



2

II. INTRODUCTION

This report is part of the regional **Health Without Fear** initiative and presents the main findings documented with respect to the implications of using criminal law to regulate abortion in six countries in the region: Brazil, Chile, Guatemala, Peru, the Dominican Republic, and Uruguay.

The study was based on official information collected by partner organizations in those countries to conduct country-specific research—also under the auspices of Health Without Fear¹—and that, following the application of a methodology to standardize it, provide the first local results indicating how abortion criminalization works.

It should be noted that criminal law continues to be used to regulate abortion in all Latin American and Caribbean, although there are different approaches regarding the scope of criminalization. At least three different models were identified in the countries that are the focus of the initiative as of the time the country reports were carried out: Absolute ban (Dominican Republic²); exceptions or for specific grounds (Brazil, Chile, Guatemala, Peru); and a mixed model under which abortion is allowed up to a certain gestational age, and after which, only allowed under certain justifications (Uruguay).

In this regard, and based on the evidence available from the country investigations, this report goes further into depth on the whole range of cases, which, despite their diversity, made it possible to identify commonalities in criminal proceedings over abortion and in the profiles of those being targeted by the processes. This report thus provides a comparative and regionally-focused analysis of the phenomenon of the criminalization of abortion. The study examines the findings based on international human rights standards.

¹ The partner countries and organizations that are the focus of the first component of the initiative and this report are: Brazil (Anis), Chile (Miles), Guatemala (Crisálidas), Peru (Proyecto Igualdad), the Dominican Republic (CLADEM), and Uruguay (MYSU). The countries and partners were selected based on the following criteria: 1) ensure geographic diversity, 2) include different models of abortion regulation, and 3) strengthen the evidence base to promote strategies for a paradigm shift in countries where local organizations are working toward this goal. The country reports are available at: <https://saludsinmiedos.com/informes/>

² Historically, abortion has been a criminal offense in the Dominican Republic under the 1884 Penal Code, which does not allow for exceptions. In 2025, the Dominican Republic's Congress passed the new Penal Code (Law 74-25), following decades of debate aimed at replacing the previous legislation. The approved legislation provides for a 12-month vacatio legis from the date of its approval, meaning the new code would take effect in August 2026. Both the country report and the comparative analysis for this regional report were based on empirical evidence and conducted while the 1884 law was in effect; consequently, the classification of the country as one with an absolute ban was maintained.

The report is organized into several chapters, the first of which provides a description of the methodology used. Chapter 4 presents the main findings of the study on criminal proceedings related to the criminalization of abortion and the human rights violations identified. There are three main findings: (i) the criminal prosecution often starts with the violation of the obligation of professional confidentiality, and it is in these contexts that certain forms of gender-based abuse and violence take place; (ii) the judicial proceedings violate due process guarantees, and the penalties imposed as a result are therefore arbitrary; and (iii) the criminalization of abortion is a discriminatory policy that is informed by gender stereotypes and has a disproportionate impact on certain groups of women. A fourth finding relates to the right of access to information, given the restrictions in-country researchers had to deal with to when seeking access to official data.

Based on the foregoing, chapter 5 conceptualizes the “criminalization pathway” as the Health Without Fear initiative’s contribution to raising awareness on the common elements of how abortion criminalization works in practice and the ways in which it amounts to a discriminatory policy. The chapter also analyzes the approaches taken by international human rights mechanisms and by the region’s high courts in response to the impacts that the criminalization of abortion has had on human rights. Along these lines, chapter 6 reviews the conclusions and recommendations that Health Without Fear proposes for addressing the human rights violations identified and for consolidating those legal frameworks and public policies that roll back the criminalization of abortion by delegating abortion regulation to the healthcare sector.

Lastly, the report includes the stories and testimonies of the women criminalized in the cases analyzed in the report. These stories provide the most tangible evidence of the human cost and the impact to the life projects of those accused of committing crimes associated with stereotypical assumptions about maternity and the role of women in society. This report is dedicated to them and to the hundreds of other women impacted by abortion criminalization in our region. With the collective effort of Health Without Fear, we will continue pressing to make reproductive autonomy a reality, along with health policies that guarantee access to abortion that is safe, dignified, and performed under conditions of equal protection and non-discrimination.



3

III. METHODOLOGY

This report is a comparative study of the criminalization of self-abortion in six countries of the region—Chile, Brazil, Peru, Uruguay, the Dominican Republic, and Guatemala—during 2012-2023. It takes a mixed-methods approach that combines quantitative and qualitative methods³. The quantitative component allows us to identify trends and frequencies that are comparable across countries, while the qualitative component allows us to go into depth on institutional practices, the experiences of the persons involved, and what it meant to them. Triangulating the two approaches enhances the validity of the results while at the same time making it possible to identify both regional trends and country-level characteristics.

The research drew on a variety of sources of information. First, requests for information were submitted to 154 government agencies in the six countries regarding criminal proceedings related to abortion; of these, only 25% received a response, and only 33 provided complete and detailed information. These limitations are an indication of the significant challenges in accessing data—due, among other things, to the lack of digitalization of the information.

Additionally, the analysis is based on partial access to 489 case files and 547 judgments. It also includes 199 news reports on cases and 74 interviews with key actors, including public defenders, academics, the women charged, relatives or partners, and representatives of civil society organizations. These sources help supplement quantitative evidence with qualitative information relevant to understanding the complexity of the phenomenon of criminalization of self-induced abortion.

³ To design the methodology implemented in the six countries that were included in the first component of the Health Without Fear initiative, at least 15 previous studies were reviewed to identify methodologies and sources: Salud con Lupa, "[Perseguidas por abortar: de la sala de emergencias al juzgado por un aborto](#)". November 2022; Proyecta Igualdad, Justicia Verde, and Chakakuna, "[Nacer con útero. Efectos de la criminalización del aborto en el Perú](#)." September 2022; Fundación Mujeres por Mujeres and O'Neill Institute for National & Global Health. Georgetown Law, "[Aborto legal en los tribunales](#)". Las narrativas jurídicas en las demandas contra la ley de Interrupción Voluntaria del Embarazo en Argentina." July 2022; Trialwatch Women and Girls' Report, Clooney Foundation, Columbia Law School Human Rights Institute, and University of São Paulo "[Abortion in Brazil: Substantive and Procedural Flaws in the Criminalization of Women](#)." July, 2022; Human Rights Watch, "[Why do they want to make me suffer again? The impact of abortion prosecutions in Ecuador](#)". July 14, 2021; La Mesa por la Vida y la Salud de las Mujeres, Causa Justa y Fokus, "[La criminalización del aborto en Colombia](#)." July, 2021; Agrupación Ciudadana para la Despenalización del Aborto de El Salvador, "[Del hospital a la cárcel](#)". Consecuencias para las mujeres por la penalización, sin excepciones, de la interrupción voluntaria del embarazo en El Salvador. 1998-2019". December, 2020; María Lina Carrera, Natalia Saralegui Ferrante, and Gloria Orrego-Hoyos, "Dicen que tuve un bebé. Siete historias en las que el sistema judicial encarcela mujeres y a casi nadie le importa." Siglo XXI Editores. September, 2020; Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito, Centro de Estudios Legales y Sociales (CELS), Centro Universitario San Martín (CUSAM), María Lina Carrera, Natalia Saralegui Ferrante, and Gloria Orrego-Hoyos, "[La criminalización por aborto y otros eventos obstétricos en la Argentina](#)." 2020; Somos Muchas and Optio Global Programa de Justicia Reproductiva, "[La criminalización de mujeres por el delito de aborto en Honduras](#)." 2019; GIRE, "[Maternidad o Castigo. La criminalización del aborto en México](#)." 2018; CLACAI. "[Muerte o Cárcel](#)". Persecución y Sanción por Aborto. October, 2018; Center for Reproductive Rights and Agrupación Ciudadana para la Despenalización del Aborto de El Salvador, "[Excluidas, perseguidas, encarceladas](#)". El impacto de la criminalización absoluta del aborto en El Salvador." July, 2013.

Additionally, the analysis is based on partial access to 489 case files and 547 judgments. It also includes 199 news reports on cases and 74 interviews with key actors, including public defenders, academics, the women charged, relatives or partners, and representatives of civil society organizations. These sources help supplement quantitative evidence with qualitative information relevant to understanding the complexity of the phenomenon of criminalization of self-induced abortion.

Additionally, data from the country-level investigations carried out in the framework of the initiative⁴ was compiled,⁵ making it possible to establish that over the course of the study period (2012–2023), there were at least 15,653 criminal cases associated with the various criminal offenses codified in national law, and 15,172 people were prosecuted criminally. Of these cases, 10,848 involved women, adolescents, and girls who were specifically charged with the crime of self-induced abortion.

Based on criteria of quality, consistency, and the volume of available quantitative and qualitative data, it was determined that, for the purposes of the regional report, 611 cases for which more complete information was available would be used. This is based on the understanding that comparative research requires reliable, comprehensive, and methodologically-consistent data, which helps strengthen the analytical validity of the results and reduce the risk of biased interpretations as a result of fragmented or inconsistent records.

Although the selection is not random but rather intentional, the 611 cases contain information gathered by the initiative’s partner organizations from national agencies within the scope of their respective jurisdictions. Because these are public records, the sampling error is lower, and the cases are representative of the phenomenon of criminalization for self-induced abortion, as they sufficiently capture the variability in the proceedings or characteristics of the accused individuals. Using public records to source the data offers numerous advantages, including broader geographic coverage, the ability to generate more detailed disaggregations, and lower data collection costs.

Overall, this research makes a key contribution to the region by providing robust and methodologically-sound comparative evidence on the criminalization of self-induced abortion. The use of a mixed-methods approach, the triangulation of multiple sources, and the sourcing of cases from public records strengthen the validity and comparability of the findings. Despite limitations in access to information, the study both highlights the scale and characteristics of the phenomenon and reveals the structural challenges to producing and accessing public data.

⁴ See: [Reports – Health Without Fear](#).

⁵ The following factors were taken into account when compiling the data: a) the volume and response rate of requests for access to public information, interviews conducted, focus groups, and media coverage; b) sociodemographic data on the accused individuals and the type of crime, including partial information on gender, age, and occupation. It should be noted that there were significant gaps in areas such as educational level, occupation, and ethnicity; c) characteristics of criminal proceedings, including the criminal offense charged, the source of the complaint, the type of legal representation, and whether appeals were filed; and d) judicial decisions, evaluating the sentences or measures imposed according to the criminal offense.

4

IV. FINDINGS IN CRIMINAL PROCEEDINGS RELATED TO THE CRIMINALIZATION OF ABORTION AND HUMAN RIGHTS VIOLATIONS

This chapter presents the findings from an in-depth study of the 611 cases examined for this report. The shared elements in the cases help to establish the typical experiences of women who are prosecuted criminally for the offense of self-induced abortion. The findings are also analyzed according to relevant international human rights standards to identify the human rights violations committed.

Figure 1. Cases of self-induced abortion, 2012–2023

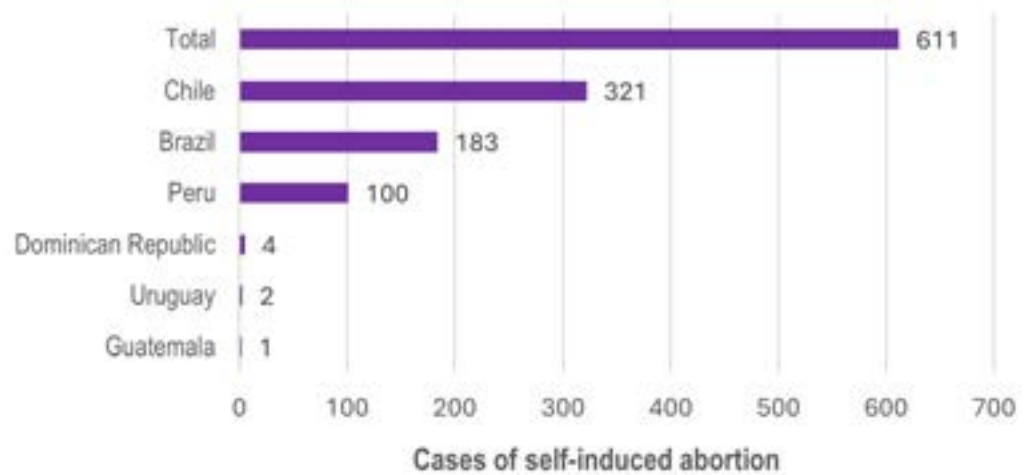


Figure 1: Number of cases by country

Figure 2. Cases of self-induced abortion, 2012–2023



Figure 2: Number of cases over the period covered by the study (2012–2023)

4.1. First finding: Health centers as the gateway to criminalization.

The evidence gathered in the six countries shows one initial commonality: Health centers are frequently the gateway to the criminal justice system, as well as a place where women seek medical care. They can be subjected to abuse and even certain forms of violence. Below, we analyze these findings and the ways in which they amount to a violation of the right to health and other rights, pursuant to applicable international standards.

4.1.1. Violation of professional secrecy and the guarantee of confidentiality in health matters

Of the 611 cases, the source of the complaint could be determined in 286 cases. It was found that, in 171 of these cases,⁶ the criminal proceedings were initiated based on complaints filed directly by healthcare workers or by police officers present at those healthcare facilities.⁷ This finding is consistent with evidence from country-level studies,⁸ which also showed that criminal proceedings are typically initiated based on reports filed by healthcare personnel after women sought medical care at hospitals; and the information related to that care and the patient's medical records are often used to support criminal prosecution.

- Peru: "Healthcare personnel at [public health facilities] are the primary source of reports in most cases, in violation of the legal duty of medical confidentiality [...] Medical personnel and other actors in the healthcare system may act as catalysts in initiating criminal proceedings, using confidential information provided by women during medical care." [Country report](#), pg. 74.

- Chile: "In cases where [...] information [about who filed the complaint] is recorded, a large number of complainants are healthcare professionals or workers." [Country report](#). Executive Summary, pg. 6.

⁶ Specifically, of the 611 cases analyzed, information was available on who filed the report in 286 cases, and within this group, it was indicated that: i) in 136 cases, the reports were filed by healthcare personnel, ii) in 2 cases by hospital police personnel, and iii) in 33 cases, the reports originated from the healthcare setting under the category "healthcare or police personnel" at the hospital.

⁷ This is specifically the case in Peru with regard to police officers who are permanently stationed in the emergency rooms of public hospitals. See: [Peru country report](#), pg. 74.

⁸ With the exception of the national study in Uruguay, which identified four criminal cases involving abortion offenses "that were initiated based on complaints, two of which were filed by unknown individuals and the rest by family members or people with ties to the pregnant women." It is worth noting that two of these cases were brought against the healthcare workers involved, which offers another perspective on the impact of the criminalization of abortion; however, this study does not explore this issue in depth for methodological reasons. See: [Uruguay country report](#), pg. 30.

- *Brazil: “Of the 104 reports whose source could be identified, nearly half (48, or 46%) came from healthcare professionals, and two cases were filed by child welfare officers against adolescents, pointing to the primary violation identified in this study: the breach of professional confidentiality used as a tool to prosecute women for abortion.” [Country report](#), pg. 11.*
- *Dominican Republic: “The decisive factor in the criminal prosecutions in all four cases is the external reporting of the abortion by healthcare personnel or the media; however, it is the medical information that forms the basis for all four prosecutions.” [Country report](#), pg. 73.*
- *Guatemala: In Julieta’s case, when she was about 16 weeks pregnant, she began experiencing abdominal pain and went to a public hospital in Guatemala for an examination. According to the case file, Julieta was reported by hospital staff after being treated.⁹ [Country report](#). Executive Summary, pg. 11.*

This situation raises a concerning question, as the complaints that come from healthcare personnel and/or relied on health information to support the allegations transgress the guarantee of medical privacy and healthcare professionals’ duty of confidentiality, in violation of international human rights obligations,¹⁰ as examined hereinafter.

First, it is important to highlight the “special relationship” that exists between doctors and patients, which is characterized by “the asymmetry in the exercise of power by the physician based on his special professional knowledge and control of information.”¹¹ This disparity is further exacerbated in view of the vulnerabilities women may face in the context of medical care related to abortion or obstetric emergencies, including experiencing pain, fear, and stress, and lacking information about their rights.

⁹ The country-level study in Guatemala examines Julieta’s case as emblematic of multiple issues related to the criminalization of abortion in the country. Furthermore, although the data obtained from the Public Prosecutor’s Office and other agencies did not make it possible to determine who filed the criminal allegations, the report noted that “other investigations have already indicated that, in practice, it is usually healthcare personnel who notify the authorities when they believe they are dealing with a possible case of abortion.” See: [Guatemala country report](#). Executive Summary, pg. 15.

¹⁰ The international human rights treaties on which the standards used in this regional report are based have been ratified by the vast majority of the region’s States.

¹¹ Inter-American Court. Case of I.V. v. Bolivia: Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016, para. 160.

In this context, international human rights law has recognized the guarantee of confidentiality in medical care as central to guaranteeing the right to health and other rights.¹² Within the framework of the inter-American human rights system, the Inter-American Commission on Human Rights (hereinafter the Inter-American Commission or IACHR) has noted, for example, that “doctor-patient privilege serves as a functional guarantee for other fundamental rights, including in particular the right to privacy, honor, information, and others.”¹³ For its part, the Inter-American Court of Human Rights (hereinafter the Inter-American Court) has stated in general terms that the doctor-patient relationship is “regulated by certain principles of medical ethics; above all, the principles of the patient’s autonomy, beneficence and not maleficence, and justice.”¹⁴

In the case of *Manuela v. El Salvador*, the Inter-American Court examined in depth the nature and scope of professional secrecy and the guarantee of confidentiality in medical care, with a particular focus on sexual and reproductive health.¹⁵ In this regard, the Court underscored that information regarding a person’s health “describe[s] the most sensitive or delicate aspects of an individual” and is therefore protected, especially when it comes to “information on an individual’s sex life[, which] should also be considered as personal and highly sensitive.”¹⁶ The Inter-American Court of Human Rights thus held that, by virtue of the rights to privacy and to health, everyone “has the right to the confidentiality of medical attention and the protection of their health data,” for which reason, “the information that physicians obtain in the exercise of their profession must not be disclosed.” The Court noted that this duty of professional confidentiality “includes both the information shared by the patient while being treated, and also the physical evidence that the medical staff may observe while providing this treatment.”¹⁷

¹² CESCR, General Comment 14, The right to the highest attainable standard of health, E/C.12/2000/4, August 11, 2000, para. 12(c); CESCR, General Comment 22, on the right to sexual and reproductive health, E/C.12/GC/22, May 2, 2016, paras. 40 and 49(d); Human Rights Committee, General Comment 36 Article 6: Right to Life, CCPR/C/GC/36, September 3, 2019, para. 8; Inter-American Court, Case of *Manuela et al. v. El Salvador*. Preliminary objections, Merits, Reparations, and Costs, judgment of November 2, 2021, paras. 202 et seq.; Report on Access to Information on the Issue of Reproduction from a Human Rights Perspective, November 22, 2011, para. 76-81; IACHR Report No. 59/14, Petition 12,376. Friendly Settlement. Alba Lucía Rodríguez Cardona Colombia. July 24, 2014, pg. 5.

¹³ IACHR Report No. 59/14, Petition 12,376. Friendly Settlement. Alba Lucía Rodríguez Cardona Colombia. July 24, 2014, pg. 5.

¹⁴ Inter-American Court. Case of *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 30, 2016, para. 160.

¹⁵ In two previous cases involving Peru, the Inter-American Court of Human Rights had addressed the issue of confidentiality in medical care from the perspective of health professionals and in the context of armed conflict. In that decision, the Court emphasized that “the information a physician obtains in the exercise of his profession is privileged by professional confidentiality” and that “physicians have a right and an obligation to protect the confidentiality of the information to which, as physicians, they have access.” See: Inter-American Court. Case of *De la Cruz Flores v. Peru*. Merits, reparations, and costs. Judgment of November 18, 2004, para. 97 and 101; Inter-American Court. Case of *Pollo Rivera et al. v. Peru*. Merits, reparations, and costs. Judgment of October 21, 2016, para. 237.

¹⁶ Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 205.

¹⁷ Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 206. See also Inter-American Court of Human Rights, Case of *De La Cruz Flores v. Peru*. Merits, Reparations, and Costs, Judgment of November 18, 2004, paras. 97 and 101; Inter-American Court of Human Rights, Case of *Pollo Rivera et al. v. Peru*, Merits, Reparations, and Costs, Judgment of October 21, 2016, paras. 236 and 237.

However, in its decision, the Inter-American Court of Human Rights emphasized that the guarantee of confidentiality in medical care is not an absolute right, and that it may be restricted “provided that the interference is not abusive or arbitrary; accordingly, this must be established by law, pursue a legitimate purpose and be necessary in a democratic society.”¹⁸ In this specific case, the Court conducted a proportionality analysis, weighing the State’s legitimate interest in investigating potential crimes against the need to protect the individual’s right to health and privacy, as well as the public interest in protecting trust in the healthcare system. The Court therefore concluded that, in the case of obstetric emergencies, the restriction on confidentiality was disproportionate and therefore inadmissible.¹⁹ Consequently, it ordered the State to adopt clear regulations regarding the scope of medical confidentiality, expressly stipulating, among other matters, that “[...] medical and nursing staff do not have an obligation to report women who have received medical attention for possible abortions [and] that, in such cases, health personnel must observe medical professional secrecy when questioned by the authorities.”²⁰

The information gathered from the country studies indicates that there is no single reason why professional secrecy is breached and confidentiality in healthcare matters is violated. Rather, such violations entail interactions between regulatory frameworks and deeply entrenched institutional practices. With regard to regulatory frameworks, regulatory ambivalence persists in some countries, as duties of confidentiality coexist with duties to report crimes, often through regulations of equal or differing hierarchy. In other countries, such as Peru, domestic law provides for a clear exception to the duty of confidentiality, as the General Health Law stipulates that healthcare personnel are required to report cases where there are “indications of criminal abortion.”²¹ Both regulatory frameworks are at odds with international human rights standards. The regulatory ambiguity that fails to define exceptions to confidentiality in health matters and the explicit requirement to report punishable abortions both violate the rights to privacy and health.

In addition to the violation of individual rights, breaches of medical confidentiality and the resulting mistrust in health care systems have harmful collective effects, with implications for public health. Multiple protection mechanisms and international bodies have also emphasized the chilling effect that comes with a lack of confidentiality when it comes to people seeking healthcare services, particularly with sexual and reproductive health.

¹⁸ Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 207.

¹⁹ Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 220–224.

²⁰ Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 286.

²¹ See: [Peru country report](#), pg. 26 et seq. .

On this point, the World Health Organization (hereinafter WHO) has been emphatic in highlighting the importance of ensuring confidentiality and has stated that the fear that confidentiality will not be respected “dissuades many women—particularly adolescents and single women—from seeking legal and safe abortion services and can incentivize them to seek unsafe clandestine abortions.”²² The United Nations Special Rapporteur on the right to health has also warned that “a lack of confidentiality may deter individuals from seeking advice and treatment, thereby jeopardizing their health and well-being,” and therefore, “States are obliged to take effective measures to ensure medical confidentiality and privacy.”²³ In turn, in its General Recommendation 24 on the right to health, the Committee on the Elimination of Discrimination against Women (hereinafter the CEDAW Committee) emphasized that failure to respect the confidentiality of patient information “may deter women from seeking advice and treatment and thereby adversely affect their health and well-being.” The Committee warned that a lack of confidentiality in medical care can make women “less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.”²⁴

Also, the Human Rights Committee has stated that “where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion,” women’s right to privacy is not respected, and their rights to life and to be free from torture or cruel, inhuman, or degrading treatment or punishment may also be affected.²⁵ Similarly, the Special Rapporteur on torture has warned against the harmful practices of healthcare workers who report women who have had abortions and demand a confession as a condition for providing medical care.²⁶ In addition, in their Concluding Observations, the Committee against Torture,²⁷ the Human Rights Committee,²⁸ the Committee on Economic, Social and Cultural Rights (CESCR)²⁹, and the CEDAW Committee³⁰ have expressed particular concern about the practice of reporting women who seek post-abortion medical care.

²²WHO, *Safe Abortion: Technical and policy guidance for health systems*, 2nd edition, 2012, pg. 68.

²³Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2004/49, February 16, 2004, para. 40.

²⁴CEDAW, General Recommendation 24, Women and Health (1999), para. 12(d).

²⁵Human Rights Committee, General Comment 28, Article 3: The equality of rights between men and women, 68th Period of Sessions, March 29, 2000, CCPR/C/21/Rev.1/Add.10, para. 20

²⁶Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, February 1, 2013, A/HRC/22/53, para. 46.

²⁷Committee Against Torture, Conclusions and Recommendations on Chile, CAT/C/CR/32/5, June 14, 2004, para. 7(m).

²⁸See Human Rights Committee, Concluding Observations on Chile, CCPR/C/79/Add.104, March 30, 1999, para. 15.

²⁹CESCR, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, E/C.12/SLV/CO/3-5, June 19, 2014, para. 22; CESCR, Concluding observations on the sixth periodic report of El Salvador, E/C.12/SLV/CO/6, November 9, 2022, para. 58.

³⁰CEDAW, Concluding Observations on the combined eighth and ninth periodic reports of El Salvador, CEDAW/C/SLV/CO/8-9, March 9, 2017, para. 38(b).

Similarly, the Inter-American Commission has noted that the duty of health professionals to keep information obtained from their patients confidential “is of critical interest in sexual and reproductive health.”³¹ The Commission has stated that fears that confidentiality will not be respected may deter women from seeking the necessary medical care, whereas “if a person feels safe and trusting, she will provide all the information needed so the medical professional can more effectively diagnose and treat her.”³² Similarly, in the aforementioned *Manuela* case, the Inter-American Court of Human Rights emphasized that “the ultimate aim of the provision of health services is to improve the mental and physical health of the patient”³³ and that, in order to “provide the appropriate medical treatment, the patient must feel able to share all necessary information with them.”³⁴ For this reason, the Court stated, “it is essential that the information that patients share with medical staff is not divulged illegitimately. Thus, the right to health means that, for health care to be acceptable, personal health data must be treated with confidentiality.”³⁵

In addition to this, and from a regional perspective, it is important to consider how the supreme courts in countries such as Argentina, Brazil, and Colombia have addressed this issue. In general, and given the importance of the right to confidentiality—both in the specific case of individuals who require medical care and face the dilemma of choosing between saving their lives and facing imprisonment, and because of the systemic effects that erode public trust in the healthcare system—several decisions by domestic courts have upheld as reasonable the declaration of annulment of criminal proceedings that were based on violations of the guarantee of medical confidentiality.

For example, in Argentina, the Supreme Court has emphasized that the criminal justice system cannot take advantage of the vulnerability of those seeking medical care, further noting that allowing the criminal action to proceed would violate the right to protection from self-incrimination.³⁶ The Court reached this decision by

³¹ IACHR, Report on Access to Information on the Issue of Reproduction from a Human Rights Perspective, November 22, 2011, para. 76.

³² IACHR, Report on Access to Information on the Issue of Reproduction from a Human Rights Perspective, November 22, 2011, para. 81.

³³ Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 202.

³⁴ Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 203.

³⁵ Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 202 and 203.

³⁶ See: CSJN, Baldivieso, César Alejandro, Case No. 4733, Decisions 333:405, Judgment of April 20, 2010, with dissenting opinions by Highton and Petracchi, and concurring opinions by Lorenzetti, Fayt, Maqueda, and Zaffaroni. In this specific ruling, the Court unanimously overturned the drug trafficking conviction of an individual who had been reported after seeking treatment at a hospital with packets of cocaine lodged in his intestines. The Court determined that there was no basis for waiving professional confidentiality, since there were “no other interests at stake, as there was no danger whatsoever, nor was there any serious harmful process underway that needed to be halted to prevent harm to the life or physical integrity of third parties; thus, any other conflicting scenario can be ruled out.”

“reaffirming the long-standing legal precedent established by the Criminal and Correctional Appeals Court in its 1966 plenary ruling in the ‘Natividad Frías’ case,” which concerned an investigation into a woman who was reported to the police after seeking post-abortion care. The Court of Appeals’ decision ordered the dismissal of the case and established a rule that “no criminal proceedings may be brought against a woman who has induced her own abortion or consented to another person inducing it, based on a complaint filed by a medical professional who became aware of the act in the course of their professional practice or employment—whether official or not.”³⁷ The Argentine Criminal Cassation Chamber has followed this same line of reasoning and has also overturned criminal proceedings related to abortion that were initiated in violation of the guarantee of professional confidentiality.³⁸ In fact, according to research conducted prior to Argentina’s 2020 abortion law, the standard established in Natividad Frías and upheld by the Supreme Court was routinely applied by Argentine courts to dismiss abortion investigations that had been initiated in violation of attorney-client privilege.³⁹

In Brazil, the Superior Court of Justice (STJ) ruled in 2023 on three habeas corpus petitions involving women who were facing criminal charges for abortions, in cases that had been initiated in violation of professional confidentiality.⁴⁰ The three women on trial had undergone self-induced abortions and then sought care at a health clinic, where the staff reported them to the authorities. In all three cases, the Supreme Court of Justice ordered the criminal proceedings dismissed, finding that the investigation had been based on evidence obtained in violation of professional confidentiality, making it inadmissible.⁴¹ In this regard, the Court emphasized that “the criminal proceeding is tainted by evidence obtained unlawfully and is therefore null and void.”⁴²

³⁷ Full Bench of the National Criminal and Correctional Court of the Federal Capital, Frías, Natividad v. Abortion, August 26, 1966.

³⁸ See: Criminal Cassation Court. Second Chamber, A., G. Y. re: cassation appeal. July 13, 2012, Case No. 10193, Registry No. 20278.

³⁹ CELS, Confidencialidad en la atención médica, aborto y derechos humanos, 2020, pgs. 9-17, <https://www.cels.org.ar/web/publicaciones/confidencialidad-en-la-atencion-medica-aborto-y-derechos-humanos/>

⁴⁰ On this point, see Banfi, Analia, and Lauletta, Natasha, “Entre la vida y la libertad: el secreto profesional y la salud reproductiva en Brasil,” Agenda Estado de Derecho, March 8, 2024, <https://agendaestadodederecho.com/salud-reproductiva-en-brasil/>

⁴¹ STJ. HC No. 783.927/MG, Reporting Justice Sebastião Reis Junior, Sixth Panel, decided March 14, 2023; STJ. HC No. 820.577/SP, Reporting Justice Reynaldo Soares de Fonseca, Fifth Panel, June 29, 2023; STJ. HC No. 448.260/SP, Reporting Justice Antonio Saldanha Palheiro, Sixth Panel, October 3, 2023.

⁴² STJ. HC No. 783.927/MG, Reporting Justice Sebastião Reis Junior, Sixth Panel, decided on March 14, 2023, pg. 9. In another case, the Federal Supreme Court (STF) ruled on a similar matter in 2023, although it dismissed the case on procedural grounds. However, in their dissenting opinion, two judges warned that the breach of attorney-client privilege was “sufficient to render the evidence used to initiate the criminal proceedings unlawful.” Furthermore, they noted that the threat to report them to the authorities violated women’s right to health and the right to protection from self-incrimination, and constituted “discrimination against women, in violation of the commitments Brazil has made through international agreements and domestic laws aimed at preventing gender inequality, torture, and degrading treatment.” See: STF, Interlocutory Appeal in Habeas Corpus Case No. 217.465/SP, Reporting Justice Ricardo Lewandowski, Second Panel, April 13, 2023. Opinions of Justices Fachin and Mendes.

Lastly, in Colombia, the Constitutional Court ruled in 2024 on a case in which a woman wanting to seek an abortion was harassed by a conservative group, which had learned of her intention following a breach of professional confidentiality at the health care facility where she had sought medical care. In its ruling, the Court emphasized that “professional confidentiality is a safeguard for the patient and a duty for the professional,” and that “any unjustified disclosure necessarily impacts the patient’s fundamental rights and has ethical, disciplinary, and even criminal consequences.”⁴³ Furthermore, the court held that “given the historical discrimination and persecution faced by girls, women, and pregnant individuals who decide to terminate a pregnancy, the confidentiality of the procedure and the patient’s privacy are afforded enhanced protection.” In cases of leaks of confidential information, it found, the person in charge of data management is liable, unless they can prove otherwise⁴⁴.

From what has been described so far, it is clear that when a criminal complaint regarding abortion originates at a health care facility, or when medical information disclosed by health care personnel is used in criminal proceedings, the right to medical confidentiality has been violated, and along with it, the rights to privacy and health enshrined in international human rights treaties. Therefore, as will be discussed in the recommendations, States are required to adapt their regulatory frameworks to ensure they are compatible with these guarantees, and they must also take measures to reform the institutional practices that produce these violations. Later in this report, in section 4.2 (second finding), we will also analyze the implications of the violation of the confidentiality guarantee as it pertains to due process guarantees, particularly the right to protection from self-incrimination.

4.1.2.

Abuse and obstetric violence in contexts where abortion is criminalized

Another troubling finding related to the healthcare landscape concerns the treatment of women who are reported for having an abortion. In this regard, several of the country reports had already warned of instances of abuse, some of which were classified as obstetric violence.⁴⁵

In a large number of the 611 cases analyzed in this regional report, women reported—or the case files documented—incidents of violence taking place within health care facilities while they were receiving medical care. These situations included both psychological abuse—in which healthcare personnel mistreated and humiliated the women involved as a form of informal punishment—and instances in which healthcare personnel directly encouraged criminal justice intervention against their patients, insisting that they make a statement to the police or even making medical care contingent on the woman’s consent to report the incident to the authorities. In

⁴³ Constitutional Court, Decision T-402/24, September 23, 2024, para. 65.

⁴⁴ Constitutional Court, Decision T-402/24, September 23, 2024, para. 154.

⁴⁵ Specifically in the [national reports](#) from Peru, the Dominican Republic, and Guatemala.

addition, there were also instances in which police officers participated and remained on the premises of the health facility, and even cases in which handcuffs or other restraints were used on the accused woman.

Specifically, up to four forms of abuse and violence were identified: 1. Attempts to coerce the woman to self-incriminate, 2. Inhumane treatment and other humiliating and degrading treatment, 3. Deliberate exposure to fetal remains, and 4. Restriction of freedom of movement within the hospital. These situations are illustrated below through testimony and accounts of some specific cases.

Luciana (Brazil) was in a motorcycle accident that caused bleeding and severe abdominal pain. In the emergency room, under pressure from the doctor treating her—who threatened to administer an intravenous medication and told her that if she had taken anything to induce an abortion, she would die—Luciana, overwhelmed by pain and coercion, admitted that she had taken “medications, probably abortifacients.” That was when a nurse at the hospital called the police.⁴⁶

Sofia (Peru), was told by her gynecologist: “You have to tell me whether or not you’ve taken pills, because if you don’t, I won’t treat you.” Just before the dilation and curettage, the nurse told her, “The police officer is outside and wants to know where you got the pills.” “I was lying there with my legs up, waiting for them to perform the dilation and curettage. I was still bleeding; I was still in bad shape. And she said to me, “No, it’s just that he wants to know. He wants to know.” I even think the police officer came in. I don’t remember because I was in bad shape, right? But he was there, I think? I mean, he was still there. And I didn’t know what to do. And I kept saying to him, ‘I don’t know, I don’t know, I don’t know, I don’t know, please, help me.’⁴⁷

Julieta (Guatemala), a 26-year-old mother of three, took a natural remedy to treat abdominal pain, unaware that she was pregnant. Since her health was not improving, she went to a health clinic to seek medical care. The medical staff determined that Julieta was experiencing bleeding consistent with a miscarriage. According to the doctor, a medication was found inside Julieta’s vagina that may have caused the miscarriage. Medical staff reported Julieta to the police; she was arrested and charged with self-induced abortion and taken into police custody. Police officers took a photo of her while she was on a recovery stretcher at the health center and shared it on social media; the media then picked up the story with headlines including “Woman charged with self-induced abortion.” While she was receiving medical care, Julieta spent the entire day without eating and handcuffed to a stretcher. Her partner was not allowed to give her water, and her

⁴⁶ Luciana’s case is one of the 611 cases analyzed in depth for this report. The case took place in Brazil in 2013. Luciana is not her real name.

⁴⁷ Sofia’s testimony is one of the 611 cases analyzed in depth for this report. The case is from Peru. Sofia is not her real name. The case is also mentioned in the relevant country-level report. See: [Peru country report](#), pg. 76.

phone and personal belongings were taken away. One of the nurses said, “Let her die of thirst; she doesn’t deserve to be a woman.” During the trial, it was proven that the substance found in Julieta’s vagina was neither misoprostol nor any other medication that could have caused the abortion. The case is currently in the preliminary phase.⁴⁸

Catherine (Perú) said: “They treated me very badly.” They didn’t give me anything to eat all day so that I would supposedly think about the things I had done and realize that those were the consequences. And they starved me all day. They didn’t even give me a glass of water. The treatment was horrible. It’s not even like they told me while I was alone in a room. There were two or three patients, and they spoke to me like that right in front of them [...]he doctor started demanding that I tell him what I had taken, what I had put into my body, saying they wouldn’t treat me if I didn’t say [...] The worst part was when [...] he brought in the bag with the fetus and they just left it under the hospital bed without a second thought. And after a while, they lifted the bag to my feet, they cut the placenta and pulled the baby out, and they held it right in front of me and started saying horrible things to me. I think that was the hardest part of it all. Because I can handle what people say to me, but the fact that—I don’t know—they would pull out the baby like that and make me look at it while they say horrible things to me—that was the worst part. They called me a murderer, a bad person, things like that [...].⁴⁹

The situations described—and, more broadly, the violence women face when seeking medical care, particularly post-abortion care—are part of a widespread problem that has been a source of concern for various human rights protection mechanisms. In this regard, the Special Rapporteur on Torture has noted that the abuse inflicted on women seeking reproductive health services “can cause tremendous and lasting physical and emotional suffering” and that it is “inflicted on the basis of gender.”⁵⁰ As an example of the abuses women face in the healthcare system, the Special Rapporteur cited mistreatment and humiliation by healthcare personnel, denial of access to abortion and post-abortion services, breaches of confidentiality that result in criminal charges, as well as the practice of making post-abortion care contingent on the woman’s confession.⁵¹ The Special Rapporteur has also been emphatic in stating that the use of shackles and handcuffs “during labour and immediately after childbirth is absolutely prohibited.”⁵²

⁴⁸Julieta’s case is one of the 611 cases analyzed in depth for this report. The case took place in Guatemala in 2021. Julieta is not her real name. The case is also mentioned in the relevant country-level report. See: [Guatemala country report](#). Executive Summary, pg. 11.

⁴⁹Catherine’s testimony is one of the 611 cases examined in depth for this investigation. The case is from Peru. Catherine is not her real name. The case is also mentioned in the relevant country-level report. See: [Peru country report](#), pg. 76.

⁵⁰Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, A/HRC/22/53, February 1, 2013, para. 46.

⁵¹Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, A/HRC/22/53, February 1, 2013, para. 46.

⁵²Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 21.

Despite this, and as noted, national studies have shown that these practices persist and correlate with the experiences of women who are criminalized for abortion in the region, who are often abused and humiliated in health care settings. In this context, the Special Rapporteur on Torture has also noted that the risk of ill-treatment faced by women in the healthcare system is exacerbated when they seek “medical treatment on the basis of actual or perceived non-conformity with socially determined gender roles.”⁵³ In general, he has stated that, when it comes to maternal health services, women “face a high risk of ill-treatment, particularly immediately before and after childbirth.”⁵⁴ This type of mistreatment, the Special Rapporteur said, “is often motivated by stereotypes regarding women’s childbearing roles and inflicts physical and psychological suffering that can amount to ill-treatment.”⁵⁵

These statements by the Special Rapporteur on Torture have been added to by the more recent development of the concept of obstetric violence. This is a specific form of gender-based violence⁵⁶ centered on the reproductive processes that take place in a woman’s body. This violence takes place in the context of pregnancy care and everything related to it, whether in the management of obstetric emergencies, during labor and delivery, or when providing care for spontaneous or induced abortions.

In this regard, the Inter-American Court has noted that this form of gender-based violence takes the form of actions or omissions by health care personnel that is “mostly, but not exclusively, expressed in a dehumanized, disrespectful, abusive or negligent treatment; in the denial of treatment and of complete information on their state of health and the applicable treatments; in forced or coercive medical procedures, and in the tendency to pathologize the natural reproductive processes, among other threatening manifestations in the context of health care during pregnancy, childbirth and post-partum.”⁵⁷

⁵³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 42.

⁵⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 47.

⁵⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, para. 47.

⁵⁶ This is violence “that is directed against a woman because she is a woman or violence that affects women disproportionately,” and it is “a form of discrimination that seriously inhibits women’s ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men.” CEDAW, General Recommendation 19, Violence against women (1992), para. 6; CEDAW, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017), para. 1; CEDAW, General Recommendation 28, CEDAW/C/GC/28 (2010), para. 19.

⁵⁷ Inter-American Court, Case of *Britez Arce et al. v. Argentina*, Judgment of November 16, 2022, Merits, Reparations and Costs, para. 81; Inter-American Court, Advisory Opinion OC-29/22, Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty, May 30, 2022, para. 160 et seq.

As the Inter-American Commission has also recognized, the specific experience of obstetric violence can include an array of acts or omissions during the medical care surrounding pregnancy and childbirth; one of its most common manifestations is psychological abuse, in the form of mockery and humiliation by healthcare personnel.⁵⁸ In this regard, the Commission has explained that “this type of violence is rooted in sexist and stereotypical views about women’s roles, their experience of motherhood, and their bodies” and that “it violates women’s rights to personal integrity, equality and non-discrimination, health, privacy, and respect for their autonomy.”⁵⁹

Other protection mechanisms, such as the CEDAW Committee,⁶⁰ the Special Rapporteur on violence against women, its causes and consequences,⁶¹ and the United Nations Working Group on Discrimination against Women and Girls⁶² have expressed similar views. International human rights organizations have also emphasized that States must establish adequate judicial mechanisms and diligently investigate obstetric violence, as well as ensure proper oversight of both public and private health care institutions, as measures to prevent this type of gender-based violence.⁶³

It follows from the foregoing that the situations typically faced by women criminalized for abortion during their time in health care facilities constitute forms of obstetric violence that are incompatible with international human rights treaties. Similarly, the Inter-American Court has ruled in cases such as *V.R.P. and V.P.C. v. Nicaragua* and *Guzmán Albarracín v. Ecuador* regarding the institutional violence suffered by the victims—girls who were victims of sexual violence—at the hands of judicial authorities and educational institutions, respectively, taking into account, among other factors, revictimization and the tolerance of these forms of violence.⁶⁴ In this regard, the way in which obstetric violence and the other forms of abuse mentioned take place, as well as the fact that they are directed against women who are subjected to criminal proceedings, suggests that these situations are normalized and accepted, and taken

⁵⁸ IACHR, *Indigenous Women and Their Human Rights in the Americas*, 2017, para. 80; IACHR, *Violencia y discriminación contra mujeres, niñas y adolescentes: Buenas prácticas y desafíos en América Latina y en el Caribe*, 2019, para. 183.

⁵⁹ IACHR, *Violence and discrimination against Women and Girls: Buenas prácticas y desafíos en América Latina y en el Caribe*, 2019, para. 182.

⁶⁰ CEDAW, *S. F. M. v. Spain*, CEDAW/C/75/D/138/2018, February 28, 2020; CEDAW, *N. A. E. v. Spain*, CEDAW/C/82/D/149/2019, July 13, 2022.

⁶¹ Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, July 11, 2019, A/74/137.

⁶² *Women’s and girls’ sexual and reproductive health rights in crisis: Report of the Working Group on discrimination against women and girls*, A/HRC/47/38, April 28, 2021;

⁶³ See: Inter-American Court. *Case of Rodríguez Pacheco et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2023. Series C No. 504, para. 112; and CEDAW. *C.S.F. and E.B.S.F. v. Argentina*. CEDAW/C/90/D/164/2021. February 21, 2025, para. 7.10.

⁶⁴ See: Inter-American Court. *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350, para. 296; and Inter-American Court. *Case of Guzmán Albarracín et al. v. Ecuador*. Merits, reparations, and costs. Judgment of June 24, 2020. Series C No. 405, para. 157.

together, they may also constitute forms of discriminatory institutional violence. Additionally, no effective accountability mechanisms are in place for these situations, which leads to impunity and impact that is more structural.

4.2. Second finding: Legal proceedings without guarantees

Although each of the national justice systems in the countries examined has its own specific characteristics, an analysis of the 611 cases included in this regional report revealed violations of the due process guarantees established under international human rights law. In general, the proceedings revealed instances in which the defendants were unable to exercise their right to an adequate defense, and many cases involved a violation of the right to protection from self-incrimination, particularly when criminal prosecution was initiated based on a breach of medical confidentiality.

4.2.1. Right to an adequate defense

The type of defense could be identified in 313 of the 611 cases analyzed. Within this group, 228 women were represented by a public defender, 46 had private defense counsel, 4 had both public and private defense counsel, and in 3 cases, the women were represented by feminist organizations. Thus, the vast majority of women facing criminal charges cannot afford private legal representation, which demonstrates that the criminalization of abortion disproportionately affects poor women. These differential impacts will be discussed in greater detail in the section on discrimination.

With regard to the right to a defense, the information analyzed showed that in some cases, the authorities failed to promptly assign attorneys to represent the accused, with the result that they lacked legal representation at critical procedural junctures during the investigations against them. This made it impossible to verify the legality of the proceedings and investigative actions, as well as to adequately exercise their right to a defense. Similarly, of particular concern are cases initiated as a result of interrogations conducted at health centers, where women made incriminating statements under pressure, without being informed of their rights or having legal representation—all within the context of the practices described above regarding breaches of professional confidentiality and the mistreatment women face under these circumstances. This also has an impact on the right to protection from self-incrimination, as explained below.

Additionally, it was evident in some cases that the defense was conducted in a deficient or negligent manner, due to—among other issues—limited participation, failure to challenge evidence obtained unlawfully, and a lack of clear strategies to protect the defendants' rights. Regarding the latter point, an analysis of the case files reveals disparities in the quality of legal representation. For example, it was observed in some cases that even as the Public Prosecutor's Office typically presented a wealth of evidence—including evidence obtained unlawfully and/or in violation of attorney-client privilege—the defense teams representing the women facing criminal charges, by contrast, either did not present any evidence of their own or did so only to a very limited extent.

Another significant finding is the use of summary proceedings. In Brazil and Peru, approximately 85 cases were identified in which these special procedures were applied; under the laws of both countries, this means that the women had to admit their guilt and/or agree to comply with certain conditions and remain subject to the judicial process for a specified period in order to qualify for early termination of the proceedings.⁶⁵ While a summary proceeding is not in itself incompatible with international human rights standards, it must be used independent of any form of coercion. The information available regarding how these decisions are made raised concerns as to the circumstances under which criminalized women agreed to these procedural measures, given that the alternative to doing so was to remain subject to a judicial process with the characteristics described above, as well as whether they had access to all the necessary information and adequate legal counsel.

Regarding the implications of these findings under international human rights law, the Inter-American Court has noted that the right to a defense “is a key component of due process and obliges the State, at all times, to treat the individual as a true subject of the proceedings, in the broadest sense of the concept and not merely as an object of it.”⁶⁶ It has also found that in criminal proceedings, this is reflected, on the one hand, in a “right to a substantive defense” exercised by the accused themselves, with the opportunity to actively participate in hearings and proceedings, and, on the other hand, in a right to legal representation exercised by a legal professional.⁶⁷

In this regard, the right to legal representation is not merely a right to the observance of procedural formalities, but rather requires that the legal professional involved—whether chosen by the defendant or appointed by the State—act diligently in following the proceedings and defending the defendant’s rights. On this point, the Inter-American Court has found that “appointing a public defender with the sole object of complying with the procedural formality would be equivalent to not providing expert defense.” For the right to defense to be understood as having been exercised, it is necessary “for the defense attorney to act diligently to protect the procedural guarantees of the accused, thereby preventing the rights of the accused from being violated and breaking the trust relationship.”⁶⁸

⁶⁵ Of the total of 611 cases, information on the outcome of the criminal proceedings is available for only 513 cases. A total of 85 cases were identified in Peru from that group, all of which resulted in an order for early termination of the proceedings. See: [Peru country report](#), pg. 8; and Brazil country report, where the proceedings were conditionally suspended. See: [Brazil country report](#), pg. 28).

⁶⁶ Inter-American Court, Case of Valencia Campos et al. v. Bolivia, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 18, 2022, para. 260; Case of Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, para. 29; Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 120.

⁶⁷ Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 120.

⁶⁸ Inter-American Court, Case of García Rodríguez et al. v. Preliminary Objections, Merits, Reparations, and Costs, Judgment dated January 25, 2023, para. 247; Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 122.

Furthermore, the Inter-American Court of Human Rights has noted that the right to legal counsel is violated when the defense is not allowed to participate in key stages of the proceedings, such as when the accused is making a statement to the authorities.⁶⁹

4.2.2.

The right to protection from self-incrimination and the use of evidence that should be excluded

Luciana (Brazil) was in a motorcycle accident and arrived at the emergency room with bleeding. Under pressure from the doctor (“if you took anything, you’re going to die”), she admitted to having taken medication, after which a nurse called the police.⁷⁰

Sofia (Peru) was pressured by the gynecologist who treated her to admit that she had taken pills: “If you don’t say it, I won’t treat you.” The nurse who testified at the trial stated that the police wanted to know where she had obtained them.⁷¹

Julieta (Guatemala), after suffering an obstetric emergency, was interrogated at the hospital and reported by the doctor. She was never informed of her rights and did not have a lawyer.⁷²

Cristina (Chile) went to the hospital because she was bleeding. Healthcare workers found a pill and notified the police. She was arrested at the hospital, and during the proceedings, her medical records and testimony from healthcare staff were presented as evidence against her.⁷³

Azucena (Dominican Republic) was pressured while receiving medical care to incriminate herself for having an abortion. Her alleged confession was the basis for her conviction, which was upheld by the Supreme Court of Justice.⁷⁴

⁶⁹ Inter-American Court, Case of López Álvarez v. Honduras, Merits, Reparations and Costs, Judgment of February 1, 2006, paras. 150 and 152; Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 121.

⁷⁰ Luciana’s case is one of the 611 cases analyzed in depth for this report. The case is from Brazil and dates from 2013. Luciana is not her real name.

⁷¹ Sofia’s testimony is one of the 611 cases analyzed in depth for this report. The case is from Peru. Sofia is not her real name. The case is also mentioned in the relevant country-level report. See: [Peru country report](#), pg. 76.

⁷² Julieta’s case is one of the 611 cases analyzed in depth for this report. The case took place in Guatemala in 2021. Julieta is not her real name. The case is also mentioned in the relevant country-level report. See: [Guatemala country report](#). Executive Summary, pg. 11.

⁷³ Cristina’s case is one of the 611 cases analyzed in depth. The case took place in Chile in 2015. Cristina is not her real name; she was charged with self-induced abortion under Article 344 of the Chilean Penal Code.

⁷⁴ Azucena’s case is one of the 611 cases analyzed in depth. The case took place in the Dominican Republic in 2017. Azucena is not her real name. Dominican Republic country report, pgs. 46-49. [Reports - Health Without Fear](#)

First, it should be noted that criminal proceedings initiated in violation of the guarantees discussed above like the right to confidentiality—especially when the violation is used for collecting evidence against the women being prosecuted—are themselves violations of the right to protection from self-incrimination. The same applies to cases in which medical care to provide an abortion or following one is contingent on the patient admitting to having committed the crime of abortion.

In this regard, both Article 14 of the International Covenant on Civil and Political Rights and Article 8 of the American Convention on Human Rights (hereinafter the American Convention or ACHR) establish in their fair trial guarantees, that no one may be compelled to testify against themselves or to confess guilt. Regarding this procedural guarantee, the Human Rights Committee has noted that it is a safeguard that “must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt.” In this context, it emphasized that “a fortiori, it is unacceptable” to subject the accused to torture or cruel, inhuman, or degrading treatment in order to force a confession.⁷⁵

It is also worth noting that in 2004, the United Nations Committee Against Torture noted with great concern that in Chile, health care personnel administer “life-saving medical care for women suffering complications after illegal abortions [...] only on condition that they provide information on those performing such abortions” and that these confessions were subsequently used “in legal proceedings against the women and against third parties, in contravention of the provisions of the Convention [against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment].”⁷⁶ In this regard, it called on the State to “eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention.”⁷⁷

For its part, the Inter-American Court has found that “the exclusion of evidence obtained through coercion is absolute and non-derogable.”⁷⁸ On this point, it has found that the exclusion of the defendant’s confession as evidence in the proceedings “does not only apply to cases where acts of torture or cruel treatment have been committed” and that “whenever it is proven that any form of duress has interfered with the spontaneous expression of a person’s will, this necessarily implies the obligation to exclude that evidence from the judicial proceeding.”⁷⁹ Furthermore, regarding the guarantee set forth in Article 8(2)(g) of the American Convention, which recognizes the right not to be compelled to testify against oneself or to confess guilt, the Court

⁷⁵ Human Rights Committee, General Comment 32, Article 14. Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 41.

⁷⁶ Committee Against Torture, Conclusions and Recommendations on Chile, CAT/C/CR/32/5, June 14, 2004, para. 6.j).

⁷⁷ Committee Against Torture, Conclusions and Recommendations on Chile, CAT/C/CR/32/5, June 14, 2004, para. 7 m).

⁷⁸ Inter-American Court, Case of Pollo Rivera et al. v. Peru, Merits, Reparations, and Costs, Judgment of October 21, 2016, para. 176.

⁷⁹ Inter-American Court. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2010, para. 166.

has found that “the exercise of this right presupposes that the accused is able to freely decide whether to make a statement or, in other words, that there is no coercion that would impede the accused from freely making that determination.”⁸⁰ In that regard, the Court ruled that a law providing an incentive for the defendant to waive their right to remain silent—by limiting pretrial detention if they cooperate in clarifying the facts of the charges against them—constituted a violation of the right to protection from self-incrimination.⁸¹

In turn, the European Court of Human Rights has noted that the guarantee against self-incrimination and the right to remain silent are “generally recognised international standards which lie at the heart of a fair procedure” whose “aim is to provide an accused person with protection against improper compulsion by the authorities.”⁸² In this regard, the Court explained that the scope of this guarantee is not limited to cases in which direct coercion has been exerted on the defendant, but also extends to situations in which subterfuge is used to obtain confessions or other incriminating statements.⁸³

In light of the foregoing, evidence collected in violation of the confidentiality guarantee in medical care—particularly in obstetric emergencies—must be considered to have been obtained through coercion and/or deception, and is therefore inadmissible as evidence for the prosecution. This is because the disclosure of the pregnant person’s health condition and the information that an illegal act may have been committed were made with the aim of protecting their physical integrity, in response to a real, specific, and present threat to their life and health. Furthermore, this disclosure was made on the understanding that the doctor-patient confidentiality agreement governs the relationship between the doctor and the patient.

In such cases, it is the person in need of medical care who acts as the source of the *notitia criminis*, bringing to the attention of the authorities the occurrence of an unlawful act that they themselves are alleged to have committed. A policy that disregards medical confidentiality in order to report women who have abortions effectively amounts to imposing a duty on them to report themselves. That duty is enforced through a threat—namely, the lack of medical care and the resulting harm to their life and health. In addition to the criminal complaint notifying law enforcement that a crime has been committed, this practice also involves a forced confession, as in the form of the physical evidence collected at the time of treatment and any statements the victim may have made to healthcare personnel. That confession, made under duress and driven by the need to be saved, will later be used against her as evidence in the prosecution’s case, in violation of the right to protection from self-incrimination.

⁸⁰ Inter-American Court, Case of Tzompaxtle Tecpile et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 7, 2022, para. 131.

⁸¹ Inter-American Court, Case of Tzompaxtle Tecpile et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 7, 2022, para. 134.

⁸² ECHR, Case of Allan v. the United Kingdom, Application No. 48539/99, Judgment of November 5, 2002, para. 44.

⁸³ ECHR, Case of Allan v. the United Kingdom, Application No. 48539/99, Judgment of November 5, 2002, para. 50.

Similarly, and as also noted in the analysis on professional confidentiality, this guarantee of protection from self-incrimination—which is recognized in the national legal systems under consideration—could also serve as a basis for declaring criminal proceedings initiated under the circumstances described to be null and void. This was the case, for example, in the aforementioned 1996 case of Natividad Frías in Argentina. In the ruling that declared the proceedings null and void due to a violation of professional confidentiality, one of the judges on the panel also explained that the criminal investigation of the woman who sought post-abortion medical care constituted “forced self-incrimination” and because no one can be compelled to testify against themselves, “they certainly cannot be compelled to suffer the consequences of self-incrimination imposed by an insurmountable necessity.” Similarly, another judge stated that “if it is unjust to compel a criminal to bring about their own conviction by confessing, it is equally and consequently unjust to convict them on the basis of a self-incrimination to which they were compelled by nothing less than the imminent loss of their human right to survive their crime.”⁸⁴

4.2.3.

The sentences imposed in cases involving human rights violations are arbitrary

The possibility of being convicted is a constant threat faced by women criminally prosecuted for abortion from the very start of the proceedings, given the circumstances described above regarding the lack of safeguards and the various factors that exacerbate their vulnerability in these contexts. Although this does not ultimately happen in every case, the convictions that are actually handed down to these women are, in reality, decisions that not only fail to address these violations of due process but also reinforce the inequality and discrimination they have faced throughout the proceedings. In addition to the consequences for the individual, these convictions also serve to send a collective message to society about the consequences of failing to comply with traditional expectations regarding motherhood and reproduction. Section 4.3 (third finding) will examine these approaches in greater detail, focusing on the right to equality and non-discrimination and the criminalization of abortion.

It should be noted that 61 women from the cases examined for this report were found to have been sentenced to prison terms.⁸⁵ In the specific case of Peru, other measures were also identified: For example, in some cases, a fine was also imposed.⁸⁶ Another significant finding is that in both cases where a conviction was handed down and cases where the proceedings either ended prematurely or resulted in a dismissal, prescription, or other outcomes, measures additional or alternative to imprisonment were imposed, including health-related restrictions, mobility restrictions (e.g., not

⁸⁴ Full Bench of the National Criminal and Correctional Court of the Federal Capital, Frías, Natividad v. Abortion, August 26, 1966; opinions by Justices Frías Caballero and Romero Victorica.

⁸⁵ Of the total of 611 cases, data on this variable was available for 484; within this group, 61 cases were identified, broken down as follows: 33 in Chile, 25 in Peru, 1 in the Dominican Republic, and 2 in Uruguay. No cases with this variable were identified in Brazil and Guatemala.

⁸⁶ Of the 25 women convicted, 14 were sentenced to this. It should be noted that the number of cases in which a fine was imposed is higher (38), since, although a conviction was not handed down in all cases, such penalties were imposed, for example, in cases where the proceedings were terminated early (25 cases).

leaving home, not frequenting bars), community service, attending therapy sessions, and periodic reporting to the courts.⁸⁷

As has been established, in accordance with international human rights standards, a conviction resulting from a trial that violates due process guarantees and other rights like those related to medical confidentiality must be considered arbitrary.

In this regard, the United Nations Working Group on Arbitrary Detention has had the opportunity to issue opinions in cases involving the detention and conviction of women who experienced obstetric emergencies in El Salvador. It should be noted that, in accordance with the mandate granted to this mechanism in the examination of individual cases, in order to determine whether a deprivation of liberty is arbitrary, the Working Group must examine, among other factors, compliance with guarantees relating to due process and the right to a fair trial.⁸⁸ With regard to the cases from El Salvador, the Working Group examined the allegations raised in connection with this category, including the lack of an adequate defense and the lack of adequate resources to mount such a defense. The Group also took into account “the degree of vulnerability [in which] [one of the convicted women] found herself at the time of the obstetric emergency.” In that regard, it concluded that, in the case of two of the convicted women, their fundamental rights to a fair, independent, and impartial trial had been violated.⁸⁹

Given the findings discussed in this section, it is clear that in cases where women prosecuted criminally under the circumstances described were sentenced, these decisions are arbitrary under international human rights standards. Furthermore, given that these decisions frequently rely on gender stereotypes, they constitute rulings that undermine access to justice without discrimination and with equal protection, as discussed in section 4.3 (third finding).

4.2.4. Use of pretrial detention

Although information on this variable was limited, it was found that in at least 18 cases, pretrial detention orders were issued. It should be noted that, of this group of 18 cases, less than 50% involved cases in which the women were actually convicted.⁹⁰ In these

⁸⁷ A total of 138 cases were identified in which these measures were imposed, included 61 cases where the defendant was convicted. Of the 138 cases: 6 are from Brazil, 61 from Chile, and 71 from Peru. No cases with this variable were identified in Guatemala, the Dominican Republic, or Uruguay.

⁸⁸ Specifically, the Working Group considers that a detention is arbitrary “when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).” See: Fact Sheet 26. Working Group on Arbitrary Detention, pg. 27.

⁸⁹ Working Group on Arbitrary Detentions Opinion No. 68/2019 concerning Sara del Rosario Rogel García, Berta Margarita Arana Hernández and Evelyn Beatriz Hernández Cruz (El Salvador). A/HRC/WGAD/2019/68. March 4, 2020, para. 97.

⁹⁰ Of the 18 cases, 8 women were convicted (4 in Chile, 2 in Uruguay, 1 in the Dominican Republic, and 1 in Brazil). Regarding the remaining cases, the information available indicates as follows: In 1 case in the Dominican Republic, the woman was declared a fugitive; in 3 cases, a final dismissal was issued (2 in Chile and 1 in the Dominican Republic), in 2 cases, a provisional dismissal was issued (both in the Dominican Republic); in 1 case, a conditional suspension of proceedings was ordered (in Brazil); and for 3 cases, no information was available regarding this variable.

cases, no specific procedural grounds were established; under international human rights law, such grounds are the only acceptable justification for pretrial detention. In that regard, detention under these circumstances served as a form of premature punishment, thereby also undermining the presumption of innocence.

In this regard, it is important to emphasize that pretrial detention in criminal proceedings is an exceptional measure whose sole purpose is to ensure the proper conduct of the judicial process: to prevent the accused from fleeing justice or obstructing the investigation of the facts.⁹¹ However, in several countries, spending the duration of the criminal proceedings in custody has become the norm rather than the exception. The Inter-American Court of Human Rights has warned that there is “an excessive and abusive use of pretrial detention” in the region.⁹² For its part, the IACHR has noted that the “excessive and non-exceptional use of pretrial detention is one of the most serious and widespread problems” in the region.⁹³

The Inter-American Court of Human Rights has explained that when the American Convention states that “no one shall be subject to arbitrary arrest or imprisonment,” it is prohibiting “arrest or imprisonment by means that may be legal, but that, in practice, are unreasonable, unpredictable, or disproportionate.”⁹⁴ Furthermore, the exceptional nature of pretrial detention is directly linked to the principle of the presumption of innocence. While a decision is being made regarding the accused’s criminal liability, the Court has stated that the general rule must be that the accused remains free, as they “enjoy a legal status of innocence and this requires that the State accord [them] a treatment in keeping with [their] situation of someone who has not been convicted.”⁹⁵

To order pretrial detention, there must be “sufficient evidence to allow reasonable supposition” that the person has participated in the crime under investigation, and this suspicion must “be based on specific facts” and not “on mere conjectures or abstract intuitions.”⁹⁶ Even when such evidence exists, the sole purpose of pretrial detention is to ensure the proper conduct of the proceedings. The deprivation of liberty “cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment.” Rather, its sole purpose must be “to ensure that the accused does

⁹¹ Among many others, Case of García Rodríguez et al. v. Preliminary Objections, Merits, Reparations, and Costs, Judgment dated January 25, 2023, para. 159.

⁹² Inter-American Court, Advisory Opinion OC-29/22, Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty, May 30, 2022, para. 27.

⁹³ IACHR. Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, paras. 2 and 12; Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, para. 1; Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. 105, July 3, 2017, para. 20.

⁹⁴ Among many others, Inter-American Court, Case of Palamara Iribarne v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 22, 2005, paras. 196 et seq, Case of López Álvarez v. Honduras, Merits, Reparations and Costs, Judgment of February 1, 2006, para. 67, Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Merits, Reparations and Costs, Judgment of May 29, 2014, para. 309.

⁹⁵ Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Merits, Reparations and Costs, Judgment of May 29, 2014, para. 310.

⁹⁶ Inter-American Court, Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, paras. 101 and 103.

not prevent the proceedings from being conducted or elude the system of justice.⁹⁷ Furthermore, the Inter-American Court of Human Rights has emphasized that “risks to the proceedings cannot be presumed” and that an assessment of such risk must be “verified in each case, based on the objective and precise circumstances of the specific case.”⁹⁸

It should be noted that these standards were applied by the Inter-American Court of Human Rights when it considered the aforementioned case of *Manuela v. El Salvador*. In its judgment, the Court found that Salvadoran law did not require the judge to examine whether the procedural purposes of pretrial detention were being met, nor its appropriateness, necessity, or proportionality. On the contrary, it provided for mandatory detention for certain types of crimes and allowed for factors such as the alarm amongst the general public caused by their commission to be taken into account. The Court concluded that the pretrial detention ordered against *Manuela* had violated the American Convention, as it had been ordered without a justification that demonstrated its necessity and had been based on provisions that provided for automatic pretrial detention.⁹⁹

⁹⁷Inter-American Court, Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, para. 103.

⁹⁸Inter-American Court, Case of J. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 27, 2013, para. 159; Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, Merits, Reparations and Costs, Judgment of May 29, 2014, para. 312; Inter-American Court. Case of Wong Ho Wing v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 30, 2015, para. 250; Case of Pollo Rivera et al. v. Peru, Merits, Reparations, and Costs, Judgment of October 21, 2016, para. 122.

⁹⁹Inter-American Court. Case of *Manuela et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 109-110.

4.3. Third finding: the criminalization of abortion and its conflict with the right to equal protection and non-discrimination

A common finding throughout analysis of the cases studied, related to both the criminal legal framework that codifies the termination of pregnancy as a criminal offense and to its specific application, is the tension and incompatibility with the right to equal protection and non-discrimination. In general terms, the CEDAW Committee has repeatedly stated that the criminalization of abortion conflicts with the right to equal protection and non-discrimination, as it is a crime directed primarily at women and their reproductive capabilities. In the Committee's words, "restrictive abortion laws and practices embody harmful gender stereotypes," linked to the notion that "the primary role [of women] is to be mothers and caregivers."¹⁰⁰

In addition to this more general international standard, the analysis of the 611 cases reveals more specific findings regarding equality and non-discrimination. First, gender stereotypes are often present in healthcare, as well as in investigations and legal proceedings—including cases that result in a conviction and/or the imposition of other restrictions on the rights of those on trial. And second, it is also clear that the criminalization of abortion does not affect all groups of women equally.

4.3.1. The presence of gender stereotypes in the health and criminal justice systems

One of the main problems identified in the case studies was the presence of gender stereotypes regarding women's reproductive function. These stereotypes permeate both the initiation of investigations—which may occur in the context of medical care—and the subsequent legal proceedings.

In Brazil, the Minas Gerais Court of Justice noted that the defendant appeared "very calm after the abortion, an emotional state that was, to say the least, strange for someone who had just lost a child."¹⁰¹

In Peru, Catherine heard nurses say things like: "All women want to have children, and you're killing them... God has blessed you—how can you kill such a tiny angel?"¹⁰²

¹⁰⁰ See, among others: CEDAW, Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention, CEDAW/C/POL/IR/1, August 21, 2024, para. 80.

¹⁰¹ This is an excerpt from one of the pleadings found in the 611 cases analyzed in depth. The case is from Brazil. Original text: "[...] estava muito tranquila após o aborto, estado emocional minimamente estranho para quem acabou de perder um filho que desejava".

¹⁰² Catherine's case is one of the 611 cases analyzed in depth for this study. The case is from Peru. Catherine is not her real name. This is an excerpt from the case file that was reviewed. The case is also mentioned in the relevant country-level report. See: [Peru country report](#), pg. 76.

In general, in the judicial case files reviewed, women were described as “cold,” “calculating,” or even “murderers,” reinforcing the idea that they had violated their natural role as mothers and caregivers. Furthermore, a review of the decisions that imposed alternative measures and/or measures restricting liberty and other rights—as discussed above—reveals a clear moralizing bias aimed at “re-educating” women to conform to a traditional role as mothers and caregivers. For example, some of the measures included:

- “Attend a family counseling and valuation of live program.”¹⁰³
- “Undergo an evaluation and, if necessary, treatment through the mental health program at the city’s main hospital.”¹⁰⁴
- “Avoid places of dubious reputation or refrain from drinking alcohol.”¹⁰⁵
- “Participate in programs designed to develop and monitor maternal skills.”¹⁰⁶

The Inter-American Court has found on multiple occasions that the concept of gender stereotyping “refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women,” and that the subordination of women is associated with practices that are “based on persistent socially-dominant gender stereotypes.” Furthermore, it found that gender stereotypes are “one of the causes and consequences of gender-based violence against women,” and their presence is even more problematic when they are “reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities.”¹⁰⁷

The Inter-American Court of Human Rights has also noted that a gender stereotype “becomes harmful when it limits an individual’s capacity to develop their personal abilities or becomes a violation or violations of human rights.”¹⁰⁸ In such cases, the

¹⁰³ Valeria’s case is one of the 611 cases analyzed in depth. The case took place in Chile in 2016; the accused was 16 years old. The case involved self-induced abortion under Article 344 of the Chilean Penal Code. This is an excerpt from the hearing conditional suspension of the proceedings and/or verbal indictment issued by the Court of First Instance and Guarantees.

¹⁰⁴ Verónica’s case is one of the 611 cases analyzed in depth. The case took place in Chile in 2013. The case involved self-induced abortion under Article 344 of the Chilean Penal Code. This is an excerpt from the hearing conditional suspension of the proceedings and/or verbal indictment issued by the presiding judge of the guarantees court.

¹⁰⁵ The Pilar case is one of the 611 cases analyzed in depth. The case took place in Peru in 2012. The prosecution was for self-induced abortion under Article 114 of the Peruvian Penal Code, and this is an excerpt from the judgment issued by the criminal court.

¹⁰⁶ The Isabella case is one of the 611 cases analyzed in depth. This case took place in Chile in 2017, and this is an excerpt from the order suspending the proceedings for a period of two years.

¹⁰⁷ Case of González et al. (“Cotton Field”) v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 16, 2009, para. 401; Inter-American Court. Case of Ramírez Escobar et al. v. Guatemala, Merits, Reparations and Costs, Judgment of March 9, 2018, para. 294; Case of Women Victims of Sexual Torture in Atenco v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2018, para. 213; Guzmán Albarracín et al. v. Ecuador, Merits, Reparations and Costs, Judgment of June 24, 2020, para. 188; Inter-American Court, Case of Manuela et al. v. El Salvador. Preliminary objections, Merits, Reparations, and Costs, judgment of November 2, 2021, para. 133.

¹⁰⁸ Inter-American Court of Human Rights, Case of Manuela et al. v. El Salvador. Preliminary objections, Merits, Reparations, and Costs, judgment of November 2, 2021, para. 133.

Court has emphasized that gender stereotypes are incompatible with international human rights law.¹⁰⁹

In this context, the central problem with the presence of gender stereotypes in the justice system is that it “may indicate a lack of impartiality.”¹¹⁰ And in criminal proceedings, the use of gender stereotypes “may reveal a violation of the right to presumption of innocence, of the duty to provide the reasons for a decision, and of the right to be tried by an impartial court.”¹¹¹

In this regard, the CEDAW Committee has noted that the presence of gender stereotypes in the judicial system constitutes an obstacle which, within a structural context of discrimination and inequality, prevents women from exercising their right to access to justice.¹¹² According to the Committee, a fundamental problem with the presence of gender stereotypes in the justice system is that they “distort perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts” and “can cause judges to misinterpret or misapply laws.”¹¹³

It is worth noting that gender stereotypes come into play not only in the actual application of the law by prosecutors and judges, but also directly in the drafting of restrictive criminal laws. On this point, the CEDAW Committee has explained that “restrictive abortion laws and practices embody harmful gender stereotypes” and that such laws generally assume “that a foetus should receive greater protection than a pregnant woman and that a pregnant woman’s human rights are legitimately subordinated to the protection of the foetus.” Furthermore, the Committee notes that, as a result of gender stereotypes, “it is commonly assumed that the predominant and natural role of women in society is as mothers and caregivers,” and therefore, the decision to have an abortion contradicts this stereotype and “the view that women should prioritize childbearing.” The Committee also notes that because “it is often assumed that women are emotional or incompetent decision-makers, [...] their decisions not to carry a pregnancy to term are often questioned and not respected.”¹¹⁴

Similarly, in its ruling in the Manuela case, the Inter-American Court emphasized that one of the most common gender stereotypes involves preconceived notions about the role of women and motherhood, which “condition a woman’s value to being a mother.” According to the Court, these stereotypical notions “assume that women who decide

¹⁰⁹ Inter-American Court, Case of Artavia Murillo et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012, para. 302, and Case of Velasquez Paiz et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 19, 2015, para. 148.

¹¹⁰ Inter-American Court of Human Rights, Case of Manuela et al. v. El Salvador. Preliminary objections, Merits, Reparations, and Costs, judgment of November 2, 2021, para. 133.

¹¹¹ Inter-American Court of Human Rights, Case of Manuela et al. v. El Salvador. Preliminary objections, Merits, Reparations, and Costs, judgment of November 2, 2021, para. 134.

¹¹² CEDAW, General Recommendation No. 33, Women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 3.

¹¹³ CEDAW, General Recommendation No. 33, Women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 26.

¹¹⁴ CEDAW, Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention, CEDAW/C/POL/IR/1, August 21, 2024, para. 87.

not to be mothers have less worth than the others, or are undesirable persons. In addition, this imposes on women the responsibility of prioritizing the well-being of their children, even over their own well-being, regardless of the circumstances.”¹¹⁵

Similarly, in their rulings on individual complaints, the Human Rights Committee, the CEDAW Committee, and the Committee on the Rights of the Child have also noted how the persistence of stereotypes regarding women’s reproductive role and the assumption that the protection of the fetus must take precedence over the mother’s health have led to discrimination. The prevalence of gender stereotypes has manifested itself in the denial or delay of access to abortions necessary to protect the life and health of the pregnant woman, as well as in legal proceedings aimed at punishing women who terminate their pregnancies.¹¹⁶

4.3.2.

Indirect and intersectional discrimination when criminalization affects certain groups of women differently

CAs mentioned earlier, the 611 cases analyzed for this report are a sample of the 10,848 women, adolescents, and girls criminalized for self-induced abortion in Brazil, Chile, Guatemala, Peru, the Dominican Republic, and Uruguay between 2012 and 2023. This figure alone underscores what has already been recognized at the regional and global levels: the criminalization of abortion primarily affects women, who are the ones who experience pregnancy and have historically faced biased social expectations regarding their reproductive capacity.

Along these lines, the data collected provided further insight into certain aspects of these women’s sociodemographic profile. Of the 611 cases analyzed, women’s ages ranged between 18 and 52, with an average age of 26. At least 21 were minors. According to the data available on educational attainment, only five of the women had enrolled in a technical program, and six in a university program. In terms of residence and occupation, 66 women lived in rural areas, and 102 reported having some form of employment; of those, 21 worked in the informal sector, 38 performed unpaid domestic work, and 11 were self-employed. Forty-one of them were found to be students. However, since these disaggregated variables were not available for the entire sample of in-depth case studies, this data must be analyzed in conjunction with other sources of information showing that women subjected to criminal prosecutions are often in a situation of socioeconomic vulnerability. One example is the fact that most women cannot afford a private defense attorney, and their only option is a public defender.

¹¹⁵ Inter-American Court. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 2, 2021, para. 144.

¹¹⁶ CEDAW, L.C. v. Peru, Communication 22/2009, CEDAW/C/50/D/22/2009, November 25, 2011, para. 8.15; Human Rights Committee, Mellet v. Ireland, Communication No. 2324/2013, CCPR/C/116/D/2324/2013, November 17, 2016, para. 7.11. Committee on the Rights of the Child, Camila v. Peru, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 8.15. See also L.N.P. v. Argentina, in which the Human Rights Committee emphasized how the authorities had relied on stereotypes regarding virginity and sexual morality to cast doubt on the credibility of an indigenous minor who was the victim of rape. Human Rights Committee, L.N.P. v. Argentina, Communication 1610/2007, CCPR/C/102/D/1610/2007, August 24, 2011, para. 13.3.

It was previously noted that the crime of abortion is directly discriminatory in that it primarily affects women and relates to the reproductive processes of their bodies. In addition, findings regarding the disproportionate impacts that abortion criminalization has on certain groups of women must be analyzed in light of two other forms of discrimination: indirect and intersectional.

The CEDAW Committee has noted that indirect discrimination against women “occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.”¹¹⁷ The Inter-American Court of Human Rights has ruled in a similar vein, emphasizing with regard to such measures or regulations that, “the intention to discriminate is not essential,” but rather the “particularly negative repercussions on a person or group with specific characteristics.”¹¹⁸.

With regard to intersectional discrimination, international human rights protection mechanisms have examined how various factors can interact and result in more severe forms of discrimination. The CEDAW Committee has noted that discrimination based on sex and gender “is inextricably linked with other factors that affect women” and that “intersectionality is a basic concept for understanding the scope of the general obligations” imposed by the Convention.¹¹⁹ In this regard, it has noted that “discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women.”¹²⁰ Furthermore, the Inter-American Court has noted that “certain groups of women suffer discrimination throughout their life based on more than one factor combined with their gender, which increases their risk of enduring acts of violence and other violations of their human rights.”¹²¹ Similarly, the IACHR has stated that intersectionality is essential for “understanding the overlapping of various layers of discrimination, the impact it has on the enjoyment and exercise of human rights, and the scope of States’ obligations in adapting its responses to each particular instance.”¹²² The Commission has also noted that “the overlapping of various layers of

¹¹⁷ CEDAW, General Recommendation 28, CEDAW/C/GC/28, December 16, 2010, para. 16.

¹¹⁸ Inter-American Court. Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2012. Series C No. 257, para. 286.

¹¹⁹ CEDAW, General Recommendation 28, CEDAW/C/GC/28, December 16, 2010, para. 18.

¹²⁰ CEDAW, General Recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 8.

¹²¹ Inter-American Court, Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Remedies and Costs, Judgment of September 1, 2015, para. 288.

¹²² IACHR, Violence and discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean, OEA/Ser.L/V/II, Doc. 233, November 14, 2019, para. 92.

discrimination—intersectionality—leads to a form of deepened discrimination which manifests itself in substantively different experiences from one woman to another.¹²³

With regard to gender-based violence, the CEDAW Committee has noted that, since women experience multiple and interrelated forms of discrimination, “gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.”¹²⁴ In this regard, the Special Rapporteur on violence against women has also noted that “Some women experience intersecting forms of discrimination, which have an aggravating negative impact, and gender-based violence may affect some women to different degrees, or in different ways; appropriate legal and policy responses are needed in this regard.”¹²⁵

This is also consistent with what has been established in comparative case law in the region. For example, in its 2022 ruling, the Constitutional Court of Colombia noted that the structural barriers to accessing legal abortion created by criminal law disproportionately affected women and girls in vulnerable situations.¹²⁶ The Court noted that women charged with the crime of abortion “are exposed to intersectional factors of discrimination that make them even more vulnerable,” that “the most vulnerable female population is the one most affected by criminal penalties,” and that this population includes “rural women, women from the lowest socioeconomic strata, migrant women, refugees, those who have not completed their education, and others.”¹²⁷ The Court therefore concluded that the criminalization of abortion “creates a serious conflict with the right to equal protection of women in vulnerable situations.”¹²⁸

Furthermore, with regard to individuals who have been subject to criminal prosecution for abortion, it is important to emphasize that these are people with a specific health condition—recently pregnant and, in many cases, having experienced obstetric emergencies. On this point, it is worth noting that the Inter-American Court has emphasized that pregnancy is a special circumstance to be taken into account, as a pregnant person is in a “situation of special vulnerability,” which places “special duties on the State.”¹²⁹

¹²³ IACHR, Violence and discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean, OEA/Ser.L/V/II, Doc. 233, November 14, 2019, para. 8.

¹²⁴ CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35(2017), para. 12.

¹²⁵ Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence, July 11, 2019, A/74/137, para. 43.

¹²⁶ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 340.

¹²⁷ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, paras. 362-3.

¹²⁸ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 369.

¹²⁹ Inter-American Court, Case of Brites Arce et al. v. Argentina, Judgment of November 16, 2022, Merits, Reparations and Costs, para. 56.

It follows from all of the above that when the criminalization of abortion disproportionately affects certain groups of women, the crime of abortion gives rise—in addition to direct discrimination, since it targets acts that occur within a woman’s body—to indirect and intersectional discrimination. The following section examines in greater depth the criminalization of migrant women, women with disabilities, and girls, and adolescents.

**a.
Migrant women**

Of the 611 cases examined for this report, 62 migrant women were identified as having been investigated in Chile, and 1 in the Dominican Republic. The women were between the ages of 19 and 37, and at least one of them was a minor, aged 17. In addition, it was found that at least 11 lived in rural areas, 16 worked in the informal sector, 1 was an indigenous woman, and 1 was a woman of African descent.

In this regard, and with regard to women’s right to health, the CEDAW Committee has emphasized that States must pay special attention to the needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugees, and internally displaced persons; girls and older women; women in the sex trade; indigenous women; and women with physical or mental disabilities.¹³⁰ In particular, with regard to migrant women, the Committee has noted that “discrimination may be especially acute in relation to pregnancy,” given that in many cases, the “lack of access to safe reproductive health and abortion services and [...] affordable obstetric care, resulting in serious health risks.”¹³¹

Orquídea, a 32-year-old Haitian woman, an undocumented migrant who did not speak the language, was reported for self-induced abortion in the Dominican Republic after seeking medical care following a miscarriage. She was detained while hospitalized. Although her case was dismissed six months after her arrest due to lack of evidence, she still had to face a legal process with linguistic and cultural barriers, which exacerbated her vulnerability and lack of safeguards.¹³²

**b.
Women with disabilities**

Specifically, the national study in Peru identified disability as a vulnerability factor for women criminally prosecuted for abortion in two ways: when the woman with a disability herself faces legal proceedings for abortion, and when her direct support and/or care networks consist of people with disabilities.¹³³ In this context, the case of Ina—documented in the relevant country-level report—was also included among the 611 cases covered in this report, and illustrates the serious barriers faced by women with disabilities in the justice system.

¹³⁰ CEDAW, General Recommendation 24, Women and Health (1999), paras. 6 and 16 (It also stated that “States parties should ensure that adequate protection and health services [...] are provided for women in especially difficult circumstances, such as [...] women refugees.”).

¹³¹ CEDAW, General Recommendation No. 26 on women migrant workers (2009), CEDAW/C/2009/WP.1/R, para. 18. Also see the 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/HRC/23/41, May 15, 2013

¹³² Orquídea’s case is one of the 611 cases analyzed in depth for this report. The case took place in the Dominican Republic in 2022. Orquídea is not her real name. The case is also mentioned in the relevant country-level report. See [Dominican Republic country report](#), pgs. 52-53.

¹³³ See: [Peru country report](#), pg. 61, 64.

Ina, a 40-year-old Peruvian woman with three children and the head of her household, with no formal education or criminal record, who has “hearing and speech impairments” and is illiterate, decided to terminate her fourth pregnancy at 10 weeks of gestation due to her precarious financial situation. She went to a private healthcare provider in Peru, accompanied by her 15-year-old son. During the procedure, the premises were raided and Ina was taken to the hospital, where she was diagnosed with a “threatened abortion.” During the raid, her son was also asked to make a statement; however, he was not informed of his right not to testify against a family member under Article 7.2 of the Juvenile Responsibility Code for Adolescents, his rights were not read to him, and he was not provided with legal counsel. Under these circumstances, Ina’s son was pressured to incriminate his mother in his statement. Ina was charged with self-induced abortion, and in 2021, she was sentenced to seven months in prison, with one of the key pieces of evidence being the statement her son made on the day of the procedure. The sentence was suspended on the condition that she appear in court every six months for a year, not change her address, and not commit any other crimes. During the trial, she did not receive adequate legal representation, and her disability was not taken into account at any point in the proceedings. Her 15-year-old son served as the interpreter during the hearings, which were held online due to the COVID-19 pandemic. Ina’s vulnerable situation—due to her disability, financial circumstances, and rural residence—was not taken into account during the process. It should be noted that a brief reference to her hearing impairment appears only at the end of the case file.¹³⁴

With regard to the situation of women, girls, and adolescents with disabilities, the Committee on the Rights of Persons with Disabilities has noted that some of the barriers faced by persons with disabilities in accessing the justice system include: (i) a lack of procedural accommodations and support to facilitate the participation of persons with disabilities in legal proceedings; (ii) a lack of knowledge and training among legal professionals regarding the Convention on the Rights of Persons with Disabilities and access to justice for persons with disabilities; (iii) lack of accessibility to judicial facilities, as well as to information and communication on legal proceedings¹³⁵; and (iv) the persistence of models that continue to override the will of persons with disabilities or that deem them “lacking capacity for judgment” in the context of legal proceedings.¹³⁶

Furthermore, taking into account the intersection of gender and disability, the Committee of Experts of the Follow Up Mechanism of the Convention of Belém do Pará (MESECVI) has referred to States’ duty under that instrument “to ensure a fair and equal trial and the right to participate in the administration of justice as an intrinsic element of the right of access

¹³⁴ Ina’s case is one of the 611 cases analyzed in depth for this report. The case took place in Peru in 2017. Ina—not her real name—was charged with self-induced abortion under Article 114 of the Peruvian Penal Code. The case is mentioned in the relevant country-level report. See: Peru country report, pg. 62. The audio version of her story can also be heard at: La crueldad hecha rutina: Criminalización del aborto en el Perú.

¹³⁵ See, among others: Committee on the Rights of Persons with Disabilities. Concluding observations on the combined second and third periodic reports of Germany, CRPD/C/DEU/CO/2-3. October 3, 2023; Concluding observations on the initial report of Georgia. CRPD/C/GEO/CO/1. April 18, 2023, para. 27; and Concluding Observations on Indonesia’s initial report. CRPD/C/IDN/CO/1. October 12, 2022, paras. 32-33.

¹³⁶ Committee on the Rights of Persons with Disabilities. Concluding observations on the combined second and third periodic reports of China. CRPD/C/CHN/CO/2-3. October 10, 2022, para. 30; Concluding observations on Jamaica’s initial report. CRPD/C/JAM/CO/1. May 20, 2022, para. 26; Concluding observations on Switzerland’s initial report. CRPD/C/CHE/CO/1. April 13, 2022, paras. 27(c), 28(d).

to justice.” Within these obligations, the provision of procedural and age-appropriate accommodations should be understood as “all judicial and administrative proceedings” and “be based on the free choice and preference of the person concerned.”

**c.
Girls and adolescents**

The data collected from the 611 cases analyzed in depth also showed that at least 21 girls and adolescents were criminally prosecuted for abortion.¹³⁷ The group includes girls as young as 13 and 14.¹³⁸ Furthermore, some cases also highlighted the link to the serious issue of sexual violence.

For example, in Chile, there was the case of Emma, a 13-year-old girl who was a victim of sexual violence; her case was initiated following a report by the director of the health facility, even though the abortion was performed on the legal grounds of rape. Although the case was later closed, Emma found herself subjected to a process that re-victimized her by treating her as a suspect in a crime rather than as a victim of sexual violence.¹³⁹

In Brazil, two cases of girls criminally prosecuted for abortion were identified:

***Renata**, a teenager who was reported to the authorities and prosecuted for abortion after a doctor disclosed information obtained during emergency care, when she sought medical attention while in a state of severe pain and vulnerability. The charges were based primarily on the statement the young woman made during that medical examination. One of the arguments put forward by the prosecution was that the minor had “the intent to kill, to expel the child she was carrying.”¹⁴⁰*

The other case involved a teenage girl who was a victim of sexual violence and was actually pressured by her attacker to terminate the pregnancy resulting from that assault

***Raquel**, became pregnant after being sexually assaulted by her father, and was charged with a criminal offense analogous to self-induced abortion.¹⁴¹ The criminal complaint completely omitted the context of sexual violence, as well as the fact that it was her own abuser who had purchased the medication and forced her to terminate the pregnancy.*

¹³⁷It should be noted that, of the 611 cases, age data was available for 505 cases, and overall, the age range was between 18 and 52. The cases involving girls and adolescents were identified from within this subgroup. Furthermore, while it was possible to obtain data broken down by age for all countries, in the case of Brazil, the available variable was expressed only as under or over 18 years of age.

¹³⁸One 13-year-old girl in Peru, one 13-year-old girl in Chile, and three 14-year-old girls in Chile.

¹³⁹Emma’s case is one of the 611 cases analyzed in depth for this report. The case took place in Chile in 2021. Emma is not her real name. The case is also mentioned in the relevant country-level report. See: [Chile country report](#).

¹⁴⁰Renata’s case is one of the 611 cases analyzed in depth for this report. Renata is not her real name. The case is from Brazil.

¹⁴¹Raquel’s case is one of the 611 cases analyzed in depth for this report. Raquel is not her real name. The case is from Brazil. It is called an “analogous offense” because in Brazil, adolescents under the age of 18 do not commit crimes, but rather infractions. This means that they may commit an act that is classified as a criminal offense, but the criminal penalty is set by special legislation, not the same criminal laws that apply to people over the age of 18.

It is worth noting that, in 2023, the Committee on the Rights of the Child issued its decision in the case of *Camila v. Peru*, in connection with the criminalization of an indigenous girl. Camila was 13 years old when she became pregnant as a result of sexual abuse by her father. She had requested access to therapeutic abortion in accordance with the legal framework, but never received a response from either the health care institutions or the judicial authorities. After suffering a miscarriage, Camila “was charged with and convicted of self-induced abortion based on nothing more than her repeated statements that she did not wish to continue with the pregnancy.”¹⁴² In its decision, the Committee noted that “[...] in the case of pregnant girls, consideration should be given to the special and differential physical and mental health impacts of child pregnancy, the particularly significant risk that pregnancy poses to the lives of girls because of possible complications during pregnancy and childbirth, and the potentially serious impact that it can have on their development and their future. The impact that pregnancy will have on a girl’s health and life will depend on her age and physical and psychological maturity, her family and community support systems and other factors that can have a bearing on mental health, including a history of rape or incest and socioeconomic or cultural factors that increase vulnerability.”¹⁴³

The decision also found that failing to provide Camila with information about abortion services or to ensure her effective access to such services exposed the girl “to a real, personal and foreseeable risk of death,” and that this constituted a violation of her rights to life and to the enjoyment of the highest attainable standard of health, as set forth in Articles 6 and 24 of the Convention on the Rights of the Child.¹⁴⁴ Furthermore, the Committee concluded that a “series of acts and omissions attributable to the State party” constituted cruel, inhuman, or degrading treatment, as prohibited by Article 37 of the Convention.¹⁴⁵ In short, the Committee concluded that the girl had been discriminated against on the grounds of age, gender, ethnicity, and social status, in violation of Article 2 of the Convention, and emphasized that the “author’s lack of access to safe abortion and her subsequent prosecution for self-abortion constituted in themselves differential treatment based on the author’s gender, as she was denied access to a service that was essential for her health and was punished for not complying with gender-based stereotypes relating to her reproductive role.”¹⁴⁶

¹⁴² Committee on the Rights of the Child. [Peru violated child rape victim’s rights by failing to guarantee access to abortion and criminally prosecuting her for self-abortion, UN Committee finds](#). June 13, 2023. The Committee found that the State Party had violated Articles 6, 7, 12, 13, and 24 of the Convention on the Rights of the Child.

¹⁴³ Committee on the Rights of the Child. *Camila v. Peru*, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 8.5.

¹⁴⁴ Committee on the Rights of the Child, *Camila v. Peru*, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 8.7.

¹⁴⁵ Committee on the Rights of the Child, *Camila v. Peru*, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 8.12.

¹⁴⁶ Committee on the Rights of the Child, *Camila v. Peru*, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 8.15.

The Committee also found that she had been revictimized, “which exacerbated and prolonged her suffering.”¹⁴⁷ For its part, as previously noted, the Inter-American Court has also ruled on cases involving girls who are victims of sexual violence, addressing the institutional violence that occurs when the State not only fails to fulfill its duty of due diligence in response to such violence, but also provides a response that in turn amounts to a new form of gender-based violence, causing “greater harm and intensifying the traumatic experience endured.”¹⁴⁸

4.4. An additional finding: On the right to access to information

The review of the evidence considered for this report also revealed an issue related to the right of access to information. In the 314 requests for access to information submitted to 154 state entities in the six countries analyzed, researchers encountered, among other things, a lack of disaggregated and/or up-to-date data, the omission of information regarding the profiles of individuals facing criminal charges, and even inconsistencies between the official figures reported by different authorities. The respective country reports also highlighted gaps in how the information obtained was recorded and found that some authorities failed to respond to requests for information.

The authorities’ failure to address this type of information is no minor matter; it is yet another consequence of the fact that the government’s response to abortion falls under criminal law rather than being treated as a matter of public health policy. The lack of this type of information also perpetuates the inequalities described in this section, particularly by obscuring the varying impacts of abortion criminalization. This is also linked to the States’ obligation to “ensure that women, as individuals and groups, have access to information about their rights under the [CEDAW] Convention and are able to effectively promote and claim those rights.”¹⁴⁹

In this regard, and in line with the case law of the Inter-American Court, which has recognized the right of access to public information as a fundamental human right,¹⁵⁰ the Inter-American Commission has also noted that the obligation of States to act with due diligence to prevent, investigate, and punish violence and discrimination against women includes a specific obligation to produce adequate statistics and other types of information pertinent to the causes, consequences, and frequency of these acts.¹⁵¹

¹⁴⁷ Committee on the Rights of the Child. *Camila v. Peru*. CRC/C/93/D/136/2021. May 15, 2023, para. 8.12.

¹⁴⁸ Inter-American Court. *Case of V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350, para. 297.

¹⁴⁹ CEDAW Committee. General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/GC/28. December 16, 2010, para. 27.

¹⁵⁰ See: Inter-American Court. *Case of Claude Reyes et al v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para. 77.

¹⁵¹ IACHR. [Acceso a la información pública en materia de violencia y discriminación contra las mujeres: Avances y desafíos pendientes en las Américas](#). Office of the Special Rapporteur for Freedom of Expression. 2018, para. 14.

In light of the above, it is important to note that, although both the regional and universal legal systems contain numerous rulings and decisions that analyze the impacts of the criminalization of abortion on women, girls, and adolescents and have made recommendations regarding a shift in this approach toward a human rights-based perspective—as discussed in the following section—there has been no concrete development linking this issue to the right of access to information. That said, in its latest review of the Dominican Republic in 2022, the CEDAW Committee included a recommendation to introduce “a moratorium on the enforcement of the current law [on abortion] and review the detention of women for abortion-related offences to ensure their immediate release and the provision to them of adequate reparations.”¹⁵² Such formulations can assist governments in generating relevant statistical information.

V PROPOSAL OF A NEW PARADIGM

The analysis in the previous chapter sheds light on the numerous human rights violations that occur in practice when enforcing the criminal offense of abortion. As described, although the course of these cases is neither uniform nor linear, a comparative analysis of the findings revealed common elements that begin in the context of medical care and continue into criminal proceedings in which basic due process guarantees are violated.

Based on this, at Health Without Fear, we use the term “abortion criminalization pathway” to identify this institutional framework in which healthcare becomes a gateway to the criminal justice system and in which medical, police, and judicial practices interact to turn obstetric emergencies or pregnancy terminations into criminal cases. However, the abortion criminalization pathway is, above all, a reflection of a discriminatory policy that undermines the rights and freedoms of women and people capable of pregnancy, and it occurs when the voluntary termination of pregnancy is codified as a criminal offense.

In this regard, and as the CEDAW Committee has noted, under Article 2 of the Convention, States must “respect, protect and fulfil women’s right to non-discrimination and to the enjoyment of equality.” In particular, States must refrain from “making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.”¹⁵³

Furthermore, with regard to criminal law, the CEDAW Committee has explained that it is an important tool for ensuring that women can exercise their rights, and that States must “ensure that women have access to the protection and remedies offered through criminal law, and that they are not exposed to discrimination within the context of those mechanisms.” In particular, the Committee has emphasized that States must address discriminatory laws and practices in the field of criminal law, such as when “behaviour that can be performed only by women”¹⁵⁴ are criminalized.

In this context, various human rights organizations have warned that both the lack of access to abortion and its criminalization have a negative impact on women’s rights, and have recommended that states decriminalize abortion. In fact, among human rights protection mechanisms, there is a consensus on the need to move away from the current approach in all countries in Latin America and the Caribbean, where abortion remains a crime, albeit under different legal frameworks.

¹⁵³ CEDAW, General Recommendation 28, CEDAW/C/GC/28 (2010), para. 9.

¹⁵⁴ CEDAW, General Recommendation No. 33, Women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 47.

In this regard, the CEDAW Committee has issued repeated statements regarding, on the one hand, the need to decriminalize abortion and eliminate any criminal penalties for voluntary abortion, and, on the other hand, a positive obligation to legalize abortion at least in certain specific circumstances. In its inquiries into Poland and the United Kingdom, the Committee emphasized that over the years it “systematically recommends the decriminalization of abortion in all cases.”¹⁵⁵ The Committee has noted that the States Parties to the CEDAW Convention “obligated not to penalize women resorting to, or those providing, such services.”¹⁵⁶

According to the Committee, criminalization does not serve as a deterrent, and when women face restrictive conditions, they resort to clandestine abortions, often putting their lives and health at risk. Furthermore, it says, even when it is permitted under certain circumstances, the criminalization of abortion has a stigmatizing effect on women and deprives them of their rights to privacy, self-determination, and autonomy. It indicates that this constitutes an affront to their right to equality and amounts to discrimination.¹⁵⁷ In addition to the obligation to eliminate criminal penalties for women who have abortions under any circumstances, the Committee has also emphasized that the Convention requires States to “legalize abortion, at least in cases of rape, incest, threats to the life and/or physical or mental health of the woman, or severe fetal impairment.” According to the Committee, this constitutes a “positive obligation” to provide access to health care services that include accessible and safe legal abortions.¹⁵⁸ These recommendations from the CEDAW Committee have been reiterated in the Concluding Observations it has issued to States Parties to the Convention where abortion is a criminal offense.¹⁵⁹

¹⁵⁵ CEDAW, Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention, CEDAW/C/POL/IR/1, August 21, 2024, para. 71; CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention, CEDAW/C/OP.8/GBR/1, March 6, 2018, para. 58.

¹⁵⁶ CEDAW, Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention, CEDAW/C/POL/IR/1, August 21, 2024, para. 71; CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention, CEDAW/C/OP.8/GBR/1, March 6, 2018, para. 58.

¹⁵⁷ CEDAW, Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention, CEDAW/C/POL/IR/1, August 21, 2024, para. 72; CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention, CEDAW/C/OP.8/GBR/1, March 6, 2018, para. 59.

¹⁵⁸ CEDAW, Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention, para. 60.

¹⁵⁹ Among many others, see CEDAW, Concluding observations on the eighth periodic report of Chile, CEDAW/C/CHL/CO/8, October 31, 2024, para. 38.b); Concluding Observations on the combined eighth and ninth periodic reports of Brazil, CEDAW/C/BRA/CO/8-9, June 6, 2024, para. 35.a); Concluding Observations on the combined seventh to tenth periodic reports of Nicaragua, CEDAW/C/NIC/CO/7-10, February 14, 2024, para. 40.c); Concluding Observations on the eighth periodic report of Jamaica, CEDAW/C/JAM/CO/8, November 15, 2023, para. 33.a); Concluding Observations on the tenth periodic report of Guatemala, CEDAW/C/GTM/CO/10, November 14, 2023, para. 39.a); Concluding Observations on the Ninth Periodic Report of the Philippines, CEDAW/C/PHL/CO/9, November 14, 2023, para. 44.c); Concluding Observations on the ninth periodic report of Honduras, CEDAW/C/HND/CO/9, November 1, 2022, para. 39.a); Concluding Observations on the eighth periodic report of the Dominican Republic, CEDAW/C/DOM/CO/8, March 1, 2022, para. 36.b); Concluding Observations on the ninth periodic report of Peru, CEDAW/C/PER/CO/9, March 1, 2022, para. 38.a); Concluding Observations on the ninth periodic report of Colombia, CEDAW/C/COL/CO/9, March 14, 2019, para. 38.c); Concluding Observations on the seventh periodic report of Chile, CEDAW/C/CHL/CO/7, March 14, 2018, para. 39.a); Concluding Observations on the combined eighth and ninth periodic reports of Guatemala, CEDAW/C/GTM/CO/8-9, November 22, 2017, para. 37.f); Concluding Observations on the seventh periodic report of Paraguay, CEDAW/C/PRY/CO/7, November 22, 2017, para. 37.d); Concluding Observations on the seventh periodic report of Costa Rica, July 24, 2017, CEDAW/C/CRI/CO/7, para. 31.a).

Similarly, other United Nations treaty bodies have also emphasized the need to eliminate criminal penalties against people who have abortions. In its Concluding Observations, the Human Rights Committee has repeatedly emphasized that States parties must “repeal the criminal sanctions applied to women and girls who undergo abortion and to medical service providers who assist them in doing so.”¹⁶⁰ It stated likewise in its General Comment on the Right to Life, in which it cautioned that States must review their legislation and “not apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion.”¹⁶¹

For its part, the Committee Against Torture has recommended on several occasions that States Parties to the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment take measures to ensure “that neither patients who resort to abortion nor medical professionals who perform abortions face criminal penalties.”¹⁶² For its part, the Committee on Economic, Social and Cultural Rights has made similar statements, using different wording. In its Concluding Observations, it has recommended, for example, that the legal system be amended so that “women and girls who undergo abortions and doctors or others who attend to them are not subject to criminal penalties”¹⁶³; that “the prohibition of abortion [be reviewed] to make it compatible with the integrity, autonomy and health of women”¹⁶⁴; that measures be adopted to “liberalize the conditions for legal abortion and, in any case, ensure that women who obtain abortions are never criminalized”¹⁶⁵; that the State “decriminalize abortion and expand the circumstances in

¹⁶⁰ Human Rights Committee, Concluding Observations on the third periodic report of Honduras, CCPR/C/HND/CO/3, August 23, 2024, para. 18.b). See also, Concluding Observations on the second periodic report of Indonesia, CCPR/C/IDN/CO/2, May 3, 2024, para. 21.a); Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/8, May 3, 2024, para. 23.a); Concluding Observations on the third periodic report of Brazil, CCPR/C/BRA/CO/3, September 6, 2023, para. 26.b); Concluding Observations on the eighth periodic report of Colombia, CCPR/C/COL/CO/8, September 4, 2023, para. 15.a); Concluding Observations on the fourth periodic report of Panama, CCPR/C/PAN/CO/4, April 12, 2023, para. 20.b); Concluding Observations on the sixth periodic report of Peru, CCPR/C/PER/CO/6, April 5, 2023, para. 25.b); Concluding Observations on the fifth periodic report of Ireland, CCPR/C/IRL/CO/5, January 26, 2023, para. 266.a); Concluding Observations on the fourth periodic report of Nicaragua, CCPR/C/NIC/CO/4, November 30, 2022, para. 20.b).

¹⁶¹ Human Rights Committee, General Comment 36 Article 6: Right to Life, CCPR/C/GC/36, September 3, 2019, para. 8.

¹⁶² Committee Against Torture, Concluding observations on the third periodic report of Honduras, CAT/C/HND/CO/3, May 27, 2024, para. 35.b). See also Concluding Observations on the eighth periodic report of Ecuador, CAT/C/ECU/CO/8, August 16, 2024, para. 42; Concluding Observations on the second periodic report of Brazil, CAT/C/BRA/CO/2, June 12, 2023, para. 50.b); Concluding Observations on the third periodic report of El Salvador, CAT/C/SLV/CO/3, December 19, 2022, para. 31; Concluding Observations on the second periodic report of Nicaragua, CAT/C/NIC/PCO/2, December 7, 2022, para. 31; Concluding observations on the third periodic report of the Plurinational State of Bolivia, CAT/C/BOL/CO/3, December 29, 2021, para. 29.

¹⁶³ CESCR, Concluding Observations on the Seventh Periodic Report of Poland, E/C.12/POL/CO/7, October 24, 2024, para. 45.a).

¹⁶⁴ CESCR, Concluding Observations on the Seventh Periodic Report of Poland, E/C.12/POL/CO/7, October 22, 2024, para. 61.a); Concluding Observations on the third periodic report of Panama (E/C.12/PAN/CO/3), March 31, 2023, para. 49.a); Concluding Observations on the fourth periodic report of Guatemala, E/C.12/GTM/CO/4, November 11, 2022, para. 47.a); Concluding observations on the sixth periodic report of El Salvador, E/C.12/SLV/CO/6, November 9, 2022, para. 59.a); Concluding observations on the fifth periodic report of Nicaragua, E/C.12/NIC/CO/5, November 11, 2021, para. 45.a); Concluding Observations on the fourth periodic report of Ecuador, E/C.12/ECU/CO/4, November 14, 2019, para. 52.f); Concluding Observations on the third periodic report of Senegal, E/C.12/SEN/CO/3, November 13, 2019, para. 37.a); Concluding Observations on the fourth periodic report of Chile, E/C.12/CHL/CO/4, July 7, 2015, para. 29.a).

¹⁶⁵ CCESCR, Concluding Observations on the fourth periodic report of Argentina, E/C.12/ARG/CO/4, November 1, 2018, para. 56.f)

which it is legally permitted,¹⁶⁶ etc.

The need to move away from using criminal law to address voluntary termination of pregnancy has also been expressed in the decisions of certain committees issuing communications on individual cases. In 2011, the CEDAW Committee issued a ruling on the case of a Peruvian girl who had been raped by her father, became pregnant at age 13, and attempted suicide by jumping from a building. The fall resulted in paraplegia, which required urgent surgery. However, the surgery was canceled and postponed indefinitely to protect the pregnancy. The Committee found that this violated Article 12 of the CEDAW Convention, which guarantees the right to health, in conjunction with Article 5, in that the decision to postpone the surgical procedure due to the pregnancy was influenced by the stereotype that protecting the fetus should take precedence over the mother's health.¹⁶⁷ In its recommendations, the Committee called on the Peruvian government to adopt measures to ensure effective access to abortion for medical reasons, as well as to revise its legislation to decriminalize abortion when the pregnancy is the result of rape or sexual abuse.¹⁶⁸

The Human Rights Committee has had the opportunity to address the criminalization of abortion in its consideration of individual communications on seven occasions, including communications regarding Peru, Argentina, Ireland, Nicaragua, and Ecuador, the most recent of which were decided in January 2025. In all cases, the Committee has found that the authors of the communications have been subjected to cruel, inhuman, and degrading treatment as a result of the ban on abortion and the lack of access to legal abortion, in violation of Article 7 of the Covenant,¹⁶⁹ and that the lack of access to abortion constitutes an arbitrary interference with reproductive autonomy, thereby constituting a violation of the right to privacy guaranteed under Article 17 of the same instrument.¹⁷⁰

¹⁶⁶ CESCR, Concluding Observations on the Second Periodic Report of Indonesia, E/C.12/IDN/CO/2, March 14, 2024, para. 59; Concluding Observations on the third periodic report of Brazil, E/C.12/BRA/CO/3, November 15, 2023, para. 62.a); Concluding Observations on the fourth periodic report of Ecuador, E/C.12/ECU/CO/4, November 14, 2019, para. 52.f).

¹⁶⁷ CEDAW, L.C. v. Peru, Communication 22/2009, CEDAW/C/50/D/22/2009, November 25, 2011, para. 8.15.

¹⁶⁸ CEDAW, L.C. v. Peru, Communication 22/2009, CEDAW/C/50/D/22/2009, November 25, 2011, paras. 9.a) and c).

¹⁶⁹ Human Rights Committee, K.L. v. Peru, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.3; L.M.R. v. Argentina, Communication 1608/2007, CCPR/C/101/D/1608/2007, April 28, 2011, para. 9.2; Mellet v. Ireland, Communication No. 2324/2013, CCPR/C/116/D/2324/2013, November 17, 2016, paras. 7.3-7.6; Whelan v. Ireland, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, July 11, 2017, paras. 7.3-7.7; Susana v. Nicaragua, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.7-8.11; Lucia v. Nicaragua, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.7-8.11; Norma v. Ecuador, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, paras. 11.10-11.14.

¹⁷⁰ Human Rights Committee, K.L. v. Peru, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.4; L.M.R. v. Argentina, Communication 1608/2007, CCPR/C/101/D/1608/2007, April 28, 2011, para. 9.3; Mellet v. Ireland, Communication No. 2324/2013, CCPR/C/116/D/2324/2013, November 17, 2016, paras. 7.7-7.8; Whelan v. Ireland, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, July 11, 2017, paras. 7.8-7.9; Susana v. Nicaragua, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.12-8.14; Lucia v. Nicaragua, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.12-8.14; Norma v. Ecuador, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, paras. 11.15-11.17.

In addition, in the case of Peru in 2005, the Committee found a violation of Article 24 of the Covenant, which requires the adoption of special protective measures for children and adolescents.¹⁷¹ Meanwhile, in the three cases from 2025—which also involved pregnant girls who had been unable to obtain an abortion—the Committee further found a violation of the right to life guaranteed under Article 6 of the Covenant,¹⁷² an issue it had failed to address in 2005.¹⁷³ In addition, the Committee found a violation of Article 19 of the Covenant, as the girls had not received the sexual and reproductive health education necessary to recognize the sexual violence they had suffered and to realize that they were pregnant.¹⁷⁴

For its part, in its 2016 and 2017 decisions regarding Ireland, the Committee found a violation of Article 26 of the Covenant, holding that the criminalization of abortion constituted a violation of the rights to equal protection and non-discrimination of the women who filed the communication.¹⁷⁵ In 2025, the Committee again found a violation of Article 26, but stated more emphatically that “the impossibility of obtaining an abortion in itself constitutes differential treatment based on gender, on the basis of a gender stereotype related to the reproductive role of women, who are primarily thought of as mothers,” and that by stereotyping them as reproductive instruments, the accused were subjected to discrimination.¹⁷⁶ It also noted that sexual violence, forced pregnancy, and motherhood, as well as the lack of access to women’s health services, constitute forms of gender-based violence against women and gender discrimination.¹⁷⁷

¹⁷¹ Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.5.

¹⁷² Human Rights Committee, *Susana v. Nicaragua*, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.4–8.6; *Lucía v. Nicaragua*, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.4–8.6; *Norma v. Ecuador*, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, paras. 11.7–11.9.

¹⁷³ Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, November 22, 2005, para. 6.3 and Dissenting Opinion by Committee Member Hipólito Solari-Yrigoyen.

¹⁷⁴ Human Rights Committee, *Susana v. Nicaragua*, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.15–8.17; *Lucía v. Nicaragua*, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.15–8.17; *Norma v. Ecuador*, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, paras. 11.18–11.20.

¹⁷⁵ Human Rights Committee, *Mellet v. Ireland*, Communication No. 2324/2013, CCPR/C/116/D/2324/2013, November 17, 2016, paras. 7.9–7.11; *Whelan v. Ireland*, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, July 11, 2017, paras. 7.10–7.12; *Norma v. Ecuador*, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, paras. 11.21–11.22.

¹⁷⁶ *Susana v. Nicaragua*, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.19; *Lucía v. Nicaragua*, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.19.

¹⁷⁷ *Susana v. Nicaragua*, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, paras. 8.19; *Lucía v. Nicaragua*, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, paras. 8.19; *Norma v. Ecuador*, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, para. 11.22.

In its opinions on Ireland in 2016 and 2017, the Committee was explicit about the need to bring domestic law into line. The Committee concluded that, to prevent similar violations in the future, the State must “amend its law on the voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, ensuring effective, timely and accessible procedures for pregnancy termination in Ireland.”¹⁷⁸ In its 2025 decisions, the Committee also recommended revising the legal framework to “ensure access to pregnancy termination services for all women and girls who are victims of sexual violence, including incest or rape, and/or in cases where there is a risk to the mother’s health.”¹⁷⁹ In addition, in the aforementioned case of *Camila v. Peru*, the Committee on the Rights of the Child expressly recommended that the government “decriminalize abortion in all cases involving child pregnancy.”¹⁸⁰

It is also important to note that the criminalization of abortion has a ripple effect that extends beyond what criminal law formally penalizes. In practice, criminalization restricts the availability of and access to abortions that are actually legal in the respective country, while at the same time impacting the care provided for obstetric emergencies that may arise during pregnancy, such as miscarriages and unexpected births, which are viewed as possibly involving illegality and therefore, as analyzed in this report, prosecuted criminally in some cases. On this point, both the Human Rights Committee and the CEDAW Committee have expressed concern about the criminal prosecutions and penalties imposed on women who experience miscarriages.¹⁸¹ This, in turn, has been noted by the Inter-American Court and¹⁸² Commission, as well as by other human rights bodies.¹⁸³

¹⁷⁸ Human Rights Committee, *Mellet v. Ireland*, Communication No. 2324/2013, CCPR/C/116/D/2324/2013, November 17, 2016, para. 9; *Whelan v. Ireland*, Communication No. 2425/2014, CCPR/C/119/D/2425/2014, July 11, 2017, para. 9.

¹⁷⁹ Human Rights Committee, *Susana v. Nicaragua*, Communication No. 3626/2019, CCPR/C/142/D/3626/2019, January 17, 2025, para. 10.a); *Lucía v. Nicaragua*, Communication No. 3627/2019, CCPR/C/142/D/3627/2019, January 17, 2025, para. 10.a); *Norma v. Ecuador*, Communication No. 3628/2019, CCPR/C/142/D/3628/2019, January 17, 2025, para. 13.a).

¹⁸⁰ Committee on the Rights of the Child, *Camila v. Peru*, Communication 136/2021, CRC/C/93/D/136/2021, June 13, 2023, para. 9.

¹⁸¹ Human Rights Committee, Concluding Observations on the seventh periodic report of El Salvador, CCPR/C/SLV/CO/7, May 9, 2018, para. 15; CEDAW, Concluding Observations on the combined eighth and ninth periodic reports of El Salvador, CEDAW/C/SLV/CO/8-9, March 9, 2017, para. 38.a).

¹⁸² Inter-American Court of Human Rights, *Case of Manuela et al. v. El Salvador*. Preliminary objections, Merits, Remedies and Costs, Judgment of November 2, 2021, paras. 41-43; IACHR Report No. 9/20, Case 13,378, Merits Report: *Beatriz v. El Salvador*, OEA/Ser.L/V/II.175, Doc. 15, March 3, 2020, paras. 27, 28, 31

¹⁸³ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254, August 3, 2011, paras. 24 and 38; Report of the Office of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum - Follow-up mission to El Salvador, A/HRC/17/26/Add.2, February 14, 2011, para. 68.

In short, the criminalization of abortion means that care for miscarriages is subject to a level of scrutiny that other medical situations do not face. The criminalization of abortion, even when there is a framework of permitted grounds, contributes to stigma and a lack of information about sexual and reproductive health. Furthermore, the involvement of criminal law in the realm of health care encourages violations of medical confidentiality and the guarantee of privacy in medical care, even in cases of legal abortion, miscarriage, or other obstetric emergencies.

Furthermore, the supreme courts of Mexico and Colombia have ruled that the criminalization of voluntary abortion, at least in the early stages of pregnancy, is incompatible with the constitutions of their respective countries.

In Mexico, in 2021, the Supreme Court of Justice of the Nation (SCJN) unanimously ruled that the criminalization of abortion in the Penal Code of the State of Coahuila was unconstitutional and generally affirmed the right of pregnant people to decide to terminate a pregnancy without facing criminal consequences.¹⁸⁴ In the years that followed, the SCJN reiterated this position and ruled in the same vein regarding the unconstitutionality of laws criminalizing abortion in other states of the Federation¹⁸⁵ and in the Federal Criminal Code.¹⁸⁶

Regarding the application of criminal law, the SCJN noted that, although in principle the protection of unborn life could be a legitimate constitutional purpose underpinning the criminal offense of abortion, “the punitive approach does not reconcile the right of women and persons capable of gestation to decide with the constitutional objective it pursues. Instead, it completely nullifies it through a mechanism—the most aggressive available—that fails to achieve the intended goals (stopping the performance of abortions).”¹⁸⁷ The SCJN noted that, “while the legislature may validly define the purpose of protecting unborn life, it may not disproportionately infringe upon the rights of women and pregnant persons; it is not permissible under the Constitution for the legislature to sacrifice—in an absolute manner—the fundamental rights of pregnant women or pregnant persons.”¹⁸⁸

¹⁸⁴ SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021.

¹⁸⁵ SCJN, Amparo appeal 79/2023, Aguascalientes, August 30, 2023; SCJN, Amparo appeal 274/2024, Yucatán, August 21, 2024; SCJN, Constitutional Challenge 125/2023, Chiapas, November 7, 2024.

¹⁸⁶ SCJN, Amparo appeal No. 267/2023, Federal Code, September 6, 2023.

¹⁸⁷ SCJN, Amparo appeal No. 267/2023, Federal Code, September 6, 2023, para. 147; also see SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, para. 262.

¹⁸⁸ SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, para. 268.

The SCJN also explained that the fact that a constitution might provide for “protection from the moment of conception” does not mean that such protection must be provided through criminal law.¹⁸⁹ It added that there is no “constitutional or international basis for a mandate to criminalize harm to a developing fetus”¹⁹⁰ and that “just because the unborn child is a constitutionally protected interest—and because there must be means to protect it—does not mean that punitive regulations must be enacted for its protection.”¹⁹¹

Regarding the principle that criminal law should be a last resort, the SCJN reiterated its 2008 ruling upholding the constitutionality of the decriminalization of abortion in Mexico City, where it had noted that criminalization had not proven to be a suitable mechanism for protecting pregnancy. It said that “instead of preventing women from seeking safe abortions, [criminalization] forces them to undergo medical procedures under unsafe conditions that even put their lives at risk.” Therefore, “Criminalizing the conduct in question amounts to using criminal law as a symbolic tool rather than as a mechanism of last resort.”¹⁹²

Meanwhile, in 2022, Colombia’s Constitutional Court ruled that criminalizing abortion was unconstitutional, at least up to the 24th week of pregnancy. The Court noted that despite the decriminalization of abortion under certain circumstances in 2006, Colombian women face a multitude of barriers to accessing abortion in permitted cases, to the point of rendering the legal exceptions ineffective. After reviewing its case law, the Court concluded that “there are numerous obstacles to undergoing an abortion procedure” and that they “have ultimately undermined constitutional protections and rendered ineffective the exceptions intended to safeguard the dignity of women, girls, and pregnant people, along with their other rights.”¹⁹³ In addition, the Court noted that crime statistics “show a significant number of women are prosecuted despite falling under one of the permitted grounds,” and that, even if their cases are later dismissed, this “does not undo the adverse consequences that have already been caused.”¹⁹⁴

Furthermore, the Court emphasized that, although the law pursues “a compelling constitutional purpose, which is to protect unborn life,” criminalizing abortion is not an appropriate means to that end. In particular, it found that it is not clear that the threat of criminal prosecution has a general preventive effect, as it does not act as a deterrent; however, “it is evident that it has a profound impact on the rights to health and reproductive rights, equality, and freedom of conscience.”¹⁹⁵ On that basis, the Court noted that the nature of criminal law as a mechanism of last resort “requires that, before

¹⁸⁹ SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, para. 273.

¹⁹⁰ SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, para. 278.

¹⁹¹ SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, para. 279.

¹⁹² SCJN, Constitutional Challenge No. 146/2007 and joined case No. 147/2007, August 28, 2008, pgs. 182 and 184; SCJN, Constitutional Challenge No. 148/2017, Coahuila, September 7, 2021, paras. 280 and 282.

¹⁹³ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 480

¹⁹⁴ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 497.

¹⁹⁵ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 403.

resorting to the State’s punitive power, other less burdensome measures be employed,” and that even though “criminal prosecution is supposed to be a last resort,” in the case of abortion, “criminal law is used as a first resort.”¹⁹⁶

Some countries have shown that another approach is possible: regulating abortion outside the criminal justice system, under a strictly medical model. Canada, New Zealand, and the Australian Capital Territory have removed all criminal references to abortion, regulating it as a medical procedure.¹⁹⁷

This model is based on fundamental principles: informed consent, confidentiality, safe and high-quality care, and respect for conscientious objection without affecting access to services. This resolves the inherent contradiction in systems based on exceptions or timeframes, where abortion is simultaneously a right in certain cases and a crime in others. Under this healthcare model, abortion ceases to be viewed as a questionable act and becomes a legitimate and guaranteed healthcare service, subject to the restrictions applicable under healthcare regulations.

Canada’s experience is particularly illustrative. In 1988, the Supreme Court ruled that criminal restrictions on abortion were unconstitutional, finding that they deprived women of control over decisions that were fundamental to their lives and bodies.¹⁹⁸ Judge Bertha Wilson noted that such control was essential for human freedom and dignity.¹⁹⁹ Since then, the country has established stable, safe, and stigma-free access to abortion, with positive maternal health indicators and without the negative consequences that are often cited to justify criminalization.

This approach has proven effective in practice, widely supported by the evidence and by international human rights law. In its 2022 guidelines, the World Health Organization recommends the complete decriminalization of abortion, defined as the removal of abortion from criminal law and no penalties for those who undergo abortions or provide related assistance, information, or services. The guidelines also state that abortion must be accessible upon request by a pregnant woman, girl, or other person.²⁰⁰

¹⁹⁶ Constitutional Court, Judgment C-055 of 2022, February 21, 2022, para. 404.

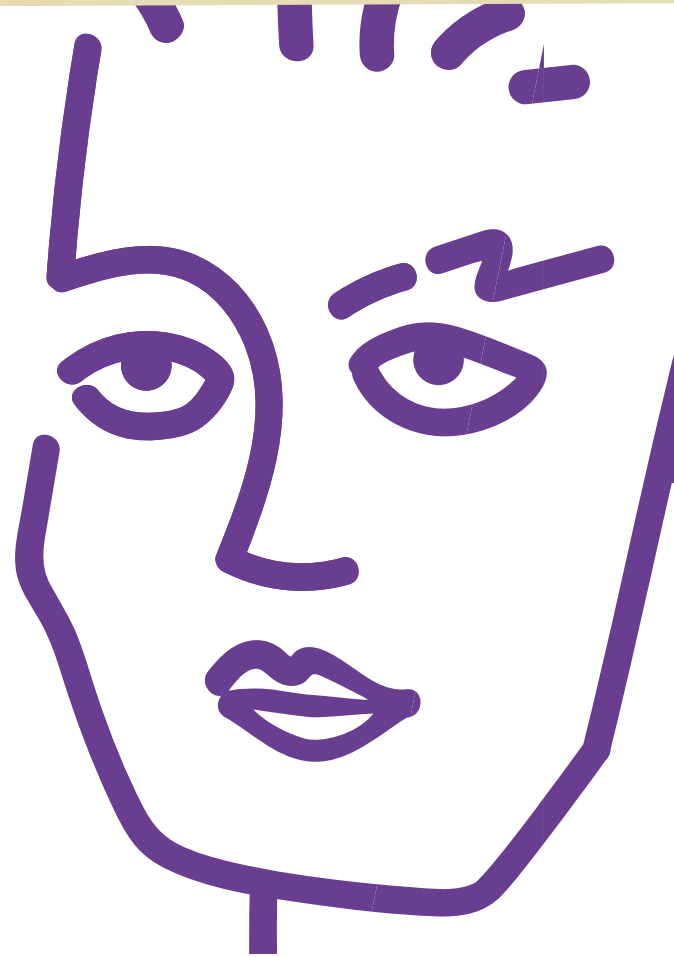
¹⁹⁷ See for example: DeJusticia. Ma. Ximena Dávila, Diana Esther Guzmán Rodríguez, Nina Chaparro González. [Descriminalizar para proteger modelos alternativos de regulación del aborto: Despenalización total y regulación sanitaria en Canadá, Australia y Nueva York](#). September 1, 2021; Joanna N. Erdman, *Constitutionalizing Abortion Rights in Canada*, Schulich School of Law, Dalhousie University, 2018.

¹⁹⁸ Supreme Court of Canada, *R. v. Morgentaler*, (1988) 1 S.C.R. 30, pgs. 161-172, [R. v. Morgentaler – SCC Cases \(scc-csc.ca\)](#).

¹⁹⁹ Supreme Court of Canada, *R. v. Morgentaler*, (1988) 1 S.C.R. 30, pgs. 176-180, [R. v. Morgentaler – SCC Cases \(scc-csc.ca\)](#).

²⁰⁰ World Health Organization. *Abortion care guideline*. Executive Summary. 2022, pg. 5.

These recommendations are based on an analysis of multiple studies, including a systematic review conducted in 22 countries between 2010 and 2019.²⁰¹ Evidence shows that criminal laws delay or hinder access to abortion, even when legal exceptions exist, and impose multiple burdens on women, such as travel, additional costs, stigmatization, and delays in medical care, including post-abortion care. At the same time, the WHO concludes that criminalization does not reduce the likelihood of deciding to have an abortion, but rather limits access to safe abortion and increases the practice of unsafe abortions. Furthermore, it notes that legal proceedings tend to disproportionately target young, unmarried women in vulnerable socioeconomic situations, as well as the fact that in some countries, healthcare workers are even required to report those seeking care.²⁰²



²⁰¹ Organización Mundial de la Salud. Directrices sobre la atención para el aborto. Resumen Ejecutivo. 2022, pág.5.

²⁰² Organización Mundial de la Salud, Abortion Care Guideline, Capítulo 2, Law & policy Recommendation 1: Criminalization (2.2.1) - Abortion care guideline (srhr.org).

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VI CONCLUSIONS AND RECOMMENDATIONS

The findings presented in this report lead to the conclusion that the application of criminal law regarding abortion, far from being an appropriate regulatory mechanism, effectively amounts to a discriminatory policy against women that disproportionately affects certain groups of women and results in specific violations of human rights in the areas of health, due process, and women’s right to live a life free from violence and discrimination.

The risk that legal proceedings related to abortion may be initiated as a result of the health care that women require—including in medical emergencies—highlights the particular vulnerability faced by women who go to hospitals seeking such care, and in which medical confidentiality—as a fundamental guarantee of the right to health and the exercise of other rights—can be seriously compromised, further exposing them to abuse and situations of violence, such as obstetric violence and institutional violence. As discussed, the impact of this situation extends beyond individual cases, as it also discourages women from seeking health care when they need it for fear of being criminally prosecuted, which in turn has a broader impact on trust in the health care system.

The circumstances under which criminal proceedings for abortion are initiated also mark the beginning of a journey through the justice system that, as this report and the country-level investigations by Health Without Fear have shown, does not guarantee effective access to justice with due process safeguards or respect for the right to equality and non-discrimination, as recognized by international human rights treaties. The lack of due process guarantees as analyzed in this study demonstrates that the criminalization of abortion particularly exposes women to stigmatization and revictimization, and to restrictions on fundamental rights like personal liberty, even when they are not actually convicted, or, in any case, to receiving arbitrary sentences resulting from proceedings conducted under the conditions described above.

This series of interrelated actions that we at Health Without Fear call the “criminalization pathway” makes it clear that while the codification of abortion as a criminal offense leads to a series of human rights violations, it also aligns the health and justice systems with that purpose, thereby undermining the general obligations States have with respect to guaranteeing the right to health, life, autonomy, and dignity (among other rights) and preventing violations thereof, amounting to forms of institutional violence. Ultimately, this reinforces an ineffective model that has impacts—in some cases irreversible—on the life plans of women, who are the most affected, and that not only perpetuates but also contributes to the structural inequality they have historically faced.

At Health Without Fear, we maintain that the future demands an urgent paradigm shift: A move toward models grounded in health and human rights, with a gender-sensitive and intersectional perspective, in which abortion is treated as what it truly is—a health service—that must be guaranteed under dignified and safe conditions that respect reproductive autonomy, as part of comprehensive policies to protect the sexual and reproductive rights of the entire population.

This requires decisive and concrete steps, and to that end, we have formulated the following recommendations as a clear roadmap for achieving the goal of *Health Without Fear*.

1

With regard to legal frameworks on abortion, the following is recommended:

- 1.1. Eliminate or significantly reduce the use of criminal law to regulate abortion, replacing it with public health regulatory frameworks.
- 1.2. To prevent unwanted pregnancies, implement public policies on health and sexual and reproductive rights, including family planning, access to modern contraceptive methods—such as emergency contraception—access to information on sexual and reproductive health, and comprehensive sex education, among other measures. These measures should also take into account an intersectional approach in line with the following recommendation.

2

The criminalization of abortion affects all women, adolescents, girls, and pregnant people, but not equally. It affects the most vulnerable women differently, highlighting intersectional discrimination. Our recommendations are as follows:

- 2.1. Implement public policies with an intersectional approach that recognizes and addresses the multiple forms of discrimination faced by women subjected to criminal prosecution.



3

Regarding the possibility that criminal proceedings for the offense of abortion may be initiated based on a complaint by healthcare personnel, and the implications of this for professional secrecy and the guarantee of confidentiality in healthcare, the following is recommended:

3.1.

In countries where such regulations remain in place, eliminate any requirement that healthcare personnel report abortions or obstetric emergencies or provide medical information in these cases for use in criminal proceedings.

3.2.

In countries where the right to medical confidentiality and the duty to report crimes coexist under the law, it should be unequivocally established that, in cases of abortion and obstetric emergencies, the right to medical confidentiality always takes precedence.

3.3.

Train healthcare personnel on human rights and gender perspectives, with an emphasis on confidentiality in healthcare in accordance with the standards discussed in this report.

3.4.

Establish accountability mechanisms for breaches of professional confidentiality, including through disciplinary sanctions.

4

As long as criminal law continues to be applied to abortion, and given the violations of due process and the right to equality and non-discrimination faced by women who are criminally prosecuted, the following is recommended:

4.1.

Strengthen training on human rights and gender perspectives for all legal professionals who handle these cases, including prosecutors, judges, and public defenders.

4.2.

Guarantee adequate, free, and specialized legal representation in cases involving the criminalization of abortion.

4.3.

Take appropriate and effective measures to eliminate gender stereotypes and incorporate a gender perspective into all aspects of the justice system, including by promoting understanding and awareness of their impact on cases involving abortion and obstetric emergencies, as well as all possible dimensions of gender-based violence and discrimination associated with them. In light of the analysis presented in this report, it is also recommended that specific measures be adopted for the initial stages of these processes, in line with the recommendations regarding the protection of professional secrecy.



5

The criminalization of abortion perpetuates and exacerbates other forms of structural violence, such as obstetric violence and institutional violence. Our recommendations are as follows:

- 5.1.
Adopt comprehensive public policies that prevent and punish obstetric violence and promote safe sexual and reproductive health services free from discrimination.
- 5.2.
Incorporate mechanisms for accountability and for monitoring the performance of justice and health systems in cases of abortion and obstetric emergencies.
- 5.3.
Provide psychosocial, legal, and health support to people who have been subjected to criminal prosecution, especially those in particularly vulnerable situations.

6

Given the lack of official, comprehensive, and disaggregated data on cases of criminal prosecution for abortion, our recommendations are as follows:

- 6.1.
Comply with the state's obligation to diligently generate, collect, and publish sufficient, reliable data disaggregated by age, ethnicity, educational level, and socioeconomic status regarding the criminalization of abortion, ensuring consistency among the data produced by different entities (prosecutors' offices, ombudsman's offices, health systems, etc.).

7

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We dedicate this work to the courage and dedication of **Dr. Rossana Cifuentes**, who devoted her life to defending sexual and reproductive rights, not only in her beloved Guatemala, but throughout Latin America.

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