

CASE OF MANUELA

V.

THE IMPACT OF BLANKET
ABORTION BANS ON WOMEN
EXPERIENCING OBSTETRIC
EMERGENCIES

EL SALVADOR

El Salvador has one of the most restrictive legal frameworks on the American continent with regard to abortion.¹ Since 1998, access to abortion has been criminalized under all circumstances,² and in 1999, the Political Constitution recognized “every human being from the moment of conception” as a person.³



CENTER *for*
REPRODUCTIVE
RIGHTS





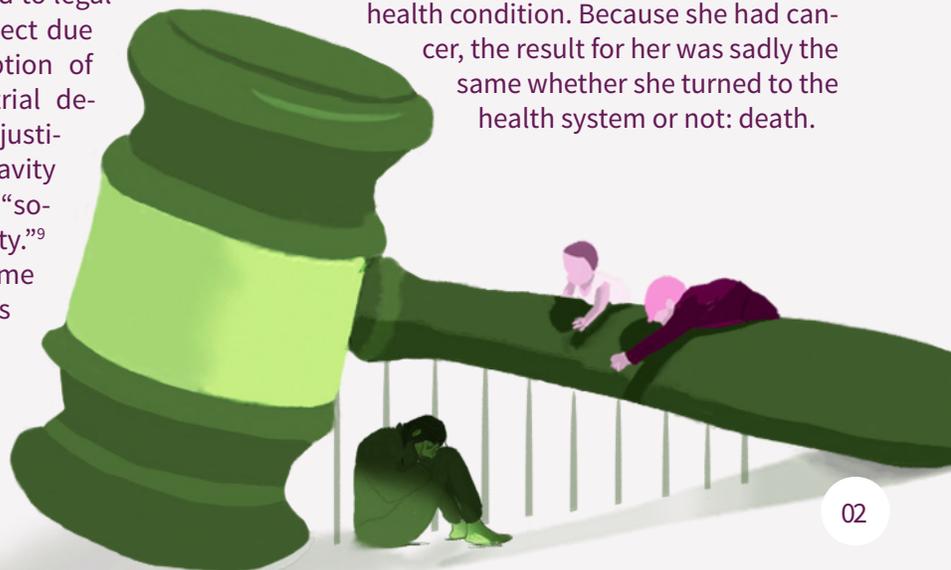
Starting with these changes to the law, Salvadoran authorities embarked on a systematic policy of criminal persecution against the reproductive processes of women, including obstetric emergencies and complications that arise spontaneously during pregnancy, childbirth, or postpartum.⁴

INDEED, BETWEEN 2000 AND 2019, 181 CASES WERE IDENTIFIED OF WOMEN WHO EXPERIENCED OBSTETRIC EMERGENCIES AND WERE PROSECUTED CRIMINALLY FOR ABORTION OR AGGRAVATED HOMICIDE,⁵ WHICH CAN BE PUNISHED WITH UP TO 50 YEARS IN PRISON.⁶

In most cases, the women are reported by health professionals, in violation of their duty to maintain professional confidentiality.⁷ This is due to the legal uncertainty in El Salvador surrounding the exercise of this duty, which, added to the social stigma on abortion, has led medical staff to report women who visit healthcare centers seeking emergency obstetric care for fear of being criminally prosecuted, as well as because of gender stereotypes that lead them to assume the women have committed a crime.⁸ Women are then subjected to legal processes that do not respect due process and the presumption of innocence, placed in pretrial detention based on abstract justifications like the alleged gravity of the facts, flight risk, and “social alarm of the community.”⁹ A practice that has become common by the police is

shackling the women to their hospital beds while they are still receiving medical care.¹⁰

The case of Manuela is emblematic and a clear example of the impact that the blanket ban on abortion has in terms of the criminalization of all women’s reproductive processes. Upon seeking emergency medical care, she became the victim of a structure of institutional and gender-based violence that, in response to an obstetric emergency, subjected her without scientific evidence and based on gender stereotypes to the Salvadoran criminal system by detaining her arbitrarily, charging her, and unjustly convicting her of aggravated homicide. This happened because of Manuela’s vulnerability as a woman living in poverty, from a rural area, and with no education, as well as her health condition. Because she had cancer, the result for her was sadly the same whether she turned to the health system or not: death.



THE FACTS OF THE CASE

Manuela was a woman from a rural area of El Salvador who lived in poverty and did not know how to read or write. She had two children—a nine-year-old and a seven-year-old—and was a single mother, as her husband had left her. She never had access to formal education or to reproductive health information and services, such as methods of contraception. Her first two births took place in her own home.

Between 2006 and 2007, Manuela began to feel constant headaches, nausea, stomach pain, and exhaustion. She also had visible lump on her neck. She was diagnosed with gastritis and prescribed analgesics at her nearest health center, but no test was ever performed to establish the cause of her maladies. Over the course of time, she became pregnant.

On February 27, 2008, she began to feel severe pelvic and abdominal pain, and she went to use the latrine that was located several meters from her house. At that moment, she had an obstetric emergency, expelled a fetus, and fainted. While she was unconscious, her family took her to the closest hospital located approximately two hours away to seek help.

MANUELA ARRIVED THERE WRAPPED IN A HAMMOCK, WITH **SEVERE BLEEDING AND SYMPTOMS OF PRECLAMPسيا**, BUT RATHER THAN RECEIVING THE EMERGENCY OBSTETRIC CARE SHE NEEDED, **SHE WAS INTERROGATED BY THE INTAKE DOCTOR**, delaying her medical care for three hours. Meanwhile, she kept bleeding and her symptoms worsened.

The doctor assumed that Manuela had induced a miscarriage and alerted the police authorities that an alleged crime had been committed. The next day, while she was still in the hospital in poor health and without the presence of a defense attorney, she was interrogated by two police officers who, without any evidence, accused her of having killed her child and called her promiscuous for having had sex outside of marriage. They detained her without an arrest warrant, shackling both hands to the hospital bed. She remained in shackles for seven days, suffering also from insults by the medical staff.





BECAUSE OF HER SOCIO-ECONOMIC STATUS,

Manuela was not able to hire a private attorney. She therefore depended on three different public defenders —**none of which ever heard her version of the events, nor that of her relatives— and who she only had contact with on the day of her hearing.**



THE APPOINTMENT OF HER DEFENSE ATTORNEYS WAS NO MORE

THAN A FORMALITY, as she never had the opportunity to meet with them beforehand. Furthermore, the defense attorneys were changed without notice at key moments, making a fair trial impossible.



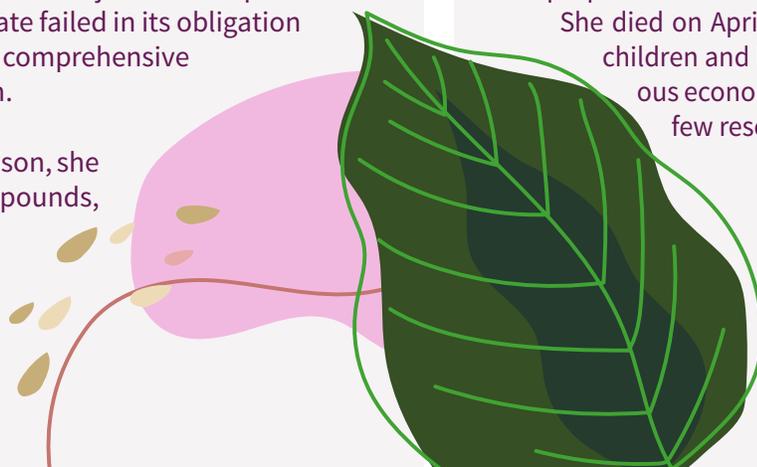
Those attorneys also **NEVER CALLED INTO QUESTION THE COERCION OF HER FATHER BY POLICE OFFICERS.** He did not know how to read and was forced to place his fingerprints on a document that later turned out to be a false denunciation of his own daughter.

In the Court hearing Manuela was convicted and sentenced to 30 years in prison for the crime of aggravated homicide. Based on stereotypical preconceptions, the Court concluded that she had thrown her child in a latrine to hide an alleged infidelity and avoid public criticism. Also, the Court indicated that “maternal instinct” should have led her to seek medical care, even though she had passed out, was bleeding and unconscious. Manuela’s public defender did not file any appeal of the decision, and while she was subjected to deprivation of liberty, the State failed in its obligation to provide her with a comprehensive medical examination.

During her time in prison, she dropped nearly 28 pounds,

and her hair loss was obvious. However, she was only provided with analgesics. Almost one year later, she was diagnosed with Hodgkin’s lymphoma, a cancer of the lymphatic system. The chemotherapy she needed was provided late and inconsistently. Manuela was forced to suffer the effects of the chemotherapy in her cell, in overcrowded conditions. As her health worsened, she was taken to a hospital, where she was shackled to the bed and guarded by a police officer for three months. In the end, the lack of proper treatment for her cancer ended her life.

She died on April 30, 2010, orphaning her two children and leaving her family in a precarious economic situation, as they had very few resources to care for the children.



A C C E S S T O J U S T I C E

In the context of the blanket criminalization of abortion, and in the framework of a policy of criminal persecution of women suffering obstetric emergencies, the State of El Salvador violated its obligation to guarantee Manuela's rights to freedom, judicial guarantees, judicial protection, and equal protection and nondiscrimination, as she was detained and convicted arbitrarily for a crime she did not commit. Additionally, the investigation and criminal proceedings against her were plagued with technical shortcomings, as it was never scientifically established whether the fetus had come to term, if it had been born alive, or its cause of death. Neither was the series of elements that affected the course of her pregnancy rigorously investigated, including her cancer and her obstetric emergency.

LIKewise, THROUGHOUT THE CRIMINAL PROCEEDINGS, **GENDER STEREOTYPES** WERE USED THAT PREVENTED AN EXHAUSTIVE ANALYSIS OF THE EVIDENCE AND THAT SHUT DOWN POTENTIAL LINES OF INVESTIGATION: THE STEREOTYPE OF AN "IMMORAL WOMAN" WHO COMMITTED AN ALLEGED INFIDELITY, AND THE STEREOTYPE ACCORDING TO WHICH THE HIGHEST PURPOSE OF A WOMAN IS "SACRIFICING HERSELF IN THE NAME OF REPRODUCTION."





El Salvador also violated Manuela's rights to privacy and health, as the medical staff attending her failed in its duty to maintain professional confidentiality, opting to prioritize and activate a criminal prosecution against her, rather than provide her with the emergency medical care she needed. Additionally, **ADDITIONALLY, THE STATE VIOLATED ITS OBLIGATION TO GUARANTEE HER RIGHT TO HEALTH, INCLUDING TO REPRODUCTIVE HEALTH, DUE TO THE VIOLENCE SUFFERED** following the obstetric emergency, impacting her access to that right. The treatment she experienced during her detention also impacted her rights to integrity of person, to not be subjected to torture, and to live a life free of gender-based violence. Likewise, the State violated Manuela's rights to health, integrity of person, and life, as it did not perform a comprehensive medical checkup when she was deprived of liberty, nor did it

provide timely and adequate medical treatment, which could have prolonged her life.

The lack of due diligence in the handling of the case, along with gender discrimination with the use of stereotypes, prevented both Manuela and her family from accessing justice. Today, 12 years after the facts, this case remains in impunity, the truth has not yet been established, and her relatives are still waiting for justice and reparations.

In 2012, the Center for Reproductive Rights (the Center) and the Colectiva Feminista por el Desarrollo Local (the Collective) submitted a petition before the Inter-American Commission on Human Rights (IACHR) denouncing these facts. In July 2019, the IACHR decided to submit the case before the Inter-American Court of Human Rights (Inter-American Court). The public hearing in the case before the Inter-American Court will be held on March 10 and 11, 2021.



This is the first case to reach the Inter-American Court on the impact that blanket abortion bans have on the reproductive rights of women and, in particular, **ON THE CRIMINAL PROSECUTION OF WOMEN SUFFERING OBSTETRIC EMERGENCIES FOR CRIMES THEY DID NOT COMMIT.**

In this regard, through this litigation, the Center and the Collective are asking the Inter-American Court to establish protection for the rights of women and recognize, among other things, that:



CASELAW DEVELOPMENT SOUGHT THROUGH THIS CASE

a .

The **CONTEXT OF A BLANKET BAN ON ABORTION** is a form of gender-based discrimination and violence that has a disproportionate impact on vulnerable women and that facilitates the criminalization of their reproductive processes, including obstetric emergencies.

b .

La **RELEASE BY HEALTH PROFESSIONS OF THE CONFIDENTIAL MEDICAL INFORMATION OF WOMEN** needing emergency obstetric care to police and judicial authorities is an arbitrary restriction on the right to privacy and a violation of the right to health.

c .

DETAINING AND SHACKLING WOMEN WHO ARE RECEIVING EMERGENCY OBSTETRIC CARE SEVERAL HOURS AFTER SUFFERING AN OBSTETRIC EMERGENCY is torture and a violation of the rights to personal liberty and judicial guarantees. Additionally, pretrial detentions based only on the gravity of a crime are arbitrary and violate the presumption of innocence.

d .

Practices and rationales that assume that women experiencing serious health problems should put their own lives above that of a fetus, even when they are unconscious or vulnerable, are gender-based stereotypes, and therefore, a form of **GENDER-BASED** discrimination and violence. Likewise, they pose barriers to access to justice and have a particular effect on the right to be heard, the presumption of innocence, and judicial protection.



BINDING NATURE AND IMPORTANCE

OF THE JUDGEMENTS ISSUED BY THE INTER- AMERICAN COURT OF HUMAN RIGHTS

Manuela's case is emblematic and offers the Inter-American Court an opportunity to not only establish El Salvador's international responsibility for the multiple human rights violations committed against her, but also (and more importantly for the region) establish that States are responsible for preventing the criminal prosecution of women experiencing obstetric emergencies and providing reparations to those that have been arbitrarily detained and convicted for experiencing these types of complications.

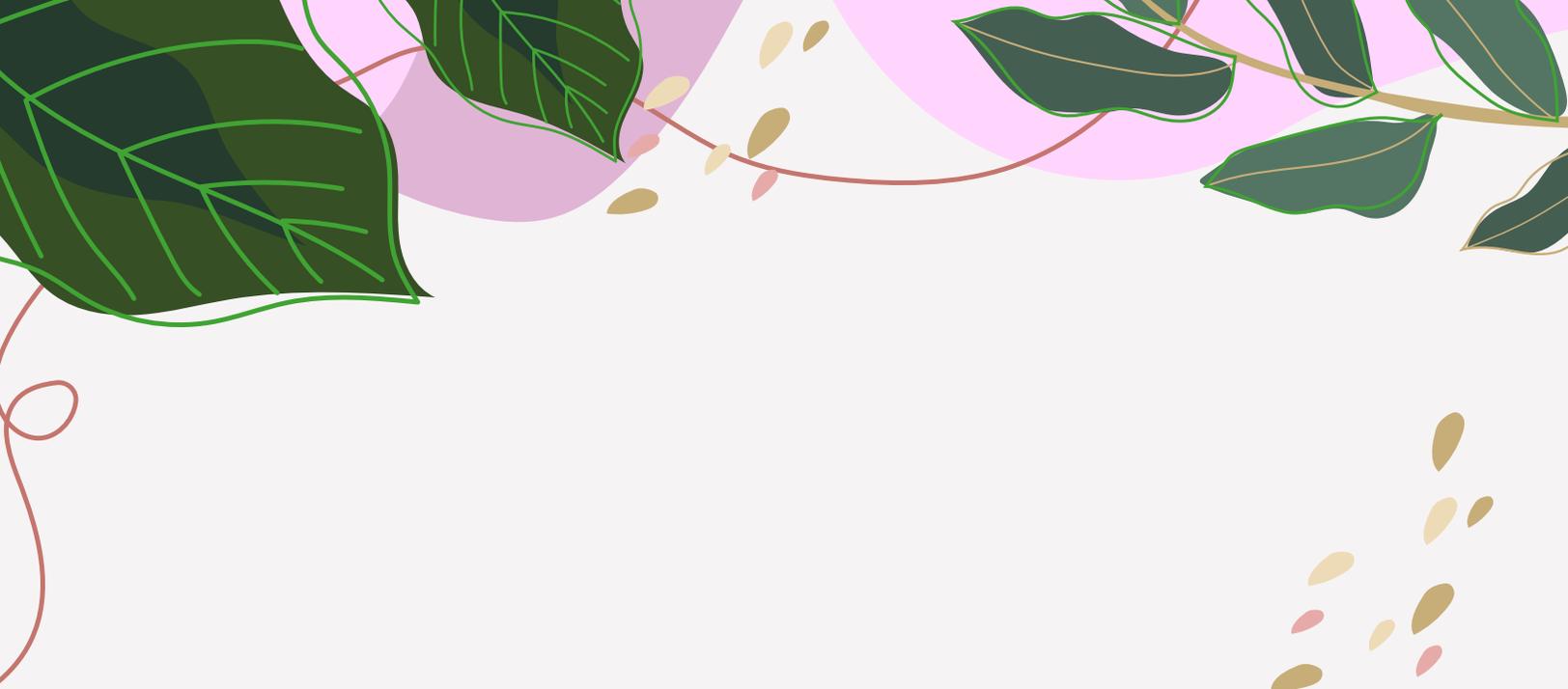
The judgments of the Inter-American Court require the State in question to comply with what is decided therein. In El Salvador, this has been the case

since June 6, 1995, the date on which the sovereign State recognized the Court's competence.¹¹ The Court's judgments also set standards that must be followed by all States that have ratified the American Convention on Human Rights. Thus, the scope of these decisions becomes part of the Inter-American Human Right Protection System, which is recognized by more countries in the region.

Additionally, the Inter-American Court's judgment on Manuela's case will establish a series of individual and structural measures to

PROVIDE REPARATIONS FOR THE CONSEQUENCES OF THE VIOLATIONS OF HER AND HER FAMILY'S RIGHTS, as well as ensure facts like the ones in this case do not happen again.





ENDNOTES

1 Center for Reproductive Rights, *The World's Abortion Laws*, 2019. Available at: <https://reproductiverights.org/worldabortionlaws#recent-developments>

2 Penal Code of El Salvador, Decree 1030 of 1997, articles 133, 135-137. Available at: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>

3 Constitution of El Salvador, Decree 38, article 1. (Amended by Legislative Decree 1,541 of February 3, 1999). Available at: <http://pdba.georgetown.edu/Constitutions/ElSal/constitucion.pdf>

4 Peñas, M. "El aborto en el salvador: tres décadas de disputas sobre la autonomía reproductiva de las mujeres." *Península*, vol. XIII, no. 2, pgs. 213-234. Available at: <http://www.scielo.org.mx/pdf/peni/v13n2/1870-5766-peni-13-02-213.pdf>; Feusier, O. "Pasado y presente del delito de aborto en El Salvador." *Universidad Centroamericana José Simeón Cañas (UCA): Department of Legal Research*, 2012. pgs. 45-68. Available at: http://www.uca.edu.sv/deptos/ccjj/media/archivo/95bbb4_pasadoypresentedeldelitodeabortoenelsalvador.pdf; Viterna, J. "Análisis Independiente de la Discriminación Sistemática de Género En El Proceso Judicial de El Salvador Contra Las 17 Mujeres acusadas del homicidio agravado de sus recién nacidos." *Harvard University*. 2014. Available at: http://scholar.harvard.edu/files/viterna/files/analysis_preliminar_17_salvadorenas_espanol_0.pdf

5 Agrupación Ciudadana por la Despenalización del Aborto. "Del hospital a la cárcel 1998-2019: consecuencias para las mujeres por la penalización sin excepciones de la interrupción del embarazo en El Salvador." *El Salvador*. 2019..

6 Penal Code of El Salvador, Decree 1030 of 1997, articles 198 and 199. Available at: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>

7 Working Group on Arbitrary Detention. Opinion 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. 101.

8 Fundación de Estudios para la Aplicación del Derecho (FESPAD). "Diagnóstico: Mujeres criminalizadas por homicidio agravado a causa de problemas obstétricos o partos extrahospitalarios." *El Salvador: FESPAD Ediciones*. 2018, pg. 12.

9 Working Group on Arbitrary Detention. Opinion 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. 94.

10 Center for Reproductive Rights and Agrupación Ciudadana. "Marginalized, Persecuted, and Imprisoned: The Effects of El Salvador's Total Criminalization of Abortion," 2013, pg. 59. Available at: <https://reproductiverights.org/sites/default/files/documents/El-Salvador-CriminalizationOfAbortion-Report.pdf>

11 American Convention on Human Rights "Pact of San José, Costa Rica." Available at: <https://www.cidh.oas.org/basicos/basicos3.htm>; Inter-American Court. *Case of the Serrano Cruz Brothers v. El Salvador*. Judgment of March 1, 2005. Merits, Reparations and Costs. Series C No. 120, para. 27.