THE STATE AS A CATALYST FOR VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN AND TORTURE OR OTHER ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH IN LATIN AMERICA AND THE CARIBBEAN

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EXECUTIVE SUMMARY

The World Health Organization recently declared a Public Health Emergency of International Concern after detecting an "explosive" spread of cases of the Zika virus in Latin America and the Caribbean.[1] Fears that mother-to-child transmission of the virus may be linked to microcephaly in babies, as well as the possible sexual transmission of the virus, have turned the spotlight on the huge challenges regarding sexual and reproductive rights that exist in the region today.

Some countries in the region have recommended that women not become pregnant for some time.[2] This recommendation is not just absurd; it is insulting in a region where more than half of pregnancies are unwanted or unplanned, where there are extremely high rates of sexual violence, where the demand for contraception far outstrips availability and where cultural norms continue to give pride of place to women's role as mothers. In addition, 97% of the women in Latin America and the Caribbean of reproductive age live in countries where access to safe abortion is severely restricted by law. As always happens in this the most unequal region in the world, the unmet need for sexual and reproductive health disproportionately affects people living in poverty and marginalized communities.

This recommendation is also discriminatory as it lays all the responsibility on women, without mentioning the role of men in pregnancy or the multiple barriers that health systems themselves put in the way of women making a choice about whether and when to have children and, if they do, how many. This recommendation and all the debate around the Zika virus bring into stark focus the harmful gender stereotypes and prejudices that persist in the region as a whole regarding the reproductive role of women. It also highlights the power of the state to impose these stereotypes and the systematic, devastating forms of violence against women that this generates – the central theme of this report.

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[1] See World Health Organization, "WHO announces a Public Health Emergency of International Concern", available at: http://www.paho.org/hq/index.php?option=com_content&view=article&id=11640%3A2016-who-statement-on-1st-meeting-ihr-2005-emergency-committee-on-zika-virus&Itemid=135&lang=en&hootPostID=1c9c5791ea6d35f9c39b93deda30c20f%3Cx3/%3E.

[2] See, for example, "Ante epidemia de zika, Gobierno recomienda evitar los embarazos en zonas afectadas", Noticias Colombianas (online) available at: http://www.noticiascolombianas.com.co/index.php/226371/ante-epidemia-de-zika-gobiernorecomienda-evitar-los-embarazos-en-zonas-afectadas; "El Salvador Advises Women to Avoid Pregnancy for 2 Years Due to Zika Outbreak", ABC News, 26 January 2016, available at: http://abcnews.go.com/Health/el-salvador-adviseswomen-avoid-pregnancy-years-due/story?id=36524952; "Jamaica advises women to delay pregnancy due to Zika virus," Associated Press, 18 January 2016, available at: http://bigstory.ap.org/article/6bdff0c8fe734934b57418a1d8d7d7d2/jamaica-advises-women-delaypregnancy-due-zika-virus; "Panamá: piden aplazar embarazos en comarca indígena por zika," Terra Noticias (online), 26 January 2016, available at: http://noticias.terra.com/mundo/latinoamerica/panama-piden-aplazarembarazos-en-comarca-indigena-por-zika,5b14d2a7a6f1572732c9277e9bd7e5c516vap4qb.html ; "Brazil warns women not to get pregnant as Zika virus is linked to rare birth defect", *The Guardian*, 4 December 2015, available at: http://www.theguardian.com/global-development/2015/dec/04/brazilzika-virus-pregnancy-microcephaly-mosquito-rare-birth-defect.

For several years Amnesty International has been adding its voice to the hundreds of women's organizations in the region demanding an end to violence against women. All the human rights violations described in this report have been highlighted and worked on consistently by organizations fighting for women's rights at the national, regional and international levels. The movements for women's rights and gender justice in Latin America and the Caribbean are growing in strength. They are becoming more organized and more sophisticated in their analysis of rights and more effective in their advocacy.

This debate on the Zika virus underscores the central message set out by Amnesty International in this report: violence against women will not be eradicated unless states in the region change discriminatory legislation, public policies and practices in the area of sexual and reproductive health.

While discrimination against women is evident in almost all areas of life, it is in the area of sexual and reproductive health that it reaches shocking levels. It is the regulation of women's sexuality and reproduction that most clearly reveals gender stereotypes and bias. It also brings into focus prevailing ideas about the role that women should play in society and how they are imposed on all women through legislation and highly discriminatory practices.

This report argues that these discriminatory norms not only violate a range of human rights, they also generate violence against women and constitute torture or other cruel, inhuman or degrading treatment.

In order to arrive at this conclusion, the report starts from an analysis of the context of persistent gender-based violence in the region and the failure of states to show the political commitment needed to combat and eradicate it. In this report, Amnesty International argues that states are not only failing to prevent and eliminate violence against women by third parties, but they are themselves propagating institutional violence.

The central part of the report consists of representative cases from eight different countries in the region that illustrate how states generate violence against women and girls. The life stories of Rosaura, Tania, Teodora, Mónica, Mainumby, Esperanza and Michelle, reveal situations in which women or girls experienced physical and emotional suffering due to abuse and ill-treatment either when they sought sexual and reproductive health services or because they were denied these services. These are not isolated cases; they highlight patterns that are repeated throughout the region. Discriminatory behaviour based on gender stereotypes and prejudices that causes harm and suffering to women is common to the experiences of all seven women and girls. The cases are divided into two groups, but it is important to stress that these kinds of violations have multiple causes and are the result of a complex cycle of discrimination.

The first group are cases showing how legislation can produce institutional violence, including torture or other ill-treatment, in areas of sexual and reproductive health. This group includes the stories of Rosaura in the Dominican Republic, Tania in Chile and Teodora in El Salvador. These countries criminalize abortion in all circumstances, even when the life of the woman is at risk.[3] Both Tania and Rosaura needed a termination to allow them to continue

[3] In Latin America and the Caribbean, seven countries prohibit abortion in all circumstances or do not have laws that explicitly set out exceptions to the total ban, even to save the life of the woman. They are: Chile, El Salvador, Haiti, Honduras, Nicaragua, Suriname and the Dominican Republic.

treatment for cancer. Both women were denied access to safe, legal abortion. Tania had the means and the support to have a clandestine abortion and so was able to continue the treatment that saved her life. Rosaura, however, who was just 16 years old, had to undergo an unwarranted delay in her treatment for leukaemia, treatment that could have saved her life. Teodora suffered an obstetric emergency in the last weeks of pregnancy. When she went to the hospital to get help, she was charged with having induced an "abortion". Teodora's family has limited financial resources, so they could not afford an effective legal defence; Teodora was sentenced to 30 years in prison.

The second group of cases illustrate how state practices can generate institutional violence, including torture or other ill-treatment, in the area of sexual and reproductive health. The cases detailed here are those of Esperanza in Peru, Michelle in Mexico, Mainumby in Paraguay and Mónica in Argentina. The experiences of Mónica and Mainumby are in many ways similar to those of Teodora, Tania and Rosaura. Although legislation in their countries permitted legal abortion in their cases, the state did not allow the terminations to go ahead and subjected them to institutional violence, including torture. Both were denied the freedom to choose what was best for their lives and health. They were also forcibly "detained" in what were essentially prison conditions. Mainumby, who was just 10 years old, was also separated from her mother and had to face a pregnancy that was the result of rape alone while her mother was wrongfully imprisoned.

These five representative cases provide stark illustrations of a regional pattern: the use of the law to criminalize abortion in all circumstances with no or few exceptions. The ostensible aim of these laws is to prevent abortions. However, this report confirms what many others have said: the criminalization of abortion does not reduce the number of abortions. Rather, it results in increased mortality and morbidity because it forces women and girls to seek clandestine abortions, putting their lives and health at risk.[4] Latin America and the Caribbean have the highest estimated percentage of unsafe abortions in the world.[5]

Abortion in all circumstances remains a crime in several countries and in most others is prohibited in all but very limited circumstances due to religious and moral influence on laws and policies. The result is that priority has been accorded to the absolute, or near absolute, protection of the foetus, at the expense of the rights to life, health and humane treatment of women and girls. This protection is strongly influenced by the concept that "life is sacred and must be protected from the moment of conception" promoted by the Catholic and Evangelical churches, whose hierarchies have enormous influence in the region and in individual states. Human rights bodies have stated that this concept is discriminatory because it imposes a stereotype of women as mothers, viewing them mere instruments of reproduction. They have also determined that while states may wish to protect the foetus, this protection cannot be absolute but must be developed gradually and incrementally . Fundamentally, protection of the foetus is ensured via the pregnant woman or girl and by giving primacy to guaranteeing her life or health.

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[4] World Health Organization, *Safe abortion: technical and policy guidance for health systems* (Second edition), 2012, p90; World Health Organization, *Sexual health, human rights and the law*, 2015, p16.

[5] WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division, *Trends in Maternal Mortality: 1990 to 2013. Estimates by WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division,* Geneva, WHO, 2014, available at: http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2013/en/.

The cases of Esperanza and Michelle illustrate another prejudice, which is just as discriminatory, violates human rights and results in violence. Both women were sterilized without their consent. In both cases, the state considered that other people were better able to decide than the women whether or not they should have more children. Esperanza was the victim of a programme implemented in Peru in the 1990s in which women, most of whom were Indigenous or living in poverty, were coerced or deceived into having their fallopian tubes sealed. The stated aim of the programme was poverty reduction. Esperanza was pregnant at the time the procedure was carried out and wanted to continue with the pregnancy.[6] Michelle is living with HIV. Despite abundant evidence that with proper treatment the risk of vertical mother-to-child transmission of HIV is minimal, Michelle was coerced into being sterilized "in order not to bring more children with HIV into the world".

Chapter 3, which gives this report its title, analyses another regional pattern that emerges from the cases: laws or practices that violate sexual and reproductive rights also act as triggers for continuing violence. By upholding such laws and practices, the state itself acts as a catalyst, generating further violence. It is the state that promotes and legitimizes the structural discrimination that underpins all gender-based violence. These "other forms of violence" in turn generate further violations of human rights.

Examples of these other forms of violence include ill-treatment and denial of services in health-care institutions; breaches of patient confidentiality; the impact on families who are also victims of violence; the imposition of certain moral or religious views on women and girls; and multiple discrimination. The chapter ends with an examination of the role of conscientious objection in the area of sexual and reproductive health. Operating without regulation or poorly regulated, this is a key factor infringing on the rights of women, as the example from Uruguay detailed in this chapter shows.

It is important to highlight that throughout the region there is a lack of access to justice in order to lodge complaints and obtain redress for the human rights violations described in the report. One case, that of Esperanza, shows how the failure for nearly 20 years to ensure justice and reparation for violations of reproductive rights results in institutional violence and revictimization.

In all the cases detailed, prejudices and gender stereotypes underpin and result in discriminatory behaviour towards women. Discrimination against women is unquestionably the root cause of the violence, torture or other ill-treatment and other violations of human rights documented.

The report also includes an overview of relevant human rights standards. This report is based on the premise that sexual and reproductive rights are human rights, fully established in international and national human rights standards. It analyses violations of these rights as constituting violence against women perpetrated by the state itself (state violence), and torture or other ill-treatment. As regards torture or other ill-treatment, the report sets out a detailed analysis, using case examples, of the four elements of torture under international human rights law and their application in the field of sexual and reproductive health.

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[6] The World Health Organization recommends postponing surgical sterilization procedures such as that performed to Esperanza, if a pregnancy is detected. WHO, *Medical eligibility criteria for contraceptive use* (Fifth Edition) 2015, p232, available at: iris/bitstream/10665/181468/1/9789241549158_eng.pdf?ua="1".

The report concludes that states in the region can and should do much more to prevent and eradicate violence against women and torture or other ill-treatment in the context of sexual and reproductive health. In the conclusions, Amnesty International argues that the cycle of violence against women cannot be broken unless states undertake to reform discriminatory norms and practices in the area of sexual and reproductive health. The report ends with a series of recommendations which place particular emphasis on measures to protect young and adolescent girls because of their special vulnerability and because of the increasing tendency in the region to force them to carry pregnancies to term and give birth.

In this, the 20th anniversary year of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) and almost 30 years after the Inter-American Convention to Prevent and Punish Torture came into force, this report argues that states in Latin America and the Caribbean owe a huge outstanding debt to women and girls in the region because of the lack of progress in preventing and eradicating violence against them and torture or other ill-treatment in the context of sexual and reproductive health. Amnesty International therefore urges states in the region to:

- Amend all laws, regulations, practices and public policies relating to sexual and reproductive health that may produce institutional violence, torture or other cruel, inhuman or degrading treatment or punishment.

- Implement measures to eliminate discrimination against women and stereotyped patterns of behaviour that promote the unequal treatment of women in society, especially in the area of sexual and reproductive health care, including special measures to address multiple discrimination.

- Prevent institutional violence, torture or other ill-treatment in the area of sexual and reproductive health and ensure the availability of mechanisms to provide effective, appropriate and impartial access to justice for victims as well as comprehensive reparation.

- Create protocols on how to respond to and investigate sexual violence. Ensure the availability of emergency contraception for all women and girls, and especially for those who have been raped.

- Regulate the exercise of conscientious objection by health professionals to ensure that there is no risk to the health of the patient and that the patient's right to receive services and contraceptives,[7] a termination, or any other necessary health-care service is guaranteed. Implement mechanisms to ensure that health professionals who can provide this care are always accessible.

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[7] Committee on the Elimination of all forms of Discrimination against Women (CEDAW), Concluding observations: Mexico, para 33, (2006); Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12), United Nations, 2000.

■ Taking into account the principles of the Convention on the Rights of the Child, in particular the best interests of girls, develop public policies to protect them from forced pregnancy and maternity.

In addition, Amnesty International calls on the Inter-American System for the protection of human rights, in light of its influence on countries in the region and given the context of structural discrimination, to become more involved in this crucial debate for the region.

METHODOLOGY

This regional report is part of Amnesty International's "My body My rights" campaign.[8] It is the result of research involving both primary and secondary sources in eight countries in the region[9] and secondary sources on the regional situation.

To document the seven representative cases and the particular situation in Uruguay, Amnesty International interviewed the victims of human rights violations whose cases are highlighted, their relatives and friends, health personnel, lawyers, organizations who supported them and others relevant to their cases. The organization also obtained victims' free and informed consent to the inclusion of their cases in this report. In order to document the regional and national context government officials and civil society organizations in each of the countries covered in the report were also interviewed.

Amnesty International researchers carried out interviews between August and December 2015 in Argentina, Chile, El Salvador, Mexico, Paraguay, Peru and Uruguay. In researching the situation in the Dominican Republic, Amnesty International delegates worked closely with the Women and Health Collective (Colectiva Mujer y Salud) and with Women's Link Worldwide.

In order to produce this report, Amnesty International carried out 31 interviews in eight countries in the region[10] with nine women, five relatives, six doctors as well as 11 members of civil society organizations. In addition, researchers reviewed the medical records (4) and judicial records (2) available and two requests for access to information in Uruguay had not elicited a response by the time of writing.

Researchers requested interviews with eight officials in the countries where the representative cases were identified, seven of whom agreed to be interviewed (some on condition that they remain anonymous). Amnesty International met the Head of the Legal Reform Unit, SERNAM, in Chile; the Director of Sexual and Reproductive Health at the Ministry of Public Health and Social Welfare in Paraguay; the Ombudsperson for Children and Adolescents at the Justice and Public Defence Ministry in Paraguay; the Health Secretary for the State of Veracruz in Mexico; the Director of the National Center for the Prevention and Control of HIV and AIDS (CENSIDA) in Mexico City and the Head of the Sexual and Reproductive Health at the Ministry of Public Health in Uruguay.

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[8] See Amnesty International, *My life, my health, my education, my choice, my future, my body my rights* (Index: ACT 35/001/2014), available at: amnesty.org/en/library/info/ACT35/001/2014/en.

[9] Argentina, Chile, El Salvador, Mexico, Paraguay, Peru, the Dominican Republic and Uruguay.

[10] Argentina, Chile, El Salvador, Mexico, Paraguay, Peru, the Dominican Republic and Uruguay.

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Amnesty International is especially grateful to the women who shared their painful personal experiences in order to help ensure that these human rights violations are not repeated. We would like to thank: Rosaura, Rosa, Tania, Teodora, Esperanza, Michelle, Mainumby, CEF and Mónica for all their efforts and courage. This report and all our efforts to combat torture and violence in sexual and reproductive health in the region are dedicated to you.

1. VIOLENCE AGAINST WOMEN GENERATED BY THE STATE

In 2015, Amnesty International documented a pattern of increasing violence against women in Latin America and the Caribbean.[11] This epidemic of violence remains one of the major human rights problems in the region.

Some women are at particular risk of violence in the Americas. In the USA and Canada, for example, Indigenous and Alaska Native women continue to experience disproportionate levels of violence. In the USA, they are 2.5 times more likely to be raped than other women. In Canada, the homicide rate is at least six times higher for Indigenous women. In Colombia, women living in areas of armed conflict are more likely to be victims of sexual violence by both state forces and members of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC). Impunity for these crimes remains the norm.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people throughout the region are also at heightened risk of gender-based violence, despite progress in some countries with the passing of legislation prohibiting discrimination on grounds of sexual orientation and gender identity. During 2015, there were violent unsolved murders of transgender women in Argentina, as well as hate crimes, including murder and rape, against LGBTI people in the Dominican Republic. Between January 2013 and March 2014, the Inter-American Commission on Human Rights (IACHR) learned of 594 cases of killings of people who were, or were believed to be, LGBTI and 176 cases of attacks on their physical integrity in the Americas.[12] In 2015, Amnesty International documented episodes of violence against LGBTI people in El Salvador, Guyana, Honduras, Trinidad and Tobago and Venezuela. Consensual sexual relations between men remain a criminal offence in Jamaica where the authorities continue to fail to investigate threats and harassment of LGBTI people.

It is clear that states in the region have not made sufficient progress in stopping what the Pan American Health Organization[13] has described as a "pandemic". Tragically the shortcomings of states on the issue do not end there. As this report shows, states have not only failed to fulfil their obligation to prevent violence against women by third parties, but many are promoting or tolerating laws, policies and practices that harm or cause suffering to women because of their gender. This constitutes state-generated violence against women; that is, "institutional violence".

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[11] *Amnesty International Report 2015*, "Americas Regional Summary", published 28 February 2016.

[12] Inter-American Commission on Human Rights, *An Overview of Violence against LGBTI Persons in the Americas: a Registry Documenting Acts of Violence between January 1, 2013 and March 31, 2014,* available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/153A.asp.

[13] "Whether at home, on the street or in armed conflict, violence against women is a global pandemic that occurs in public and private spaces. The main forms of violence are physical, sexual and psychological." http://www.paho.org/ecu/index.php?option=com_content&view=article&id=1411:eliminar-la-violencia-contra-las-mujeres-una-pandemia-mundial-que-adopta-muchas-formas&Itemid=360.

The stories of the women and girls from seven countries in the region that are documented here, all of which are related to attempts to access sexual and reproductive health services, are representative examples of a widespread problem throughout the region. These stories detail with stark clarity the suffering caused by certain practices, public policies and legislation, or the lack of laws, relating to access to sexual and reproductive health for women and girls. This often constitutes torture or other ill-treatment.

These stories are part of a complex situation. More than half of all pregnancies in Latin America and the Caribbean are unwanted or unplanned. This rate has remained unchanged since 1985[14] despite an increase in the use of modern contraceptives. There are many reasons for this such as very high levels of sexual violence, including intimate partner violence;[15] lack of access to contraception,[16] including emergency contraception; and cultural patterns that promote the role of women first and foremost as mothers. In addition, 97% of women of reproductive age in Latin America and the Caribbean live in countries where abortion is severely restricted by law.[17] In 2014, at least 10% of all maternal deaths in the region were due to unsafe abortions.[18] El Salvador is one of only eight countries in the world where the number of maternal deaths has risen since 2003[19] while in Argentina abortion-related complications have been the leading direct cause of pregnancy-related deaths since 1980.[20] Around 760,000 women in the region are hospitalized each year for complications linked to unsafe abortions.[21]

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[14] *Seguimiento de la CIPD en América Latina y el Caribe después de 2014: documento técnico*, p25, available in Spanish only at: http://www.clacaidigital.info:8080/xmlui/handle/123456789/535.

[15] 29.8% of women experience either physical and/or sexual intimate partner violence or sexual violence by a non-partner. World Health Organization, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*, 2013, available at: http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/.

[16] World Health Organization, Family planning/Contraception: Fact sheet N°351, updated May 2015, available at: http://www.who.int/mediacentre/factsheets/fs351/en/

[17] Guttmacher Institute, "Facts on Abortion in Latin America and the Caribbean", November 2015, available at: < https://www.guttmacher.org/pubs/IB_AWW-Latin-America.pdf >.

[18] *Ibid*. Citing unpublished data from S Singh et al, Adding It Up: The Costs and Benefits of Investing in Sexual and Reproductive Health 2014, New York: Guttmacher Institute, 2014.

[19] Institute for health metrics and evaluation, available at: <http://www.healthdata.org/news-release/sharp-decline-maternal-and-child-deaths-globally-new-data-show>

[20] Guttmacher Institute, "Facts on Abortion in Latin America and the Caribbean", *op. cit*.

[21] *Ibid*. Citing S Singh et al, Facility-based treatment for medical complications resulting from unafe pregnancy termination in the developing world, 2012: a review of evidence from 26 countries, BJOG, 2015, doi:10.1111/1471-0528.13552.

The inadequate provision of sexual and reproductive health services in the region as a whole disproportionately affects people living in poverty.[22]

In this the 20th anniversary year of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)[23] and almost 30 years after the Inter-American Convention to Prevent and Punish Torture[24] came into force, this report argues that the states in Latin America and the Caribbean must show greater commitment to preventing violence against women and torture or other ill-treatment in the context of sexual and reproductive health.

A NOTE ON TERMINOLOGY: "INSTITUTIONAL VIOLENCE"

In this report the term "institutional violence" is used to refer to a systematic state practice which subjects women and girls to violence and that occurs in contexts where the state has control over women's freedom and autonomy, for example, health care institutions in relation to the provision of sexual and reproductive health services.

Traditionally, recommendations on violence against women focus on a series of measures that the state should take to eradicate and prevent violence against women perpetrated by third parties. However, the violence documented in this report is promoted and facilitated by the state itself; its most immediate causes are laws, policies or practices that violate sexual and reproductive rights. That is why the term "institutional violence" is used.

The concept of "institutional violence" is not set out as such in human rights instruments, unlike the concept of violence against women. Traditionally regional human rights organizations have used the term in relation to violence perpetrated by law enforcement bodies (the police and justice system). It denotes actions by those who have control over the freedom and autonomy of individuals that were promoted, facilitated or at least not adequately prosecuted by the state.[25] The term refers to violence as a pattern or systematic practice rather than an isolated incident.

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[22] *Ibid.* For example, only 71% of women in the poorest households give birth in a health facility, compared with 99% of women in wealthier households. See also Tia Palermo, Jennifer Bleck, and Elizabeth Westly, "Knowledge and Use of Emergency Contraception: A Multicountry Analysis," International Perspectives on Sexual and Reproductive Health, 2014, 40 (2): 79-86; documenting the lack of access to emergency contraception in women with less access to formal education.

[23] Came into force 3 May 1995; ratified by 31 states in the region.

[24] Came into force on 28 February 1987; ratified by 18 states in the region.

[25] According to a UNICEF study, "The term institutional violence refers to different forms of violence practised by institutions, organs and agents of the state while maintaining law and order, that is social control" UNICEF, "Violence against children and adolescents." Report on Latin America as part of the United Nations World Survey. 2006. p54, available only in Spanish at: http://www.unicef.org/lac/Estudio_violencia(1).pdf. Similarly, a report by Argentine NGOs to the UN Human Rights Committee, defines it as "any arbitrary or illegitimate use of force exercised or allowed by the state organs", available only in Spanish at: http://www.derechos.org/nizkor/arg/onga/violence.htm. Similarly, see the study "Institutional violence and social violence," by Dr Elias Dobr. http://www.proceso.com.mx/203025/violencia-institucional.

The Inter-American Court of Human Rights has also used the concept of institutional violence to refer to various forms of violence by state authorities against women during the judicial process.[26]

The Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) issued a statement in 2014 acknowledging that: "the negation of public policy and sexual and reproductive health services exclusively to women, through norms, practices, and discriminatory stereotypes, constitutes a systematic violation of their human rights and subjects them to institutional violence by the State, causing physical and psychological suffering."[27]

[26] See Inter-American Court of Human Rights, Access to Justice for Women Victims of Violence in the Americas, para 164, available at: https://www.cidh.oas.org/women/Acceso07/cap2.htm.

[27] Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights, available at: https://www.oas.org/en/mesecvi/docs/CEVI11-Declaration-EN.pdf.

2. EXAMPLES OF INSTITUTIONAL VIOLENCE, INCLUDING TORTURE OR ILL-TREATMENT, IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH

"They never saw me as a person, as a whole human being. They saw me as an incubator, someone who could bring children into this world. And afterwards, it didn't matter if I raised them or not, if I died, if we would go hungry – to them that didn't matter. They see us an incubators. As machines, machines for reproduction."

Tania, Chile.

The gender-based violence described in the previous chapter is a form of discrimination against women.[28] This discrimination is evident throughout the region and in most everyday situations. However, it is in the area of sexual and reproductive health that it reaches shocking levels. The prevailing prejudices in Latin America and the Caribbean about the role that women should play in society are particularly pronounced in the regulation of women's sexual and reproductive lives.

When it comes to the right of women and girls to decide whether to be sexually active or not and whether to have children – and accessing appropriate information and services in order to be able to exercise these rights autonomously and responsibly – states in the region put up insuperable barriers and mete out treatment that often constitutes violence against women and, in numerous situations, torture or other ill-treatment.

[28] General recommendation No 19 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee).

The cases documented in this report by Amnesty International are representative of a regional pattern. They were selected to illustrate a broader and more widespread situation throughout Latin America and the Caribbean. The stories of Rosaura, Tania, Teodora, Mónica, Mainumby, Esperanza and Michelle reveal how certain state laws, policies and practices not only violate sexual and reproductive rights, but also generate violence against women and in some circumstances inflict torture or other cruel, inhuman or degrading treatment. At the same time, these stories show how these regulations and practices tend to promote a culture of violence towards women in the area of sexual and reproductive health, resulting in a proliferation of human rights violations against women in the region.

The cases have been organized in the report according to the main cause of institutional violence, including torture or other ill-treatment. In the first set of cases that cause is legislation; in subsequent cases the violations are a result of public policy or state practice. However, it is important to highlight that this structure is purely for presentation purposes, and that state violence against women is a continuum. It has many causes and is the cumulative result of various situations related to their sexual and reproductive rights that compound one another.

LEGISLATION THAT GENERATES VIOLENCE AGAINST WOMEN AND TORTURE OR OTHER ILL-TREATMENT

"Nothing will give me back my daughter, but I can't just let this pass without demanding that they admit clearly that what they did in this case was wrong. Until this is clarified and it's established where responsibility lies, there's nothing to stop another mother having to live through what I did trying to get them to care for my daughter".

Rosa Hernández, Dominican Republic

ROSAURA'S STORY: THE DOMINICAN REPUBLIC

Rosaura and her mother, Dominican Republic, 2009. © Private

Rosaura Arisleida Almonte Hernández (known in the media as "Esperanza"), a 16-year-old Dominican girl, suddenly developed a high temperature, extreme weakness, bruises on her body and intense abdominal pain. Her mother, Rosa Hernández, a teacher in a public school, took her to the medical unit at the SEMMA Teaching Hospital in Santo Domingo in the Dominican Republic, where she was admitted on 2 July 2012. After some initial examinations, the health worker merely said that Rosaura should stay in hospital because there seemed to be "something in the blood and they didn't know what it was".

Rosaura was diagnosed with a form of leukaemia[29] that requires urgent treatment; without treatment the disease has a mortality rate of 100% within weeks.[30] However, this treatment was not given to her because the day after she was admitted to hospital it was discovered that she was 7.2 weeks pregnant. There were also signs of foetal injury and vaginal bleeding with the risk of miscarriage, and a closed cervix. Although the doctor treating Rosaura recommended a therapeutic abortion so that they could start treatment for the leukaemia, the hospital authorities decided not to proceed with the termination because, according to them it was "prohibited by the Constitution" (under the Dominican Criminal Code abortion is criminalized in all circumstances).

Faced with such a serious diagnosis and given that Rosaura was so young, both mother and daughter clearly told doctors that they wanted to go ahead with a termination of the pregnancy and start the treatment for leukaemia immediately. They repeatedly made this request at various times during the month and a half Rosaura was in hospital. But those treating her and the hospital management did not take any notice.

Rosaura only started to have chemotherapy on 18 July, but it was stopped the following day because the doctors decided to wait until the 12th week of pregnancy to avoid endangering the development of the foetus. It was not until 26 July (24 days after Rosaura was hospitalized) that doctors began to treat her for leukaemia. On 16 August Rosaura suffered a miscarriage. She died the following day at 8am.

Rosaura's story is an extreme example of the violence and torture in the context of sexual and reproductive health to which women are subjected by the states in Latin America and the Caribbean. Sadly, she lost her life, but hers is not an isolated case.

Violations of sexual and reproductive rights that constitute violence against women and sometimes torture, have many interconnected causes. In the Dominican Republic, the chain of events leading to the death of Rosaura began with legislation criminalizing abortion in

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[29] Philadelphia chromosome (Ph)-negative, CALLA positive, precursor B acute lymphoblastic leukaemia. Acute lymphoblastic leukaemia (ALL) is a cancer of the white blood cells. Its causes are not known.

[30] "Acute leukaemia needs immediate full treatment irrespective of gestational stage because delay or modification of therapy results in lower maternal prognosis ". B. Brenner, I. Avivi, M. Lishner, "Hematologic cancers in pregnancy "(2012), *The Lancet*, 379; 580-587.

all circumstances that did not set out any exceptions, not even when a pregnancy poses a threat to the life or health of the woman. Legislation such as that in force in the Dominican Republic violates a number of human rights and constitutes in itself a form of torture.[31]

Despite various efforts initiated by feminist and human rights organizations and taken up by the Dominican executive and legislature, the laws on which doctors based their decision not to provide Rosaura with the treatment that could have saved her life remain in force. In December 2014, a new Criminal Code was approved that included the decriminalization of abortion when the life or health of a woman is at risk, when malformations mean the foetus is not viable and when pregnancy is the result of rape or incest. However, in December 2015, the Constitutional Court declared the new legislation unconstitutional on procedural grounds, leaving in place the previous Criminal Code (Law 2274) of 1884. So, the Dominican Republic has returned to the 19th century with laws that criminalize abortion in all circumstances, subject women to institutional violence by the health service and, in cases like Rosaura's, violate their right to life. Significantly, the Dominican Republic is one of the countries with the highest rates of maternal mortality and teenage pregnancy in the region.[32]

But the human rights violations go beyond this. When the state, through its legislation, sends a message as clear as this, professionals working in the public health sector, who are also government officials, feel they must "exercise their authority" and that they have a duty to "enforce the law". This "obligation" often reinforces the prejudices and fears of health professionals themselves. Laws that criminalize abortion also create an atmosphere of fear given that health professionals can face prosecution. As a result, health workers end up subjecting women and girls to more violence and even torture in their everyday practices by denying them the right to make decisions about their own lives and health. They deprive them of the ability to make informed decisions or force them to make life and death decisions in secret. This is effectively what happened to Tania in Chile, where abortion in all circumstances is prohibited by law.

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[31] According to International human rights law, the criminalization of abortion in all circumstances, violates a series of human rights including the right to life, the right to physical and mental integrity, the right to be free from torture and other ill-treatment, the right to live free from violence, the right to the highest attainable standard of health, the right to privacy, the right to decide how many children to have and at what intervals, the right to non-discrimination (for more information on the human rights standards relevant to abortion, see *On the brink of death: Violence against women and the abortion ban in El Salvador*; (Index: AMR 29/003/2014, September 2014), pp47-50. Legal restrictions on abortion as torture and other cruel, inhuman and degrading treatment, see Chapter 4, p47.

[32] The Dominican Republic has one of the highest rates of maternal mortality and teenage pregnancy in the region; more than 20% of women under 20 are either pregnant or have children (Women and Health Collective. *Boletín Ciudadanas* 2015, "28 de Mayo. Día Internacional de Acción por la Salud de las Mujeres". pp2-3). This takes place in a context where there is very little progressive, age-appropriate sex education available to children and adolescents, no ready access to contraception or to services to help prevent sexually transmitted diseases and widespread gender-based violence. Early pregnancy, in addition to posing a high risk to the health of adolescents and girls, is also often indicative of sexual abuse or rape.

TANIA'S STORY: CHILE

Tania was 31 years old with a husband and three children aged between three and seven and was undergoing cancer treatment when she became pregnant. In order to continue the pregnancy without putting the foetus at risk she would have had to stop the cancer treatment, which would have put her life at risk. However, the doctor treating her gave her no choice. He told her to stay calm, that everything would be fine and that if she tried to have an abortion, he would have to report her to the authorities. Tania sought other opinions (from a midwife and another doctor). They confirmed that the pregnancy was incompatible with her cancer treatment. She decided to have an abortion, even though it was against the law, with all the risks to her life and health that that implied. Fortunately, Tania had the means to pay for the procedure at a private clinic with qualified personnel and in hygienic conditions.

According to Tania, the doctor who treated her initially withheld crucial information about the cancer treatment and his first reaction was to get annoyed with her for getting pregnant. "He was very annoyed when he learned that I was pregnant. He made me feel guilty. I remember that there was something on the table, I don't remember what. He took it and threw it. He was very angry, very annoyed." Then suddenly, he changed: "It was as if he became another person and he said, 'don't worry because your illness is under control. Straight away he was separating things, it was as if he was cutting me up: the illness, me and the baby, as if we were three separate things."

"It wasn't an easy decision to take because, looking beyond what was happening to me at that moment, I wanted to have more children and the only option I had was to have a hysterectomy and so I would never be able to have another child." In the end "with the father of my children, the midwife and the gynaecologist, we decided that in reality I had to decide to save my life because that was the choice, it was that stark. It was clear there was no other way. I felt sure when I did it. I felt at that point I was fighting for my life." Tania described how "they took me to a clinic at night, at around 10 or 11 o'clock. It was all very clandestine, but the procedure was carried out in a clinic." When Tania woke up after her operation, she was alone: "There was no support, there was no one to support me at that moment. They took me there at night and the following morning I went home and I had check-ups after that as though I'd had an operation to remove cysts. That's what they wrote in the records; that I'd had an operation for cysts."

She added: "I have been in hospital many times [for the cancer] and seen women who had had abortions. They were treated very badly. You can't imagine the inhuman treatment they get, from the person who sweeps the wards to the doctor. They faced constant recriminations, all day."

Tania has kept her story a closely guarded secret for more than 30 years. "Most people don't know. My children don't know. It stayed between the midwife, the doctor, my husband and me. Because that's what we agreed between us."

Image used by Amnesty International Chile for its campaign to decriminalize abortion. © Amnesty International

Despite the progress made in protecting human rights in Latin America and the Caribbean, the region still has some of the most restrictive laws on sexual and reproductive rights. Chile is one of seven countries in the region (along with El Salvador, Haiti, Honduras, Nicaragua, Suriname and the Dominican Republic) that criminalize abortion in all circumstances. The total ban means that women and girls are faced with institutions and health professionals who are not prepared to respond appropriately to their situation. In the absence of clear regulations and protocols, decisions in each case are at the discretion of the doctor or health professional. They can provide partial information that does not take into account the emotional needs of women dealing with a difficult situation or simply recommend treatment be suspended, as in the case of Tania, which could cost them their lives. Safe abortion is an option for those who have the means. For those who don't, it means risking their lives and health having clandestine abortions in insanitary conditions or losing their lives without access to medical treatment.

This legislation has been in force in Chile since 1989, when the military government of General Augusto Pinochet introduced the criminalization of abortion without exceptions. Before then, abortion was a criminal offence but the law allowed for exceptions, namely to save the life or protect the health of the pregnant woman. In January 2015, President Michelle Bachelet presented a bill to Congress to introduce three exceptions to the total ban on abortion: when the life of the woman is at risk, when the foetus is not viable and when the pregnancy is the result of rape. At the time of writing, the bill was being debated in the Chilean Congress.

In El Salvador, similar legislation produces similar violence against women and promotes a discriminatory attitude towards women. It means that women are under suspicion and that pregnancy is turned into a very dangerous experience, to the point where women suffering an obstetric emergency are almost invariably suspected of a "crime". If they do not have the resources to pay for a good defence, they can face sentences of up to 40 years' imprisonment. That is what happened to Teodora.

Teodora Vásquez in the Ilopango municipal prison, El Salvador, 2015. © Amnesty International

TEODORA'S STORY: EL SALVADOR[33]

Teodora del Carmen Vásquez, is 31 years old and is the sixth of 11 children in a poor farming family. She was not able to finish her basic education because she had to go to work at a very early age to supplement the family income. The family's difficult economic situation led to her leaving her home village at 17 and going to the city where she was employed as a domestic worker. Teodora's wages were a vital source of income for her family throughout her working life.

Teodora gave birth to her first child when she was 20; her son is now 12 years old. Cecilia, Teodora's sister, told Amnesty International how every year, Teodora "would celebrate his birthday with piñatas and music. She would decorate his room and they would go for a walk together, just the two of them."

In 2006, Teodora became pregnant. On 13 July 2007, Teodora was in her ninth month of pregnancy when her whole world was turned upside down. That day, while she was at work, Teodora started to have pains and feel unwell.

"When the pain got too bad, I grabbed my phone and started to dial 911, because that was the only number I could think of. A woman answered and said that she had made the request and help was on its way. But no one arrived to help me… I rang at least five times."

Teodora had not been able to attend prenatal check-up sessions during her pregnancy because she didn't have the money and she was working from six in the morning until nine at night. She didn't get the medical support she needed because she lacked the resources and the time.

While she was waiting for help, Teodora felt she needed to go to the toilet. As she was on her way to the bathroom the pain got worse and she fell. She subsequently had a miscarriage in the bathroom. She passed out and was bleeding profusely. Several police officers arrived at her workplace. Teodora was handcuffed, accused of aggravated homicide on suspicion of having induced an "abortion" and detained. The following day, in her hospital bed and still confused and disorientated, she was confronted by the accusatory questioning of police officers who asked her: "Why did you do it?" She was then taken to prison.

Teodora's family have few financial resources and so were unable to pay for an effective legal defence. In 2008, she was sentenced to 30 years in prison. She has already served eight years (she has been in prison since 2007). Despite the sentence, she has continued to study and at the moment is studying for her baccalaureate. From her prison cell, Teodora told Amnesty International: "Every day I get up with a positive attitude, eager to learn something new."

These three cases, like those of Mónica and Mainumby which are described in the following chapter, bring into sharp focus a pattern that is repeated across the region; namely, the use of the criminal law to criminalize abortion in all, or almost all, circumstances. The ostensible purpose of these laws is to prevent abortions. However, this report documents how these draconian laws result in violations of human rights – including the right to life, health and women's equality – and subject women and girls to institutional violence, including torture or other ill-treatment.

[33] To read more about the story of Teodora and other women in a similar situation in El Salvador, see Amnesty International, *Separated families, Broken Ties*, November 2015, Index: AMR 29/2873/2015.

There are numerous studies that show that criminalization does not reduce the number of abortions but rather increases maternal mortality and morbidity because it forces women and girls to seek clandestine treatment that puts their lives and health at risk.[34] States in Latin America and the Caribbean have already acknowledged this.[35] However, abortion is still a crime in much of the region because the foetus is afforded absolute, or near absolute, protection, even at the expense of the rights to life, health and humane treatment of women.

As discussed in detail below (Chapter 3: "Impositions of moral or religious precepts"), this protection is strongly influenced by the notion that "life is sacred and should be protected from the moment of conception" advanced by the Catholic and Evangelical churches, which have a huge presence and influence in the region. Human rights bodies have stated that this concept is discriminatory because it imposes a stereotype of women as mothers, viewing them as mere instruments of reproduction.[36] They have also determined that while states may wish to protect the foetus, this protection cannot be absolute but must be gradual and incremental, according to the development of the foetus.[37] Fundamentally, protection of the foetus is ensured via the pregnant woman or girl[38] and by giving primacy to guaranteeing her life or health.[39]

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[34] See for example, World Health Organization, *Safe abortion: technical and policy guidance for health systems* (Second edition), 2012, p90. 2015, World Health Organization, *Sexual health, human rights and the law*, 2015, p16.

[35] In the Montevideo Consensus on Population and Development, states in the region stated that they were, "Concerned at the high rates of maternal mortality, due largely to difficulties in obtaining access to proper sexual health and reproductive health services or due to unsafe abortions, and aware that some experiences in the region have demonstrated that the penalization of abortion leads to higher rates of maternal mortality and morbidity and does not reduce the number of abortions, and that this holds the region back in its efforts to fulfil the Millennium Development Goals." ECLAC, LC/L.3697, 23 September 2013, p15

[36] See Committee on the Elimination of Discrimination against Women, the *case of L.C. vs Peru*, *Op. cit.*

[37] Inter-American Court of Human Rights, *Artavia Murillo and other vs Costa Rica*, para 264.

[38] "Also, taking into account, as indicated previously, that conception can only take place within a woman's body... it can be concluded with regard to Article 4(1) of the Convention, that the direct subject of protection is fundamentally the pregnant woman, because the protection of the unborn child is implemented essentially through the protection of the woman, as revealed by Article 15)(3)(a) of the Protocol of San Salvador, which obliges the States Parties "to provide special care and assistance to mothers during a reasonable period before and after childbirth," and article VII of the American Declaration, which establishes the right of all women, during pregnancy, to special protection, care, and aid." Inter-American Court of Human Rights *Case of Artavia Murillo et al (in vitro fertilization) vs Costa Rica*; Preliminary Objections, Merits, Reparations, and Costs; Judgment of November 28, 2012, para 264.

[39] Committee on the Elimination of Discrimination against Women, View: Communication No 22/2009, *L.C. vs Peru*, para 8.15, 2011; Committee on the Elimination of Discrimination against Women, Concluding observations on Hungary, 2013, para 30.

STATE PRACTICES THAT GENERATE VIOLENCE AGAINST WOMEN AND, SOMETIMES, TORTURE OR OTHER ILL-TREATMENT

In other cases, the state supports or tolerates public policies or practices on sexual and reproductive rights that are deeply discriminatory towards women and result in violence against women and, in some instances, torture and other cruel, inhuman or degrading treatment.

In Peru, for example, implementation of the National Programme for Reproductive Health and Family Planning 1996-2000 (Programa Nacional de Salud Reproductiva y Planificación Familiar, PNSRPF), resulted in the forced sterilization of an as yet unknown number of mostly Indigenous women in rural areas living in poverty. The Office of the Ombudsman has documented the sterilization of 272,028 women during the period 1996-2001[40] and has concluded, after three in-depth reports, that there were no guarantees of free choice in the application of this permanent method of contraception.[41] Esperanza is one of the women affected.

Esperanza Huayama, President of the Women's Association of Huancabamba, Peru, October 2015. © Amnesty International / Raúl García Pereira

[40] Ombudsperson's Office. "La aplicación de la Anticoncepción quirúrgica y los derechos reproductivos III". Informe Defensorial Nº 69. Lima: Ombudsperson's Office, 2002, p62.

[41] *Ibid.* p304

ESPERANZA'S STORY: PERU

Esperanza is 59 years old and lives in the northern Andean region of Peru. In 1998, she had nine children and recalls that at that time "health promoters were coming to the villages to see us and tell us that a group of doctors from Lima was coming to the area. They told us to come so we could get food and help. So lots of us went along."

When Esperanza arrived at the polyclinic, she learned that they had brought them there to have their tubes sealed as part of the Family Planning Programme being implemented at that time. During the operation, Esperanza overheard a conversation between the doctor and the nurse who pointed out that she was pregnant: "I heard the nurse speaking to the doctor and talking about my 'condition'." That's when I reacted and told him, 'If they're going to take my child, I want die with him'. I begged them not to remove the foetus. They didn't say anything. They just gave me another injection and I fell asleep. I don't remember anything, until I woke up at 6pm."[42]

In the months following sterilization, Esperanza experienced continuous pains in her belly and nausea. She went to see a doctor living in the province who finally determined that she had lost the pregnancy: "I lost my baby son against my will because of what those doctors who operated on me did. They didn't care about my life or my baby."

Esperanza still lives with the scars of that forced sterilization: "The pain of losing my baby never leaves me. I'm sick and it's because I let them operate on me; that's why I'm like this. My belly swells up and I have no energy. I feel awful. Sometimes, a few of us who had our tubes sealed get together. They have backaches and headaches too. They suffer from the same aches and pains as I do. Some have been left in very poor health; they can barely walk. Others have died. I've been able to buy medicines and take care of myself, thank God. I also use medicinal plants; I don't neglect my health. The Comprehensive Health Insurance [Seguro Integral de Salud, SIS] only prescribes paracetamol for us and that doesn't do anything at all. We don't get to see specialist doctors, just nurses. We've been forgotten".

Like many of the women who were sterilized, Esperanza's life has changed. She can no longer do the work she did before and so has lost her source of an income: "I used to spin and weave, but now I can't because my back aches and my body swells up. I can't do anything." Fortunately my husband supports me, unlike some other women whose husbands have abandoned them because they can't do anything now. We are suffering. Some have even died of cancer because they couldn't get treatment."

Those responsible for violating the human rights of Esperanza, and all the other women sterilized without their consent during that period, continue to enjoy total impunity. Esperanza is the current President of the Women's Association of Huancabamba Province (Asociación de Mujeres de la Provincia de Huancabamba, AMHBA). "Although people say I am illiterate, it doesn't discourage me, because as a member of the organization I have learned to be strong, to hold my own so that they don't try to fool me, so that they don't mock us as Indigenous women." In the AMHBA we have organized ourselves to defend the rights of sterilized women."

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[42] The World Health Organization recommends postponing surgical sterilization procedures such as that performed on Esperanza if the woman is pregnant. WHO, *Medical eligibility criteria for contraceptive use*, Fifth Edition 2015, p232, available at: http://apps.who.int/iris/bitstream/10665/181468/1/9789241549158_eng.pdf.

The policy and practice of mass sterilizations in Peru have now ended,[43] but the violence they inflicted on Esperanza and the other women sterilized against their will has not. By failing to guarantee truth, justice and reparations for such serious human rights violations, the state is subjecting the victims of forced sterilizations to further and ongoing violence.

In April 2015, the Public Prosecutor's Office reopened an investigation into the systematic practice of forced sterilization in the country as a grave violation of human rights.[44] At the time of writing, the investigation was continuing. In addition, in November 2015, the government began recording the names of victims of forced sterilization in order to provide them with psychological and medical support and to facilitate their access to justice, although so far, it has not provided them with comprehensive reparation.[45]

Mural created for International Day for the Elimination of Violence against Women. The mural reads: "A life free of violence is a human right". Veracruz, Mexico, 2015 © Veracruz Municipality Department of Social Communications

[43] The Ombudsperson in Peru has recognized that following the recommendations made to the Ministry of Health, various actions have been taken, including changes in regulations (both in the Programme for Reproductive Health and Family Planning Handbook 1996-2000 as well as in the AQV Manual, as well as in its implementation. Ombudsperson, Eduardo Vega Luna, at the «Foro sobre los derechos humanos de las mujeres en Esterilizaciones forzadas. 18 años sin justicia», Lima, Auditorio del Congreso de la República, 6 July 2015, available at http://www.defensoria.gob.pe/modules/Downloads/prensa/discursos/2015/discurso-06-07-2015.pdf.

[44] In April 2015, the Senior Public Prosecutor Specializing in Organized Crime, Luis Landa Burgos, stated that: "Extending the preliminary investigation into the case by THREE MONTHS will allow for detailed proceedings and allow us to clarify the matter." Legal complaint N ° 01-2014. In February 2016 the investigation was extended for a further 150 days.

[45] In adopting "Supreme Decree No 006-2015-jus", the Peruvian government declared prioritizing care for victims of forced sterilizations between 1995 and 2001 to be a matter of national interest and created the relevant register. This includes declaring the social support and the physical and mental health of the victims of forced sterilization of national interest and ensuring free legal aid so that they can have access to justice. The decree establishes that the Register of Victims aims to identify all those affected and ensure their access to justice.

Unfortunately, the practice of sterilizing women without their consent is not confined to the past or to Peru. Civil society organizations have documented cases in at least four countries in the region where women living with HIV are being coerced or forced to undergo sterilization,[46] including some states in Mexico.[47]

In Mexico, as in all countries of the region, when pregnant women go to hospital, they run a serious risk of experiencing obstetric violence.[48] Obstetric violence can take the form of being denied treatment, have requests or demands ignored, criticisms or jibes, or making medical decisions about childbirth without their consent. Women living with HIV are even more exposed to such violence. Some may even be forced or coerced into undergoing sterilization because of their HIV status by the failure to provide appropriate information about mother-to-child transmission of the virus.[49]

In recent years various civil society organizations, such as Balance, Promotion for Development and Youth (Balance, Promoción para el Desarrollo y Juventud, A.C.), have received a number of testimonies from women living with HIV who point out that misinformation about the transmission of the virus has often resulted in coerced or forced sterilization. Despite the fact that there is ample evidence about effective interventions to reduce the risk of mother-to-child transmission, a number of HIV-positive women have been

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[46] Forced sterilization is when a person is sterilized without their knowledge or informed consent. "Sterilization under coercion" is when people give their consent for the procedure, but on the basis of incorrect information or other coercive tactics such as intimidation or that conditions are attached to sterilization, such as financial incentives or access to health services, etc. Conf. T Kendall and C Albert, "Experiences of coercion to sterilize and forced sterilization among women living with HIV in Latin America." *Journal of the International AIDS Society,* 2015, 18:19462.

[47] A report carried out in El Salvador, Honduras, Mexico and Nicaragua, concluded that women living with HIV and whose health providers knew about their condition when they became pregnant, were six times more likely to undergo forced or coerced sterilization in these countries. In addition, many of these women reported that health-care providers were told that the fact that they were living with HIV meant they no longer had a right to choose the number and spacing of their children, or to use a contraceptive method of their choice. Health-care workers also provided incorrect information about the consequences for their health and that of their children and denied them access to treatments that minimize mother-to-child HIV transmission to coerce them into being sterilized. T Kendall and C Albert, "Experiences of coercion to sterilize and forced sterilization among women living with HIV in Latin America", *Journal of the International AIDS Society*, 2015, 18:19462. Similarly, a regional study (carried out by Balance A.C. among 100 women with HIV in 2013) reveals similar results, including difficulties in getting access to information about reproductive matters, from the time of the diagnostic test, to treatment options, to protected sex and safe sex, and about options to choose to have children (report Balance A.C., unpublished, on file with AI).

[48] According to a report by the Information on Reproductive Choice (Grupo de Información en Reproducción Elegida, GIRE), obstetric violence is a serious problem in Mexico, as in many cases obstetric health services in Mexico can end in obstetric violence or maternal death. This has a significant impact on Indigenous women living in poverty. GIRE, *Niñas y Mujeres sin Justicia: derechos reproductivos en México*, 2015, p119.

[49] New HIV infection in children can be prevented and the lives of their mothers can be saved if pregnant women living with HIV and their children have a timely access to quality life-saving antiretroviral drugs. These are not only important for the women's own health, but also prevent HIV transmission during pregnancy, childbirth and breastfeeding. When antiretroviral drugs are available as a preventative measure, HIV transmission can be reduced to less than 5%. UNAIDS, *Global Plan towards the elimination of new HIV infections among children by 2015 and keeping their mothers alive*, 2011, p8.

forced to undergo sterilizations or have agreed to be sterilized without having the proper information and knowledge about their options.[50] This is what happened to Michelle in Mexico.

MICHELLE'S STORY: MEXICO

Michelle is a 23-year-old woman living with HIV. Originally from Veracruz, she is housewife and mother of two. In 2014, during her second pregnancy, Michelle started attending the General Hospital in her municipality as part of her prenatal care. When she was four months pregnant, the hospital informed her that she was HIV-positive. From that moment on and even after the birth of her child, she was subjected to various forms of ill-treatment by health-care providers in the State of Veracruz.

As she was nearing her due date, Michelle attended an appointment with the gynaecologist, accompanied by her mother, to plan her caesarean section. The gynaecologist told her she would need surgery to prevent her having any more children (bilateral tubal occlusion).[51] Michelle did not want this procedure; her preferred method of contraception was a coil (intrauterine device, IUD). However, the doctor insisted that she undergo the procedure. Michelle remembers being told in a very brusque manner: "What are you waiting for? You have HIV and you're about to bring a sick child into the world: Why do you want to get pregnant again?"

Michelle told Amnesty International: "I felt under a lot of pressure and I felt ashamed. The doctor even had a go at my mother, telling her that, as a mother, 'she must understand'". Michelle remembers that was very scared because she had been told it was a painful procedure. Although Michelle said several times that she did not want the procedure, the operation went ahead without obtaining her full informed consent.

On 27 September 2014, Michelle arrived at the General Hospital in labour, but the surgeon on duty did not want to carry out a caesarean section. She had to wait several hours for a doctor to arrive who was willing to carry out the procedure on women with HIV. While she was in the General Hospital, she was subjected to discriminatory treatment and verbal abuse; a large sign was placed above her bed giving her name, age, date of admission and the letters HIV. Likewise, health workers repeatedly ignored her requests for help for basic things, like going to the toilet.

Michelle suffered a haemorrhage and health personnel responded by thrusting a piece of cloth at her and telling her to clean up her own blood, shouting that she had to do it because hospital staff didn't want to be infected. Michelle also remembers that she was the only one who was given her food on disposable plates and then only after all the other women in the ward had eaten.

Michelle currently works for a foundation that helps pregnant women living with HIV. The organization helped her to overcome the trauma and share her experiences with other women like herself who have undergone forced sterilization. "It caused me a great deal of suffering, because it is a scar that I will carry all my life. It wasn't my decision. They did it to me by force."

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[50] Even though national legislation defines family planning as the right of every person to decide in a free, responsible and informed manner on the number and spacing of their children and to obtain specialized information and appropriate services. The exercise of this right applies to all, irrespective of gender, age and people's social or legal status. (NOM 005-SSA2-1993).

[51] Bilateral tubal occlusion is a permanent contraceptive method for women. It consists of blocking both fallopian tubes in order to prevent fertilization. See Norma Oficial Mexicana, NOM 005-SSA2-1993, De los Servicios de Planificación Familiar, available at: http://www.hgm.salud.gob.mx/descargas/pdf/dirgral/marco_juridico/normas/nom_02.pdf

Michelle's case exposes a practice which, in addition to being highly discriminatory, violates human rights standards which recognize that women living with HIV have the right to contraception and other reproductive health services in the same conditions as all women. According to these standards contraceptives must be available and affordable and women must have the right to freely choose or reject family planning services (including sterilization).[52]

The element common to the experiences of Esperanza and Michelle and those of Rosaura and Tania is that it was other people, usually medical staff working for the state, who made decisions about their reproductive future, their health and their lives. And each of the women is still living with the serious consequences of those decisions. All four women were deprived of the freedom to make such important decisions as stopping a pregnancy that put their life or health at risk, or keeping a child that they wanted or permanent sterilization that would prevent them ever having children again. The experience of Mainumby, a young girl in Paraguay, also illustrates the same violence inflicted by the state.

In April 2015, the story Mainumby[53] caused a public outcry and made international headlines. Mainumby, who was 10 years old and weighed just 34kgs, was 21 weeks pregnant as a result of rape, apparently committed by her stepfather.

MAINUMBY'S STORY: PARAGUAY

Mainumby lived with her mother, her brother WF and her stepfather in a deprived area on the outskirts of Asunción. Mainumby's mother, CEF,[54] worked in a school kitchen and would leave home very early in the morning and return late in the evening. Mainumby's stepfather worked as a mechanic and had no fixed working hours. CEF suspected that her daughter was being abused. Therefore, in January 2014 she began lodging complaints with the relevant authorities, but these were dismissed. The authorities failed to investigate the allegations properly or to give immediate protection to the girl by keeping the alleged abuser away from her.

In January 2015, Mainumby began to complain of stomach pains and said she was feeling unwell. Her mother took her to two different public health centres and both diagnosed a parasitic infection. But Mainumby continued to feel ill and in mid-April they went to a private hospital where she was diagnosed with a possible tumour and an ultrasound was requested. On 21 April 2015, Mainumby and her mother arrived at the Holy Trinity Maternity and Infant Hospital to have the ultrasound, which revealed by chance that she was 20-21 weeks pregnant.

At the hospital the girl and her mother received comprehensive care. The Hospital Director filed the relevant reports and publicly stated that this was a high-risk pregnancy because the girl was so young and her uterus was not developed enough to carry a baby. According to press reports, the Hospital Director said that, "in

[52] "The interagency statement of the World Health Organization (WHO), UN women, UN AIDS, UNICEF, the United Nations Population Fund, the United Nations Development Programme and the Office of the High Commissioner for human rights (OHCHR) on involuntary sterilization", p3-4; *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, 2014, available at: http://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf

[53] Not her real name.

[54] The woman asked to be identified by these initials.

the event that the girl's life or health is at risk, a termination will be considered. We are legally mandated to do so."[55] From that moment, organizations with religious affiliations began to apply constant pressure on CEF and on various officials in different state departments to prevent the termination of the Mainumby's pregnancy.

On 23 April, the Public Prosecutor on duty ordered that Mainumby be admitted to the private Queen Sofia Hospital run by the Paraguayan Red Cross, accompanied by her mother, and that for the time being she stop attending school. Four days later, they separated Mainumby from CEF by issuing a detention order against CEF on charges of failing to exercise her duty of care and complicity in the abuse of her daughter, even though she had previously reported her suspicions about the abuse. Mainumby's rapist remained at large. The arrest of CEF took place on the same day as a termination of Mainumby's pregnancy was requested to avoid risk to her life and health. The case provoked a media storm and the resulting pressure led to a press statement by the country's highest authorities categorically rejecting the request for an abortion.[56]

In addition to being denied an abortion, Mainumby was separated from her mother and was left on her own in the hospital. A few days later, a judicial order "interned" Mainumby in a home, described as the "hostel for child mothers".[57] This hostel is in an enclosed area and the judge dealing with the case ordered that visits be strictly limited. While she was in the hostel, Mainumby was not able to attend school and it was only after numerous requests from CEF that she received educational support once a week. On May 24, Mainumby's 11th birthday, her mother was able to visit her for the first time (CEF was allowed to spend 15 minutes with her daughter in the hostel).

During the time she was in prison, CEF received no news of her daughter from the authorities; her only sources of information were the press and human rights organizations who were providing her with support and advice.

Mainumby finally gave birth by caesarean section on 13 August 2015 at the Red Cross Hospital. She was discharged 10 days later. The after-effects, physical and psychological and in terms of Mainumby's project of life, are still not clear. Mainumby is having enormous difficulty in getting hold of the medicines she needs for her recuperation and the enriched whole milk for the newborn that would enable her to pursue important aspects of her development as a child, including going to school; this is virtually impossible while she is having to breastfeed the baby.

The case against CEF has been dismissed, but she has lost her job and now must take care of her two young children and the new baby.

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[55] ABC Color, Declaraciones del Dr Ricardo Oviedo, Director del Hospital Materno Infantil de Trinidad; 24 April 2015, available at: http://www.abc.com.py/edicion-impresa/locales/si-la-vida-de-nina-embarazada-corre-riesgo-interrumpiran-gestacion-dicen-1359702.html. See also https://www.youtube.com/watch?v=8_OLLYOiam8.

[56] "We [in the state] are not, from every point of view, in favour of the termination of the pregnancy", statement published in the local media regarding the Minister of Public Health and Social Welfare Antonio Barrios' rejection of abortion, in the case of "Mainumby": http://www.ultimahora.com/nina-embarazada-ministro-salud-no-esta-favor-del-aborto-n892740.html. Abortion is criminalized in Paraguay, except when the life of the woman or girl is in danger.

[57] On 30 April, the Youth Judge issued preventative measures ordering the internment of Mainumby in the Maternal Hostel "Andres Gutebich", very close to the Hospital.

Demonstration to commemorate International day for the Elimination of Violence against Women, Asunción, Paraguay, 25 November 2015. © REUTERS

This is probably one of the cases that most starkly exposes the cycle of institutional violence to which women and girls are subjected by agents of the state. CEF first reported the possible abuse of Mainumby in January 2014 to the Municipal Council of Child and Adolescents Rights (Consejería Municipal de Derechos del Niño, Niña y Adolescente, CODENI), but no action was taken.[58] Although CODENI has a legal obligation to investigate and ensure protection in cases of child abuse, all state officials did was tell CEF that she should lodge a criminal complaint with the Public Prosecutor. On 20 January 2014, CEF lodged a complaint with the Public Prosecutor's Office, which opened an investigation that was dismissed on the basis that psychological assessments of the girl found no signs of abuse.[59] The Prosecutor did not follow any of the due diligence measures, set out in international human rights standards,

[58] CODENI comes under the auspices of municipal government and is mentioned in Paraguay's Code on Children and Adolescents (2001), which incorporates the principles of the Convention on the Rights of the Child. Law 4295/11 also establishes a procedure to deal with child abuse in Paraguay. Both set out the obligation of CODENI to receive complaints about violations of the rights of girls and to immediately take measures to protect and support them (see Code on Children and Adolescents, Articles 5 and 34 and Law 4295/11, Article 4). CODENI has stated that it has no record of CEF's complaint. However, it has acknowledged that "in cases involving allegations of sexual abuse, it advises the complainant to report it to the Public Prosecutor's Office (*Cf.* expediente penal de la causa sobre abuso sexual de Mainumby - Causa 484/2014, Fjs 19, on file with Amnesty International).

[59] On 20 August 2014, the Public Prosecutor requested that the complaint be dismissed. Case 484/2014. Criminal prosecution official, Zone No 5, Luque (Agente Fiscal Penal de la Fiscalía Zonal Numero 5 de Luque).

that state officials are required to take when investigating violence against women and girls.[60] Neither was the alleged abuser identified in order to remove him from the girl's surroundings as a preventive measure, nor was the Children's Commissioner (Defensoría de la Niñez) informed of the case so that they could protect the girl's rights.

According to the Convention of the Rights of the Child (CRC), children and adolescents have the same rights as every other person and also to specific safeguards because they are still developing and their capacities are evolving. Article 3.1. of the CRC states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The CRC also establishes special mechanisms for the protection of children and adolescents from physical, mental and sexual abuse and ill-treatment, including the obligation of the state to protect them and investigate the perpetrators of such crimes.[61]

The Committee on the Rights of the Child recommends "that cases of violence in the home and of ill-treatment and abuse of children, including sexual abuse in the family, be investigated according to judicial procedures that are child sensitive and with due regard for the protection of the right to privacy of the child. Measures should also be taken to ensure that support services are available to children during legal proceedings to ensure the physical and psychological recovery and social reintegration of victims of violations and avoid their being treated as criminals or ostracized."[62]

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[60] Among other requirements, in the course of a criminal investigation for rape: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; ii) the victim's statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and vi) access to advisory services or, if applicable, free legal assistance at all stages of the proceedings should be provided. Inter-American Court of Human Rights, *the case of Fernández Ortega et al vs Mexico,* Preliminary Objections, Merits, Reparations, and Costs; Judgment of 30 August 2010, para 194. See also, Inter-American Court of Human Rights, the case of *Rosendo Cantu and another vs Mexico,* Preliminary Objections, Merits, Reparations, and Costs; Judgment of 31 August 2010, para 178; Inter-American Court of Human Rights, *the case of J vs Peru,* Preliminary Objections, Merits, Reparations, and Costs; Judgment of 27 November 2013, para 344.

[61] Art. 19 of the Convention on the Rights of the Child: "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

[62] Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, "Article 19", p281.

As happens throughout the region, victims of family violence are often not taken seriously; their complaints are not investigated properly and no protection is provided. If the CODENI or the Public Prosecutor's Office had taken immediate steps to protect Mainumby and to remove the alleged perpetrator from her environment, she would not have continued to be raped by her stepfather and she would not have become pregnant.[63]

This re-victimization by a justice system that should have protected her was compounded by the failures of the state health system. CEF took her daughter to two public health institutions where not only did they fail to diagnose the problem and prescribe the wrong medication, but one doctor accused her of being "sulky and difficult". It was by chance that, four months later, a public hospital finally spotted the result of the rape and by then Mainumby was already 20 weeks pregnant.

Abortion is criminalized in Paraguay, except when the life of the woman or girl is in danger.[64] No exceptions are allowed in any other circumstances, even when pregnancy is the result of rape or incest or when the health of the woman or girl is at risk. This violates the minimum requirements set out in human rights standards. The Committee on the Rights of the Child, analysing the situation in another country,[65] recently expressed concern at the criminalization of abortion in cases of rape or incest and at restrictive interpretations of therapeutic abortion which create a situation in which girls are obliged to resort to unsafe abortions, endangering their health and their lives. The Committee called on the state to:

"Decriminalise abortion in all circumstances, ensure children's access to safe abortion and post-abortion care services, at least in cases of rape, incest, serious impairment of the foetus and in cases of risk to the life and health of mothers, and provide clear guidance to health practitioners and information to adolescents on safe and abortion and post-abortion care. The views of pregnant girls should always be heard and respected in abortion decisions."[66]

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[63] According to the diagnosis, Mainumby was 20-21 weeks pregnant on 21 April 2015. The rape that resulted in the pregnancy must therefore have occurred in mid-December 2014.

[64] Article 109.4 of the Criminal Code, Death indirectly caused in childbirth by necessary treatment. "Anyone indirectly bringing about the death of the foetus will not be liable to prosecution if, in the opinion of medical experts, this was necessary to protect the life of the mother from serious risk." (Unofficial translation.)

[65] International human rights standards require states to: 1) decriminalize abortion in all circumstances in order to eliminate the punitive measures imposed on women and girls who seek abortion services and on health professionals providing them if there is a full consent. 2) Ensure access to abortion in law and in practice as a minimum in cases where the pregnancy poses a risk to the life or health of the woman, where the foetus suffers from severe malformation or is not viable, or where the pregnancy is the result of rape or incest. 3) Take steps to ensure that the life and health of the woman or girl take precedence over the protection of the foetus. 4) Regardless of the legal status of the termination, states have an obligation to ensure access to quality and confidential health services for the treatment of complications arising from unsafe abortions and miscarriages. This treatment should be free from discrimination, coercion and violence. For more information on human rights standards regarding abortion, see Amnesty International, *On the brink of death: Violence against women and the abortion ban in El Salvador*, (Index: AMR 29/003/2014), pp47-50 and Annex I. The Special Rapporteur on torture has repeatedly expressed concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment. (See CAT/C/PER/CO/4, para 23). On legal restrictions on abortion as torture and other cruel, inhuman and degrading treatment, see Chapter 4, p47.

[66] Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Peru (11-29 January 2016). Para 56 b, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en.

Nevertheless, even under the restrictive legislation in Paraguay, Mainumby should have had access to a legal abortion. The World Health Organization has declared that pregnancy poses a danger to the lives of adolescents; adolescents aged under 16 face four times the risk of maternal death compared to women in their 20s.[67] According to news sources, Dr Maria Ligia Aguilar, Director of Comprehensive Child and Adolescent Health at the Ministry of Health of Paraguay, has expressed similar views.[68]

Although they had all this information at their disposal, state officials still refused to consider terminating this high-risk pregnancy. In the face of their refusal to allow a termination, experts from the UN, the European Parliament, the Inter-American Commission on Human Rights and other national and international organizations asked the authorities to take urgent measures to protect the life and health of the child by ensuring her access to all the treatment necessary to safeguard her health, including the option of safe abortion.[69] However, the authorities continued to reject abortion as an option, claiming that the girl was in a stable condition.[70] Subsequently, Paraguay refused to implement the precautionary measures requested by the Inter-American Commission on human rights on 8 June 2015 to protect Mainumby's life and personal safety by ensuring all medical options were available.[71]

The state at no point took into consideration the implications for Mainumby's overall health and project of life, and all the mental and physical dangers posed in the short, medium and long term by this high-risk pregnancy. This very small child was already suffering from the profound trauma of rape and sexual abuse and the pregnancy was a daily reminder of those violations. It is difficult to fully comprehend the extreme cruelty involved in forcing a child to continue a pregnancy and forced motherhood. The physical and mental impact of continuing with this high-risk pregnancy, giving birth and breastfeeding a newborn baby could be devastating and comparable to torture or other cruel, inhuman or degrading treatment.

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[67] World Health Organization, "Adolescent pregnancy: a culturally complex issue", available at: http://www.who.int/bulletin/volumes/87/6/09-020609/en/.

[68] She stated that pregnancy at a young age creates several complications that may compromise both the life of the young mother and the baby: "One of the risks is the threat of premature birth, which occurs in 18% of cases. This can reduce the baby's chances of survival. There can also be complications during the birth itself which have, on occasion, resulted in the deaths of adolescent girls" http://www.abc.com.py/edicion-impresa/locales/si-la-vida-de-nina-embarazada-corre-riesgo-interrumpiran-gestacion-dicen-1359702.html.

[69] See United Nations, *Human rights: Paraguay has failed to protect a 10-year old girl child who became pregnant after being raped, say UN experts*, 11 May 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15944&LangID=E. See also inter-American Commission on Human Rights, Precautionary Measures, MC 178/15, Case of the girl named Mainumby in Paraguay, 8 June 2015, http://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf, (available in Spanish only); European Parliament, resolution of 11 June 2015 on the legal aspects related to child pregnancy (2015/5/2733(RSP). See also Amnesty International, "Paraguay insiste en desconocer el drama de niña de diez años violada y embarazada" (Index: AMR 45/1695/2015), (available in Spanish only).

[70] Paraguayan Ministry of Health, http://www.mspbs.gov.py/v3/nina-embarazada-gestacion-no-presenta-complicaciones/ and Ministry of Foreign Affairs http://www.mre.gov.py/v2/Noticia/2876/comunicado-de-prensa.

[71] See Ministry of Foreign Affairs, press release, 11 June 2015, http://www.mre.gov.py/v2/Noticia/2876/comunicado-de-prensa.

In a similar case in 2012, the European Court of Human Rights found that the actions of the state had violated the "prohibition of inhuman or degrading treatment" and that the difficulties were the result of "the lack of a clear legal framework, the delay of medical staff and also as a result of harassment [by religious institutions]".[72]

Mainumby's case is one of extreme violence, but unfortunately hers is not an isolated case either in Paraguay or indeed in the region, which has the second highest rate of teenage pregnancies in the world (around 70 births per 1,000 women aged 15-19) and it is estimated that 38% of women become pregnant before the age of 20. Almost 20% of births are to adolescent mothers.[73]

The pregnancy rate for girls under 14 in the region is not known. However, very worryingly, preliminary studies indicate that it is a problem in almost all countries in the region and affects above all families living in poverty and rural and Indigenous communities. It is the product of a series of serious shortcomings in state protection of these children.[74] In Paraguay, where the age of consent is 16, all pregnancies involving girls under the age of 14 are by definition the result of sexual abuse. For many years the rate of these crimes has remained constant, showing no improvement.[75]

Unfortunately, it is not only in cases involving young girls that certain state agents consider that they have greater decision-making power than the person whose life, health and future, as well as the future of their family, are at stake. Near Asunción, in Entre Ríos (Argentina), Mónica suffered similar violence at the hands of the state with serious consequences for their health and life. The cases of Mainumby and Mónica have another thing in common: the special vulnerability of women and girls with limited resources faced with a system that inflicts violence on them.

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[72] European Court of Human Rights, *Case of P. & S. vs Poland*, ECHR 398, 2012. The case involved a 14-year-old girl "P", who was pregnant as a result of rape and who was denied her right to abortion. At the local hospital, the Head of Obstetrics and Gynaecology said that P and her mother needed a priest, not an abortion, and set up a meeting with a Catholic priest. P discovered that the priest had been given confidential information about her pregnancy without her consent. In desperation, P and her mother travelled to Warsaw, where, with the support of an NGO, they finally saw a doctor, but the Church continued interfering and mother and daughter were harassed to the point where they needed police protection. Weeks after the rape and only a few days before reaching the time limit for a legal abortion, the Ministry of Health intervened and P was able to obtain the abortion she had right to in a hospital of 500km from her home. The European Court of Human Rights found that the state had violated P's human rights (hfile:///Users/lina/Downloads/Chamber%20judgment%20P.%20and%20S.%20v.%20 Poland%2030.10.12.pdf).

[73] UNFPA Paraguay, *JOPARE*, July 2013, www.unfpa.org.py.

[74] Planned Parenthood, Federation of America, Global: *Stolen Lives*, CLADEM (report to be published in March 2016, preliminary conclusions on file with Amnesty International).

[75] Official statistics indicate that in 2009, 590 pregnancies were recorded among children and adolescents in this age group; in 2010 there were 555; and in 2011, a total of 611. UNFPA Paraguay, *JOPARE*, July 2013, www.unfpa.org.py.

MÓNICA'S STORY: ARGENTINA[76]

Mónica suffers from a congenital heart disease. The condition causes various complications[77] resulting in a series of five miscarriages between 1997 and 2005. The latest miscarriage occurred in the sixth month of pregnancy. Given the risks that each pregnancy posed to Mónica's health and life, the doctor advised that she undergo tubal ligation, and she agreed. But the day she was admitted to undergo the procedure, the public hospital was not able to carry it out because, according to her medical records, "the operating theatre was not ready". Mónica was discharged. The appointment was not rescheduled and she was not offered any alternative contraceptive method.[78]

Mónica and her husband have a 17-year-old son, M, who was born on 15 June 1998, at 27 weeks weighing 1.7kgs. M suffers from developmental delay (learning difficulties) because of his premature birth, which was in turn a direct result of his mother's heart condition.

On 15 June 2011, Mónica went to the San Roque Public Hospital where it was discovered that she was 10 weeks pregnant. The hospital knew Mónica's medical history, but they carried out tests on her heart to confirm her state of health. The same tests were carried out in late July when she was 17 weeks pregnant.

On 4 August, the Multidisciplinary Unit at the San Roque Hospital concluded unanimously that **"in order to protect the life of the patient**, given the particular and serious health conditions that have been uncovered and confirmed... **we advise that that the patient undergo a termination of her pregnancy... in order to protect her health and avoid a life-threatening situation."**

In Argentina, abortion is legal in cases of rape and also where there is a danger to the life or health of the woman. The latter was the case here.

On the same day, 4 August, Mónica gave her written consent for the termination and the procedure was scheduled for 11 August in San Martin Hospital, which has a cardiology department in case that was needed.

On 11 August, as Mónica was preparing to go into the operating theatre, accompanied by her sister, a doctor came into the room, saying that what they were about to do "was a crime" and that he would report the doctors carrying out the procedure to the authorities. He stopped the procedure from going ahead. This doctor not only managed to cancel the procedure without Mónica's consent, but he also subjected her to new cardiology examinations by other doctors who accessed her medical records without her consent. Although all these breaches were reported, no sanctions were imposed on the medical personnel involved.[79]

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[76] At their request, the names used in this case have been altered to protect people's identities.

[77] Tetralogy of Fallot is a complex heart condition involving a large ventricular septal defect, an overriding aorta, pulmonary stenosis and right ventricular hypertrophy. Most sufferers undergo early corrective surgery. The condition results in reduced pulmonary arterial blood flow and some degree of pulmonary hypoplasia. (http://www.sachile.cl/upfiles/revistas/51c333327fc54_revision_carvajal.pdf). Studies have shown that the most common obstetric complications include, caesarean sections (20%), as well as cardiovascular problems such as significant arrhythmias (8.1%), postpartum haemorrhage (10%) and hypertension (8%). Other less common complications include, heart failure, myocardial infarction and strokes http://www.reproduccionasistida.org/tetralogia-fallot-embarazo/.

[78] Despite the fact that tubal ligation is expressly provided for in Article 6 of the Law No 25673 on Sexual Health and Responsible Parenthood (2003), it was only in 2006 that this was accepted as an approved method available to patients with this type of health risk.

[79] Administrative proceedings were initiated against medical personnel as a result of a complaint filed by NGOs who were following the case. However, the case was closed "as the actions of hospital staff presented no evidence of wrongdoing." Official Gazette, Province of Entre Rios, Parana, No. 25.378 - 007/14, Friday, 10 January 2014, Resolution No. 3336, 11 September 2013.

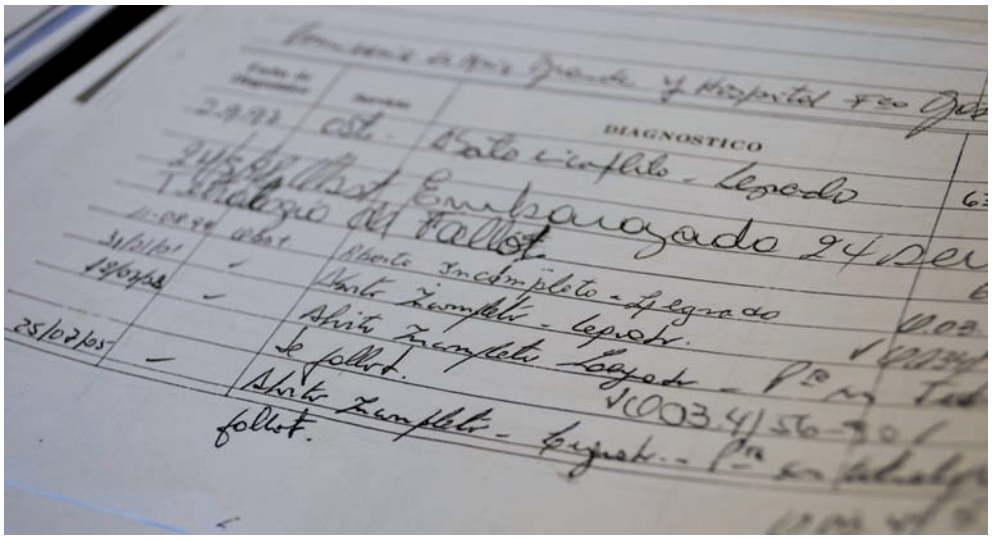
That same day Monica was sent back to San Roque Hospital "because the hospital has experience in this type of pathology". The following day, that hospital ordered that Monica be transferred to the Posadas Hospital in the Province of Buenos Aires, some 1,250km from her home and her family, because it had more specialized facilities.

On 14 August, Monica was admitted to the Posadas Hospital. She was completely alone; her husband could visit only once a week between 4 and 5pm. The distances involved, the cost of travel and the fact that he needed to take care of their son and go to work meant that Monica spent almost four months totally alone in the hospital. She gave birth to a daughter by caesarean section on 25 November.

Eight days later, while still in the Posadas Hospital, Monica suffered a stroke (cerebrovascular accident CVA). The genetic heart disease, the fact that she was forced to continue with the pregnancy, the large amount of drugs that she was given in the last stage of pregnancy and the fact that she was hospitalized against her will and separated from her family were all contributing factors. The stroke left her paralyzed on the left side of the body. Monica subsequently suffered other complications that forced her to stay in hospital for another six months.

The stroke caused permanent damage and Monica remains scarred by the trauma she has lived through. She cannot move her hand, she has little mobility in one of her legs and she is afraid to go out of the house. Her life and that of her family are no longer the same.

In Argentina, the law permits legal abortion when the life or health of a pregnant woman is at risk or when the pregnancy is the result of rape. In Mónica's case there was no doubt that the abortion was legal. She had asked for a termination and a multidisciplinary group of doctors had recommended the procedure in order to save her life and protect her health.



Extract from Mónica's medical records showing the abortion she had requested, and that doctors had recommended, was arbitrarily stopped, Argentina, 2015. © Amnesty International

The legality of abortion in such cases was confirmed by the Supreme Court of Justice on 13 March 2012.[80] However, nearly four years later, access to legal abortion (in force since 1921) has yet to be implemented throughout the country.[81]

According to official Ministry of Health figures, 243 women died in 2013 in Argentina of pregnancy-related complications.[82] Since 1980, complications related to abortion has been the leading direct cause of maternal deaths.[83] Complications resulting from unsafe abortions are the leading single cause of maternal deaths in 17 of the 24 provinces. It is estimated that more than 60,000 women have to be admitted to a public hospital because of the consequences of abortions performed in unsafe conditions. Most of the victims come from low-income groups.[84]

Although in Mónica's case, the abortion was clearly legal, the state prevented her from exercising her right and inflicted violence similar to that seen in the cases of Rosaura, Tania and Teodora. This violence included transferring her to various health centres, subjecting her to a forced pregnancy that posed grave risks to her life and health, and forced internment very similar to arbitrary detention that separated her from her family for nearly a year. This whole cycle of violence had very serious consequences for her physical and mental health and her life. It also revealed the power medical staff have to impose their own beliefs on women's rights to health, physical integrity, autonomy and life, even in situations where the legality of abortion was not in doubt. It also highlights the complicity of the state in allowing them to do so.

Some 53,000 abortion-related admissions are recorded by public hospitals in Argentina every year.[85] About 15% involve adolescents aged under 20; about 50% of the women affected are aged between 20 and 29. Unfortunately, the lack of accurate and reliable data on hospitalizations, fertility and births makes it difficult to assess the number of abortions.

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[80] In the case of "F.A.L", the Supreme Court clarified the way in which Article 86 of the Criminal Code should be interpreted. It established that legal abortion should be available, without the need for judicial authorization, and that in cases of rape, the sworn statement of the woman was sufficient. It urged the national and provincial authorities and those of the city of Buenos Aires to remove all administrative or practical barriers by implementing and enforcing hospital protocols on the provision of legal abortions. Supreme Court, Caso F.A.L s/ medida autosatisfactiva, 13 March 2012.

[81] Only eight jurisdictions have protocols that are almost entirely in line with the Supreme Court judgment; Chaco, Chubut, Jujuy, La Rioja, Misiones, Santa Cruz, Santa Fe, and Tierra del Fuego. The provinces of Córdoba, Entre Ríos, La Pampa, Neuquén, Buenos Aires, Río Negro, Salta and the autonomous city of Buenos Aires should amend their protocols to bring them into line with the standards set by the Court; while eight other jurisdictions still do not have any manual setting out procedures: Catamarca, Corrientes, Formosa, Mendoza, San Juan, San Luis, Santiago del Estero and Tucumán.

[82] National Ministry health of the nation, Estadísticas Vitales, 2014 available at: http://www.deis.gov.ar/Publicaciones/Archivos/Serie5Nro57.pdf.

[83] *Ibid.*

[84] Edith Pantelides (Conicet y Cenep-Centro de Estudios de Población) and Silvia Mario (Instituto Gino Germani), *Estimación de la magnitud del aborto inducido en Argentina*, National Ministry of Health.

[85] Department of Health Statistics and Information (Dirección de Estadísticas e Información de Salud, DEIS), National Ministry of Health, *Egresos de establecimientos oficiales por diagnóstico*, *año 2010*, December 2012, p19.

There are many different obstacles preventing women and girls from exercising their rights: the abuse of conscientious objection by health care providers; the use of the justice system to delay or prevent abortions; health facilities that discourage women and girls with negatives comments; the bad faith of health-care providers and public officials; the violation of patient confidentiality; the harassment and persecution of women and girls; the influence of the church on the national and local governments; the lack of a regulation that explicitly incorporates the provision of legal abortion as an essential health-care procedure. All these are delaying tactics that work against the right to legal abortion and subject women and girls to institutional violence.

3. CONSEQUENCES: THE STATE AS A CATALYST FOR VIOLENCE AGAINST WOMEN

State laws or discriminatory practices, such as those described here, inflict institutional violence whose effects extend beyond the implementation of legislation. When state institutions are organized in such a way as to restrict the fundamental rights of women, as the examples in this report illustrate, the state is sending a very clear message to its officials. That message is that women's inequality, gender-based discrimination and violence against women are promoted, or at the very least tolerated, by the state.

This makes the state itself directly responsible for generating and reproducing violence against women and sometimes torture or other ill-treatment. Laws and the actions of those who act with "state authority" have a symbolic influence on the culture, on politics and on how women are viewed in society. The result is that women in such societies face state and social practices that inflict greater violence on them. By upholding such laws and practices, the state itself acts as a catalyst, generating further violence.

There are many examples of these "other forms of violence" to which women are subjected. In turn, each of these forms generates a new violation of human rights such as the right to life, integrity and health, and to privacy and family life, among others; discrimination cuts across them all. The following section details some of the most representative examples from among the cases documented. However, these violations are systemic and widespread throughout the region.

Women's rights activists protest in front of the Supreme Court, to demand the decriminalization of abortion, San Salvador, El Salvador, 15 May 2013. © REUTERS/Ulises Rodriguez

ILL-TREATED AND DENIED CARE IN HEALTH FACILITIES: A VIOLATION OF THE RIGHT TO LIFE, HEALTH AND HUMANE TREATMENT

"Inside, the women were under anaesthesia and moaning. It was very upsetting and I was scared. I remember they asked me my name. I said to the doctor, that I had not had a period for three months. He told me that this didn't mean anything and took me into a room. I was given an anaesthetic in my back and I must have been only half asleep because I was conscious, even when the doctor cut me: it hurt. I was sharing the bed with another woman. She moved and kicked the drip I was attached to and that really hurt. My back also hurt."

Esperanza, Peru.

Women and girls in the region often suffer abuse at the hands of the health workers treating them and some are even denied treatment that could save their lives or protect their health because of gender stereotypes and discriminatory attitudes.

The experience of **Teodora**, in El Salvador shows this clearly. She was taken to a public health facility after suffering an obstetric emergency. While still in her hospital bed and confused and disorientated, she was confronted by the accusatory questioning of police officers who asked her: "Why did you do it?" Teodora was then handcuffed, accused of aggravated homicide on suspicion of having induced an "abortion" and taken to prison.

The same patterns are highlighted by the experience of **Mainumby** who spent at least four months in various public hospitals in Paraguay being misdiagnosed and given the wrong medication before it was finally revealed that she was 20-21 weeks pregnant and she was then forced to carry the pregnancy to term despite the serious risks posed to her health and her life. In addition she was separated from her mother, who was denied the ability to decide what she thought best for the life and health of her daughter. The state inflicted forced pregnancy and motherhood on Mainumby and then abandon her to her fate when she needed medicine, baby formula and other special care.

Mónica's story again illustrates the same forces at work. She also went to a number of public hospitals and was interned hundreds of kilometres from her family and isolated in hospital, because someone concluded that she was not capable of making the decision to terminate her pregnancy, even though she had requested the termination because the pregnancy was putting her life and health at risk and the procedure was permitted by law. This is also true of **Tania's**, story. She had to seek out a clandestine abortion in Chile to avoid losing her life because doctors were not prepared to continue with the cancer treatment that saved her life.

It is also **Rosaura's** story in the Dominican Republic. She died at the age of 16, deprived of the vital treatment that would have helped her to combat leukaemia; doctors delayed chemotherapy because she was pregnant. Moreover, she also had to endure "psychological support" provided by the hospital whose sole aim was to encourage her to continue her pregnancy, even at the expense of her own life. And it is the story of **Michelle** in Mexico whose abusive treatment in the health facility, was largely the result of the stigma experienced by women living with HIV.

The treatment meted out to these women and girls, constitutes violence against women by state agents, such as health-care workers. This is violence against women and girls by the apparatus of state; that is, institutional violence.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Rapporteur on torture) has stated that: "International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender. Examples of such violations include abusive treatment and humiliation in institutional settings; involuntary sterilization; denial of legally available health services such as abortion and post-abortion care; forced abortions and sterilizations; female genital mutilation; violations of medical secrecy and confidentiality in health-care settings, such as denunciations of women by medical personnel when evidence of illegal abortion is found; and the practice of attempting to obtain confessions as a condition of potentially life-saving medical treatment after abortion."[86]

The Rapporteur on torture recognizes that the task of ending torture and ill-treatment in health-care settings faces unique obstacles due, among other things, to the perception that the authorities can defend certain health-care practices on grounds of administrative efficiency or medical opinion or to modify behaviour.[87]

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[86] Human Rights Committee, General Comment No 28, 2000, para 11; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, February 2013, A/HRC/22/53, para 46.

[87] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Op. cit.*, para 46.

Doctor holding a stethoscope, 2012. © Adam Berry/Getty Images

BREACHES OF DOCTOR-PATIENT CONFIDENTIALITY: A VIOLATION OF THE RIGHT TO PRIVACY

"In the General Hospital they put a big sign above my bed with the word 'HIV'."

Michelle, Mexico

Non-consensual disclosure of personal medical information is a violation of the right to privacy. States have an obligation to protect the right to privacy, which "includes the obligation to guarantee that adequate safeguards are in place to ensure that no testing occurs without informed consent, that confidentiality is protected, particularly in health and social welfare settings, and that information on HIV status is not disclosed to third parties without the consent of the individual".[88] As the case of Michelle in Mexico and most of the documented cases show, the regional pattern is unfortunately one of breaches of patient confidentiality in the context of sexual and reproductive health.

Patient confidentiality must be guaranteed because if people fear that their confidentiality or privacy will not be protected in a health-care context, it can deter them from using services

[88] The Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*, 2007, para 121, available at: http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf.

and so put their health at risk.[89] Health professionals have an ethical duty which also guarantees the human right of every person to privacy set out in several international human rights treaties.[90] This duty of confidentiality acquires special relevance when women approach health personnel seeking support in contexts where restrictive legislation governs decisions on sexual and reproductive issues, as is the case in Latin America and the Caribbean.

It is clear that if women are not sufficiently confident that their privacy will be respected and confidentiality guaranteed, as is the case in practically all of the stories detailed in this report, this reduces the likelihood that they will promptly seek out the health services they need. It makes it more likely that they will resort to unsafe practices in order to avoid being reported and/or that third parties will become involved in decisions, putting women's health and lives at risk.[91] This has been recognized by the Committee on the Elimination of all forms of Discrimination against Women and the World Health Organization.[92]

In this respect, the duty of confidentiality has an undeniable relationship with the *"do no harm"* principle.[93] Equal consideration should be given to this before informing third parties about decisions or situations related to women's sexual and reproductive health (such as their partners or parents). The World Health Organization (WHO) has stated that unless women give explicit approval for the health-care supplier to consult their husband, father or any other person that is not essential to ensure safe and appropriate care, any such consultation constitutes a serious breach of confidentiality.[94]

The risk is even greater in countries where medical staff are required to report an offence (for example, abortion), regardless of whether such an obligation is actually set out in medical codes or is something medical staff believe to be the case; either way, it generates fear and uncertainty.[95]

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[89] Committee on the Elimination of Discrimination against Women General recommendation No 24 UN, 2009; Committee on the Rights of the Child General Comment No 3, 2003.

[90] World Health Organization "Sexual health, human rights and the law", *Op. cit.*

[91] Panel for Women's Life and Health (Mesa por la Vida y la Salud de las Mujeres) and the National Alliance for the Right to Decide (Alianza Nacional por el Derecho a Decidir), "Causal Salud: interrupción legal del embarazo, ética y derechos humanos", 2008, p207.

[92] Committee on the Elimination of Discrimination against Women, *Op. cit*. World Health Organization "Sexual health, human rights and the law", *Op. cit.*

[93] Panel for Women's Life and Health (Mesa por la Vida y la Salud de las Mujeres) and the National Alliance for the Right to Decide (Alianza Nacional por el Derecho a Decidir), "Causal Salud: interrupción legal del embarazo, ética y derechos humanos", 2008, p207.

[94] World Health Organization, *Safe abortion: technical and policy guidance for health systems*, 2003, p68.

[95] R. Cook and B.M. Dickens, "Law and ethics in conflict over confidentiality", *International Journal of Gynecology & Obstetrics*. Faculty of Medicine and Joint Center for Bioethics, University of Toronto, pp385-391.

"They say that if you do not reports this type of situation, you are part of the crime, you are an accomplice and you risk losing your job. They are stopping us from being doctors and turning us into policemen. My bosses have raised this with me several times. But I tell that that I can't breach the doctor-patient confidentiality I owe my patients. When you know your rights, no one can intimidate you."

Dr "Lemus", El Salvador[96]

In Chile, for example, the Health Code prohibits any action whose purpose is to cause an abortion and under the Criminal Code any woman who induces or consents to a termination and anyone who assists her, whether or not they are health-care professionals, faces a possible prison sentence. The Code of Criminal Procedure states that health professionals who observe injuries suggesting that a crime may have been committed are obliged to report it. Even though a regulation issued by the Ministry of Health has limited this obligation, in practice women who go to a health centre with complications arising from a clandestine abortion are likely to be reported by their doctor or midwife, as happened in 2015 on at least two occasions.[97]

In some cases, medical care for women whose lives were in danger because of complications arising from clandestine abortions has been made conditional on them providing information on those who carried out the terminations. The Committee against Torture has expressed concern about this situation[98] and recommends eliminating the practice of extracting confessions to further prosecutions from women who seek emergency care for the consequences of clandestine abortions.[99] In accordance with the directives of the World Health Organization, the state party should guarantee the immediate and unconditional treatment of people seeking emergency medical attention.[100]

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[96] Amnesty International, "Aborto en El Salvador: La delgada línea entre médicos y policías", disponible en https://www.amnesty.org/es/latest/news/2015/12/aborto-en-el-salvador-la-delgada-linea-entre-medicos-y-policias/.

[97] See Amnesty International, Chile: Urgent progress needed on right to choose after young woman arrested for a clandestine abortion, November 2015, available at: https://www.amnesty.org/en/press-releases/2015/11/chile-urgent-progress-needed-on-right-to-decide-after-young-woman-arrested-for-a-clandestine-abortion-1/.

[98] CAT/C/CR/32/5 (2004), para 6.

[99] *Ibid.*, para 7.

[100] *Ibid.*

The Human Rights Committee has also recommended that states amend their legislation to protect patient confidentiality.[101] The Inter-American Court of Human Rights has stated that: "physicians have a right and an obligation to protect the confidentiality of the information to which, as physicians, they have access."[102]

This is essential not only to protect women and girls, but also to protect medical staff. In El Salvador,[103] Chile[104] and Nicaragua,[105] Amnesty International has documented the fear and confusion felt by medical staff as a consequence of legislation that places them in a policing role, forcing them to violate their duty of confidentiality. They also find themselves facing the ethical dilemma of either risking the health of a pregnant woman who needs an abortion, even letting her die, or going to jail.

Obstetrician René Castro highlighted the problems caused by having to wait until there is an imminent danger of death before being able to take action:

"Today there is a much greater consensus internationally when talking about quality of life. The issue is whether I wait until a woman is in intensive care because of a grave complication of a pre-existing condition before taking action, or whether I'm going to forestall this serious episode and accept it when a woman tells me 'doctor, I'd prefer to terminate the pregnancy before I get to that point… [because] the focus should be on the woman's own decision".[106]

So great is the pressure on medical staff that recently 834 doctors and the health professionals from 44 countries in all regions of the world added their voices to growing calls for the decriminalization of abortion by signing an open letter to governments. In the letter, they call for an end to interference in the work of health professionals and warn that the criminalization of abortion is endangering the health and lives of women and girls.[107]

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[101] Human Rights Committee, Concluding observation on Chile, U.N.Doc. CCPR/C/79/Add.104 (1999).

[102] Inter-American Court of Human Rights, the *case of De la Cruz Flores vs Peru, Judgment of 18 November 2004 (Merits, Reparations and Costs),* para 101.

[103] Amnesty International, "Abortion in El Salvador..." *Op. cit.*

[104] Amnesty International, "Abortion is not a crime, doctors warn governments", November 2015; Amnesty International, Chile: Urgent progress needed on right to decide after young woman arrested for a clandestine abortion, November 2015, available at: https://www.amnesty.org/en/latest/news/2015/11/chile-urgent-progress-needed-on-right-to-decide-after-young-woman-arrested-for-a-clandestine-abortion/.

[105] See, for example, Amnesty International, *The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized*, July 2009, available at: https://www.amnesty.org/en/documents/AMR43/001/2009/en/.

[106] Amnesty International, "Abortion is not a crime...", *Op. Cit.* Amnesty International, "Chile: Urgent progress needed on right to choose after young woman arrested for a clandestine abortion", *Op.cit.*

[107] Amnesty International, "Abortion is not a crime...", *Op. cit.*

THE IMPACT ON FAMILIES: A VIOLATION OF THE RIGHT TO HUMANE TREATMENT AND FAMILY LIFE

"No one can understand the agony you feel seeing your daughter like that. She is a little girl who should be playing, studying, sharing things with her friends. No one can put themselves in my shoes. When the baby wakes, I have to wake up my daughter so she can breastfeed her".

CEF, Paraguay

"My greatest suffering is that my daughter isn't here. They destroyed her and losing her destroyed me and my family. Rosaura was everything to me. Everything I did, I did for her. It's very hard to talk about it, but I am not going to quit, I'm not going to give up until justice is done."

Rosa, Dominican Republic

The families of women who experience institutional violence, including torture in sexual and reproductive health contexts suffer equally devastating consequences both psychologically and in terms of morale. As the words of these two mothers highlight, the suffering is especially acute when the victim is a child or adolescent.

These mothers not only suffer the pain of her daughters, but they are also judged and treated with suspicion by society and subjected to "disciplinary proceedings" by medical or even religious personnel aimed at imposing certain moral values on them. This is especially so if they decide to raise their voices in defence of their daughters' sexual and reproductive rights.

"To stop me going round talking about my daughter's case, the Monsignor even came to tell me that they would make me sign documents and that they would deceive and undermine me because I don't speak English."

CEF, Paraguay[108]

They, too, are victims of institutional violence. In the case of CEF, the price of speaking out went as far as being imprisoned. The criminal justice system had failed them when CEF reported possible abuse of her daughter in 2014; it only took action when the case sparked a public outcry. Unfortunately the action taken was to revictimize Mainumby by ordering the detention of CEF for two months while she was left to face on her own a pregnancy that was the result of rape.

The case against CEF was dismissed on 11 November 2015. However, between April 2015 and November, the possibility of returning to prison and not be able to support her daughter or her other young son, and now her newborn granddaughter, weighed on her like a sword of Damocles. This greatly hampered her ability to fight for her own and her daughter's rights.

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[108] Referring to a trip that she planned to make to Washington DC with CLADEM to a meeting at the Inter-American Commission on Human Rights on the precautionary measures granted in favour of her daughter.

María Sánchez, Teodora's mother, standing in what had been Teodora's bedroom, before she was imprisoned, El Salvador, 2015. © Amnesty International

The unjustified detention of CEF caused extreme suffering to both mother and daughter and is yet another example of discrimination against women by the criminal justice system. The woman is always regarded with suspicion; Mainumby's aggressor meanwhile remained at liberty.[109]

In the case of Michelle, her mother was also humiliated by health staff and intimidated to try to get her to bring her daughter, who was over 18, into line. She was pressured into giving her consent for an irreversible sterilization procedure to go ahead.

In the cases of Mónica, Esperanza and Tania there were partners, sons and daughters whose suffering often remains invisible. Amnesty International has documented the effects on the families of women who, like Teodora in El Salvador, are in jail for obstetric complications:[110]

"When the boy went [to the prison] the first time, while we were outside I told him that he must be brave and that he mustn't cry, that he must be strong for her. He was not yet four years old… When we left the prison, that was hard. He clung to her. 'Mummy, I'm taking you with me', he said. 'Why don't you turn into a dove and get out, and come with us? I don't want to leave you here'."

Teodora's mother, María

The way in which the children experience the various stages of criminal proceedings against their mothers -- from arrest to sentencing and imprisonment -- can affect them for the rest of their lives. In addition, criminalization has an impact on families because of the violence inflicted in their dealings with prosecutors and medical staff. Criminalization often has physical, psychological and emotional implications for relatives, as well as negative financial repercussions, especially for families where the woman's income was essential to support her children.

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[109] On 9 May 2015, the alleged abuser was captured; he was in custody awaiting trial at the time of writing.

[110] Amnesty International, *Separated families, Broken Ties*, November 2015 (Index: AMR 29/2873/2015).

IMPOSITION OF MORAL OR RELIGIOUS PRECEPTS

Underlying most of the cases documented in this report is a pernicious trend that is in evidence throughout the region: the power of medical personnel, state officials and certain religious groups to impose their opinions about women and girls, even if this is at the expense of women's human rights to health, physical integrity, autonomy, privacy and life. Among the factors that make this possible is the tremendous imbalance of power in the doctor-patient relationship in general and the relationship between doctors and women seeking reproductive services in particular. Another contributory factor is that these groups often have the "weight of the law" on their side, or else benefit from an absence of legislation or regulations. This makes the state an accomplice to the violence inflicted.

This violence is inflicted on women and girls throughout the region by state agents who try to persuade them of, or in many cases impose, their own moral or religious beliefs or gender stereotypes. And they succeed in this by removing women's ability to decide for themselves, according to their own convictions and circumstances, what is best for them.

Altar with statues of the Virgin Mary in a public hospital, Veracruz, Mexico 2015. © Amnesty International

In some instances, this influence is more formal, as for example when religious groups challenged the constitutionality of decriminalization in certain limited circumstances in the Dominican Republic.[111] Similarly, in Uruguay, members of the Medical Association filed a collective judicial action to "protect" their right to conscientious objection (see "Conscientious objection in health facilities", page 55).

As stated earlier, the whole area of women's sexuality and reproduction is beset with prejudices about women's "proper" role in society -- as mothers (as long as they are not poor or living with HIV) and carers -- which women are expected to accept unquestioningly. Anyone who deviates from these norms risks severe punishment by the state.

In the case of Mainumby, the state imprisoned her mother the day she requested a termination of her daughter's pregnancy. A prosecutor ordered that Mainumby be interned in a private hospital a day after the Director of the Public Hospital made statements to the press indicating that they were legally entitled to interrupt the pregnancy in order to safeguard the life and health of the girl. The judge then ordered that Mainumby be interned in a "hostel for child mothers", a sealed enclosure where girls are kept in conditions of strict isolation and high security.

It is clear in this case how the highest state authorities prioritized their personal convictions over the rights of Mainumby and flatly denied the option of a termination.[112] The same thing happened in the cases of Rosaura, Tania and Mónica.

This imposition also works in the opposite direction. In cases of forced sterilization, there is a belief that the state or medical staff know better than women themselves what is right for them. The fact that women are poor or Indigenous or living with HIV is deemed to justify taking away their right to decide whether they want to have children or not, as happened to Esperanza and Michelle. This view is also discriminatory and violates human rights. The imposition of the views of certain state agents on women and their right to decide whether or not to have children is equally arbitrary.

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[111] In December 2014 a new Criminal Code was approved in the Dominican Republic that included the decriminalization of abortion when the life or health of a woman is at risk, when embryo malformations mean it is not viable and when pregnancy is the result of rape or incest. In January 2015, three foundations presented three appeals of unconstitutionality before the Constitutional Court. One of them is the Happy Marriage Foundation which, according to its website, is "a not-for-profit institution of Catholic inspiration, a living reality in the service of the Church and the Dominican family. At a time when marriage and the family are subject to many forces trying to distort them and destroy them, the Happy Marriage Foundation, assumes responsibility for proclaiming the wishes of God, for these holy institutions." (available at: http://www.matrimoniofeliz.org/fundaci-n-matrimonio-feliz.html, accessed 20 January 2016). The appeals argue that the articles are unconstitutional both for procedural reasons (relating to the procedure for their approval by parliament), and on the grounds that they violate the right to life from the moment of conception, established in Article 37 of the Dominican Constitution. In December of the same year, the Constitutional Court upheld the appeals and declared the new legislation unconstitutional on procedural grounds, leaving in place the previous Criminal Code (Law 2274) of 1884.

[112] The views of the authorities were evident, for example, in the publicity given to an action supporting the idea of human life beginning at the moment of conception which was published on the official website of the Ministry of Public Health and Social Welfare. A call for Amnesty International to be expelled from Paraguay was also published on the website: http://www.mspbs.gov.py/v3/piden-manifestarse-a-favor-de-la-vida-desde-el -moment-de-la-concepcion /.

PROTECTING THE FOETUS ABOVE ALL ELSE

In the region there has been a trend towards establishing absolute protection of the foetus (including by granting foetuses legal personality) which has resulted in the foetus being prioritized over the human rights of women and girls. Several countries in the region have integrated the concept of absolute protection into the criminal law by means of a total prohibition of abortion in all circumstances (El Salvador, the Dominican Republic and Chile) or through partial bans on abortion (Argentina and Paraguay), which often in practice become absolute bans. In the case of Rosaura, Teodora, Tania, Mónica and Mainumby, efforts to protect the foetus played a central role in the violence to which they were subjected.

No international human rights body has ever recognized the foetus as the object of protection under the right to life or other provisions of international human rights treaties, including the Convention on the Rights of the Child.[113]

The American Convention on Human Rights is the only treaty which contains a clause stating that the right to life shall be protected "in general, from the moment of conception".[114] In interpreting this clause, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have said that such protection is not absolute.[115] When interpreting this clause, the Inter-American Court echoed international and national jurisprudence on the subject which clearly states that the direct object of protection is

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[113] See R. Copeland *et al*, "Human Rights Being at Birth: International Law and the Claim of Fetal Rights", *Reproductive Health Matters* (2005), vol. 13, issue 26, pp120-129. An opposing argument was put forward that this was a misreading of paragraph 9 of the Preamble to the Convention on the Rights of the Child, which states: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth' " The legislative history on this treaty clarifies that these safeguards "before birth" should not affect the choice of women to terminate an unwanted pregnancy. As originally drafted, the Preamble contained no reference to protection "before as well as after birth." The Vatican put forward the proposal to add the phrase, while at the same time affirming that "the purpose of the amendment was not to exclude the possibility of an abortion" (Commission on Human Rights, *Question of a Convention on the Rights of a Child: Report of the Working Group*, 36th Session, E/CN.4/L/1542, 1980). Although the words "before or after birth" were accepted, the limitation on their purpose was reinforced by the statement that "the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties." (UN Commission on Human Rights*, Report of the Working Group on a draft Convention on the Rights of the Child*, E/CN.4/1989/48, p 10). Meanwhile, the legislative history of the International Covenant on Civil and Political Rights indicates that a proposed amendment stating "The right to life is inherent in the human person from the moment of conception. This right shall be protected by law" was rejected. Annex A GAOR, 12th Session, Item 33 of the agenda, at 96, a / C.3 / L.654; UN GAOR, 12th Session, Item 33 of the agenda, in 113, A / 3764, 1957. The Commission finally voted to adopt Article 6 as it stands, without any reference to conception, by a vote of 55 for, none against and 17 abstentions.

[114] American Convention on Human Rights, Article 4.1

[115] Inter-American Court of Human Rights, *Resolution 23/81, Case 2141 (United States)*, OEA/Ser.L/V/II.54, doc. 9 rev 1, 1981, para 25; Inter-American Court of Human Rights, the *case of Artavia Murillo (in vitro fertilization) et al vs Costa Rica.* Preliminary Objections, Merits, Reparations, and Costs; Judgment of November 28, 2012, para 222.

fundamentally the pregnant women, given that the defence of the foetus is essentially achieved through the protection of the woman.[116]

In addition, the Inter-American Court on Human Rights has established that any interest states may have in protecting the foetus, should be gradual and incremental, in accordance with the development of the foetus, and cannot be absolute. This is the basis for exceptions to the general rule.[117]

It is on the basis of this interpretation that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have stated that the American Convention does not establish absolute protection of the right to life before birth when granting precautionary and provisional measures on behalf of women whose lives were at risk because of the total ban on abortion.[118]

According to international human rights standards, states have an obligation to take measures to ensure that the life and health of the woman or girl take priority over the protection of the foetus.[119] The Committee on the Elimination of the Discrimination against Women has indicated that the "decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother" and was discriminatory.[120] Abortion in all circumstances should be decriminalized to eliminate the punitive measures imposed on women and girls who seek these services and health professionals providing them, if there is a full consent.[121] Finally, states must ensure access to abortion in law and in practice, at least in cases where pregnancy entails a risk to the life

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[116] "Also, taking into account, as indicated previously, that conception can only take place within a woman's body... it can be concluded with regard to Article 4.115.3. of the Convention, that the direct subject of protection is fundamentally the pregnant woman, because the protection of the unborn child is implemented essentially through the protection of the woman, as revealed by Article 15)(3)(a) of the Protocol of San Salvador, which obliges the States Parties "to provide special care and assistance to mothers during a reasonable period before and after childbirth," and article VII of the American Declaration, which establishes the right of all women, during pregnancy, to special protection, care, and aid." Inter-American Court of Human Rights the *case of Artavia Murillo et al (in vitro fertilization) vs Costa Rica*, *Op. cit*., para 264. See also, Committee on Economic, Social and Cultural Rights, General Comment No 14, "The right to the highest attainable standard of health" E / C.12 / 2000/4, para 14.

[117] Inter-American Court of Human Rights, *Artavia Murillo and other vs Costa Rica*, para 264.

[118] Inter-American Commission on Human Rights, *Precautionary Measures* 43-10, "Amelia," Nicaragua (2010); Inter-American Court of Human Rights, *Provisional Measures, the case of B vs El Salvador*, 2013.

[119] *L.C. vs Peru*, *Op. cit* .; Committee on the Elimination of Discrimination against Women, *Concluding Observations on Hungary*, 2013, para 30

[120] Committee on the Elimination of Discrimination against Women, *the case of L.C. vs Peru*, *Op. cit.*

[121] Committee on the Elimination of Discrimination against Women, *Concluding observations on the Philippines*, 2006, para 28; Committee on the Rights of the Child, *Concluding observations on Nigeria*, 2010, para 59 (b).

or health of the woman, of severe malformation or non-viability of the foetus or when the pregnancy is the result of rape or incest.[122]

Agents of the state are, of course, entitled, like everyone else (including the women and girls whose cases are documented in this report) to hold their own beliefs and to live according to them. However, they do not have the right to impose them on others, especially not in the exercise of their powers as agents of the state and not when other rights of women and girls, which have been recognized internationally, are in conflict with these beliefs. This imposition of ideology is a grave form of violence and a breach of the human rights obligations of the state. In addition, states are violating their human rights obligations if they allow some (medical staff) exercising their "conscience" to violate the rights of others.

The Inter-American Court of Human Rights has addressed the issue and given an unequivocal ruling. The case under discussion was a ban on in vitro fertilization (IVF) in Costa Rica. This had been ordered by the Costa Rican Supreme Court on the grounds that it involved discarding fertilized eggs and that these were a "human life", according to the "scientific literature". The ban on IVF, therefore, aimed to avoid the violation of the right to life recognized in Article 4 of the American Convention on Human Rights. The Inter-American Court of Human Rights stated:

the Court considers that this is a question that has been assessed in different ways from a biological, medical, ethical, moral, philosophical and religious perspective, and it concurs with domestic and international courts that there is no one agreed definition of the beginning of life. Nevertheless, it is clear to the Court that some opinions view a fertilized egg as a complete human life. Some of these opinions may be associated with concepts that confer certain metaphysical attributes on embryos. Such concepts cannot justify preference being given to a certain type of scientific literature when interpreting the scope of the right to life established in the American Convention, because this would imply imposing specific types of beliefs on others who do not share them.[123]

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[122] Regarding the obligation to ensure access to abortion when a pregnancy poses a risk to the life or health of the woman, UN treaty bodies have consistently stated that to prevent maternal mortality and morbidity and safeguard the lives and health of women, states must ensure access to legal abortion when there is a risk to the life or health of the woman. International health and human rights bodies consistently interpret "health" to encompass both physical and mental health. On the obligation to ensure access to abortion in cases of sexual assault, rape and incest, the UN treaty bodies have consistently urged states to implement laws that establish rape and incest as grounds for abortion and have repeatedly requested that states which do not have laws to that effect to amend their legislation. In two separate Latin American cases, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have stated that by not providing young women with access to a legal therapeutic abortion in cases of rape or life-threatening foetal malformation, states are violating numerous rights, including the right to equality and non-discrimination, the right to privacy and the right not to be subjected to torture or other cruel, inhuman and degrading treatment. See *L. C. vs Peru*; and *KL vs Peru*, Human Rights Committee, 2005.

[123] Inter-American Court of Human Rights, *Artavia Murillo et al vs Costa Rica*, Preliminary Objections, Merits, Reparations and Costs; Judgment of November 28, 2012, Series C 257, para 185,

CONSCIENTIOUS OBJECTION IN HEALTH FACILITIES

Conscientious objection is a right that is held by an individual, not by institutions (such as hospitals, pharmacies or clinics). It is also a right that allows for exceptions, for example in order to protect public health.[124] In the field of health, conscientious objection can function as a barrier, denying women and girls their human rights. It is for this reason that the Committee against Torture has expressed concern about the unregulated exercise of conscientious objection[125] and various treaty bodies have called on states to regulate its exercise by health professionals so that there is no risk to the health of the patient and their right to receive contraceptive goods and services.[126]

Human rights standards stipulate that health services should be organized in such a way as to ensure that the exercise of the freedom of conscience by health professionals will not impede people, and in particular women, from accessing the services to which they are entitled by law.[127] Laws and regulations should not allow care providers or institutions to block people's access to legal health services.[128] Health professionals who claim conscientious objection must refer people to others willing and qualified to provide the care either in the same health centre or in another that is readily accessible. When such a referral is not possible, the health professional exercising their conscientious objection has a duty to provide safe services to save life or to prevent damage to a person's health.[129]

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[124] The right to freedom of thought, conscience and religion (which includes the freedom of belief) is recognized in paragraph 1 of Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Paragraph 3 of Article 18 allows for limitations to the manifestation of religion or belief in order to protect *inter alia*, public health, or the rights and freedoms of others. In interpreting the scope of permissible limitation clauses, states parties should proceed from the need to protect the rights guaranteed by the Covenant, including the right to equality and non-discrimination in all areas; *Cf.* Human Rights Committee, General Comment No 22, Article 18; Freedom of thought, conscience and religion, UN Doc. HRI/GEN/1/Rev.7 at 179 (1993).

[125] Committee against Torture, *Concluding observations on Poland*, 2013, para 23.

[126] Committee on the Elimination of Discrimination against Women, *Concluding observations on Mexico*, 2006, para 33; Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health*, Article 12, United Nations, 2000.

[127] World Health Organization, *Sexual health, human rights and the law*, 2015, p16. Citing the following precedents and sources: Yazgül Yilmaz v. Turkey. Application No 36369/06, Strasbourg: European Court of Human Rights, 2011; P. and S. v. Poland. Application No 57375/08, Strasbourg: European Court of Human Rights, 2012; FIGO Committee for the Ethical Aspects of Human Reproduction and Women's Health; "Ethical guidelines on conscientious objection", *Int J Gynecol Obstet*. 2006; *Safe abortion: technical and policy guidance for health systems*, revised edition, Geneva: World Health Organization, 2012; *Ensuring human rights in the provision of contraceptive information and services*, World Health Organization, Geneva, 2014.

[128] World Health Organization "Sexual health, human rights and the law", 2015, p.16.

[129] World Health Organization; *Safe abortion: technical and policy guidance for health systems*, revised edition, Geneva: 2012. World Health Organization, *Ensuring human rights in the provision of contraceptive information and services*, Geneva, 2014.

The World Health Organization states that in the field of sexual and reproductive health, conscientious objection acts as a barrier to certain health services to which women have a right.[130] It emphasizes that in cases of access to abortion it is a unique barrier because it pits the right of a woman to life and health against that of the medical professional to act according to their conscience. This is because conscientious objection in health services seeks to challenge or change a rule or a public policy and has implications for the provision of health services and the protection of the rights of third parties.[131] In addition, conscientious objection in the fields of reproductive health tends to have discriminatory effects, because it affects almost exclusively or disproportionately women and girls of reproductive age.

Women's rights activists protest in front of Parliament to demand the decriminalization of abortion, Montevideo, Uruguay, 25 September 2012. © Miguel Rojo/AFP/GettyImages.

[130] World Health Organization, *Sexual health, human rights and the law*, *Op. cit.*

[131] Ana Cristina González Vélez, M.D. "Objeción de conciencia: un debate sobre la libertad y los derechos. Estado del debate en América Latina", en CLACAI Digital, available at: http://www.clacaidigital.info:8080/xmlui/bitstream/handle/123456789/600/AC%20Gonzalez%20Velezd2.pdf?sequence=1.

THE CASE OF URUGUAY

The case of Uruguay is an example of how throughout the region conscientious objection is an obstacle to legal terminations of pregnancy; a situation that affects women and girls exclusively.

In November 2012, Uruguay became one of the four Latin American countries[132] that allow voluntary terminations following the approval of the Law No 18987 and its Regulatory Decree (375/012).[133] Abortion is not a crime[134] provided the woman complies with the requirements set out in law and that the abortion takes place in the first 12 weeks of pregnancy. This regulatory framework complements Law No 18,426 on the Defence of the Right to Sexual and Reproductive Health adopted in 2008.[135]

This progress in the field of reproductive rights was limited for some Uruguayan women when, in August 2015, the Federal Administrative Court (Tribunal de lo Contencioso Administrativo) decided to suspend the implementation of several key provisions of the Regulatory Decree of the law of abortion, on the basis of an appeal by a group of gynaecologists who claimed it imposed an "unlawful restriction" of their right to conscientious objection.[136] Conscientious objection was valid originally, according to the legislation,[137] only for the abortion itself, not for consultation prior to the abortion or post-abortion care.

In the Department of Salto, 100% of gynaecologists declared themselves to be conscientious objectors. Faced with this situation, the state sought to settle the issue by bringing in a gynaecologist from Montevideo (500km away) once a week to provide abortion services at both at private and public sector clinics in the Department. However, reports suggest that "women go to the clinics for treatment for complications resulting from abortions performed outside the health system more than for actual abortions. Lack of knowledge about the new legislation puts them at risk of legal action as abortions performed outside of the national integrated health system are a criminal offence".[138]

In effect, the Administrative Court ruling means that women in the Department of Salto cannot access health services that are guaranteed by the Uruguayan public health system in the same way as women in Montevideo. It is difficult to imagine men being denied access to health services destined exclusively for men and which may be necessary to save their lives or protect their health on grounds of conscience.

Dr Ana Visconti, Coordinator of the Sexual Health and Reproduction Programme at the Ministry of Public Health, told Amnesty International that following the Administrative Court ruling on the Regulatory Decree, a plan is being developed that will set out guidelines for the proper implementation of the Law, as well as a new regulatory decree. At the time of writing, the new regulations had not been published.

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[132] The other three are: Cuba, Guyana and Puerto Rico.

[133] Voluntary termination can only be requested by Uruguayan citizens or foreign citizens resident in the country for at least a year (Article 13).

[134] Criminal Code, Articles 325 to 328.

[135] Article 4b (2). In 2008 President Tabaré Vázquez appealed the veto which removed the clause decriminalizing abortion, after which it was approved by both houses of parliament. The text recognized the right of women to terminate a pregnancy within the first 12 weeks.
Judgment 586/2016, available at: http://www.tca.gub.uy/fallos.php.

[136] *Ibid.*

[137] Conscientious objection is covered by Law 18.987 on the voluntary termination of pregnancy. Abortion Law, Article 11 and its Regulatory Decree 375/012, Chapter VIII conscientious objection, Articles 28 to 35. Further, only individuals, not institutions, can exercise "conscientious objection".

[138] Organization for Women and Health in Uruguay (Organización Mujer y Salud en Uruguay, MYSU) *Asegurar y avanzar sobre lo logrado. Estado de situación de la salud y los derechos sexuales y reproductivos en Uruguay. Monitoreo 2010-2014*, p61.

VIOLATIONS OF THE RIGHT TO EQUALITY: GENDER STEREOTYPES AND INTERSECTIONAL DISCRIMINATION AGAINST WOMEN

Underlying each of the stories described in this report is another common pattern. The human rights violations experienced by these women and girls are rooted in the structural discrimination which exists in all countries in the region. This discrimination against women because they are women, flourishes thanks to entrenched gender stereotypes in society and reaches its most pernicious levels in the area of sexuality and reproduction.

Examples of these stereotypes in Latin America and the Caribbean are beliefs such as: "every woman wants to be and should be a mother"; "We must reduce the number of children that poor and Indigenous women have because that reduces poverty"; "Every pregnant woman should carry the pregnancy to term regardless of her personal circumstances, health or even risk to their lives"; "Adolescents are not able to make decisions about their sexuality or whether they want to be mothers or not"; "Girls who become pregnant as a result of sexual violence must carry the pregnancy to term"; "Women living with HIV should be sterilized to stop the virus spreading"; "Women who come to the hospital with obstetric emergencies undoubtedly induced it themselves, especially if they have limited resources", among others.

Stereotypes exist in all societies. The way in which we perceive others may be determined by simplistic assumptions, based on particular characteristics such the fact of being a woman or girl. Stereotypes are based on social norms, practices and beliefs, many of which are promoted by religion, and reflect underlying power relationships.[139] In this report there are numerous examples of how these stereotypes are violently imposed on women and girls by those who hold more power in society than they do.

Gender stereotypes generate discrimination and this is a violation of the right to equality set out in all international human rights treaties. However, it was not until some years after the entry into force of the Convention Against all Forms of Discrimination against Women (CEDAW), that the link began to be made between the right to equality between men and women and to non-discrimination and state human rights obligations; that is, the positive obligation of states to take measures to combat discrimination against women.[140] The Convention and its Committee have developed the concept of equality as a human right composed of various elements: substantive equality or equality of outcomes, non-discrimination and state responsibility.[141]

The structural discrimination which is evident in the stories set out in this report shows a regional pattern that cannot be overcome using a purely legislative or a formal programmatic approach. To achieve substantive equality enshrined in CEDAW, states must adopt special

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[139] UN Women, see http://www.unwomen.org/es/news/stories/2011/7/countering-gender-discrimination-and-negative-gender-stereotypes-effective-policy-responses#sthash.BNXwfZJG.dpuf.

[140] Alda Facio, "La responsabilidad Estatal frente al Derecho Humano a la Igualdad", Mexico 2014, Human Rights Commission of the Federal District (Derechos Humanos del Distrito Federal). Available at: ihttps://www.justassociates.org/sites/justassociates.org/files/alda_facio_finalsin.pdf.

[141] *Ibid.*

Members of the Women's Association of Huancabamba gather to discuss forced sterilizations, Huancabamba, Peru, October 2015.
© Amnesty International / Raúl García Pereira

measures to eliminate forms of discrimination, including treating men and women differently in order to overcome these inequalities.[142]

Similarly, an analysis of the state as generating and reproducing violence against women must also highlight the fact that women are discriminated against because they are women, but also because they are Indigenous, because they live in poverty or in rural areas, because they have had limited access to education, because they are living with HIV, because they are young, because they are children and because they are victims of sexual violence. Each of them experience discrimination differently since they suffer multiple forms of discrimination simultaneously.

In this the most unequal region in the world, access to sexual and reproductive health services and the risk of encountering institutional violence trying to access them, are heavily interlinked with other aspects of women's personal situations. What would have happened if Teodora had been able to pay for a good defence lawyer or had access to quality prenatal checkups? What would have happened to Mónica if she had gone to a private health clinic and demanded a termination of the pregnancy to protect her health? What would have happened to Tania if she hadn't had the resources to go to a private doctor to terminate her pregnancy in safe conditions and so be able to continue with her cancer treatment?

The CEDAW Committee has highlighted how women belonging to certain groups, in addition to suffering discrimination for being women, may also be subjected to multiple forms of discrimination on grounds such as race, ethnic origin, age or other factors. This discrimination affects these groups of women in different ways to men.[143]

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[142] CEDAW Committee, General recommendation No 25 on paragraph 1 of article 4 of the Convention on the Elimination of all Forms of Discrimination against Women, concerning temporary special measures, para 12.

[143] *Ibid.*

This cycle of multiple discrimination builds on itself. The violence and sometimes torture experienced by these women and girls puts them at increased risk of further violations of human rights, including their sexual and reproductive rights.

Although no cases are documented in this report, the intersectionality of discrimination is also evident in the gender-based violence targeted against LGBTI people in the region. Discrimination on grounds of identity and gender is a reality throughout the region and in the area of health it becomes particularly acute for members of certain groups. For example, denying people access to adequate contraception, denying transgender or intersex people access to the services they need to be able to exercise their identity (including hormone therapy) or imposing health services without consent.

4. HUMAN RIGHTS STANDARDS

Sexual and reproductive rights are rooted in human rights set out in international and regional human rights treaties that most states in the region have ratified and committed to fulfil:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Convention on the Rights of the Child (CRC)
- The American Convention on Human Rights (ACHR)
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

Sexual and reproductive rights are not new rights. The term describes a set of rights recognized in these human rights instruments which protect the right of people to make informed decisions about their sexual and reproductive lives, free from violence, coercion or discrimination and to ensure that those decisions are respected. They include rights such as the right to privacy, physical and mental integrity and to freedom from discrimination and torture or other ill-treatment. Fundamental sexual and reproductive rights include: the freedom to decide whether or not to be sexually active; to engage in consensual sexual relationships irrespective of sexual orientation; to have sex that is not linked to reproduction; to choose one's partner; to decide how many children to have and when; to freedom from violence and harmful practices; as well as access to information, and contraception and family planning services, and to comprehensive sexuality education, especially for children and adolescents. All states that have ratified human rights treaties have an obligation to respect, protect and fulfil sexual and reproductive rights.

Violations of sexual and reproductive rights have often been understood as violations of the right to health, physical integrity, autonomy and equality, among others. However, the denial of certain services or ill-treatment in the context of sexual and reproductive health care are also a form of violence against women (caused by the state; that is, institutional violence) which in some cases also constitutes torture other cruel, inhuman or degrading treatment.

This chapter brings together the relevant human rights standards that support this statement. These standards are mainly drawn from the international system of human rights protection (United Nations) and, to a lesser extent, from the Inter-American System.

These standards are binding on all state parties to these human rights treaties. By ratifying international and regional human rights treaties, states make a commitment to implement measures and bring national legislation into line with the obligations and duties they have undertaken. International and regional human rights law sets minimum obligations that states must respect, protect and fulfil. Monitoring compliance with international human rights is the responsibility of bodies created by UN treaties. These bodies have a mandate to provide states with guidance and interpretations on the obligations of state parties to enable them to fulfil in practice the human rights set out in each of these treaties ("human rights standards"). At the regional level, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the bodies charged with interpreting the scope and content of state obligations and setting regional human rights standards.

VIOLATIONS OF SEXUAL AND REPRODUCTIVE RIGHTS AS A FORM OF VIOLENCE AGAINST WOMEN (INSTITUTIONAL VIOLENCE)

"[t]he negation of public policy and sexual and reproductive health services exclusively to women, through norms practices, and discriminatory stereotypes, constitutes a systematic violation of their human rights and subjects them to institutional violence by the State, causing physical and psychological suffering."

Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), 2014

International human rights law defines violence against women in broad terms and sets out the array of human rights violations that can be categorized as violence against women. Particularly relevant is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, or the "Convention of Belém do Pará," which defines violence against women as "any act or conduct, **based on gender**, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."[144] The Convention also defines the broad scope of the right to be free from violence, explaining that it includes, but is not limited to "the right of women to be free from all forms of discrimination".[145]

Similarly, in its General Recommendation on Violence against Women, the CEDAW Committee explains that discrimination under CEDAW "includes gender-based violence" which is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately." It goes on to provide examples of acts that can be characterized as violence against women including those "that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty" and also clarifies that such violence may violate Convention articles, whether or not those articles explicitly mention violence.[146] The CEDAW Committee goes on to note that some of the rights that women do not enjoy as a result of gender-based violence include the right to life as well as the right to "the highest standard attainable of physical and mental health."[147]

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[144] Convention of Belém do Pará), Article 1 (emphasis added).

[145] Convention of Belém do Pará, Article 6.

[146] Committee on the Elimination of Discrimination against Women, General recommendation No 19 on Violence Against Women, 1992 para 6.

[147] Committee on the Elimination of Discrimination against Women, General recommendation No 19 on Violence Against Women, 1992, para 7(g).

It can be argued that violations of reproductive rights that breach, among other rights, the right to life and the right to health constitute forms of gender-based violence. That is, they are directed against women or affect women disproportionately and they inflict a range of different types of harm or suffering. In other words, it is violence that is directed specifically against women and girls and is based on stereotypes such as "women living with HIV can not make decisions about motherhood"; "Poor women can not have more children because that reproduces poverty"; "A pregnant woman or girl should give birth at all costs, regardless of their personal situation, their health and even the risk to their lives". Such violence constitutes gender-based violence and such violations of sexual and reproductive rights constitute violence against women. The seven cases documented in this report clearly show that the violence experienced by these women was rooted in discrimination (see Chapter 3: "Violation of the right to equality")."[148]

Some practices that violate specific reproductive and sexual rights have been recognized as violence against women. For example, **forced sterilization and restrictions on abortion and contraception.** However, the concept of institutional violence is applicable to any law or practice relating to women's sexual and reproductive health that causes death or physical, sexual or psychological suffering to women on grounds of discrimination or gender.

With respect to **forced sterilization**, the Special Rapporteur on Violence against Women has referred to the practice as "a severe violation of women's reproductive rights"[149] and specifically characterized it as a form of violence against women, explaining that it is "the battery of a woman – violating her physical integrity and security."[150] The Special Rapporteur explicitly states that "forced sterilization constitutes violence against women." She goes on to provide examples of this practice in Peru in circumstances very similar to those of Esperanza whose case is detailed in this report.[151] She also gives the example of China, where forced sterilization is directed at women who are "detained, restricted, or forcibly taken from their homes to have the operation."[152]

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[148] Similarly, the Declaration on the Elimination of Violence Against Women, which although not binding, is an important guide, defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Declaration on the Elimination of Violence Against Women, General Assembly Resolution 48/104, art. 1, Doc. ONU, A/RES/48/104, available at: http://www.un.org/documents/ga/res/48/a48r104.htm.

[149] Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women (Fifty-fifth session), para 51, Doc. ONU E/CN.4/1999/68/Add.4 (1999) (Report of Radhika Coomaraswamy, 1999).

[150] Radhika Coomaraswamy, Report of the Special Rapporteur on violence against women, its causes and consequences: Policies and practices that impact women's reproductive rights and *contribute to, cause or constitute violence against women,* (55th Sess.), para 51, U.N. Doc. E/CN.4/1999/68/Add.4 (1999).

[151] Radhika Coomaraswamy Report 1999, para 52, Doc. ONU E/CN.4/1999/68/Add.4 (1999) Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/103/26/PDF/G9910326.pdf?OpenElement.

[152] Radhika Coomaraswamy Report 1999, para 53, Doc. ONU E/CN.4/1999/68/Add.4 (1999).

In addition, in its general recommendation on violence against women the CEDAW Committee has stated that "compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children."[153]

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment (Special Rapporteur on Torture) in his 2013 report, characterizes forced sterilization as an act of violence (citing both CEDAW's General Recommendation discussed above as well as the Human Rights Committee's General Comment on the equality of rights between men and women) and requests that state parties provide information about measures to prevent forced sterilization.[154]

The Special Rapporteur's recent report is instructive in framing these unwanted medical interventions as serious human rights violations. He unequivocally declares non-consensual sterilization to be "an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment." He calls on states "to outlaw forced or coerced sterilization in all circumstances" and clarifies that sterilization to prevent pregnancy can never be justified on grounds of medical emergency.[155]

The Inter-American System has characterized coercive sterilization as a form of violence against women. The Inter-American Commission on Human Rights has held that "sterilization performed by health personnel without a woman's informed consent" and the "physical and psychological consequences of such a procedure" are forms of violence against women.[156] Its report on Peru states that: "The Commission considers that when a family planning program ceases to be voluntary and turns women into a mere object of control so as to make adjustments to population growth, it loses its raison d'etre and instead poses a danger of violence and direct discrimination against women." The implementation of family planning programmes, such as the practice of coercive sterilization, can, therefore, be considered a form of violence against women.[157]

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[153] CEDAW Committee, General recommendation No 19, para 22, available at: http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm-sp.htm.

[154] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez U.N. (Report of the Special Rapporteur Juan Méndez, 2013) Doc. ONU A/HRC/22/53 (2013), available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/105/80/PDF/G1310580.pdf?OpenElement.

[155] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez U.N. (Report of the Special Rapporteur Juan Méndez, 2013) Doc. ONU A/HRC/22/53 (2013), available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/105/80/PDF/G1310580.pdf?OpenElement.

[156] IACHR, Access to Maternal Health Services from a Human Rights Perspective, OEA/Ser.L/V/II. Doc. 69, 7 June 2010, para 75, available at: https://www.oas.org/en/iachr/women/docs/pdf/saludmaternaeng.pdf.

[157] IACHR, Second Report on the Situation of Human Rights in Peru, OEA / Ser.L / V / II.106 Doc. 59 rev. 2 June 2000, para 26, available at: https://www.cidh.oas.org/countryrep/Peru2000en/TOC.htm.

In 2015, the Commission referred a case of sterilization without consent in Bolivia to the Inter-American Court, claiming that "[a]n international consensus exists that non-consensual sterilization constitutes a form of violence against women in which, as indicated in earlier sections above, a series of human rights are infringed."[158]

Restrictions on abortion and contraception have also been considered a form of violence against women. The Special Rapporteur on violence against women has noted that restrictions or bans on access to voluntary contraception is a form of violence in the context of reproductive health. "Acts deliberately restraining women from using contraception or from having an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, resulting in increased and preventable risks of maternal mortality and morbidity."[159]

VIOLATIONS OF THE SEXUAL AND REPRODUCTIVE RIGHTS AS A FORM OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

While the prohibition of torture may initially have been applied above all in contexts such as the interrogation, punishment or intimidation of detainees, the international community has begun to acknowledge that torture may also occur in other contexts, for example in health care.[160] As the cases in this report show, health institutions are places where people are often not free to discharge themselves at will, most notably the cases of Mónica and Mainumby who were held against their will in hospitals on the orders of the state to give birth.

The definition of torture contained in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)[161] comprises at least four essential elements:

1. it inflicts severe pain or suffering, either physical or mental;
2. it is intentional;
3. it has a specific purposes, including discrimination;
4. it occurs with the consent or acquiescence of a public official.[162]

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[158] IACHR, *I.V. vs Bolivia* (Merits, Report No 72/14), 15 August 2014, para 156.

[159] Report of the Special Rapporteur on violence against women, its causes and consequences, Integration of the rights of women and a gender perspective: violence against women, UN Doc. E/CN.4/1999/68/ Add.4, (1999). para 57.

[160] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, paras 15-16.

[161] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in its resolution 39/46 of 10 December 1984, entered into force on 26 June 1987; Article 1.

[162] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, para 17.

In the Inter-American System for the Protection of Human Rights, the Inter-American Convention to Prevent and Punish Torture (Inter-American Convention against Torture) [163] contains similar elements but with some differences, namely:

- There is no requirement that the pain or suffering inflicted be "severe".
- The purpose is not specified and can be "for any other purpose".

Neither the American Convention nor the Inter-American Convention on Torture define what would constitute cruel, inhuman or degrading punishment (hereinafter "ill-treatment" or "cruel, inhuman or degrading treatment"). However, the Inter-American Court of Human Rights has stated that the violation of the right to physical and psychological integrity is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by factors which must be proven in each specific situation.[164]

Under Article 16 of the UN Convention against Torture, acts that do not conform to the definition of torture can constitute cruel, inhuman or degrading treatment or punishment. According to the Committee against Torture, in order for an act to qualify as cruel, inhuman or degrading treatment, neither the intention element nor the "impermissible purpose" element contained in the definition of torture needs to be satisfied.[165] In order to differentiate between torture and cruel, inhuman and degrading treatment or punishment, the Inter-American Court has looked to case law from the European Court of Human Rights and has largely used the difference in the intensity of the suffering to distinguish between the two.[166]

However, the concept of torture and cruel, inhuman or degrading treatment is not a static one. It has evolved over time, underpinned by the progressive nature of international human rights law and to reflect the changing conditions and values in society. For example, the Inter-American Court of Human Rights, in its decision *Cantoral-Benavides v. Peru*, cites the European Court of Human Rights, noting that that Court "has pointed out recently that certain acts that were classified in the past as inhuman or degrading treatment, but not as torture, may be classified differently in the future; that is, as torture, since the growing demand for the protection of fundamental rights and freedoms must be accompanied by a more vigorous response in dealing with infractions of the basic values of democratic societies."[167]

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[163] Organization of American States, Inter-American Convention to Prevent and Punish Torture (2003), OAS / Ser.L / V / I.4 Rev. 9 Article 2 (Inter-American Convention against Torture), available at: http://www.oas.org/juridico/english/treaties/a-51.html

[164] Inter-American Court of Human Rights, *Case of Loayza-Tamayo v Peru*, Judgment of September 17, 1997*(Merits)*, C33; para 57.

[165] CAT Committee, General Comment 2 (2007), para 10, available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf

[166] Inter-American Court of Human Rights, case of *Caesar vs Trinidad and Tobago*, Judgment of 11 March 2005, H.R., (Ser. C) No 123, para 50.

[167] Case of Cantoral Benavides vs Peru, Judgment of 18 August 2000, ICHR, (Ser. C) No 69, para 99, citing the European Court Human Rights, *Selmouni v. France*, Judgment of 28 July 1999, para 101. In its jurisprudence, the Inter-American Court has referred to the three specific international instruments -

The following sections looks at how the four essential elements which define an action as torture in international human rights law (that is, severe suffering, intention, purpose and state involvement) apply to an analysis of abuses in the context of sexual and reproductive health care.

TORTURE OR OTHER ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH: SEVERE HARM OR SUFFERING

The first element of the definition of torture in international law has to do with the severity of the suffering or harm that is inflicted on the victim of torture. Obviously, this has to be analysed on a case-by-case basis. However, the examples set out in this report show how severe the damage and suffering caused by violations to sexual and reproductive rights can be.

In cases where access to abortion is completely prohibited or severely restricted, the suffering caused is so severe that women and girls die from preventable causes. The link between unsafe abortions and maternal mortality and morbidity has been proven and is incontestable.[168] Indeed, it has recently been acknowledged by states in the region.[169] In Latin America and the Caribbean, women are resorting to unsafe abortions because of restrictive laws, with direct effects on their health and well-being.[170] The region has the highest estimated percentage of unsafe abortion in the world.[171]

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that combat torture and other ill-treatment: UN Convention against Torture (1984 and its 2002 Protocol); the Inter-American Convention against Torture (1985) and European Convention against Torture (1987). See for example the case *Maritza Urrutia vs Guatemala*, Judgment of 27 November 2003, (Ser. C) 103, para 90; *Bámaca Velásquez vs Guatemala*, Judgment of 25 November 2000, Inter-American Court of Human Rights (Ser. C) No 70, para 156; and *Cantoral Benavides vs Peru*, Judgment of 18 August 2000, Inter-American Court of Human Rights (Ser. C) No 69, para 183. Some of the judges consider that the implementation of the three international instruments are complementary and not mutually exclusive; see *Maritza Urrutia vs" Guatemala*", supra note 29; Separate opinion of Judge Cançado Trindade, para 2.

[168] See World Health Organization, *Safe abortion: technical and policy guidance for health systems*, Second Edition, WHO 2012, p 23, available at: http://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/ ; and WHO *Global and Regional estimates of the incidence of unsafe abortion and associated mortality in 2003*, 5ª Edition, 2003, available at: http://who.int/reproductivehealth/publications/unsafeabortion_2003/ua_estimates03.pdf.

[169] States in the region stated that they were: "Concerned at the high rates of maternal mortality, due largely to difficulties in obtaining access to proper sexual health and reproductive health services or due to unsafe abortions, and aware that some experiences in the region have demonstrated that the penalization of abortion leads to higher rates of maternal mortality and morbidity and does not reduce the number of abortions, and that this holds the region back in its efforts to fulfil the Millennium Development Goals." Montevideo Consensus on Population and Development, ECLAC, LC/L.3697, 5 September 2013, para 33.

[170] Department of Reproductive Health and Research, World Health Organization. *Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008*, 6a ed., Geneva, WHO, 2011. 2. World Health Organization, *World Health Statistics 2012*, Geneva, WHO, 2012.

[171] WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division. Trends in Maternal Mortality: 1990 to 2013. Estimates by WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division [Internet]. Geneva: WHO; 2014, available at: http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2013/en/.

The suffering is often so severe that women sometimes contemplate suicide. A representative case illustrating this pattern is that of *L.C vs. Peru*. L.C. became pregnant when she was 13 years old as a result of repeated rape by an older man. L.C. tried to commit suicide by throwing herself off the roof of a neighbour's house and suffered a spinal cord injury. She was taken to a public hospital where doctors recommended urgent surgery to prevent the injuries caused by the fall from becoming permanent. The surgery was not carried out after it was confirmed that she was pregnant; a formal request made to the hospital management for a therapeutic abortion was rejected. It was only after L.C. suffered a miscarriage, almost three months after the injury, that the surgery went ahead. However, despite the surgery, she remained paralysed in all four limbs.[172] The CEDAW committee recommended that Peru review its legislation with a view to decriminalizing abortion when the pregnancy is the result of rape or sexual abuse and that it establish a mechanism to ensure effective access to therapeutic abortion, which is legal in the country.[173]

Recently, the Peruvian Ministry of Health reported that 56% of reported deaths among pregnant teenagers in 2012 not directly attributable to their condition were the result of suicide.[174] Studies have identified a disproportionate correlation between teenage pregnancies and suicide.[175] The Committee against Torture has repeatedly called on the state to take measures to prevent suicides.[176]

Maternal deaths and suicides are just two indicators of the pain and suffering experienced by women and girls in situations where abortion is illegal and criminalized. In this report we have documented many other instances of appropriate treatment being denied -- for example treatment for diseases such as cancer in the case of Tania and Rosaura, or for a genetic heart condition in the case of Mónica -- on the grounds that the treatment could harm the foetus. Denial of health treatment on the grounds that the treatment could harm the foetus could constitute torture or other ill-treatment.

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[172] Centre for Reproductive Rights, Factsheet: the case of L.C vs Peru (CEDAW), available at: http://www.reproductiverights.org/case/lc-v-peru-un-committee-on-the-elimination-of-discrimination-against-women.

[173] CEDAW Committee, Communication No. 22/2009, October 2011, CEDAW/C/50/D/22/2009.

[174] Committee on the Rights of the Child, Fourth and fifth periodic reports of States parties due in 2012, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/048/74/PDF/G1504874.pdf?OpenElement.

[175] WHO and United Nations Population Fund (UNFPA), *Mental health aspects of women's reproductive health. A global review of the literature, 2009*, p. 9, http://whqlibdoc.who.int/publications/2009/9789241563567_eng.pdf. Amnesty International translation.

[176] See, for example, Conclusions and recommendations of the Committee against Torture on the United Kingdom, CAT/C/CR/33/3, para 4 (h) in which the Committee expresses concern about "reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures"; and Conclusions and recommendations of the Committee against Torture on the Republic of Korea, CAT/C/KOR/CO/2, para 14: "The Committee is concerned about the high number of suicides and other sudden deaths in detention facilities... The State party should take all necessary steps to prevent and reduce the number of deaths in detention facilities...and suicide prevention programmes should be established in such facilities."; Conclusions and recommendations of the Committee against Torture on Portugal CAT/C/PRT/CO/4, para 11: "[The State party]... should also step up measures aimed at preventing violence among inmates, including sexual violence, and suicide by prisoners".

Despite restrictive legislation, women turn to abortion when faced with a pregnancy they do not want to or cannot continue.[177] Unsafe abortions can have a dramatic impact on their lives and health. Often objects inserted into the vagina result in perforation of the uterus or injuries such as haemorrhage, sepsis, toxaemia or permanent disability. Criminalization of abortion exposes women and girls to social, medical, psychological and legal risks. These are heightened when, because women lack social support, financial resources or reliable, quality information on which to base their decisions, terminations take place in inadequate conditions.[178]

When analysing the level of serious harm or suffering in the context of sexual and reproductive health, it is important to bear in mind that the interpretation of the concept of torture and cruel, inhuman or degrading treatment is evolving and, in particular, that the "degree of suffering" varies according to personal characteristics and the circumstances of the case; different people experience pain in different ways. The cumulative effect of suffering in the areas of sexual and reproductive health also need to be taken into account.

The Inter-American Court, echoing a decision by the European Court, has stated that: "analysis of the gravity of the acts that may constitute cruel, inhumane or degrading treatment or torture, is relative and depends on all the circumstances of the case, such as duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and health of the victim, among others.[179]

In addition, human rights bodies, including the Inter-American Court of Human Rights, are increasingly recognizing that women, as a result of their sex or gender, may experience pain and suffering differently and that, therefore, the effects of these harms may also be different.[180]

Finally, it is not only physical suffering that can be considered severe. In interpreting acts that constitute torture, the Inter-American Court of Human Rights has made clear that

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[177] Guttmacher Institute [homepage on the Internet]. Nueva York: Guttmacher Institute; 2012. [issued January 2012]. *Facts on Induced Abortion Worldwide. Worldwide Incidence and Trends*, available at: http://www.guttmacher.org/pubs/fb_IAW. html

[178] Alejandra López Gómez, "Mujeres y aborto" in, I*nvestigación sobre aborto en América Latina y El Caribe: una agenda renovada para informar políticas públicas e incidencia*, available at: http://clacaidigital.info:8080/xmlui/bitstream/handle/123456789/661/Inv-aborto-ALyC-web.pdf?sequence=2&isAllowed=y [An executive summary is available in English at: http://www.clacaidigital.info:8080/xmlui/bitstream/handle/123456789/662/Executive%20summary.pdf?sequence=5&isAllowed=y

[179] Inter-American Court of Human Rights, the case of *Brothers Gómez Paquiyauri vs Peru*, Judgment of 8 July 2014, (Ser. C) No 110, para 113, citing Eur. Court H.R., Case *Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No 25, para 162.

[180] Criminal case of *Miguel Castro Castro vs Peru*, Judgment of Merits, Reparations and Costs, Inter-American Court of Human Rights, (ser. C) No 160 (25 November 2006).

inflicting psychological suffering or moral anguish can constitute torture.[181] That is, the element of physical violence is not necessary in order for torture to be established. For example, in its decision in *Maritza Urrutia v. Guatemala*, the Court stated the following:

"according to the circumstances of each particular case, some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself."[182]

There is no doubt that violations of reproductive rights documented in this reports, such as denying safe abortion services to women and girls who need them or inflicting forced abortions or sterilization (as in the cases of Esperanza and Michelle) causes severe mental pain and suffering.

TORTURE AND OTHER ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH: INTENTIONALITY AND SPECIFIC PURPOSE

The Committee against Torture makes clear in General Comment No 2 that "elements of intent and purpose in Article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances."[183] It is clear that countries that have passed legislation criminalizing abortion in all circumstances, intend to prohibit that treatment for women and girls even if their lives or health are at risk or the pregnancy is the result of an inherently traumatic experience such as rape.[184] There is also a clear intention to criminalize them and subject them, and any medical personnel treating them, to imprisonment.

With respect to the requirement of "intent", the Special Rapporteur on torture has stated that this can be deemed to be present in cases where someone has been discriminated against, for example on ground of disability. On the other hand, according to the Rapporteur, conduct

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[181] "[T]he Court has established that an act of torture can be perpetrated both by acts of physical violence and by acts that produce acute mental or moral suffering for the victim." Inter-American Court of Human Rights, Fernández Ortega et al vs Mexico. Preliminary Objections, Merits, Reparations, and Costs, Judgment of 30 August 2010, para 124.

[182] Inter-American Court of Human Rights, *Maritza Urrutia vs Guatemala*, Judgment of 27 November 2003, (Ser. C) 103, para 93.

[183] Committee against Torture, General Comment No 2 Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008, para 9.

[184] The Inter-American Court of Human Rights: "has recognized that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage that leaves the victim "physically and emotionally humiliated," a situation that is difficult to overcome with the passage of time, contrary to other traumatic experiences. This reveals that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injuries or disease." *Fernández Ortega et al vs Mexico*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of 30 August 2010, para 114. Case of the *Río Negro massacres vs Guatemala*, Preliminary Objections, Merits, Reparations, and Costs; Judgment of 4 September 2012, para 132. Case of *the Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs; Judgment of 25 October 2012, para 165.

that is merely negligent lacks the intentionality required in Article 1, but may constitute ill-treatment if it causes severe pain or suffering.[185]

The criterion of "particular purpose" perhaps requires further analysis in the area of sexual and reproductive health. In the context of medical treatment, the options for women and girls are often undermined while their so-called "best interests" are pursued and grave violations and discrimination against certain groups of people are perpetrated under the guise of health professionals' "good intentions".[186]

The cases documented in this report illustrate this. Mainumby was interned, forced to carry a pregnancy to term and to give birth in the name of protecting a greater good, in the opinion of prosecutors, judges and politicians. They considered the protection of the foetus to be more important than her best interests, her health or project of life. The same happened to Mónica, Tania and Rosaura. In legal contexts that criminalize abortion, as is the case in Latin America and the Caribbean, this is very common. In the cases of Michelle and Esperanza, it is possible that the doctors treating them also believed that forced sterilization was "for their own good".

In the context of discrimination, the actions of staff in the state justice and health systems in the region are often intended to punish women who have dared to make decisions about their sexuality and reproduction, or who have experienced situations that they consider "reprehensible". This was what happened to Teodora who was blamed for her obstetric emergency, ill-treated during her stay in hospital because of her supposed guilt and then sent to prison. The same pattern is evident in the case of Michelle who was ill-treated in hospital because she was HIV positive and pregnant, something deemed reprehensible by the doctor treating her. In Tania's case, the first reaction of the doctor treating her was to blame her for getting pregnant in the middle of cancer treatment. He then lied to her saying that her cancer treatment could be suspended without putting her life at risk.

It is important to emphasize that health personnel are often also victims of the state's punitive system. For example, when abortion is criminalized in all cases or with few exceptions, they are faced with the dilemma of either letting their patient die or risking imprisonment.

In the areas of sexual and reproductive health, proving that a doctor *intentionally* caused harm or suffering often poses considerable challenges because in the majority of cases, they are protected by legislation or "a perception that, while never justified, certain practices in health-care may be defended by the authorities on grounds of administrative efficiency, behaviour modification or medical necessity."[187]

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[185] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, para 19.

[186] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, para 19, referring to people with disabilities.

[187] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, para 13.

However, according to the UN Convention against Torture, the element of particular purpose includes "any reason based on any kind of discrimination". Consequently, it is not necessary to prove that the *intention* of the doctors carrying out the treatment was to cause harm, but rather that the reason for the harm or severe suffering was based on discrimination. It is clear that this would apply to all the violations of sexual and reproductive rights described in this report and many others in the region, given that the basis of such violations is gender discrimination.[188]

This is the case because denying or imposing without consent health care services that only women or girls of reproductive age may need is gender-based discrimination.

Several UN special rapporteurs have explained the clear link between gender-based violence, including violations of reproductive rights, and torture. Their analyses explain that because reproductive rights violations are driven by discrimination, by definition, they satisfy the element of the definition of torture that requires that there be a purpose behind the commission of torture. The Special Rapporteur on torture clearly sets out this link:

"Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination."[189]

Similarly, the Committee against Torture has specifically identified the context of medical treatment, "particularly involving reproductive decisions" as one in which women are particularly "subject to or at risk of torture or ill-treatment and the consequences thereof."[190]

The Human Rights Committee found that in the case of Peru there was discrimination in the state's efforts to ensure the right to life (set out in Article 6 of the ICCPR) as men were able to seek medical care for conditions that put their lives at risk without having to fear that they or those providing that medical care could face criminal charges, while women were denied this possibility.[191]

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[188] As previously stated, in the Inter-American System the element of "purpose" is not elaborated, as according to the American Convention against Torture, torture can an act committed "for any other purpose".

[189] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment Manfred Nowak: Promotion and protection of all human, civil, political, economic, social and cultural rights, including the right to development, para 68, Doc. ONU A/HRC/7/3 (2008).

[190] Committee against Torture, General Comment No 2 (2007), para 22.

[191] Concluding observations of the Human Rights Committee: Peru, 15 September 2000, CCPR/CO/70/PER, para 20, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2F70%2FPER&Lang=en.

The element of "specific intent" required by Article 1 of the UN Convention against Torture is, therefore, present whenever severe pain or suffering is caused by legislation, policies or practices of sexual and reproductive health, which is discriminatory.

TORTURE AND ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH: STATE INVOLVEMENT

The other element of the definition of torture is that it is committed at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Health workers in state facilities are considered state officials. The Special Rapporteur on torture has stated explicitly that the element of state participation in the definition of torture extends, among others, to doctors and health professionals, including those who work in private hospitals and other institutions.[192]

Other bodies of the UN and the Inter-American Court of Human Rights have provided a more in-depth analysis of the circumstances in which the state is responsible for the acts of private actors. For example, the Committee on the Elimination of Discrimination against Women has indicated that "the State is directly responsible for the action of private institutions when it outsources its medical services and that, furthermore, the State always maintains the duty to regulate and monitor private health-care institutions."[193]

Similarly, in cases of cruel, inhuman and degrading treatment, the Inter-American Court of Human Rights has explained that the duty of the state "to regulate and supervise the institutions which provide health care services... includes both public and private institutions which provide public health care services, as well as those institutions which provide only private health care."[194]

In 2015, the Inter-American Court of Human Rights condemned Ecuador for violating the right to life and to physical integrity of a young woman who was infected with HIV through a private blood bank. It held the state responsible for the negligence that led to the infection on the grounds that it had failed in its obligation to control and supervise the provision of health services.[195]

In light of the jurisprudence, the state is unquestionably responsible for torture and cruel, inhuman or degrading treatment or punishment committed in public and private health care institutions.

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[192] 2008 report of the Special Rapporteur, Manfred Nowak, Doc. ONU A/HRC/63/175 (2008), para 51.

[193] CEDAW, Case of *Silva Pimentel vs Brazil*, Communication No 17/2008, para 7.5 Available at: http://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/CEDAW-C-49-D-17-2008_en.pdf.

[194] Inter-American Court of Human Rights, *Ximenes Lopes vs Brazil*, Merits, Reparations, and Costs, C) No 149, ¶ 141 (4 July 2006).

[195] Inter-American Court of Human Rights, *Gonzalez Lluy et al vs Ecuador*, Preliminary objections, merits, reparations and costs (1 September 2015) para 191.

SPECIFIC VIOLATIONS OF REPRODUCTIVE RIGHTS AS A FORM OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

A number of UN treaty bodies have stated that certain violations of sexual and reproductive rights are a form of torture and/or cruel, inhuman or degrading treatment. The following are examples of these violations. However, it is important to stress that, in line with the analysis set out above of the applicability of the constituent elements of torture and other cruel, inhuman or degrading treatment in health-care contexts, many other violations of sexual and reproductive rights could be considered torture or other cruel, inhuman or degrading treatment.

RESTRICTIONS ON ACCESS TO ABORTION AND THE TOTAL BAN ON ABORTION

The Special Rapporteur on torture has "repeatedly expressed concerns about restrictions on access to abortion and about absolute bans on abortion as violating the prohibition of torture and ill-treatment."[196]

In Latin America and the Caribbean, the Committee against Torture has expressed concern about restrictive abortion laws on more than one occasion. For example, in Peru the Committee found that: "Current legislation severely restricts access to voluntary abortion, even in cases of rape, leading to grave consequences, including the unnecessary deaths of women... that constitute cruel and inhuman treatment." [197] In Nicaragua, the Committee against Torture added its voice to concerns about the total ban on abortion submitted to the Human Rights Council, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights. These bodies made recommendations to the state that it consider allowing exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest.[198] In the case of Chile, the Committee against Torture recommended that the state: "Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion".[199]

Another case in which recognition of restrictions on access to abortion was recognized as a form of torture or cruel, inhuman and degrading treatment is that of *KL vs. Peru* in which the Human Rights Committee found that Peru violated the prohibition against torture or cruel, inhuman or degrading treatment under the International Covenant on Civil and Political Rights (ICCPR) when it did not allow KL to have a therapeutic abortion, despite the fact that she was carrying an anencephalic foetus. The Human Rights Committee explained that the suffering that KL experienced, including the distress and deep depression that she experienced both during her pregnancy and after having given birth was a result of the state's refusal to allow her to have an abortion. This refusal meant she was forced to carry her pregnancy to term and to give birth to her daughter, who died four days after her birth.[200]

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[196] 2013 report the Special Rapporteur Juan Méndez, Doc. UN A/HRC/22/53 (2013), para 50.

[197] Committee against torture, CAT/6/PER/CO/4 (2008) para 23, available at: < http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fPER%2fCO%2f4&Lang=en>.

[198] CAT/C/NIC/CO/1 (2009) para 16, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fNIC%2fCO%2f1&Lang=en.

[199] CAT/C/CR/32/5 (2004) para 7.

[200] *KL vs Peru*, Human Rights Committee, Communication No 1153 / 2003 (2005), para 6.3, available at: https://www1.umn.edu/humanrts/undocs/1153-2003.html.

In a case of Argentina, the Human Rights Committee also considered that the state's failure to ensure a woman's access to abortion, which was permitted by law, had caused physical and mental suffering that constituted cruel, inhuman or degrading treatment.[201] The Committee cited its General Comment No 20, which states that the prohibition in Article 7 of the ICCPR refers to psychological suffering as well as physical pain.[202]

Demonstrating a broad consensus with respect to framing the prohibition of abortion as cruel, inhuman and degrading treatment, three UN Special Rapporteurs recently issued a statement calling on the El Salvadoran government to provide a Salvadoran woman, Beatriz, with life-saving treatment, that is, a termination of her pregnancy. Beatriz was denied an abortion, in light of El Salvador's total ban on abortion, despite the fact that her life was known to be in danger owing to a high-risk pregnancy and that she was carrying an anencephalic foetus. In their statement, these Rapporteurs characterized Beatriz' situation as "cruel, inhumane and degrading."[203]

The European Court of Human Rights has stated on more than one occasion that states are violating the prohibition of cruel, inhuman and degrading treatment by denying women an abortion that was permitted under the law.[204]

FORCED STERILIZATION

The Committee against Torture, in its Concluding observations, has stated that before a sterilization is performed, the consent of the woman must be obtained, noting that obtaining "free, full and informed" consent is a necessary prerequisite to a sterilization procedure. Special mention has been made of the need to obtain this consent in situations involving individuals who are particularly vulnerable for various reasons. For example, the Special Rapporteur on health has highlighted the importance of consent regarding individuals with mental disabilities, explaining that "consent to treatment is one of the most important human rights issues relating to mental disability," going on to note that this issue relates to the prohibition against inhuman and degrading treatment.[205]

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[201] Human Rights Committee, *L.M.R. vs Argentina*, Views, Communication No 1608/2007, 101st session, 28 April 2011, (CCPR/C/101/D/1608/2007) para 9.2

[202] Human Rights Committee, *L.M.R. vs Argentina*, Views, Communication No 1608/2007, 101st session, 28 April 2011, (CCPR/C/101/D/1608/2007) para 9.2.

[203] Joint statement of UN Special Rapporteurs on torture, violence against women and health and the UN Working Group on discrimination against women in law and in practice, "El Salvador: UN Rights Experts Appeal to Government to Provide Life-Saving Treatment to Woman at Risk (26 April 2013), available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13269&LangID=E#sthash.3kcIpwK6.dpuf

[204] European Court of Human Rights, case of *RR v. Poland*, No 27617/04. (2011) & Case of *P. & S. vs Poland*, ECHR 398 (2012) 30.10.2012, (http://hudoc.echr.coe.int/fre-press?i=003-4140612-4882633).

[205] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental, E/CN.4/2005/51, para 87.

Similarly, the Committee against Torture has made special note of situations in which forced sterilization has been targeted at marginalized groups, including Roma women, and called for the investigation, prosecution and punishment of perpetrators and the provision of compensation to victims in cases in which women are sterilized involuntarily; that is, without their free, full and informed consent.[206] The Committee has framed the issue of sterilization without free and informed consent of those individuals with "mental incompetence" as linked to the prohibition against cruel, inhuman or degrading treatment and has, for example, called for the repeal of a decree in Peru allowing this practice.[207]

The Committee against Torture has also expressed concern about forced and coerced sterilization practices in Kenya involving women who are HIV positive or who have disabilities, also framing this issue under the Convention's prohibition of cruel, inhuman or degrading treatment.[208] Similarly, the Special Rapporteur on health has raised the issue of groups who are particularly vulnerable to rights violations, including women who have mental disabilities, pointing out that they are particularly vulnerable to being forcibly sterilized, characterizing this practice as a violation of sexual and reproductive health rights.[209]

The Human Rights Committee, too, has framed issues around both sterilization and abortion as potential violations of Article 7 of the ICCPR, which prohibits torture or cruel, inhuman or degrading treatment.[210] For example, the Committee has explained that state failure to respect women's privacy, for example by requiring that a husband authorize a woman's decision to be sterilized, by putting in place other requirements that must be met for a woman to be sterilized, or by requiring that doctors and other health personnel report cases of women who have had abortions, potentially violate the ICCPR's prohibition of torture or cruel, inhuman and degrading treatment.[211] The Human Rights Committee has also expressed

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[206] Committee against Torture, Concluding observations: Slovakia, para 14, Doc. de la ONU CAT/C/SVK/CO/2 (2009). "The Committee is deeply concerned about allegations of continued involuntary sterilization of Roma women. The State party should: (a) Take urgent measures to investigate promptly, impartially, thoroughly and effectively all allegations of involuntary sterilization of Roma women, prosecute and punish the perpetrators and provide the victims with fair and adequate compensation; (b) Effectively enforce the Health-care Act (2004) by issuing guidelines and conducting training of public officials, including on the criminal liability of medical personnel conducting sterilizations without free, full and informed consent, and on how to obtain such consent from women undergoing sterilization."

[207] Committee against Torture, Concluding observations: Peru, para 15 and 19, Doc. CAT/C/PER/CO/5-6 (2013). See also, Committee against Torture, Concluding observations: Peru, para 23, CAT/C/PER/CO/4.

[208] Committee against Torture, Concluding observations: Kenya, para 27, Doc. CAT/C/KEN/CO/2 (2013).

[209] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental, E/CN.4/2005/51, para 12.

[210] ICCPR, article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experiments.

[211] Human Rights Committee, General Comment No 28, Article 3 (equality of rights between men and women), Sixty eighth session (2000), in Compilation of General Comments and General recommendations adopted by Human Rights Treaty Bodies, p228, para 20, Doc ONU HRI/ GEN/1/Rev.5 (2001), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.5&Lang=en.

serious concern about forced sterilization and framed the issue within the context of the prohibition of torture and other cruel, inhuman or degrading treatment in its Concluding observations.[212]

DENIAL OF POST-ABORTION CARE AND THE OBLIGATION TO REPORT TO THE AUTHORITIES

The Committee against Torture has repeatedly expressed concern that restrictions on access to and absolute prohibitions of abortion violate the prohibition of torture and ill-treatment.[213] The Human Rights Committee explicitly noted that forced abortion and denial of access to a safe abortion for women pregnant as a result of rape were violations of Article 7 of the International Covenant on Civil and Political Rights[214] and expressed concern about the obstacles imposed on abortion when it was allowed by law.

The Committee against Torture, in its review of Paraguay, for example, has expressed concern about the denial of post-abortion care, given that it could "seriously jeopardize" women's health. It has characterized this denial as potentially constituting "cruel and inhuman treatment."[215]

As explained above, according to the definition of torture in the Convention against Torture, when severe pain or suffering is inflicted in order to obtain information or a confession, this constitutes an impermissible purpose under the Convention. In its Concluding observations to Chile, the Committee against Torture has called for an end to "the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion."[216] Therefore, it can be argued that the practice of making the provision of medical care to women who have suffered complications after having had illegal abortions conditional on their confessing or giving information about who performed the abortion so that those individuals can be prosecuted, would constitute torture given that severe pain or suffering is inflicted in order to obtain information.[217]

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[212] See also, Concluding observations of the Human Rights Committee on Slovakia, CCPR/CO/78/SVK, para 12; and Concluding observations of the Human Rights Committee on Japan and Peru, without qualifying forced sterilizations as torture or cruel, inhuman or degrading treatment, CCPR/C/79/Add.102, para 31; CCPR/CO/70/PER, para 21. "The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors. The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely."

[213] See CAT/C/PER/CO/4, para 23. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February, 2013, A/HRC/22/53. Para 50.

[214] General Comment No 28, para 11; See also CCPR/CO.70/ARG, para 14 and the report of the Special Rapporteur on torture and other inhuman or cruel, inhuman or degrading treatment or punishment, *op*

[215] Committee against Torture, Concluding observations on Paraguay, para 22, Doc. CAT/C/PRY/CO/4-6 (2011).

[216] Committee against Torture, Concluding observations on Chile, para 7(m), Doc. CAT/C/CR/32/5 (2004).

[217] Committee against Torture, Concluding observations on Chile, para 6(j), Doc. CAT/C/CR/32/5 (2004).

Similarly, in its Concluding observations to Peru, the Committee against Torture, referring to the prohibition of cruel, inhuman and degrading treatment, has expressed concern about a law requiring doctors to report women seeking post-abortion health services to the authorities.[218] The Committee has been particularly critical of, and called for the elimination of, the practice of obtaining confessions from women who need emergency medical care after having illegal abortions as well as punishing doctors for exercising their professional duties.[219] Again, assessing this practice against the definition of torture under the Convention against Torture, the argument can be made that extracting confessions from women who are seeking medical care would constitute a form of torture.

[218] Committee against Torture, Concluding observations on Peru, para 15, Doc. CAT/C/PER/CO/6 (2012).

[219] Committee against Torture, Concluding observations on Peru, para 15(d) Doc. Doc. CAT/C/PER/CO/5-6 (2013).

5. CONCLUSIONS AND RECOMMENDATIONS

The pandemic of violence against women in Latin America and the Caribbean is a clear reflection of the lack of resources allocated and the lack of political will shown by states in the region to protect the rights of women and girls. States can and should do more to prevent and eradicate gender-based violence. The measures needed are well known; numerous national and international organizations have produced evidence and information on this.

For several years, Amnesty International has been adding its voice to that of hundreds of women's rights organizations throughout the region demanding the eradication of violence against women.

Amnesty International believes that violence against women will not be eliminated unless states in the region change laws, public policies and discriminatory practices in the area of sexual and reproductive health. These laws and practices not only violate many human rights, they also generate institutional violence, torture and other cruel, inhuman or degrading treatment. In addition, as this report shows, by imposing these discriminatory practices based on gender stereotypes, the state is acting as a catalyst, generating further violence against women. It is the state that promotes and legitimizes the structural discrimination that underpins all gender-based violence.

To end this cycle of violence, states in the region must accept their historic responsibility without further delay and eradicate the gender stereotypes that inform current state regulations governing access to sexual and reproductive health services. This report argues that it is in the area of sexuality and reproduction that gender stereotypes about the role women should play in their societies are most clearly revealed, as is the abuse of state power to impose these roles through legislation, public policies and discriminatory practices.

If states in the region eliminated from their norms and practices gender stereotypes – such as: "every woman wants to be and should be a mother"; "We must reduce the number of children that poor and Indigenous women have because they reduce poverty"; "Every pregnant woman should carry the pregnancy to term regardless of her personal circumstances or health or the risk to her life"; "Adolescents are not capable of making decisions about their sexuality or whether they want to be mothers or not"; "Girls who become pregnant as a result of sexual violence must carry the pregnancy to term"; "Women living with HIV should be sterilized to stop them spreading the virus"; "Women who come to the hospital with obstetric emergencies induced it themselves, whatever they say, especially if they poor" – it would send a clear message that the authorities have the political will and commitment to ensure the human rights of women and girls.

In addition, states in the region have already made a commitment to eliminate norms and practices based on such stereotypes and which are harmful to the right to equality of women and girls, both in the Montevideo Consensus on Population and Development[220] as well as in the Sustainable Development Goals.[221]

The following recommendations place considerable emphasis on young and adolescent girls, who are particularly vulnerable because their physical and emotional capacities are still evolving. This focus also reflects grave concern about the increasing rates of teenage pregnancy in the region as well as the emerging and alarming pattern of forcing even girls under the age of 14 to continue with a pregnancy and give birth.

In light of the analysis of the regional situation described in this report and of the human rights standards that all states in the region who are parties to the major human rights treaties are obliged to uphold, Amnesty International makes the following recommendations.

Latin American and Caribbean states:

■ Amend all laws, regulations, practices and public policies relating to sexual and reproductive health that may produce institutional violence, torture or other cruel, inhuman or degrading treatment or punishment. This obligation must be fulfilled by the legislative, the executive and judicial bodies. In particular:

- Decriminalize abortion in all circumstances in order to eliminate the punitive measures imposed on women and girls who seek abortion services and on health professionals providing them where full consent is given.[222]

- Ensure access to abortion in law and in practice as a minimum in cases where the pregnancy poses a risk to the life or health of the woman, where the foetus suffers from

[220] The Montevideo Consensus on Population and Development, ECLAC, LC/L.3697, 5 September 2013, contains many commitments by states relating to the eradication of gender discrimination and multiple discrimination.

[221] The Sustainable Development Goals (SDGs) is a new development programme which all UN member states have committed to achieve. SDG 5 deals with gender equality and its targets include: end all forms of discrimination against all women and girls everywhere; eliminate all forms of violence against all women and girls in the public and private spheres; and eliminate all harmful practices. In addition, Goal 16 includes the target: end abuse, exploitation, trafficking and all forms of violence against and torture of children See http://www.un.org/sustainabledevelopment/.

[222] Committee on the Elimination of Discrimination against Women, Concluding observations on the Philippines, 2006, para 28; Committee on the Rights of the Child, Concluding observations on Nigeria, 2010, para 59 (b). Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Peru (11-29 January 2016), para 56 b.

severe malformation or is not viable, or where the pregnancy is the result of rape or incest.[223]

- Take steps to ensure that the life and health of the woman or girl take precedence over the protection of the foetus.[224]

- Regardless of the legal status of abortion, ensure access to quality and confidential health services for the treatment of complications arising from unsafe abortions and miscarriages. This treatment should be free from discrimination, coercion and violence and must ensure providers have adequate training, support and equipment in order to treat complications linked to abortion.[225]

- Guarantee patient confidentiality for women and girls who receive post-abortion care and establish procedures to investigate and punish anyone who fails to respect their confidentiality.[226]

- Eliminate laws or practices that require health professionals to report to the authorities patients who have or appear to have had an abortion.[227]

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[223] Regarding the obligation to ensure access to abortion when a pregnancy poses a risk to the life or health of the woman, UN treaty bodies have consistently stated that to prevent maternal mortality and morbidity and safeguard the lives and health of women, states must ensure access to legal abortion when there is a risk to the life or health of the woman. International health and human rights bodies consistently interpret "health" to encompass both physical and mental health. On the obligation to ensure access to abortion in cases of sexual assault, rape and incest, the UN treaty bodies have consistently urged states to implement laws that established rape and incest as grounds for abortion and have repeatedly requested that states which do not have laws to that effect amend their legislation. In two separate Latin American cases, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have stated that by not providing young women with access to legal therapeutic abortion in cases of rape or life-threatening foetal malformation, states are violating numerous rights, including the right to equality and non-discrimination, the right to privacy and the right not to be subjected to torture or other cruel, inhuman and degrading treatment. See *L. C. vs Peru*, Committee on the Elimination of Discrimination against Women, 2011; *K.L. vs Peru*, Human Rights Committee, 2005. See also, the Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Peru (11-29 January 2016), para 56 b.

[224] *L.C. vs Peru*, Committee on the Elimination of Discrimination against Women, para 8.15, 2011; Committee on the Elimination of Discrimination against Women, Concluding observations on Hungary, 2013, para 30.

[225] Committee against Torture, Concluding observations on Chile, 2004, para 7 (m); 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, 2011, paras 27 and 65 (k).

[226] Committee on the Elimination of Discrimination against Women, General recommendation No 24: (article 12: Women and health), 1999, para 12 (d).

[227] Human Rights Committee, General Comment No 28: Equality of rights between men and women, para 20; Committee on the Elimination of Discrimination against Women, Concluding observations on Chile, 1999; Committee against Torture, Concluding observations on Chile, 2004, para 7 (m); 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, 2011.

- Ensure that women and girls who ask for post-abortion care are not forced to make a statement admitting to having had an abortion in order to receive care and that any statements that are given are not used to incriminate them.[228]

- Ensure that health facilities are staffed by health-care professionals who have the necessary technical skills and can provide information and quality services, including ensuring informed consent and respecting the privacy and confidentiality of all patients, including adolescents.[229]

- Explicitly prohibit sterilization without free and informed consent.

■ Implement measures to **eliminate discrimination against women** and patterns of behaviour based on gender stereotypes that promote the unequal treatment of women in society, especially in the area of sexual and reproductive health care. In particular:

- Explicitly recognize that certain violations of sexual and reproductive rights constitute institutional violence, including torture or other cruel, inhuman or degrading treatment. Put in place a comprehensive plan to end these violations and bring those responsible to justice.

- Recognize explicitly that the personal opinions or religious beliefs of civil servants, including personnel in the health and justice sectors, must never be an obstacle to women and girls accessing their human rights. Put in place a plan to guarantee this, including imposing sanctions on those who violate this principle and incorporating the principle that only individuals, not institutions, can exercise "conscientious objection".

- Guarantee the right of women and girls (in accordance with the principle of girls' "evolving capacities") to decide on issues related to their sexual and reproductive health without undue interference, based on comprehensive sexuality education and timely and confidential access to information, advice, medical technology and quality services.

- Ensure that the views of pregnant girls are always listened to and respected regarding decisions about abortion.[230]

- Increase access to information, counselling and sexual and reproductive health services for men, including children, adolescents and young people, and promote men's equal participation in care responsibilities through programmes that sensitize men about gender equality and promote the construction of new masculinities.[231]

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[228] Committee against Torture, Concluding observations on Chile, 2004, para 7 (m). See also Committee on the Elimination of Discrimination against Women, Concluding observations on Chile, 1999, para 229; and 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, 2011.

[229] Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (Article 12), para 12; Committee on the Rights of the Child, General Comment No 4: Adolescent health and development 2003.

[230] Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of Peru (11-29 January 2016), para 56 b, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en.

[231] Montevideo Consensus on Population and Development, ECLAC, LC/L.3697, 5 September 2013, para 59.

- Recognize and guarantee the right of everyone to make free, informed, voluntary and responsible choices about their sexuality with respect to their sexual orientation and gender identity, free from coercion, discrimination and violence, and guarantee the right to the information and measures necessary for their sexual and reproductive health.[232]

- Create campaigns to raise awareness of and change patterns of behaviours based on gender stereotypes and eradicate them in all fields, especially health care.

■ In policies to promote gender equality, take into account the particular risk of human rights violations women can face as a result of intersecting factors combined with their sex, such as their age, race, ethnicity or economic status, among others. On the basis of the concept of substantive equality, states should **adopt special measures to eliminate forms of multiple discrimination against women** and their negative and complex consequences,[233] including in the areas of sexual and reproductive health. These include:

- Ensure access to information and contraception services; incorporate these services into the work of health centres and into maternal and reproductive health services.[234]

- Ensure the availability and accessibility of a full range of modern quality contraceptive methods, including those contained in national drug formularies and in the World Health Organization Model List of Essential Medicines, to avoid unwanted pregnancies.[235]

- Ensure that contraceptive services and products are affordable, addressing any economic obstacles, such as health insurance and other economic and budget problems, especially for people on low income or living in poverty.[236]

- Pay special attention to the contraceptive needs of vulnerable and disadvantaged populations and groups, such as adolescents and sex workers.[237]

- Ensure that sexually active adolescents have ready access to modern contraceptive methods such as condoms, hormonal methods and emergency contraception.[238]

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[232] Montevideo Consensus on Population and Development, para 34.

[233] CEDAW Committee, General recommendation No 25 on paragraph 1 of article 4 of the Convention on the Elimination of all Forms of Discrimination against Women, concerning temporary special measures, para 12.

[234] Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12), 2000, para 12; see also World Health Organization, *Integrating sexual and reproductive health-care services, Policy Brief*, 2006.

[235] Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12), paras 11, 12 and 21.

[236] Committee on the Elimination of Discrimination against Women, Concluding observations on Hungary, 1996, para 254, A/51/38; Slovakia, para 28, CEDAW/C/SVK/CO/4, 2008. See also Human Rights Committee, Concluding observations: Poland, para 9, CCPR/CO/82/POL, 2004.

[237] Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12, paras 18-27; Committee on the Elimination of Discrimination against Women, General recommendation No 24 (article 12: Women and health), 1999, para 6.

[238] Committee on the Rights of the Child, General Comment No 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (article 24), 2013, para 70.

■ Put in place effective, appropriate, and impartial **mechanisms to ensure access to justice** for victims of institutional violence, including torture and other ill-treatment in the area of sexual and reproductive health, as well as comprehensive reparation for victims.

■ Act promptly and with due diligence to prevent, investigate, and punish without delay all acts of violence against women, including torture or other ill-treatment in the area of sexual and reproductive health.

■ Put in place **protocols on how to respond to and investigate sexual violence against women,** taking into account the relevant provisions of the Istanbul Protocol and the Guidelines of the World Health Organization.[239] In addition, investigations must be conducted by appropriately trained staff who understand how to provide support to victims of discrimination and gender-based violence.[240]

■ Ensure the availability of **emergency contraception** for all women and girls, especially for those who have been raped.[241]

■ **Regulate the exercise of conscientious objection by health professionals** to ensure that there is no risk to the health of the patient and that the patient's right to receive services and contraceptives,[242] a termination, or any other necessary health-care service is guaranteed. Implement mechanisms to ensure that health professionals who can provide this care are always accessible.

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[239] Inter-American Court of Human Rights *Case Rosendo Cantú and another vs Mexico*, Preliminary Objections, Merits, Reparations, and Costs; Judgment of 31 August 2010, para 242.

[240] "Among other requirements, in the course of a criminal investigation for rape: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; ii) the victim's statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and vi) access to advisory services or, if applicable, free legal assistance at all stages of the proceedings should be provided." Inter-American Court of Human Rights, the case of *Fernández Ortega et al vs Mexico*, Preliminary Objections, Merits, Reparations and Costs; Judgment of 30 August 2010, para 194. See also, Inter-American Court of Human Rights, the case *Rosendo Cantu and another vs Mexico*, Preliminary Objections, Merits, Reparations, and Costs; Judgment of 31 August 2010, para 178; Inter-American Court of Human Rights, the case of *J vs Peru*, Preliminary Objections, Merits, Reparations and Costs; Judgment of 27 November 2013, para 344.

[241] Committee on the Elimination of Discrimination against Women, Concluding observations on Mexico, 2006, para 33; Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health, 2000.

[242] Committee on the Elimination of all forms of Discrimination against Women (CEDAW), Concluding observations on Mexico, para 33, (2006); Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12), United Nations, 2000.

■ **Taking into account the principles set out in the Convention on the Rights of the Child, in particular the best interests of girls**, develop public policies to **protect them from forced pregnancy and maternity.** In particular,

- Recognize explicitly that **for a young girl, pregnancy always represents a danger to her life and health** and refrain from insisting that they be on the brink of death before they are given the option of having an abortion. States must explicitly recognize that girls are not sufficiently physically and mentally developed to cope with pregnancy and motherhood and take into account existing evidence of the impact on their overall health (physical, mental and social) and on their project of life, as well as all the mental and physical dangers posed by a pregnancy to girls under 18.

- Review legislation, regulations and practices that restrict access to sexual and reproductive health services for girls, children and adolescents. In particular provide comprehensive, patient-friendly services for adolescents and young people and ensure that everyone has access to comprehensive information on all the options available, without discrimination of any kind.[243]

- Given that quality and comprehensive sexual education combined with access to contraception is one of the best strategies for reducing unwanted pregnancies that are not the result of sexual violence, review and reform laws and practices that require parents or guardians to authorize access to contraceptive services.[244]

- Ensure the effective implementation of comprehensive age-appropriate sexuality education programmes. These should be available from early childhood and respect the progressive autonomy of the child and the informed decisions of adolescents and young people about their sexuality. Programmes should be participatory and have an intercultural, gender and human rights focus.[245]

- States should implement the principle of "evolving capacities", in relation to adolescents developing sufficient maturity and understanding to make informed decisions without the authorization of their parents or guardians, on matters of importance in order to access sexual and reproductive health services, including contraception.[246]

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[243] Montevideo Consensus on Population and Development, para 35.

[244] Committee on Economic, Social and Cultural Rights, General Comment No 14: The right to the enjoyment of the highest attainable standard of health (article 12), para 23; Committee on the Rights of the Child, General Comment No 4: Adolescent health and development 2003, para 40.

[245] Montevideo Consensus on Population and Development, para 11.

[246] Committee on the Elimination of Discrimination against Women, General recommendation No 24, see note 35 above, para 14; Committee on the Rights of the Child, Concluding observations on Austria, 1999, para 15, CRC/C/15/ Add.98; Bangladesh, 2003, para 60, CRC/C/15/Add.221; and Barbados, 1999, para 25, CRC/C/15/Add.103.

The Inter-American System for the Protection of Human Rights:

The Inter-American System for the Protection of Human Rights has produced jurisprudence on violence against women that is both diverse and progressive. However, 20 years after the Convention of Belém do Pará and almost 30 years after the Inter-American Convention to Prevent and Punish Torture came into effect, the Inter-American System has yet to set a precedent or issue clear guidelines stating that a lack of access to sexual and reproductive health services and certain restrictions imposed on women's sexual and reproductive rights are violations of the right to live free of violence and torture or other ill-treatment. In light of its influence in countries in the region, Amnesty International urges the Inter-American System to:

- Issue guidelines that provide clear guidance for state parties to the Inter-American System on how to prevent and eradicate violence against women and torture or other ill-treatment in the area of sexual and reproductive health.

- Generate a debate on the application of the concept of "a life with dignity" in the areas of sexual and reproductive health, including in cases where abortion is permitted by law to save the life (or health) of the woman, as is the case in most countries in the region.

- In light of the seriousness of the situation in the region, expand the debate on forcing girls to continue with a pregnancy and give birth. In particular, given the evidence of the impact these pregnancies have on the health of girls and their project of life, issue clear guidelines for states that establish that the health and lives of girls are always at risk in pregnancy (without requiring proof of this) and that states should ensure in such cases that girls have the option to access a legal abortion to protect their health and lives.

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THE STATE AS A CATALYST FOR VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN AND TORTURE OR OTHER ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH IN LATIN AMERICA AND THE CARIBBEAN.

The pandemic of violence against women continues unabated in Latin America and the Caribbean. In this report, Amnesty International documents examples in eight countries that highlight patterns of violence against women, including torture or other ill-treatment, in the areas of sexual and reproductive health. These patterns are repeated throughout the region and include ill-treatment and the denial of health services, breaches of patient confidentiality, the imposition of certain moral or religious precepts on patients and the abuse of conscientious objection.

All these are human rights violations based on gender stereotypes about the role that women should play in society. States violently impose these stereotypes on women and girls through legislation, public policies and discriminatory practices in the areas of sexuality and reproduction that violate a range of human rights and generate institutional violence, including torture or other cruel, inhuman or degrading treatment.

This report demonstrates how the state, by imposing such discriminatory practices based on gender stereotypes, generates further violence against women. It is the state that promotes and legitimizes the structural discrimination that underpins all gender-based violence.

Amnesty International concludes that violence against women will not be eradicated until states in the region assume their historic responsibility towards women and girls and stop propagating violence against them. And to do that, they must immediately amend these discriminatory norms in the area of sexual and reproductive health.

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