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REPORT No. 153/18
CASE 13.069
REPORT ON MERITS

MANUELA AND FAMILY
EL SALVADOR

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I. SUMMARY

1. On March 21, 2012, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition presented by the Centro de Derechos Reproductivos, la Colectiva de Mujeres para el Desarrollo Local, and the Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico (hereinafter "the petitioner") alleging that the Republic of El Salvador (hereinafter "the Salvadoran State," "the State," or "El Salvador") was internationally responsible to the detriment of Manuela and Family.¹

2. The Commission approved admissibility report number 29/17 on March 18, 2017.² On March 31, 2017, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement. The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred between the parties.

3. The petitioner argued that the alleged victim suffered a fall that caused a miscarriage, which led to her being criminally tried and convicted for the crime of aggravated homicide. It stated that the State failed to provide her with essential health care services, and that in the framework of the criminal proceeding, a series of violations of due process were committed. It stated that the case of Manuela, who died while she was deprived of liberty, is part of a structural situation of criminal persecution of women who suffer obstetric emergencies, which is the result of the absolute ban on abortion in El Salvador.

4. The State said the alleged victim was provided with adequate medical care, and that in the framework of the criminal proceeding against her, all due process guarantees were respected. It said that since 2009, a series of public policies have been developed targeting poverty and access to reproductive health.

5. Based on the considerations of fact and of law, the Inter-American Commission concluded that the State is responsible for the violation of articles 4.1 (right to life), 7(1), 7(2), and 7(3) (personal liberty); 8(1), 8.2, 8(2)(c), 8(2)(e), and 8(2)(h) (fair trial); 11(2), 11(3) (privacy); 24 (equal protection), 25(1) (judicial protection); and 26 (right to health) in conjunction with the obligations established in articles 1(1) and 2 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"); as well as Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter "the Convention of Belém do Pará.") The Commission made the corresponding recommendations.

II. POSITIONS OF THE PARTIES

A. Petitioner

6. The petitioner stated that this case takes place within the structural context of criminal persecution of women who suffer obstetric emergencies, which is the result of the absolute ban on abortion in El Salvador.

¹ The petitioner organizations asked that the name of the alleged victim be kept confidential and asked that she be identified by the name "Manuela." They also asked that the identity of the alleged victim's relatives be kept confidential, as well as her medical information.

² IACHR. Report No. 29/17. Case 13.069. Manuela and Family. El Salvador. March 18, 2017. In the report, the IACHR declared the petition admissible with regard to articles 4, 5, 7, 8, 11, 13, 17, 24, 25, and 26, in conjunction with articles 1(1) and 2 of the American Convention; 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and 7 of the Convention of Belém do Pará.

7. It stated that the alleged victim was a young, illiterate woman from the Municipio of Cacaopera, a very poor area of El Salvador, and that in 2007, she began to develop painful symptoms of lymphatic cancer. It stated that between August 2006 and 2008, she went to the Cacaopera Health Clinic in the department of Morazán for care, as she had developed tumors in her neck, general pain, exhaustion, perspiration, and other alarming symptoms. However, she was not given proper treatment, and the attending physician did not conduct any examination, nor did she take measures to address the risk of death arising from the illness.

8. It stated that at the same time her health was deteriorating, the alleged victim became pregnant without knowing it. It stated that on February 26, 2008, when she was around 18 weeks pregnant, she suffered a bad fall. It reported that the following day, she thought she was experiencing bad indigestion that led her to expel several blood masses, among which the fetus was found. Her mother buried them in the latrine where they had been evacuated.

9. She stated that the same day, as a result of that emergency, she went to the Hospital San Francisco Gotera where the attending physician, in violation of her obligation of professional confidentiality, accused her of having an abortion and reported her to hospital authorities, who issued a report to the Office of the Public Prosecutor accusing her that same day. It stated that the Police arrived at the medical center on February 28, 2008, and after harassing her and accusing her of murdering her child, they handcuffed her to the hospital bed where she was receiving emergency medical care.

10. It stated that after February 28, 2008, she was held in the Hospital Nacional San Francisco de Gotera for eight days, after which she was transferred to the jail of the Morazán Police without a full medical checkup prior to her release, despite the repeated complaints and discomforts expressed by her. There, she was held for five days, until on March 11, she was transferred to the San Miguel Prison and Pretrial Detention Center.

11. It added that her arrest was carried out without any warrant issued by a judge. In this regard, it said the record includes two official documents supposedly drafted on February 28, 2008, in which police officers state they arrested Manuela "*in flagrante delicto*" for the crime of homicide, saying they explained the reasons for her arrest along with her rights and guarantees and assigned her a public defender. It said that the alleged victim never had such counsel and that the documents are wrong.

12. It said she was later criminally tried for the crime of aggravated homicide, and on July 31, 2008, she was convicted and sentenced to 30 years in prison by the Criminal Trial Court of San Francisco Gotera.

13. It stated that in the framework of the criminal proceeding, a series of due process violations were committed. Specifically, it stated that: (i) she was never notified of the charges; (ii) in her first statement, she did not have a defense attorney; (iii) later, she did have a defense attorney who represented her in several proceedings, but she only met him on the day of the criminal conviction, and he was negligent, an indication of this being that he did not appeal the guilty verdict by filing for a cassation remedy, meaning the judgment became final on August 26, 2008; (iv) she was prevented from submitting evidence including statements from the alleged victim and her mother indicating that the abortion was a miscarriage; and (v) her guilt was presumed throughout the process based on a series of gender stereotypes. In this regard, it stated that the Office of the Public Prosecutor included in the charging document a statement from the officer who arrested Manuela stating that the dead baby was a well-developed little boy who any woman or mother would have treated with love. Likewise, a report from the doctor that the Office of the Public Prosecutor added to the proceedings stated that the alleged victim's pregnancy was the result of infidelity as evidence that the abortion was intentional. Also, the police harassed her relatives for having a "criminal, unfaithful, and murderous daughter." In addition, in the guilty verdict, the Court dismissed the possibility that the fetus could have fallen into the latrine accidentally while Manuela was evacuating because the maternal instinct is to protect the child. It said the judgment took into account her "extremely poor education."

14. In addition, it stated that the alleged victim did not receive any medical treatment for the cancer she was suffering until February 2009, when the illness had reached a terminal phase and her health had severely deteriorated. It stated that she was prescribed sessions of ambulatory chemotherapy, which she received without the care necessary to endure the side effects with dignity. It stated that she did not receive the full cycle of chemotherapy, and in January 2010, her health worsened, and from that point until her death on April 30, 2010, she was admitted to the Hospital Nacional Rosales.

15. It stated that Manuela's relatives were also victims of mistreatment at the hands of the police, as the authorities—taking advantage of their literacy—made the alleged victim's father sign a complaint against his daughter without explaining to him its content. Additionally, the alleged victim's mother was subjected to anal and vaginal searches when she sought to visit her daughter in prison, and her family was intimidated to prevent them from visiting.

16. In terms of the law, the petitioner alleged that the State violated a series of rights protected by the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará.

17. It said the State violated the **right to life, the right to personal integrity, and the right to not be subjected to torture** by the failure to diagnose and adequately treat her illness between 2006 and 2008 when she was a patient of the Cacaopera Health Clinic and the Hospital Nacional San Francisco Gotera. It also said those rights were violated when she did not receive adequate medical treatment while she was deprived of liberty from March 2008 to February 2009 and spent almost a year suffering severe pain. When she did finally receive medical treatment, it was not complete, and the State did not allow it to be provided under proper conditions, which in the end led to her death.

18. It also stated that the right to humane treatment to the detriment of the alleged victim's relatives—her mother especially—was violated, for the above-indicated reasons.

19. It indicated that the State violated the alleged victim's **right to personal liberty**, as she was detained arbitrarily without having been informed of the reasons, without having been informed of the charges against her, and without any court order. It added that neither was the legality of her deprivation of liberty corrected within a reasonable period of time, and highlighted the particular situation of vulnerability of the alleged victim, who, being illiterate, needed an explanation in simple and jargon-free language, which she never received.

20. It argued that the State violated the **right to a fair trial** by failing to inform her of the charges against her, failing to provide an adequate defense, violating the right to present exculpatory evidence, and allowing stereotypes to contaminate the process and affect the independence and impartiality of the court that convicted the alleged victim. It also stated that the right to a fair trial was violated when the State did not conduct an *ex officio* investigation into the death of the alleged victim.

21. It added that the State also violated the right to a fair trial and judicial protection because at the time of the facts, there was no effective remedy for appealing the guilty verdicts, with only a cassation remedy available, whose requirements are complex and which does not allow for full review of a guilty verdict.

B. State

22. The State denied the context alleged by the petitioner and said that there are no patterns of discrimination and gender-based violence in El Salvador that are part of State policies.

23. It stated that the criminal investigation against the alleged victim originated with a report submitted by Hospital San Francisco Gotera stating that the alleged victim had entered the hospital with the appearance of having had an abortion. It stated that based on this, the Office of the Public Prosecutor asked

the Cacaopera Justice of the Peace to issue a preventative search warrant of Manuela's home, and the visual inspection consequently was conducted on February 28, 2008.

24. It stated that during the visual inspection, the investigators recovered the body of a newborn, and a forensic doctor immediately conducted the forensic medical examination *in situ*, then submitted the remains to the Forensic Medical Institute of San Miguel.

25. It stated that the Forensic Medical Institute of San Miguel found in its autopsy conducted on February 28, 2008, that the remains corresponded to the cadaver of a newborn, whose umbilical cord had been pulled out at the base and who had died by mechanical asphyxia. The State indicated that it was based on this that on February 28, 2008, Manuela was arrested while she was at the Hospital Nacional de San Francisco de Gotera.

26. It stated that, based on the results of the above-referenced autopsy, the alleged victim was criminally charged and convicted for the crime of aggravated homicide, and that the process complied with all due process guarantees. In this regard, it stated that the Chief Justice of the Criminal Trial Court of San Francisco Gotera, who heard the case against Manuela, said that at all stages of the process, the rights and guarantees of the alleged victim were respected.

27. The State also indicated that Manuela received adequate medical care before and after being deprived of liberty. Specifically, it stated that in 2008, she was cared for at the emergency room of the Hospital Nacional San Francisco de Gotera for "prematurely giving birth outside the hospital." It stated that she was stabilized in observance of existing hospital protocol for caring for women who have given birth this way, and that she was released seven days later based on her recovery and medical progress.

28. It also stated that in 2009, she was diagnosed with Hodgkin's disease by Hospital Nacional Rosales, where she was systematically given chemotherapy from February to May 2009. It stated that the treatment was not restarted until October 10 of that year due to a relapse on the right side of her neck, and that the last round of chemotherapy was administered on April 19, 2010. It said that one day later, on April 20, 2010, the alleged victim presented with a heart attack that ended her life.

29. It stated that measures to provide healthcare to Manuela were also taken inside the penitentiary system. In this regard, it said that in 2009, the "Criminological Prevention and Sentence Execution Team of the San Miguel Prison" decided to transfer Manuela from the San Miguel Prison and Pretrial Detention Center to the Ilopango Women's Reform Center so the alleged victim could receive the medical care she needed.

30. Likewise, it pointed to a series of measures it has implemented to guarantee the rights of Salvadoran women to sexual and reproductive health. It stated that between 2011 in 2012, technical operational guidelines were approved for the abortion plan strategy to provide care for women in the preconception, partum, and post-partum stages, as well as a Clinical Guide to Gynecology and Obstetrics. It added that national hospital staff have been trained on how to safely handle miscarriages and provide postpartum care, and that these measures have reduced maternal mortality. It stated that the Office of the Attorney General of the Republic has also provided training on the rights of women, with a special emphasis on public defense in crimes related to the life of developing humans, with the goal of guaranteeing the rights of women tried or convicted for the these types of crimes. It also stated that it has an Internal Office of Comprehensive Services for women deprived of liberty in Ilopango, the objective of which is to protect system inmates from any health vulnerability.

31. It addressed El Salvador's abortion ban, indicating that although Article 133 establishes that abortion under any circumstances is a crime, a judgment issued by the Supreme Court of Justice in 2007 that found the law unconstitutional indicated a need to amend the article and provide for exceptions to the prohibition. It stated that based on this, on October 17, 2016, a bill was presented to amend the law by permitting pregnancies to be terminated for three reasons: rape of women and girls; risk to the life of the mother; and unviability of life outside the womb. It added that another judgment of the Supreme Court

recognized the Inter-American Court of Human Rights' interpretation as to the legal existence of personhood and the rights recognized thereof.

III. ESTABLISHED FACTS

A. Context

32. The IACHR underscores that this case takes place in a context of the criminalization of abortion in El Salvador. Several international bodies have addressed the impact the ban has had on Salvadoran women.

33. In the United Nations, the United Nations Special Rapporteur on violence against women has stated that the absolute criminalization of abortion in El Salvador has direct consequences for maternal morbidity and mortality. In her 2011 report, the Rapporteur stated that without legal, safe, and timely options, many women have had to turn to practices that are dangerous and even deadly; they abstain from seeking medical services; or they experience obstetric emergencies without the necessary medical care.³ She also noted that according to the Ministry of Health, the maternal mortality rate among adolescents was 15.3% in 2003, 26% in 2004, and 21.4% in 2005, with unsafe and clandestine abortion becoming the second of the 10 main causes of female mortality in El Salvador.⁴

34. For its part, the United Nations Human Rights Committee has expressed concern at the severity of El Salvador's abortion laws and urged the State to take measures to bring its legislation into line with the provisions of the International Covenant on Civil and Political Rights regarding the right to life in order to help women prevent unwanted pregnancies and so they will not have to see clandestine abortions, which can put their lives at risk.⁵

35. The Committee also expressed concern in 2011 over the fact that "women seeking treatment in public hospitals have been reported to the judicial authorities by medical staff who believe they have been involved in abortions, that legal proceedings have been brought against some of these women, and that in some cases these proceedings have resulted in severe penalties for the offence of abortion or even homicide, an offence interpreted broadly by the courts. Even though the Constitutional Chamber of the Supreme Court has ruled that in cases of vital need a woman facing criminal proceedings for abortion can be absolved of criminal responsibility, the Committee is concerned that this legal precedent has not been followed by other courts and that criminal proceedings against women accused of abortion have not been dropped as a result."⁶

36. Likewise, in 2014, the United Nations Committee on Economic, Social, and Cultural Rights expressed concern regarding El Salvador's

"complete ban on abortion, which affects poor and less educated women in particular, with no allowance for exceptional circumstances, which has given rise to grave situations of distress and injustice. The Committee is particularly concerned at cases in which women whose health was seriously at risk have turned to the health system and been reported on suspicion of having had an abortion. In some cases disproportionate criminal penalties have been imposed with no regard for due process. The Committee is also concerned at the high number of unsafe and illegal abortions, which have serious consequences for health and are

³ Human Rights Council, Report of the Office of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum - Follow-up mission to El Salvador, para. 66, (2011).

⁴ Human Rights Council, Report of the Office of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, Addendum - Follow-up mission to El Salvador, para. 66, (2011).

⁵ United Nations Office of the High Commissioner of Human Rights, "**Compilación de observaciones finales del Comité de Derechos Humanos sobre países de América Latina y el Caribe (1977-2004)**." Published by the OHCHR and the Human Rights Center of the Universidad de Chile.

⁶ Concluding observations of the Human Rights Committee on El Salvador, CCPR/C/SLV/Co/6 (2010).

still one of the main causes of maternal mortality.”⁷ The Committee urged the State to provide quality treatment for complications arising from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution.⁸

37. Also, the Committee on the Elimination of Discrimination against Women stated in 2017 that it was concerned about the absolute criminalization of abortion in El Salvador, pursuant to article 133 of the Criminal Code, which has meant women often resort to unsafe methods of abortion, thus facing a serious risk to their health and life. It also expressed concern over the long periods spent by women in pretrial detention and the disproportionate criminal penalties applied to women seeking abortion and to women who have had a miscarriage, as well as the incarceration of women who are reported to the authorities after visiting a hospital in need of care by health personnel who fear punishment.⁹

38. In 2017, the United Nations High Commissioner on Human Rights expressed concern that “as a result of El Salvador’s absolute prohibition on abortion, women are being punished for apparent miscarriages and other obstetric emergencies, accused and convicted of having induced termination of pregnancy.” He added that “It only seems to be women from poor and humble backgrounds who are jailed, a telling feature of the injustice suffered.”¹⁰

39. Likewise, the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions stated in 2018 that El Salvador’s absolute ban on abortion has led to unfair imprisonment of women after having obstetric emergencies and miscarriages and later unjustly charged with having induced termination of pregnancy.¹¹

40. Also, from the Organization of American States, the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention reiterated in 2014 its concern regarding El Salvador “on having learned of a significant number of women who are being processed, punished, and deprived of liberty after being charged with crimes related to the crime of abortion.” It stated that both in the general recommendations of its hemispheric report and the specific recommendations for the State of El Salvador, the Committee has stated that all laws criminalizing abortion in cases of sexual violence and therapeutic abortion should be struck down. In this regard, the Committee has underscored the gravity and impact of criminal laws on this with regard to women’s right to life, particularly the way in which illegal abortions increase maternal mortality rates.”¹²

41. Finally, the Inter-American Commission on Human Rights has also addressed the absolute ban on abortion in El Salvador. Following its working visit to El Salvador in 2018, the IACHR noted that the prevalence of violence and discrimination against women was reflected in the criminalization of abortion. The IACHR stated that the absolute criminalization of abortion has direct consequences on maternal morbidity and mortality rates. Without legal, safe, and timely options, many women have to subject themselves to dangerous and even fatal practices; they refrain from seeking medical services; or experience obstetric emergencies without the medical care they need.¹³

42. Likewise, the IACHR expressed its concern over the fact that, even though the Criminal Code establishes sentences of up to 12 years for abortion, many women who suffer obstetric complications or

⁷ United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, UN document E/C.12/SLV/CO/3-5, June 19, 2014, para. 22.

⁸ United Nations Committee on Economic, Social and Cultural Rights, Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador, UN document E/C.12/SLV/CO/3-5, June 19, 2014, para. 22.

⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of El Salvador, CEDAW/C/SLV/CO/8-9, pg. 12.

¹⁰ [Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the end of his mission to El Salvador](#), November 17, 2017.

¹¹ [El Salvador End of Mission Statement of Agnes Callamard, United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions](#), February 5, 2018.

¹² Follow-up Mechanism of the Convention of Belém do Pará (MESECVI), Report on the Implementation of CEVI Recommendations, Second Round, El Salvador, OEA/Ser.L/II.7.10 MESECVI/I-CE/doc.16/14, October 2, 2014, para. 16.

¹³ [IACHR Wraps Up Working Visit to El Salvador](#), January 29, 2018.

miscarriages are convicted of aggravated homicide and sentenced to up to 40 years in prison, based on the suspicion of having induced an abortion and in possible violation of their right to due process. These sentences are said to be occurring in the context of proceedings that allegedly fail to respect the right of the accused to a fair trial. Likewise, the law on which these sentences are based appears to be in clear contradiction with the right to medical privacy, which reportedly keeps health professionals from having the necessary conditions of legal certainty to be able to properly exercise their responsibility as guarantors of their patients' health.¹⁴

43. The IACHR later reiterated the impact of the absolute ban on abortion in El Salvador, stated that it places a disproportionate burden on the exercise of the rights of women and girls and creating a context that facilitates unsafe abortions and ignores the State's international obligations to respect, protect, and guarantee women's rights to life, health, and integrity.¹⁵

B. Regarding the criminal processing of the alleged victim

44. The Commission observes that on February 27, 2008, Manuela went to the emergency room at the Hospital Nacional de San Francisco de Gotera. The intake and release log of the Hospital Nacional Héctor Antonio Hernández Flores de San Francisco Gotera indicates that the presumptive diagnosis on intake was "extraction of placenta from giving birth outside the hospital."¹⁶

45. The emergency room hospital intake log entry for Manuela includes the following information:

Patient, 25 year old (...) with a history of suffering a fall from her own height, trauma in the pelvic area (fell to a seated position) (...) initial lumbopelvic pain that increases in intensity, duration, and frequency (...) at 12:30 pm (02-27-08) she expelled a fetus.¹⁷

46. According to available information, the doctor who attended the alleged victim reported her to the Complaint Reception Unit of the Subregional Office of the Public Prosecutor of Morazán on February 27, 2008, which launched the criminal process described hereinafter. In her report, the doctor included the following considerations:

For the purposes of complying with Article 312 Pn., I hereby inform you that on the 27th at 525 p.m., medical attention was provided in this hospital to Manuela, female, 25 years of age (...) resulting in the following findings: premature birth, with retention of the placenta. No fetus is present. Apparently as the result of having committed a crime. Please take this into account in the application the pertinent measures under the law.¹⁸

1. Preliminary steps taken on February 28, 2008

47. On February 28, 2008, the police questioned the physician regarding her complaint. In her statement, she described the reasons why she alerted the Office of the Public Prosecutor to Manuela's situation:

The information provided by the patient did not match with the clinical diagnosis, as the patient was attended for a miscarriage, and on examination of her (...) the emergence of an

¹⁴ [IACHR Wraps Up Working Visit to El Salvador](#), January 29, 2018.

¹⁵ [IACHR Urges El Salvador to End the Total Criminalization of Abortion](#), March 7, 2018.

¹⁶ Annex 1. Medical file 138901 from the medical records of Manuela in the Hospital Nacional "Héctor Antonio Hernández Flores" de San Francisco Gotera. Annex of the brief of comments on the merits from the petitioner.

¹⁷ Annex 1. Medical file 138901 from the medical records of Manuela in the Hospital Nacional "Héctor Antonio Hernández Flores" de San Francisco Gotera. Annex of the brief of comments on the merits from the petitioner.

¹⁸ Annex 2. Criminal case file TS066/2008. Report of Dr. Johana Vanessa Mata Herrera, a physician at the Hospital Nacional San Francisco Gotera, against Manuela, dated February 27, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 27.

umbilical cord of about 40cm in length was observed, cleanly cut and with a perianal tear (...) the patient's placenta was observed to be calcified.¹⁹

48. On the same day, an officer of the National Civilian Police asked the Cacaoopera Justice of the Peace to issue a preventative search warrant for the home where Manuela lived with her family.²⁰ After it was granted by the Cacaoopera Justice of the Peace,²¹ a visual inspection was conducted, in which two investigators of the National Civilian Police participated, along with an officer from the Technical and Forensic Police, who acted as the crime scene surveyor and photographer.²² The record describing this search indicates that inside a cesspit, they found:

(...) a newborn at term, without umbilical cord as it seemed torn, with no apparent genetic defect (...) male (...) dead for approximately 24 hours, cause of death to be determined by a forensic autopsy, as the body was transferred to the forensic medical department of the city of San Miguel.²³

49. That same day, an examination of the alleged victim's genitals was conducted by a forensic doctor, the report on which stated as follows:

The umbilical cord with its vessels (two veins, one artery) clean cut, not torn. Based on this, the patient's condition verifies a birth outside the hospital, if not to term then very close, with indications of preeclampsia (hypertension during pregnancy).²⁴

50. The Commission underscores the difference between the report on the genital examination conducted on February 28 at 9 a.m.,²⁵ which finds that the umbilical cord had a clean cut and was not torn, compared to the report of the visual inspection conducted that same day at 11:30, which found the opposite.²⁶

51. That same day, the Forensic Medical Institute performed an autopsy on the body, which found the following:

External and internal examination of the body revealed the following: The umbilical cord was observed to have been torn out at its base, and feces were removed from the nose and mouth. The cadaver was decomposing rapidly due to the fecal materials, the heat in the pit, and the moisture. Internally, feces were found to be obstructing the upper airways, visual examination of the lungs found both lungs were fully expanded in the thoracic cavity, while the hydrostatic test came back positive for air. This demonstrates that the child was born alive and breathing. The cause of death was mechanical asphyxiation due to obstruction of the airways by feces and severe bleeding from the navel.²⁷

¹⁹ Annex 3. Criminal case file TS066/2008. Police record of the questioning of Dr. Johana Vanessa Mata Herrera, February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 26.

²⁰ Annex 4. Criminal case file TS066/2008. Request for order to conduct preventative search, February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 10.

²¹ Annex 5. Criminal case file TS066/2008. Resolution of the Cacaoopera Justice of the Peace of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 11.

²² Annex 6. Criminal case file TS066/2008. Record of visual inspection of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 12.

²³ Annex 6. Criminal case file TS066/2008. Record of visual inspection of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 13.

²⁴ Annex 7. Criminal case file TS066/2008. Medical Forensic Examination Report of the Forensic Medical Institute of February 28, 2008, Annex 2 to the initial petition of March 21, 2012, pg. 96.1.

²⁵ Annex 7. Criminal case file TS066/2008. Medical Forensic Examination Report of the Forensic Medicine Institute of February 28, 2008, Annex 2 to the initial petition of March 21, 2012, pg. 96.1.

²⁶ Annex 5. Criminal case file TS066/2008. Record of visual inspection of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 13.

²⁷ Annex 8. Criminal case file TS066/2008. Autopsy of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 82-83.1.

52. The casefile also includes a complaint from the father of the alleged victim in which he stated “feeling ashamed because the husband is in the United States, but his daughter told her she became pregnant by another man” and that “he feels sorry for his daughter because [her husband] never would have wanted to get rid of the child.”²⁸ The Commission notes that the complaint is signed with a finger print and that the alleged victim’s father does not know how to read or write. According to the petitioner, the father of the alleged victim was pressured to place his fingerprint on the document, but with no explanation of its contents. The State did not address this allegation. There is no indication in the casefile of any inquiry into this.

2. Detention of the alleged victim and subsequent investigative steps

53. According to the casefile, the alleged victim was detained on February 28, 2008, while she was receiving medical care in the maternity ward at the Hospital Nacional de San Francisco Gotera. The arrest report states the following:

Arrest, *in flagrante delicto* of (...) for the crime of homicide to the detriment of her newborn child, which took place on the 27th of this month at twelve thirty (...) a visual inspection was conducted by the police inside and outside the home, which found at the bottom of the septic pit the lifeless body of the newborn boy (...).²⁹

54. The Commission observes that the report is not signed by Manuela, nor does it include her fingerprint. It only states that the alleged victim did not want to sign it.

55. The same day, an *ex officio* public defender was appointed for the alleged victim. However, there is no indication she was notified of the appointment.³⁰ The Commission observes that the report is not signed by Manuela, nor does it include her finger print, even though the final document explicitly states that the thumbprint of the detainee must be placed on the document if the person cannot sign.

56. On February 29, 2008, the investigator assigned to the casefile made a report stating that she talked with the alleged victim in the hospital and with her mother at the site of the facts.³¹

57. According to the interview report, the mother of the alleged victim told the investigator on the case that “she did not know her daughter was pregnant, but that her daughter had suffered a miscarriage (...).”³² The interview report also includes a number of characterizations by the investigator:

(...) As an investigator and a woman, it is my opinion that what this woman did (...) she would not have done, if she did not want her son, she would have given him the opportunity to live there are people who cannot have children and want them with all their hearts, the baby found dead and covered in worms was a little boy, well developed, with light brown skin (...) and physically very pretty, that any woman or mother would have raised with love (...)³³

58. The Commission notes that there is no indication that the alleged victim had legal counsel during the interview with the investigator on the case.

²⁸ Annex 9. Criminal case file TS066/2008. Official document of the complaint from Manuela’s father of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 7 and 7.1.

²⁹ Annex 10. Criminal case file TS066/2008. Arrest report of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 5.

³⁰ Annex 11. Criminal case file TS066/2008. Police report on assignation of the public defender of February 28, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 6.

³¹ Annex 12. Criminal case file TS066/2008. Interview report by María Ester Hernández de Reyes of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 24.1.

³² Annex 12. Criminal case file TS066/2008. Interview report by María Ester Hernández de Reyes of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 24 and 24.1.

³³ Annex 12. Criminal case file TS066/2008. Interview report by María Ester Hernández de Reyes of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 25.

59. On February 29, 2008, the head of the Minors and Women Unit of the Office of the Public Prosecutor of Morazán asked the director of the Hospital Nacional de San Francisco Gotera for a copy of Manuela's medical records, telling him that "as part of the investigations conducted thus far, it has been determined that a crime has [...] effectively been committed, and as a consequence, she is currently under detention."³⁴

60. Later, the hospital director sent a summary of Manuela's medical records from the day she was admitted to the emergency room. It contained the alleged victim's personal medical history including "(...) first menstrual period at 13 years old, began having sexual relations at 22 years old, no family planning methods, no sexually-transmitted diseases, last pap smear five years ago, patient says pregnancy is the result of infidelity."³⁵

61. Additionally, the report states that the alleged victim said that "I don't know if the fetus fell on the ground or if the cord was torn, my sister says that my mother cut the cord and buried the child, according to my sister, the child was stillborn."³⁶

62. On February 29, 2008, the Office of the Attorney General of the Republic filed a request for the formal preliminary investigation to begin with the provisional detention of Manuela for the crime of aggravated homicide to the detriment "of her newborn son."³⁷ On March 2, 2008, the Cacaopera Justice of the Peace granted the request and issued an arrest warrant for Manuela "for the legal term of inquiry."³⁸

63. On March 3, 2008, the first hearing was held in the criminal proceeding before the Cacaopera Justice of the Peace, Department of Morazán. The alleged victim was not present because "she had not been transported to this Court by agents of the Inmate Transfer Section of the Eastern Zone of San Miguel, due to lack of personnel."³⁹ During the hearing, the Office of the Public Prosecutor again asked the Court to order the preliminary investigation with the provisional detention of Manuela, arguing that:

We are dealing with an incident defined by law as the crime of AGGREGATED HOMICIDE, which, given that its punishment exceeds the maximum prison term, is considered a very serious crime, and as in this case, the legal right protected is physical integrity, which has been violated to the detriment of a newborn male, the State's comprehensive protection is needed, for which reason it is presumed that the accused (...) could obstruct specific parts of the investigation (...) as existing evidence indicates that she also could evade justice by fleeing. It should also be taken into account that Article 294, paragraph 2 of the criminal procedural code is clear that the only measure available in these types of crimes is pretrial detention, given the nature of the crime (...).⁴⁰

64. The judge granted the formal preliminary investigation and ordered the alleged victim be held in pretrial detention while she received medical care at the maternity ward of the Hospital Nacional de San Francisco Gotera, leaving her at the disposal of the Second Trial Court.⁴¹ The judge stated that:

³⁴ Annex 13. Criminal case file TS066/2008. Request for cooperation of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 14.

³⁵ Annex 14. Criminal case file TS066/2008. Official Letter 2008-5440-0, issued by Dr. Héctor Antonio Hernández Flores, director of the Hospital Nacional de San Francisco Gotera of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 19.

³⁶ Annex 14. Criminal case file TS066/2008. Official Letter 2008-5440-0, issued by Dr. Héctor Antonio Hernández Flores, director of the Hospital Nacional de San Francisco Gotera of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 19.

³⁷ Annex 15. Criminal case file TS066/2008. Request for formal preliminary investigation with pretrial detention of February 29, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 1-4.

³⁸ Annex 16. Criminal case file TS066/2008. Resolution of the Cacaopera Justice of the Peace, Department of Morazán of February 2, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 28.

³⁹ Annex 17. Criminal case file TS066/2008. Record of the first hearing of the criminal proceeding against Manuela of March 3, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 37.

⁴⁰ Annex 17. Criminal case file TS066/2008. Record of the first hearing of the criminal proceeding against Manuela of March 3, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 41.1.

⁴¹ Annex 18. Criminal case file TS066/2008. Decision to grant the preliminary formal investigation and pretrial detention of the Cacaopera Justice of the Peace of March 3, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 47.

(...) pretrial detention is granted (...) for the purpose of protecting the investigation into the real truth of the facts (...) it also assumes that the accused person in question will try to evade the punishment to be handed down for the crime committed and could obstruct the specific acts of the investigation by hiding or even threatening witnesses; in addition to the crime committed by the aforementioned accused with regard to harm to her newborn child, she has caused social upheaval within Caserío Las Mesas (...) and neighboring communities, which abhor the improper conduct committed by the aforementioned accused (...).

(...) a FORMAL PRELIMINARY INVESTIGATION WITH PRETRIAL DETENTION is therefore ordered (...) on finding sufficient evidence to reasonably conclude that the accused is likely the perpetrator or accomplice to the act of which she is accused (...) evidence collected thus far indicates that the newborn child was the accused's (...) based on which her intent is established to hide and destroy the fetus, as she was perfectly able to hide the pregnancy without her relatives finding out.⁴²

65. On March 3, 2008, the Forensic Medical Institute sent the Second Trial Court the results of the autopsy conducted by forensic doctor Jaime Ranulfo Berrios, according to which the child was born alive.⁴³

66. On April 11, a death certificate was issued for the baby indicating he died from "asphyxiation due to airway blockage" on February 28, 2018, at 2 p.m. in the canton of Cantón Estancia Caserío Las Mesas and that he lived for two days.⁴⁴

67. The Institute also conducted a psychological examination to assess the state of Manuela's mental health at the request of the Office of the Public Prosecutor. The examination concluded that the alleged victim was depressed, but did not suffer from an altered mental state or incapacity that would prevent her from understanding the illegal nature of her actions.⁴⁵

68. On June 5, 2008, a hearing was held before the Second Trial Court of San Francisco Gotera, Morazán, to review the alleged victim's pretrial detention, at which she was represented by another publicly-appointed defense attorney.⁴⁶ At that time, the Second Trial Court of San Francisco Gotera, Morazán, concluded that the circumstances that led to the adoption of the precautionary measure persisted.⁴⁷

3. Trial

69. On June 23, 2008, the prosecutor filed charges before the Second Judge and asked that Manuela's trial begin. Reference was also made to the complaint that Manuela's father allegedly filed against her.⁴⁸

70. On July 7, 2008, the Second Court of San Francisco Gotera ordered the trial begin and upheld the pretrial detention of the alleged victim, finding that:

⁴² Annex 18. Criminal case file TS066/2008. Decision to grant the preliminary formal investigation and pretrial detention of the Cacaopera Justice of the Peace of March 3, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 41.1.

⁴³ Annex 19. Criminal case file TS066/2008. Autopsy issued by the Forensic Medical Institute on March 3, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 82-83.1.

⁴⁴ Annex 20. Criminal case file TS066/2008. Death certificate of April 11, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 99 and 99.1.

⁴⁵ Annex 21. Criminal case file TS066/2008. Psychological examination of Manuela conducted by the Forensic Medical Institute on April 25, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 97 and 98.

⁴⁶ Annex 22. Criminal case file TS066/2008. Acceptance of legal representation by the Second Trial Court of June 5, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 63.

⁴⁷ Annex 23. Criminal case file TS066/2008. Record of the hearing to review the precautionary measure of June 5, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 64.1.

⁴⁸ Annex 24. Criminal case file TS066/2008. Charges of the Office of the Attorney General of the Republic of June 23, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 72 to 81.

(...) the gravity of the punishment she would face should she be found guilty in the trial could cause her to flee or obstruct the investigation. In the judgment of the undersigned on this case, deprivation of liberty is the only effective, necessary, and sufficient precautionary measure that would ensure the accused appears at her trial and guarantee the trial's results, thus fulfilling the aims of the criminal process.⁴⁹

71. The judge indicated that the evidence of the commission of the crime included the complaint from Manuela's father, as well as the inspection of Manuela's mother's house, the medical examination of the newborn, the autopsy of the newborn, the examination of Manuela's genitals, the results of the DNA test of the newborn and Manuela, the photo album from the inspection of Manuela's mother's house, Manuela's medical records issued at the direction of the Hospital de San Francisco Gotera, and the statement of one of the police officers.⁵⁰ The judge found that this evidence proved that "the accused gave birth to a baby" and made it possible to "determine that the accused in question discarded her young child by throwing it into a septic pit,"⁵¹ indicating as well that the evidence "makes it possible to conclude it is likely that the accused has committed the crime of aggravated homicide of her newborn child (...)."⁵²

72. On July 23, 2008, a psychiatric examination of the alleged victim was added to the case file in which she states that:

(...) While I was pregnant, I fell and the child came, I was expecting him in April and the bad thing I did was I went to the bathroom and it fell in the pit, they picked me up and I was in bad condition, they took me to the hospital, and from there I don't remember anything, I don't remember what my family did there. This happened toward the end of February, like the 27th, they say I am guilty but God knows that's not true.⁵³

73. On July 31, 2008, the public hearing in the process brought against Manuela was held. During the hearing, the doctor who conducted the autopsy of the newborn confirmed his report and added to it, stating that:⁵⁴

(...) Visual examinations were conducted to verify if the lungs were expanded, as when a child breathes, the lung expands, meaning that the child was born alive because the lungs had expanded; likewise, hydrostatic tests were conducted, consisting of removing a lung, dividing it into quarters, and placing it in a container of water, and if it floats, it means there was air in the lung. In this case, the test was positive, meaning the child could have lived for approximately 10 to 15 minutes, as it was to term.

(...) On being asked whether the child could have been expelled accidentally, he stated: that there is a possibility, but that the child would normally be hung from the umbilical cord, and the child could have been removed using the same cord, as the placenta detaches around 10 minutes after the child is birthed. Also, this was a case of a pregnancy to term with normal labor in which the child doesn't come out all at once but rather first a head and then the child must be turned so the shoulders can come out, and then wait for the hips. It would have been difficult for the child to have come out as quickly as described by the mother; that could be

⁴⁹ Annex 25. Criminal case file TS066/2008. Resolution of the Second Trial Court of San Francisco Gotera, Morazán, of July 7, 2008. Annex 2 to the initial petition of March 21, 2012, pgs. 72 to 81.

⁵⁰ Annex 25. Criminal case file TS066/2008. Resolution of the Second Trial Court of San Francisco Gotera, Morazán, of July 7, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 106.1 and 107.

⁵¹ Annex 25. Criminal case file TS066/2008. Resolution of the Second Trial Court of San Francisco Gotera, Morazán, of July 7, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 107.

⁵² Annex 25. Criminal case file TS066/2008. Resolution of the Second Trial Court of San Francisco Gotera, Morazán, of July 7, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 107.

⁵³ Annex 26. Criminal case file TS066/2008. Psychiatric examination of the Forensic Medical Institute of July 23, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 128.

⁵⁴ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 138.1-139.1.

the case for a woman who has had 10 children where the newborn was small and weighed little.

(...) Regarding the fact that the forensic medical examination states that the child had a clean cut at the bellybutton, while in his autopsy report, he states that the umbilical cord was torn, he says this could have happened because they may have first cut at the bellybutton and later torn it (...).

(...) He also states that this case cannot be called a miscarriage because medically, a miscarriage is giving birth at no later than 20 weeks—that is, at five months or less it is considered a miscarriage, and in this case, it is a pregnancy that was carried to term for the full nine months (...)

74. During the public hearing, the doctor who had attended Manuela during the emergency she suffered and had reported the alleged victim to the Office of the Public Prosecutor for a possible abortion also testified. In her testimony, she stated the following:

(...) about 40 centimeters of the umbilical cord emerged from the vaginal orifice. It was solid, not gelatinous, corresponding to a term pregnancy. It was cleanly cut, as if with scissors (...)

(...) She testified that while interviewing her (...) she said she did not know anything about the newborn, that she did not know if it was alive or dead, as she had fainted during labor, but while she fainted had pushed, something the witness says is not possible. The woman also stated (...) that the child was the result of infidelity; based on all these inconsistencies, she made the decision to inform the office of the public prosecutor (...) the witness recalls that something peculiar the woman told her (...) was that a day before giving birth, she had fallen, and since then she had been in pain, but there was no physical evidence of the fall (...).⁵⁵

75. Another person who testified during the public hearing was the investigator in Manuela's case, who described the interview with the alleged victim on the day she came to the hospital:

(...) At first she told her that nothing it happened, later she said she was married and that her husband had lived in the United States for five years, but that she became pregnant by another person who would not take responsibility; and that in her home, her whole family knew she was pregnant and everyone where she lived also knew (...).⁵⁶

76. During the hearing, the public defender asked that Manuela be acquitted, noting the lack of consistency between the testimony of the witnesses and the expert who said it could have been the result of an accidental fall.⁵⁷

4. Guilty verdict and cassation

77. On August 11, 2008, the Criminal Trial Court of San Francisco Gotera issued a guilty verdict and sentenced the alleged victim to 30 years in prison for the crime of aggravated homicide. Among its considerations, the Court concluded the following:

⁵⁵ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 142 and 142.1.

⁵⁶ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 142 and 142.1.

⁵⁷ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 142 and 142.1.

(...) That on having medically proven that the deceased was born alive and remained so for between 10 and 15 minutes until asphyxiating in the feces of the septic pit, the newborn had its own independent life and legal existence, which, in accordance with the criteria or content of Article 72 paragraph 2 of the Civil Code, "begins at birth, that is, on complete separation from the mother."

(...) That this act is defined by law as a crime, as it matches the description of the prohibited conduct of "killing" a person—in this case, a newborn—described in Article 128, as the act entailed a causal relationship in the form of the immediate temporal succession of the action of discarding the newborn to take its life and the result obtained, which was its death (...)

(...) That the birth of the deceased was the result of the woman's giving birth outside of a hospital (...) the woman is therefore the biological mother of the deceased (...) which, *a priori*, constitutes an aggravating factor of homicide as defined in paragraph 1 of Article 129.

(...) That the multiple versions of the story offered by the accused that are inconsistent and improbable based on logic and medicine lead those rendering judgment to consider her possible motivations for trying to hide the act she had committed—first, that she knew she was pregnant and that the pregnancy was the result of infidelity, as she was married; for which reason, having the capacity to choose between having the baby, caring for the baby, feeding it, and living for it, as any biological mother would naturally do, she chose to behave contrary to nature itself and the requirements of the law that governs us, and so she waited to give birth to the baby to then get rid of it by throwing in the septic pit (...)

(...) In addition, to review the different versions provided by the accused to the different people who interviewed her, such as for example, "that she was not aware of anything and that due to the pain or the dysentery, the child came and she fainted, or at worst, while she was unconscious, a different person threw the child in the septic pit; these are not believable and do not seem probable under the standards of basic human understanding, as the maternal instinct is to protect her child, and all complications during birth generally lead to seeking immediate medical care, or at least the assistance of the closest relatives in securing care, not to deprive a newborn of its life.

(...) in this case, the accused—in her desire to get rid of the result of her pregnancy after giving birth, as it was the result of infidelity, and given the biological father's expressed refusal to accept responsibility—in all awareness of seeing it alive, consciously sought the right means and place of making it disappear (...) and in this case, the conduct is even more reproachable because the conduct is of a mother toward her own son.⁵⁸

(...) 2. That there is no legal motive that could justify a woman killing a son, especially not a newborn, as this is indefensible, and the process has provided evidence that her only motive for doing so was to avoid public criticism or rejection by her husband due to the infidelity committed (...) ⁵⁹;

(...) 4. Regarding the circumstances surrounding the action: It is clear that the defendant is extremely uneducated, from the countryside and a place with traditional ways of life; however, this does not justify her criminal conduct, although such factors are taken into account in imposing the minimum punishment for the crime of which she is convicted (...).⁶⁰

⁵⁸ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 137-148.

⁵⁹ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 147.

⁶⁰ Annex 27. Criminal case file TS066/2008. Judgment issued by the Criminal Trial Court of San Francisco Gotera, Department of Morazán, August 11, 2008. Annex 2 to the initial petition of March 21, 2012, pg. 147.1.

78. The Commission notes that the alleged victim's defense attorney did not appeal the conviction through a cassation remedy. The petitioner alleged—and the State did not dispute—that the failure to appeal was the result of a decision made by the public defender and his lack of diligence in exercising Manuela's legal defense, as he failed to inform her and her family of the opportunity to appeal the judgment.⁶¹

79. On August 26, 2008, the Criminal Trial Court of San Francisco Gotera notified the director of the Pretrial and Sentence Execution Center of the San Miguel prison that the guilty verdict against Manuela was final and that the alleged victim was at the disposal of the Second Court of Penitentiary Supervision and Execution of the San Miguel City Prison.⁶²

5. Health situation of the alleged victim before and while she was deprived of liberty

80. According to available information, in 2007 Manuela went to the Cacaopera Health Unit on four occasions for medical treatment. On January 24, 2007, she presented the following symptoms: headache at the frontal level for two days, malaise, nausea and epigastralgia. Because of this, she was diagnosed with acute gastritis and was prescribed analgesics and antiemetics. On May 14, 2007, the alleged victim presented at the hospital due to headache. In the description of Manuela's symptoms, a mass in her neck behind her ear was recorded, and she was diagnosed with Cervical Adenitis, for which she was prescribed analgesics. On June 6, 2007, she went to the hospital to check a visible mass in her neck at the cervical level. On that occasion, she was diagnosed with cervical adenitis and prescribed analgesics.⁶³

81. On August 18, 2007, Manuela again went to a medical consultation. The medical report indicates that she had a mass in her neck that had grown over three months, and a diagnosis of adenitis and lymphopathy. For this reason, she was transferred to the San Francisco Gotera National Hospital.⁶⁴ The Commission does not have information to determine whether the alleged victim received treatment in this hospital.

82. The Commission recalls that on February 28, 2008, the alleged victim was detained at the San Francisco Gotera National Hospital. It does not appear from the case file that a comprehensive medical examination was performed at the time of her admission to prison.

83. According to the case file, on February 6, 2009, while Manuela was in detention, she was referred to the San Miguel National Hospital. According to a transcription of the original medical report made after the appointment, the following aspects related to the health situation of the alleged victim were recorded in the report: i) the appearance of a mass in the lower left side of her neck a year prior, ii) weight loss of more than thirty pounds in three months, iii) a high fever. The alleged victim was diagnosed with Nodular Sclerosis-type Hodgkin lymphoma and was prescribed outpatient chemotherapy treatment. The chemotherapy was performed on February 14 and April 8, 2009; however, it is clear from the file that treatment should also have been performed in April and November 2009, and as a consequence of her failure to attend the treatment sessions, she suffered relapses that aggravated her health situation.⁶⁵ The Commission does not have information to determine the reasons why the alleged victim did not attend these chemotherapy sessions.

⁶¹ Initial petition of March 21, 2012.

⁶² Annex 28. Criminal case file TS066/2008. Notification of the final guilty verdict to the Director of the Pretrial and Sentence Execution Center of San Miguel of August 26, 2008, Annex 2 to the initial petition of March 21, 2012, pg. 151.

⁶³ Annex 29. Medical Advice in the Manuel Case. Dr. Flor de Maria Peña and Dr. Oliver Barahona. Clinical File 1. January 1, 2011. Annex 11 to the initial petition of March 21, 2012.

⁶⁴ Annex 29. Medical Advice in the Manuel Case. Dr. Flor de Maria Peña and Dr. Oliver Barahona. Clinical File 1. January 1, 2011. Annex 11 to the initial petition of March 21, 2012.

⁶⁵ Annex 29. Medical Advice in the Manuel Case. Dr. Flor de Maria Peña and Dr. Oliver Barahona. Clinical File 1. January 1, 2011. Annex 11 to the initial petition of March 21, 2012.

84. According to information provided by the State, it provided nine cycles of chemotherapy to the alleged victim on the following dates: 1. February 14, 2009; 2. March 6, 2009; 3. April 22, 2009; 4. May 27, 2009; 5. October 10, 2009; 6. October 30, 2009; 7. January 7, 2010; 8. February 18, 2010 and 9. April 29, 2010.⁶⁶

85. On January 10, 2010, the alleged victim returned to the hospital, where she died on April 30, 2010.

86. On October 27, 2011, Manuela's father filed a complaint against the Women's Rehabilitation Center of the City of Ilopango for failure to transfer Manuela to her chemotherapy sessions in April and November 2009.⁶⁷

87. On November 11, 2011, the Second Prison and Enforcement Supervision Court rejected the appeal, reasoning that "pursuant to Article 40 of the penitentiary law (...) the action to present the judicial complaint shall expire after 15 working days from the date on which the event occurred (...)" The Court "declare[d] the judicial complaint inadmissible (...) in view of the fact that the 15 working days indicated by the penitentiary law expired approximately 2 years ago."⁶⁸

IV. ANALYSIS OF LAW

A. The right to personal liberty,⁶⁹ fair trial,⁷⁰ and judicial protection⁷¹

1. The right to not be illegally deprived of liberty

88. The IACHR recalls that Article 7 of the American Convention enshrines guarantees on the right to liberty that the States Parties have committed to respect and guarantee. Specifically, Article 7(2) of the American Convention addresses the formal and material legality of the detention of an individual. This article "recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law."⁷² The legal exception required to affect the right to personal liberty in keeping with Article 7(2) of the Convention must of necessity be accompanied by the principle of legality, requiring States to establish "beforehand" and as specifically as possible the grounds for and conditions of deprivation of physical liberty.⁷³ Thus Article 7(2) of the Convention refers automatically to domestic law. Therefore, any requirement established in domestic law that is not followed when depriving a person of liberty will mean that the deprivation is illegal and a violation of the American Convention.⁷⁴

89. The Commission observes that El Salvador's Criminal Procedural Code allows for a person discovered *in flagrante delicto* to be detained, indicating that "a flagrant violation is committed when the perpetrator of the crime is discovered at the moment of committing or attempting to commit a crime, or

⁶⁶ State's Report of June 26, 2017.

⁶⁷ Annex 30. Judicial Complaint against the Women's Rehabilitation Center of the City of Ilopango. Annex 13 to the initial petition of March 21, 2012.

⁶⁸ Annex 31. Denial of Judicial Complaint. Annex 13.1 to the initial petition of March 21, 2012.

⁶⁹ Article 7 of the American Convention establishes the following: 1. Every person has the right to personal liberty and security; 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto; 3. No one shall be subject to arbitrary arrest or imprisonment; 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

⁷⁰ Article 8 of the Convention establishes the following: "(...) 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law."

⁷¹ Article 25(1) of the American Convention establishes that, 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁷² Inter-American Court. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 56.

⁷³ IACHR. Report on Citizen Security and Human Rights. December 31, 2009, paras. 144-146.

⁷⁴ IACHR Report No. 74/15, Case 12,846. Merits. Mariana Selvas Gómez *et al.* Mexico. October 28, 2015, para. 317.

immediately after having committed it or within 24 hours of the act, or when discovered with objects or elements with which the crime has been committed or resulting from it, or when pursued by authorities or private parties.⁷⁵

90. In this case, the Commission underscores that the alleged victim was detained on February 28, 2008, while she was receiving medical care in the Hospital Nacional de San Francisco Gotera. The authorities who arrested Manuela argued she was in "flagrant" violation and stated that they conducted a visual inspection of the place of the facts, where they found the lifeless body of a newborn.

91. The IACHR highlights a number of elements that led to the conclusion that this was an illegal detention that does not fall within the grounds of flagrant violation: (i) first, the alleged victim was not discovered in the act of committing the alleged crime, as the facts of which she is accused would have taken place on February 26, 2008, and she went to the hospital's emergency room on February 27, 2008, and was arrested on February 28, 2008; (ii) second, the Commission notes a total lack of immediacy between the alleged criminal acts and the detention, underscoring that the authorities applied the standard of flagrant violation as a result of a visual inspection conducted two days after the facts that originated based on testimony and evidence obtained while the alleged victim was receiving medical care; and (iii) the results of the visual inspection also failed to definitively prove that a crime had been committed in such a way that the concept of flagrant violation would be applicable, meaning that the alleged victim was detained under that concept but based on the suspicion of having committed a crime.

92. The Commission finds that the circumstances of this case, taken together, can in no way be equated with a situation of a flagrant violation. Extending the concept of flagrant violation to cases such as this one would mean empowering the police to make arrests without the corresponding warrant and without having witnessed a criminal act, opening the door to a series of abuses⁷⁶ by State agencies.

93. Based on these considerations, the IACHR finds that the State violated Article 7(2), in conjunction with article 1(1) of the American Convention, to the detriment of Manuela.

2. The right to not be arbitrarily deprived of liberty, principle of presumption of innocence, and right to judicial protection

94. The Commission and the Court have indicated that pretrial detention is limited by the principles of legality, presumption of innocence, necessity, and proportionality.⁷⁷ They have also indicated that it is a precautionary measure, not a punitive one,⁷⁸ and, because it is the most severe precautionary measure that can be applied, must be applied exceptionally. Considering the stances of both bodies of the inter-American system, the rule should be that the accused remains free while establishment of criminal responsibility is weighed.⁷⁹

95. Both bodies of the system have underscored that the personal circumstances of the alleged perpetrator and the gravity of the crime of which the perpetrator is accused are not, in and of themselves,

⁷⁵ Article 288 of the Criminal Procedural Code of El Salvador.

⁷⁶ Report of the Working Group on Forced or Involuntary Disappearances, Mission to Mexico, December 20, 2011, para. 89; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Mexico, December 29, 2014, para. 47.

⁷⁷ IACHR, *Report on the Use of Pretrial Detention in the Americas*. OEA/SER.L/V/II. December 30, 2013. para. 20. Inter-American Court. Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 67; Case of García Asto and Ramírez Rojas v. Rojas. Judgment of November 25, 2005. Series C No. 137, para. 106; Case of Palamara Iribarne v. Chile. Judgment of November 22, 2005. Series C No. 135. para. 197; and, Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, para. 74.

⁷⁸ Inter-American Court. Case of Suárez Rosero v. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 77.

⁷⁹ IACHR, *Report on the Use of Pretrial Detention in the Americas*. OEA/SER.L/V/II. December 30, 2013. para. 21; Inter-American Court. Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 67; Case of Palamara Iribarne v. Chile. Judgment of November 22, 2005. Series C No. 135. para. 196; and, Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, para. 74.

justification enough for pretrial detention.⁸⁰ Regarding the reasons that may justify pretrial detention, the bodies of the inter-American system have interpreted Article 7(3) of the American Convention in the sense that evidence of guilt is necessary but not sufficient for application of that measure. As the Inter-American Court has found, there must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation.⁸¹ Nevertheless, “even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but [...] based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice.”⁸²

96. Along these lines, any decision to restrict the right to personal liberty through the use of pretrial detention must provide sufficient case-by-case grounds that make it possible to evaluate whether the detention meets the conditions necessary for its application.⁸³

97. In addition to its effects on the exercise of the right to personal liberty, both the Commission and the Court have found that the improper use of pretrial detention can have an impact on the principle of presumption of innocence established in Article 8(2) of the American Convention. Respect for the right of presumption of innocence requires the State to provide clear and well-founded grounds and proof of the existence of valid reasons for ordering pretrial detention.⁸⁴ Therefore, the principle of presumption of innocence is also violated when pretrial detention is ordered arbitrarily, or when based essentially on the type of crime, the expectation of punishment, or the mere existence of reasonable evidence implicating the person accused.⁸⁵

98. Also, the IACHR recalls that States have a general obligation to provide effective judicial remedies to people who allege having been victims of human rights violations (Article 25), which should be in accordance with the rules of legal due process (Article 8(1)). For a remedy to exist it is not enough for it to be provided for by law; rather, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.⁸⁶

99. The Commission recalls that in this case, pretrial detention was ordered based on the nature and gravity of the crime committed. According to the section on proven facts, on March 3, 2008, the Justice of the Peace of the city of Cacopera ordered the alleged victim placed in pretrial detention on concluding that the accused could obstruct the investigation in view of the gravity of the crime. It also added that Article 294 of the Criminal Procedural Code states that “for these types of crimes, no other measure shall be granted.” The measure was upheld on June 5 and July 7, 2008, by the Second Trial Court of San Francisco Gotera. Lastly, the court found that “the gravity of the punishment she would face should she be found guilty in the trial could cause her to flee or obstruct the investigation.”

⁸⁰ IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/SER.L/V/II. December 30, 2013. para. 21; Inter-American Court, Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 69.

⁸¹ Inter-American Court, Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, para. 111.

⁸² Inter-American Court, Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 103.

⁸³ IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/SER.L/V/II. Doc. 46/13, December 30, 2013, para. 21.

⁸⁴ Inter-American Court, Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 144.

⁸⁵ IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/SER.L/V/II. December 30, 2013. para. 137.

⁸⁶ Inter-American Court, Case of the Dismissed Congressional Employees (Aguado - Alfaro *et al.*). Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 125; Inter-American Court, Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125. Para. 61; Inter-American Court, Case of the “Five Pensioners.” Judgment of February 28, 2003. Series C No. 98. Para. 136.

100. The IACHR recalls that El Salvador's Criminal Procedural Code explicitly establishes in Article 294 that in the case of aggravated homicide and other crimes, pretrial detention cannot be replaced with any other measure.⁸⁷

101. Consequently, and in keeping with the standards described herein, the Commission concludes that from the beginning, the pretrial detention of Manuela was arbitrary and failed to adhere to the principle of presumption of innocence, in violation of article 7(3) and 8(2), in conjunction with Article 1(1) of the American Convention. The IACHR also concludes that the alleged victim did not have an effective remedy for challenging the illegality of her pretrial detention under the Convention, taking into account the law in question and its application in this specific case, for which reason the State also violated Article 25(1) in conjunction with articles 1(1) and 2 of the American Convention.

B. Rights to a fair trial⁸⁸ and to judicial protection⁸⁹

1. The right to defense and judicial protection

102. The Commission has indicated that the right to a fair trial includes the right to adequate time and means of preparing the defense, which is established in general terms in Article 8(2)(c) of the Convention.⁹⁰ The Court has found that the right to defense must necessarily be exercised from the outset of the identification of an individual as a potential perpetrator of or participant in a punishable act, and its exercise only concludes once the process is complete.⁹¹ Regarding the relationship between the evidence collected and the right to defense, the IACHR has highlighted the principle of *audi alteram partem*, which means the accused must be involved in the receipt and control of the evidence.⁹² For its part, the Court has found it to be a violation of the right to defense when the counsel for the defense cannot be present during a fundamental proceeding in the framework of a criminal process.⁹³

103. Regarding the right to legal defense counsel provided by the State should a defendant not have one, the Inter-American Court has stated that "Appointing a public defender with the sole object of complying with the procedural formality would be equivalent to not providing expert defense. It is therefore crucial for the defense attorney to act diligently to protect the procedural guarantees of the accused, thereby preventing the rights of the accused from being violated⁹⁴ and breaking the trust relationship."⁹⁵ To determine if a State could be internationally responsible for the actions or omissions of a public defender, the Court found that it should be evaluated "whether the action or omission of the public defender constituted inexcusable negligence or a manifest flaw in the exercise of the defense that had or could have had a decisive

⁸⁷ Article 294 of El Salvador's Criminal Procedural Code establishes that "(...) pretrial detention cannot be replaced with any other measure in the following crimes: homicide, aggravated homicide (...).

⁸⁸ The relevant part of Article 8 of the American Convention reads as follows: 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: c. adequate time and means for the preparation of his defense; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; h. the right to appeal the judgment to a higher court.

⁸⁹ Article 25(1) establishes that "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

⁹⁰ IACHR. Report No. 76/11. Case 11,769. Merits. J. Peru July 20, 2011, para. 248, and Report No. 78/15. Case 12,831. Merits (publication) Kevin Cooper. United States. October 28, 2015, para. 129.

⁹¹ Inter-American Court. Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 29.

⁹² IACHR. Report No. 76/11. Case 11,769. Merits. J. Peru July 20, 2011, para. 253, and Report No. 78/15. Case 12,831. Merits (publication) Kevin Cooper. United States. October 28, 2015, para. 129.

⁹³ Inter-American Court. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Judgment of November 21, 2007, para. 154.

⁹⁴ Inter-American Court. Case of Ruano Torres *et al.* v. El Salvador. Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 303. Para. 157. Citing. Cf. Case of Cabrera García and Montiel Flores v. Mexico, para. 155.

⁹⁵ Inter-American Court. Case of Ruano Torres *et al.* v. El Salvador. Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 303. Para. 157.

effect to the detriment of the interests of the defendant.”⁹⁶ The Court added that “an unsubstantial disagreement with the defense strategy or with the outcome of a process will not be enough to have implications for the right to defense. Rather, and as noted, inexcusable negligence or a manifest flaw must be proven.”⁹⁷

104. To make this determination, the Court highlighted several scenarios (not exhaustive) that comparative law has found to be sufficient for establishing that the right to defense has been violated. These include: “(a) failure to conduct the most minimal evidentiary activity; (b) failure to plead for the interests of the defendant; (c) lack of technical legal knowledge regarding the criminal process; (d) failure to file remedies to the detriment of the rights of the defendant; (e) failure to properly ground the remedies submitted; and (f) desertion of the defense.”⁹⁸

105. In this case, the Commission recalls that the alleged victim did not have a defense attorney when the preliminary investigative steps were taken on February 28, 2008. On that day, the doctor who reported Manuela was interrogated, a visual inspection was made of her home, the alleged victim's genitals were examined, an autopsy was conducted on the body recovered from Manuela's house, and a complaint was supposedly collected from the father of the alleged victim. Manuela could not challenge or monitor any of these steps because she did not have a defense attorney. The IACHR also emphasizes that Manuela did not have legal defense during her interview with the investigator assigned to the case on February 29, 2008, from which the investigator concluded that the alleged victim had had an elective abortion.

106. These facts in themselves constitute a violation of the right to legal defense because, as indicated, the right must be executed from the beginning of the process and for all the steps in the process, with no exceptions. Also, the IACHR emphasizes that the above-indicated evidence was added to the process, and investigative steps such as the February 28, 2008, autopsy, the complaint by the father of the alleged victim, and the investigator's report where she stated that she “would not have committed” the crime that Manuela allegedly committed were added to the criminal proceeding and had an impact on the guilty verdict handed down against the alleged victim.

107. In addition, regarding the legal defense, the IACHR highlights certain deficiencies that impacted the alleged victim's rights. Specifically, the Commission notes that: (i) there is no indication that the alleged victim was notified of the appointment of her defense attorney on February 28, 2008; (ii) the evidence presented by the defense is thin and limited to offering the testimony of Manuela's mother, without offering up an other expert witness reports to call into question the hypothesis of the prosecutor, such as a second autopsy to determine the cause of death of the body found or to call into question the results of the hydrostatic test, or even to provide evidence to support Manuela's version of events; (iii) the legal defense failed to highlight certain inconsistencies in the case file, such as the supposed inclusion of a birth certificate for the fetus, which does not exist, or the inconsistencies between the death certificate and the autopsy as far as the date of death, the amount of time the fetus supposedly lives, and the causes of death.

108. In addition, the Commission highlights a grave omission of the defense in its failure to file for any remedy against the judgment finding the alleged victim guilty and sentencing her to 30 years in prison for the crime of aggravated homicide. The petitioner stated that the defense attorney failed to inform her that the judgement could be challenged. The Commission observes that the Salvadoran legislation in force at the time of the guilty verdict only provided for a cassation appeal against guilty verdicts in criminal cases.⁹⁹

109. Leaving aside the compatibility of the cassation remedy with the right to appeal a judgment recognized in the American Convention, the Commission recalls that the opportunity to appeal the judgment

⁹⁶ Inter-American Court. Case of Ruano Torres *et al.* v. El Salvador. Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 303. Para. 164.

⁹⁷ Inter-American Court. Case of Ruano Torres *et al.* v. El Salvador. Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 303. Para. 166.

⁹⁸ Inter-American Court. Case of Ruano Torres *et al.* v. El Salvador. Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 303. Para. 166. Original citations omitted.

⁹⁹ See Criminal Procedural Code of El Salvador, Decree No. 904 of December 13, 1996.

is fundamental for the right to defense.¹⁰⁰ It therefore concludes that by failing to submit the cassation remedy, Manuela's defense was manifestly negligent, with the effect of allowing a guilty verdict to become final that was the result that a process that violated minimum guarantees and—as will be shown—was discriminatory.

110. Lastly, the Commission observes that despite the obvious violations of due process described above, the public defender declined to file for remedies or move for the nullification of evidence or investigative steps in which the violations were clear. This omission was evident throughout the process, as well as in the failure to appeal the conviction, as examined in the foregoing paragraphs. In this regard, the manifest omissions of her defense counsel meant that Manuela did not have access to the judicial remedies available to challenge the human rights violations that took place during the initial investigative steps or to challenge the guilty verdict.

111. By virtue of these considerations, the IACHR concludes that the Salvadoran State is responsible for the violation of the articles 8(2)(c), 8(2)(e), and 25(1) of the American Convention, in conjunction with Article 1(1) of the same instrument, to the detriment of Manuela.

2. The right to appeal a conviction

112. The Commission recalls that a fundamental aspect of the right to defense is the opportunity to appeal a conviction before a higher judge or court, recognized in Article 8(2)(h) of the American Convention. In order for the remedy provided for in domestic legislation to comply with this guarantee, it must provide a suitable means for correcting an erroneous conviction. The remedy, therefore, must be capable of analyzing the factual, evidentiary, and legal basis for the judgment being challenged, given that court judgments entail an interplay between factual determinations and application of the law, such that an erroneous determination of facts would mean an erroneous or undue application of the law. Consequently, the grounds for admitting the remedy must make it possible to review broadly the aspects of the guilty verdict being challenged.¹⁰¹

113. The IACHR has found that “the right to appeal does not necessarily entail a full retrial or a new ‘hearing,’ as long as the court conducting the review can look at the factual dimensions of the case.¹⁰² What the norm requires is the opportunity to point out and get an answer to possible errors of various kinds that the judge or the court may have made, without precluding *a priori* categories such as the facts and weighting and taking of evidence.”¹⁰³

114. In this case, the Commission finds that there is no remedy with the scope described above for reviewing the criminal conviction. In this regard, according to the Criminal Procedural Code, the only remedy that can be sought against a guilty verdict on criminal matters issued by a sentencing court is a cassation remedy for failing to observe or erroneously applying a legal provision. This remedy would not make it possible to broadly review the factual, evidentiary, and legal questions.

115. Based on these considerations, the Commission concludes that the criminal procedural system under which Manuela was convicted did not provide a remedy for challenging a conviction that would comply with the minimum standards required under Article 8(2)(h) of the Convention. In this regard, the IACHR finds that the State of El Salvador is responsible for the violation of the right to appeal a judgment established in Article 8(2)(h) of the Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention, to the detriment of Manuela.

¹⁰⁰ IACHR Report No. 79/17, Case 12,650. Merits. Hugo Humberto Ruiz Fuentes. Guatemala, para. 119.

¹⁰¹ Inter-American Court. Case of Mohamed vs. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, párr.100.

¹⁰² IACHR Report No. 33/14, Case 12.820, Merits, Manfred Amrhein *et al.*, Costa Rica, April 4, 2014, para. 192.

¹⁰³ IACHR Report No. 172/10, Case 12.561, Merits César Alberto Mendoza *et al.* (Prison and perpetual imprisonment of minors), Argentina, November 2, 2010, para. 189.

C. The right to privacy,¹⁰⁴ the right to health,¹⁰⁵ the right to life,¹⁰⁶ the right to fair trial,¹⁰⁷ and the right to judicial protection¹⁰⁸

1. Regarding professional medical confidentiality and its implications with regard to the right to privacy and to sexual and reproductive health.

116. The IACHR recalls that Article 11 of the American Convention protects privacy and family life from the arbitrary actions of State agencies. Although this right is not absolute, any restriction of it must be established by law, have a legitimate aim, and comply with the requirements of suitability, necessity, and proportionality.¹⁰⁹ The Commission underscores that the right to privacy has been interpreted broadly by the Inter-American Court to include aspects such as access to reproductive health services with acceptable conditions, including the confidentiality of medical information.¹¹⁰

117. Regarding this, the Inter-American Court has found that the information collected by a physician during the exercise of his or her profession is protected by professional confidentiality, meaning that physicians have the right and the duty to keep that information confidential.¹¹¹

118. The European Court of Human Rights has found that disclosure of medical information on a person's pregnancy, health, and medical treatment constitutes an invasion of privacy and violation of the European Convention when it is not done according to law, does not have a legitimate aim, or is not necessary in a democratic society.¹¹² The European Court has found that if health information is not confidential, people who need medical care could be discouraged from seeking proper treatment, thereby putting their own health at risk.¹¹³

119. Also, the Human Rights Committee has stated that "another area where States may fail to respect women's privacy relates to their reproductive functions, for example, (...) where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion."¹¹⁴ The Committee has indicated that this "may inhibit women from seeking medical treatment, thereby

¹⁰⁴ The pertinent part of Article 11 reads as follows: 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation; 3. Everyone has the right to the protection of the law against such interference or attacks.

¹⁰⁵ Article 26 establishes that "States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

¹⁰⁶ Article 4 of the American Convention establishes that, 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

¹⁰⁷ The pertinent part of Article 8 of the American Convention establishes the following: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁰⁸ The pertinent part of Article 25 of the American Convention establishes that: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁰⁹ Inter-American Court. Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, párr.55.

¹¹⁰ Inter-American Court. Case of Artavia Murillo *et al.* (*in vitro* fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, párr.143.

¹¹¹ Inter-American Court. Case of Pollo Rivera *et al.* v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319; para. 237; Inter-American Court. Case of De la Cruz Flores v. Peru. Merits, Reparations, and Costs. Judgment of November 18, 2004. Series C No. 115, párr.101.

¹¹² European Court of Human Rights, Case of Radu v. the Republic of Moldova, Judgment of April 15, 2014, para. 27 and 32

¹¹³ European Court of Human Rights, Case of Biriuk, v. Lithuania, Judgment of November 25, 2008, para. 43.

¹¹⁴ Human Rights Committee, General Comment No. 28, Article 3, The equality of rights between men and women, 68th Period of Sessions, UN Doc. HRI/Gen/1/Rev.7, 2000, párr.20.

endangering their lives.”¹¹⁵ States must thus ensure that the professional confidentiality of medical professionals is respected, along with the confidentiality of patients in cases related to abortions.¹¹⁶

120. The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found that violations of medical confidentiality in the form of 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 constitute abuse and mistreatment of women seeking reproductive health services.¹¹⁷

121. Article 26 of the American Convention establishes that States Party must progressively develop the rights contained therein. Both bodies of the Inter-American system¹¹⁸ have reaffirmed their competence to rule on potential violations of Article 26 of the American Convention in the framework of the individual petitions and cases system.

122. The Commission recognizes that the interpretation of Article 26 of the Convention and specific determination of its scope and content can involve certain interpretive complexities. Thus, the Commission finds that analysis of a specific case according to Article 26 of the American Convention should be conducted on two levels. First, it needs to be established if the right in question in the case is derived from “the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States,” as referred by Article 26. That is, Article 26 of the ACHR is the article that identifies the Charter of the OAS as the direct source of these rights, assigning the provisions in that treaty applicable to these issues the character of human rights. As the objective of the Charter of the OAS was not to identify rights but to establish an international organization, outside texts must be used to identify the rights derived from the provisions of that instrument, including, fundamentally, the American Declaration, as well as other relevant provisions of international law.

123. In application of these parameters in this case: The Commission and the Court have clearly established that the right to health is one of the rights derived from the economic and social provisions mentioned in Article 26 of the Convention, for which reason it is not necessary to recapitulate that analysis.¹¹⁹

124. With this established, it must then be determined whether the State in question failed to comply with the obligation to “achiev[e] progressively” the full effectiveness of that right or the general obligations to respect and guarantee it. This second level of analysis must take into consideration the nature and scope of the State’s obligations under articles 1(1), 2, and 26 of the Convention, as well as the obligations contained in the right in question, an analysis that will be conducted later.

125. Based on this, it can be concluded that the Commission understands that Article 26 of the American Convention imposes a series of obligations on States beyond simply limiting regression—this is part of the obligation of progressiveness, but cannot be understood as the only legally actionable obligation in the inter-American system. Thus, the Commission finds that, taking into account the interpretive framework

¹¹⁵ Human Rights Committee, Concluding observations of the Human Rights Committee: Chile. 30/03/99, CCPR/C/79/Add.104, para. 15.

¹¹⁶ Human Rights Committee, Concluding Observations of the seventh periodic report on El Salvador, May 9, 2018, CCPR/C/SLV/CO/7, para 16.

¹¹⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, February 1, 2013, A/HRC/22/53, para. 46.

¹¹⁸ For example, see several admissibility reports in which the possible violation of Article 26 of the Convention has been admitted: Report 29/01. Case 12.249. Jorge Odir Miranda Cortez *et al.* El Salvador, March 7, 2001; and Report 70/04. Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas *et al.* (Pensioners of the Venezuelan Aviation - VIASA). Venezuela, October 13, 2004. Likewise, see the decision on the merits regarding Article 26 in Report 38/09. Case 12.670. National Association of Ex-employees of the Peruvian Social Security Institute *et al. v. Peru.* March 27, 2009. Likewise, the Court reaffirmed that competence in the Case of Acevedo Buendía *et al.* (“Discharged and Retired Employees of the Comptroller”) *v. Peru* (Preliminary Objections, Merits, Reparations and Costs), Judgment of July 1, 2009, Inter-American Court. Case of Cuscul Pivaral *et al. v. Guatemala.* Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 23, 2018. Series C No. 359. Paras. 74 - 97.

¹¹⁹ See, *inter alia*, Inter-American Court. Case of Poblete Vilches *et al. v. Chile.* Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349. Para. 110; Inter-American Court. Case of Cuscul Pivaral *et al. v. Guatemala.* Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 23, 2018. Series C No. 359. Para. 99.

of Article 29 of the American Convention, Article 26 analyzed in view of articles 1(1) and 2 of the Convention entails, at a minimum, the following immediate and enforceable obligations: (i) general obligations to respect and guarantee, (ii) application of the principle of nondiscrimination to economic, social, and cultural rights; (iii) obligations to take steps or adopt measures to make it possible to enjoy the rights included in that article; and (iv) obligations to provide suitable and effective remedies for protecting those rights. The methodologies or sources of analysis that are pertinent to each of these obligations must be established based on the specific circumstances of each case.

126. Regarding the immediate and enforceable components of the obligation to take steps or adopt measures, the CDESCR has indicated, for example, that the adoption of measures in itself is not limited or conditioned on other considerations; thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations. The State also has basic obligations to meet the minimum standards for these rights. These obligations are not subject to steady development but rather must be provided immediately.¹²⁰

127. Regarding its content on the right to health, in harmony with the body of international law on the right to health identified by the Court,¹²¹ the Committee on Economic, Social and Cultural Rights has found that all health services, goods, and facilities must meet requirements of availability, accessibility, acceptability, and quality.¹²² Both the Commission and the Court have taken these concepts into account and incorporated them into their analysis of multiple cases.¹²³

128. Acceptability means that healthcare facilities and services must respect medical ethics and culturally appropriate standards. They also must include a gender approach, as well as take into consideration the patient's living conditions,¹²⁴ and they must be designed to maintain confidentiality and improve the health of the people they treat.¹²⁵ With regard to sexual and reproductive health, respect for the privacy and confidentiality of health information are crucial and form part of States' basic obligations to respect this right.¹²⁶ At the same time, to ensure the availability of sexual and reproductive health services, States must ensure that providers and medical staff are duly qualified and trained specifically to provide care for women and girls.¹²⁷ The Inter-American Court has also found that "a failure to provide legal protections to ensure that reproductive health is taken into consideration can severely undermine autonomy and reproductive freedom."¹²⁸ Likewise, the lack of information and the existence of certain practices, attitudes, and stereotypes—in families and communities as well as from the staff working in healthcare facilities—can function as barriers that prevent women from accessing sexual and reproductive health services and impact their decision on whether to seek medical care or health information in a timely fashion.¹²⁹

129. The IACHR recalls that the organization and structure of health services and women's knowledge of the medical care services available and the protection of their right to health are essential for

¹²⁰ United Nations Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant), 1990. In this sense, see: IACHR. Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017) paras. 236 and 237.

¹²¹ Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349. Para. 114 and following.

¹²² UN, Committee on Economic, Social and Cultural Rights. General Comment 14, E/C.12/2000/4, August 11, 2000, para. 12.

¹²³ IACHR. Report 2/16. Case 12,484. Merits. Cuscul Pivaral *et al.* Guatemala, April 13, 2016, para. 106; Inter-American Court. Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, para. 120.

¹²⁴ Inter-American Court, Case of Poblete Vilches *et al.* v. Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, párr.121.

¹²⁵ Committee on Economic, Social and Cultural Rights, General Comment 14 (2000) "The right to the highest attainable standard of health, para. 12.

¹²⁶ Committee on Economic, Social and Cultural Rights, General Comment 22 (2016) "On the right to sexual and reproductive health," paras. 40 and 49(d).

¹²⁷ Committee on Economic, Social and Cultural Rights, General Comment 22 (2016) "On the right to sexual and reproductive health," paras. 13, 25-29.

¹²⁸ Inter-American Court. Case of Artavia Murillo *et al.* (in vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257. párr.147

¹²⁹ IACHR. Access to Maternal Health Services from a Human Rights Perspective (June 7, 2010), paras. 29 and 33

safeguarding that right.¹³⁰ The Commission has pointed to the need to encourage policies that propose specific prevention and healthcare measures in maternal health and making adequate health care services available to women, especially poor women, as well as reproductive health information and assistance programs, including dissemination measures and campaigns on the government's obligations and the rights of women in this area.¹³¹ In this regard, States must adopt measures to eliminate preventable risks and harm faced by women in the area of sexual and reproductive health, to include not only medical treatment and care that address the needs and interests specific to women, but also the elimination of stereotypical roles and concepts that affect the enjoyment of the right to health.

130. In this case, the Commission observes that the doctor who attended Manuela reported her on February 27, 2008, stating that her having given birth appeared to have been "the result of committing a crime." Additionally, the doctor gave a statement to the police on February 28, 2008, in which she revealed information from a clinical examination of the alleged victim, including that the patient "did not provide information that matched the clinical diagnosis," that "on examination of her, the emergence of an umbilical cord of about 40cm in length was observed, cleanly cut and with a perianal tear," and that "the patient's placenta was observed to be calcified."

131. Additionally, on February 29, 2008, the Director of the Hospital Nacional San Francisco Gotera sent, at the request of the Office of the Public Prosecutor of Morazán, a summary of Manuela's medical records that contained the alleged victim's personal medical history including "first menstrual period at 13 years old, began having sexual relations at 22 years old, no family planning methods, no sexually-transmitted diseases, last pap smear five years ago, patient says pregnancy is the result of infidelity."

132. The Commission underscores that this constituted a restriction on the right to privacy and raises a tension between that right and the duty to report. An evaluation of proportionality must therefore be made to determine if the restriction was acceptable under the Convention. To do so, the IACHR will take the following elements into account: (i) the legality of the restriction—that is, if it is established in law both formally and in practice; (ii) the existence of a legitimate aim; (iii) suitability—that is, if the measure has a logical connection to the aim pursued; (iv) necessity—that is, determination of whether other alternatives exist that would be less restrictive and equally suitable; and (v) strict proportionality—that is, balancing the interests in question against the degree of sacrifice.¹³²

133. With regard to legality, the IACHR notes that the criminal legislation on doctors' obligation to report cases involving obstetric emergencies is not clear. The Commission observes that Article 312 of the Criminal Code establishes that medical personnel who do not report the admission of injured individuals to the competent authorities within eight hours of their admission shall be fined in cases in which the injuries could rationally be considered to have been the result of a crime.¹³³ However, the Criminal Procedural Code provides for exceptions to doctors' obligation to report when the knowledge acquired is protected by professional confidentiality.

134. The Commission also notes that the procedure that a doctor must follow to determine whether an obstetric emergency could be the result of the commission of a crime—the result of a natural versus intentional miscarriage—is not clear,¹³⁴ and therefore not punishable pursuant to criminal law. The Commission observes that the failure to adequately regulate medical confidentiality and obstetric emergencies in a way that details the exceptions to it and that properly weighs the interests and rights in

¹³⁰ IACHR, Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998.

¹³¹ IACHR, Access to Maternal Health Services from a Human Rights Perspective (June 7, 2010), para. 43

¹³² Inter-American Court, Case of Artavia Murillo *et al.* (in vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 273.

¹³³ Article 312 of the Criminal Procedural Code of El Salvador.

¹³⁴ Article 137 of the Criminal Code of El Salvador states that "those who intentionally cause an abortion will be punished with between six months and two years in prison. Intentional miscarriages caused by the pregnant woman herself and attempts to cause a miscarriage will not be punishable.

question in this context could cause doctors to automatically report patients who have had obstetric emergencies on the mere suspicion that (for example) they sought an abortion due to fear that they could suffer a criminal or disciplinary sanction, thereby completely erasing the rights protected by professional confidentiality.

135. By virtue of these considerations, the IACHR concludes that the restriction on the privacy of the alleged victim did not fulfill the requirement of legality, making it an arbitrary restriction. Without prejudice to this, the IACHR considers it appropriate to present some general considerations regarding the requirements of the legitimate aim and suitability of the restriction.

136. Regarding the aim and suitability of the restriction, based on the reporting and the delivery of Manuela's private medical history, the Commission observes that healthcare workers' obligation to report can, in general terms, pursue a legitimate aim that is consistent with contributing to the administration of justice and preventing impunity; however, analysis of the suitability of the restriction with regard to this objective cannot be conducted in isolation, as the characteristics of the facts required to be reported criminally must also be considered. The Commission highlights that in this case, not all the information protected by professional confidentiality that was provided to the authorities in the framework of the investigation was associated with the indicated aim. In this regard, the IACHR notes that certain information had to do with the sexual background of the alleged victim, including when she began having sexual relations and the sexually-transmitted diseases she had had, even noting that her pregnancy was the result of infidelity. None of these elements has a means-to-an-end relationship with the aforementioned legitimate aim. Therefore, the Commission concludes that, in addition to failing to fulfill the requirement of legitimacy in its totality, a significant portion of the information provided also fails to comply with the requirement of suitability of the restriction on Manuela's privacy. Taking this into account, the IACHR finds that it is not necessary to continue on to analyze the requirements of necessity and strict proportionality.

137. In light of these considerations, the Commission concludes that in this case, the violation of professional confidentiality constituted an arbitrary restriction on Manuela's right to privacy. The Commission also finds that this meant that Manuela did not receive treatment under equal and acceptable conditions in accordance with the above described standards on medical ethics and confidentiality that are part of the right to health. Therefore, the Commission finds that the State is responsible for the violation of articles 11(2), 11(3), and 26 of the American Convention, in conjunction with articles 1(1) and 2 of the Convention, to the detriment of Manuela.

2. On the healthcare provided to Manuela in custody and her death while in custody

138. In this section, the Commission will analyze whether with regard to Manuela's situation, the State acted in accordance with its international obligations from the time she was taken into custody. On this point, the IACHR reiterates the previous considerations on the applicability of Article 26 of the Convention regarding the right to health, adding the pertinent general considerations regarding individuals deprived of liberty.

139. The IACHR recalls that, with regard to individuals who have been deprived of liberty, the State has the special position of guarantor, as prison officials have significant or total control over people in their custody. This is as a result of the special subordinate relationship between the person deprived of liberty and the State, characterized by the particular intensity with which the State can control their rights and obligations and by the specific circumstances of imprisonment, in which deprivation of liberty prevents prisoners from meeting, on their own, a series of basic needs that are essential for living dignified life, in terms of what is possible in such circumstances.¹³⁵

140. The right to life is directly linked to the right to health. With regard to individuals deprived of liberty, health services must be provided under equivalent conditions—that is, conditions comparable to

¹³⁵ Inter-American Court, Case of Chinchilla Sandoval v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.168.

those enjoyed by patients on the outside. The State has an obligation to guarantee the physical and mental health of people deprived of liberty, which involves, among other things: (i) an initial medical exam to evaluate the health status of an inmate and provide any medical attention that may be needed;¹³⁶ (ii) adequate, timely, and—where necessary—specialized medical treatment that addresses the special needs of the detained persons in question,¹³⁷ including appropriate diets, physical therapy, rehabilitation, and other necessary specialized facilities; (iii) when a medical condition requires it, checkups must be regular and systematic and intended to cure the detainee’s illnesses; (iv) the individuals deprived of liberty who suffer from serious, chronic, or terminal illnesses must not be held in prison facilities, except for when States can ensure that the units are equipped for medical care so as to provide adequate treatment.¹³⁸

141. With regard to the violations of the right to life attributable to the State for failure to provide health care services, the IACHR has underscored that for the purposes of determining a State’s international responsibility for failure to comply with one of the principles associated with the right to health and connected to the right to life, it is not necessary to unequivocally demonstrate the cause of death, but rather determine if measures existed that the State could have reasonably taken (but did not) to provide an individual with the treatment necessitated by his or her condition.¹³⁹ For its part, the Inter-American Court has indicated that failure to provide basic healthcare services when there is a high probability that adequate care would prolong the life of a person is a violation of the right to life.¹⁴⁰ As the Inter-American Court has underscored, a failure to provide medical care or the provision of deficient or negligent medical care is a violation of the obligation to protect the right to life of individuals deprived of liberty.¹⁴¹

142. Regarding the duty to investigate the deaths of people who die in custody as a result of deficient medical care and with no indications of violence, the Inter-American Court has stated that:

Specifically, as a particularly urgent obligation and an element that is fundamental for guaranteeing the right to life,¹⁴² the Court has established that when investigating the death of an individual who died in State custody, the corresponding authorities have a duty to launch an *ex officio* investigation without delay that is serious, independent, impartial, and effective¹⁴³—that is, with due diligence¹⁴⁴—and supported “by all legal measures available, aimed at determining the truth.”¹⁴⁵ That investigation must be carried out by the State as a juridical duty and not as a simple formality doomed from the start to failure or as a mere

¹³⁶ See IACHR, Report No. 7/14, Case 12,739. Merits. María Inés Chinchilla Sandoval *et al.* Guatemala, para. 126 and following; IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/B/II.Doc.64, December 31, 2011, paras. 163 and following; United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1995 and approved by the UN Economic and Social Council in resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Adopted by the General Assembly in resolution 43/173 of December 9, 1988, Principle 24.

¹³⁷ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.171.

¹³⁸ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.184.

¹³⁹ IACHR, Report No. 1/16, Case 12.695. Merits. Vinicio Antonio Poblete Vilches and relatives. Chile. April 13, 2016, para. 135.

¹⁴⁰ Inter-American Court, Case of Poblete Vilches *et al.* *v.* Chile. Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 349, párr.151.

¹⁴¹ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.189.

¹⁴² Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Citing. Cf. Case of Zambrano Vélez *et al.* *v.* Ecuador, *supra*, para. 88; and Case of Cruz Sánchez *et al.* *v.* Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 348.

¹⁴³ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Citing. Cf. Case of Vera Vera *et al.* *v.* Ecuador, *supra*, para. 87; and Case of Quispialaya Vilcapoma *v.* Peru, *supra*, para. 162.

¹⁴⁴ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Citing. Cf. Case of the Serrano Cruz Brothers *v.* El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 83; and Case of the Landaeta Mejías Brothers *et al.* *v.* Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 27, 2014. Series C No. 281, para. 217.

¹⁴⁵ Inter-American Court, Case of Chinchilla Sandoval *v.* Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Citing. Case of Velásquez Rodríguez, Merits, *supra*, para. 177; and Case of Quispialaya Vilcapoma *v.* Peru, *supra*, para. 162.

processing of private interests that depends on the procedural initiative of victims or their relatives or the submission of evidentiary elements by private parties.¹⁴⁶ Essentially, the State has an obligation to provide an immediate, satisfactory, and convincing explanation of what happened to an individual who was in its custody.¹⁴⁷

In this case, the Court notes that there is no indication of violence in the death of the alleged victim (nor was violence alleged). However, this does not minimize the State's duty to conduct an official investigation given her situation of being deprived of liberty.¹⁴⁸

143. In this case, the Commission notes that there is no indication that the State performed a thorough examination of the alleged victim from the moment she was deprived of liberty. The Commission emphatically underscores that Manuela's medical history shows that starting in 2007, Manuela had a mass on her neck, meaning that an initial medical examination on her intake to the prison would have enabled a timely diagnosis of her serious illness—an illness from which it can be inferred she was already suffering—and made it possible to provide her with the medical care that she needed at that time.

144. Precisely as a result of this initial omission, it was not until 2009—that is, one year after the alleged victim entered State custody—that she was diagnosed with Hodgkin's lymphoma. At that time, it was noted that she had "a mass on the left side of her neck for more than a year," as well as that she had lost more than 30 pounds in three months. Regarding this, the IACHR observes that there is no record of regular and systemic treatment prior to this diagnosis, which demonstrates that this diagnosis and subsequent treatments were not made in a timely fashion, as they began one year after the appearance of symptoms related to the illness of which she died.

145. The Commission finds that an initial diagnosis and timely and adequate medical care, absent the above-indicated omissions, would have had a high probability of prolonging Manuela's life. For this reason, it concludes that the State is responsible for the violation of articles 4(1) and 26 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Manuela. Additionally, the Commission finds that the State violated the rights to a fair trial and judicial protection established in articles 8(1) and 25(1) of the Convention, to the detriment of Manuela's family, as a consequence of the total failure to investigate and solve her death while in custody and its relationship to the omissions indicated in this section.

D. Duty to justify,¹⁴⁹ presumption of innocence,¹⁵⁰ and the principle of equal protection and nondiscrimination¹⁵¹ with regard to gender stereotypes

146. The Commission recalls that the duty to justify is “the exteriorization of the reasoned justification that allows a conclusion to be reached.”¹⁵² As the Court has stated, “The duty to state grounds is a guarantee linked

¹⁴⁶ Inter-American Court, *Case of Chinchilla Sandoval v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Cf. *Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 177; and *Case of Quispialaya Vilcapoma v. Peru*, *supra*, para. 131 and 161.

¹⁴⁷ Inter-American Court, *Case of Chinchilla Sandoval v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.257. Cf. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 111, and *Case of Vera Vera et al. v. Ecuador*, *supra*, para. 88. Also see, *mutatis mutandi*, *Case of García Ibarra et al. v. Ecuador*, *supra*, paras. 151 and 152.

¹⁴⁸ Inter-American Court, *Case of Chinchilla Sandoval v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C No. 312, párr.258.

¹⁴⁹ Article 8(1) of the Convention establishes that “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

¹⁵⁰ Article 8(2) of the Convention establishes that “Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.”

¹⁵¹ Article 24 of the American Convention establishes that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” For its part, Article 7 of the Convention of Belem do Pará establishes that “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (...) b. apply due diligence to prevent, investigate and impose penalties for violence against women.”

to the proper administration of justice,¹⁵³ protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.”¹⁵⁴

147. The Inter-American Court has indicated that in order to guarantee the presumption of innocence, principally in a guilty verdict, the duty to provide justification must include the following: (i) describe the sufficiency of the proof of the charge to confirm the hypothesis behind the charges; (ii) the observance of the rules of logical and reasonable evaluation in the assessment of the evidence, including the evidence that could raise doubts regarding criminal responsibility; and the final judgment deriving from that evaluation; (iii) where applicable, it should reflect the reasons why it was possible to obtain a conviction on the charge and establish criminal responsibility, as well as assess the evidence to dismiss any hypothesis of innocence, and only then confirming or refuting the hypothesis of the accusation; (iv) it should provide clear, complete, and logical justification as well as provide a description of the content of the evidence, weigh that evidence, and indicate why it was or was not trustworthy and suitable for proving criminal responsibility, thereby discharging the presumption of innocence.¹⁵⁵

148. The Inter-American Court has stated that the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual, and that principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority; it is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. The Court’s caselaw has indicated that at the current moment of the development of international law, the fundamental principle of equal protection and nondiscrimination has taken on the status of *ius cogens*. On it rests the entire legal framework of the national and international public order, and it permeates all legal systems.¹⁵⁶

149. The principle of equal protection and nondiscrimination should be understood in the sense of incorporating two concepts: “(...) a negative concept related to the prohibition of arbitrary differentiation of treatment, and an affirmative concept related to the obligation of States Party to create real equal conditions toward groups who have been historically excluded or who are exposed to a greater risk of being discriminated.”¹⁵⁷

150. Article 7 of the Convention of Belem do Pará requires States to apply due diligence to prevent, investigate, and impose penalties for violence against women. Article 6(b) of the Convention includes the right of women to live lives free of violence and be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination. Thus, the State obligations derived from Article 7 of the Convention of Belem do Pará must be read in the sense of including these types of situations in the concept of violence against women, and therefore, the obligations derived from that article are applicable to situations of prejudice and discriminatory stereotypes. Specifically, both the IACHR and the Inter-American Court have addressed the negative impacts of stereotypes in the framework of criminal investigations and underscored that they violate the duty of nondiscrimination.

151. Regarding the concept of gender stereotypes, the Inter-American Court has stated that “(...) gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. (...) the subordination of women can be associated with

[... continuation]

¹⁵² Inter-American Court, Case of Apitz Barbera *et al.* (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182, párr.77.

¹⁵⁴ Inter-American Court. Case of Apitz Barbera *et al.* (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182. Para. 77.

¹⁵⁵ Inter-American Court. Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 15, 2017. Series C No. 331, párrs.147-149.

¹⁵⁶ Inter-American Court. Case of Flor Freire v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 31, 2016. Series C No. 315. Para. 109.

¹⁵⁷ Inter-American Court. Case of Furlan and relatives v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. Para. 267.

practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities (...).¹⁵⁸

152. Both the IACHR and the Inter-American Court have identified a series of negative impacts that stereotypes and gender stereotypes can have in the framework of criminal investigations summarized as follows: (i) improper assessment of evidence that is based on ideas that generalize social behavior and roles; (ii) the closure of potential lines of investigation into circumstances of the case and identification of the perpetrators;¹⁵⁹ (iii) the lack of exhaustive analysis of the scene of a crime and failures in the collection, documentation, and preservation of evidence, as well as irregularities in forensic medical examinations; (iv) failure to take investigative steps as a result of judgments regarding the social behavior of men and women;¹⁶⁰ (v) tacit assumptions that women are responsible for the facts because of the way they dress, their jobs, their sexual behavior, etc.,¹⁶¹ or convictions based on negative stereotypes of certain groups that invite attribution of criminal responsibility.¹⁶²

153. For its part, the Court has also addressed the concept of the intersectionality of discrimination, meaning a simultaneous intersection or concurrence of multiple causes of discrimination that, as a result of interaction and synergy, produces a specific form of discrimination with combined effects that transform the lived experience for the individual affected.¹⁶³ In this context, the IACHR notes that Article 1(1) of the American Convention prohibits discrimination on the grounds of sex, age, and socioeconomic position, and thus, restricting rights based on those categories requires rigorous justification by the State to demonstrate that such restrictions do not have a discriminatory purpose or effect.¹⁶⁴

154. In this case, the Commission notes a series of gender stereotypes throughout the criminal process, the impact of which was to close certain lines of investigation or prevent an exhaustive analysis of the evidence; to determine the supposed motive of what happened without any evidentiary support; and to presume the guilt of the alleged victim.

155. The Commission observes that from the start of the process, the investigator assigned to the case stated that “As an investigator and a woman, it is my opinion that what this woman did (...) I would not have done (...) it was a little boy, well developed, with light brown skin (...) and physically very pretty, that any woman or mother would have raised with love (...)” Later, the judge who ordered the start of a formal preliminary investigation against the alleged victim said the alleged victim’s intent to commit the crime could be established because “she was perfectly able to hide the pregnancy without her relatives finding out.” The IACHR concludes that the results of these stereotypes was that the criminal investigation presumed the alleged victim was guilty because she did not act as a pregnant woman typically would.

156. Additionally, in the guilty verdicts, the Court found based on certain gender stereotypes that Manuela had a motive to commit the crime. Specifically, it stated that: (i) it cannot be speculated that the alleged victim did not know anything and that another person had thrown the child in the septic tank because

¹⁵⁸ Inter-American Court. Case of González *et al.* (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 401.

¹⁵⁹ IACHR Report No. 13/15, Case 12.349, Admissibility and Merits, Mayra Angelina Gutiérrez Hernández and family, Guatemala, March 23, 2015, para. 157; Inter-American Court, Case of Veliz Franco *et al.* vs. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, párr.213.

¹⁶⁰ Inter-American Court, Case of Velásquez Paiz *et al.* v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 19, 2015. Series C No. 307, párr.191

¹⁶¹ IACHR, Access to Justice for Women who are Victims of Violence in the Americas. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 155.

¹⁶² Inter-American Court. Norín Catrimán *et al.* (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile Merits, Reparations, and Costs. Judgment of May 29, 2014. Series C No. 279, párr.223.

¹⁶³ Inter-American Court. Case of Ramírez Escobar *et al.* v. Guatemala. Merits, Reparations, and Costs. Judgment of March 9, 2018. Series C No. 351, paras. 276-277; Inter-American Court. Case of Gonzales Lluay *et al.* v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 1, 2015. Series C No. 298, para. 290.

¹⁶⁴ Inter-American Court. Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 329. Judgment of May 25, 2017. Series C No. 336, para. 244

the maternal instinct is to protect the child, and all complications while giving birth generally lead a woman to seek medical care; (ii) the pregnancy was the result of infidelity, for which reason the alleged victim wanted to discard its outcome, which, according to the medical report, had been born healthy; and (iii) the biological father would not take responsibility. The Commission finds that these stereotypes caused the Court to fail to exhaustively assess certain evidence that pointed to the possibility described by the alleged victim, who said she had suffered a fall that caused a miscarriage and that it was another person who handled the newborn or that it was stillborn. The IACHR also observes that when factual gaps emerged on aspects that were important for determining criminal responsibility, they were filled with the stereotypes. The impact was to establish criminal responsibility, and not in a sense that imposed the presumption of innocence—that is, resolving doubts in favor of the defendant, or at least taking all possible evidentiary steps to objectively address those gaps rather than making the discriminatory assumptions described.

157. In addition, the IACHR recalls that Manuela was a poor, young, illiterate woman, and there are also indications that gender stereotypes were applied to Manuela in the way she was treated by different authorities in this case, which for this Commission cannot be disassociated from her poverty and age, as in practice, their convergence produced a situation of greater vulnerability of being the victim of discrimination particularly associated with it.

158. Based on these considerations, the Commission concludes that the State of El Salvador is responsible for the violation of the duty to justify, the presumption of innocence, and the principle of equal protection and nondiscrimination established in articles 8(1), 8(2), and 24, in conjunction with Article 1(1) of the American Convention, as well as Article 7 of the Convention of Belém do Pará, to the detriment of Manuela.

V. CONCLUSIONS

159. The Commission concludes that the State of El Salvador is responsible for the violation of the rights to life, personal liberty, fair trial, privacy, equal protection, judicial protection, and health established in articles 4(1), 5(1), 7(1), 7(2), 7(3), 8(1), 8(2), 8(2)(c), 8(2)(e), 8(2)(h), 11(2), 11(3), 24, 25.(1), and 26 of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention, as well as Article 7(a), (b), and (e) of the Convention of Belém do Pará.

VI. RECOMMENDATIONS

160. Based on the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE SALVADORAN STATE,

1. Provide full pecuniary and nonpecuniary reparations for the human rights violations declared in this report. The State must adopt measures to provide financial compensation and satisfaction for the non-pecuniary damages. As Manuela has died, these measures should be implemented to benefit her nuclear family.

2. Investigate administrative, disciplinary, or other responsibilities derived from the human rights violations declared in this report.

3. Implement the mechanisms necessary to prevent repetition of the violations declared in this report. In particular: (i) strengthen the full effectiveness of public defense, particularly in cases involving the possible imposition of severe punishments, including disciplinary measures for accountability regarding actions or omissions that constitute manifest negligence; (ii) ensure that according to regulation and in practice, individuals convicted of a crime can appeal to a higher authority that can comprehensively review the judgment to convict; (iii) ensure that the concept of *in flagrante delicto* is applied pursuant to the standards described in this report; (iv) ensure that in both law and in practice, the use of pretrial detention adheres to the standards described in this report; (v) conduct proper training of public defenders,

prosecutors, judges, and other judicial officials aimed at eliminating the use of discriminatory stereotypes on the role of women, taking into account their negative impact on criminal investigations and assessment of evidence, as well as on criminal responsibility in judicial decisions; (vi) review and adjust discriminatory institutional practices within criminal law and the healthcare sector, pursuant to the terms analyzed in this report; (vii) established mechanisms to inform women at the local level, specifically those in situations of poverty, on their rights regarding sexual and reproductive health; and (viii) ensure the legal certainty of professional medical confidentiality through adequate regulations that are the result of properly weighing the rights and interests in question, and establish a protocol for their protection governing medical personnel in cases involving obstetric emergencies or abortions that meets international standards and provides a detailed review of grounds for exception.