

PROTECTION OF THE RIGHTS OF THE UNBORN IN EL SALVADOR.

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November, 2019.

Article 1 subsection 2 of the Constitution of the Republic of El Salvador:

"[The Constitution] It also recognizes that every human being from the moment of conception is a human person."

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INTRODUCTION

In 1983, after many reforms throughout its history, the current Constitution of the Republic of El Salvador came into effect. In 1999, article 1 of the Constitution was amended by adding a paragraph that recognized the human person as such from the moment of conception. This reform made El Salvador one of the few countries in the world that proudly proclaims having a legal system that is known as one of the strongest protectors of the human person from the earliest stage of life. Therefore, the rest of the legal system was based on and designed in accordance with this fundamental principle.

However, there are ongoing pressures to change this legal principle, which come both from within the country and from international organizations. These pressures, under the banner of the protection of the human rights of women, neglect one of the founding principles of the country that was secured in the Constitution: the protection of the right to life from conception. These pressures, as we shall see, have a face and a name, and they seek to promote abortion as a solution to the health risks of pregnant women and as a woman's right.

Given this situation, this report aims to show how the Republic of El Salvador is a nation committed to protecting women and their children. This report also demonstrates that it is a nation that, far from wanting to oppose the rights of women and create conflict between their rights and those of their children, seeks the best for both. This can be observed not only in El Salvador's legislation, but also in the policies it carries out to achieve the goals reflected in its laws.

I. CONTEXT AND SITUATION OF EL SALVADOR

To get a closer look at the essential characteristics of El Salvador, we will analyze areas that, directly or indirectly, affect the protection and promotion of the rights of women and unborn children. We will begin with an analysis of the political-organizational context of the country and then bring the lens closer to issues related to its legislation and public policy.

I. A. POLITICAL ORGANIZATION OF EL SALVADOR

El Salvador is a unitary and sovereign state located in Central America on the coast of the Pacific Ocean. The state is territorially divided in 14 departments, and its capital is called San Salvador. The legal, political, and social framework of the Republic of El Salvador was created by the Constitution of the Republic, which was ratified and promulgated in 1983.²

As for the form of government of the state and its political system, El Salvador's sovereignty resides with the people, who are a people free to elect their own rulers.³ The country is organized under a republican, democratic, and representative system of government.⁴

The Salvadoran system of government establishes three branches: Legislative, Executive and Judicial⁵ There are also other bodies created by the Salvadoran Constitution that perform other functions that, while not called basic or essential, are nonetheless crucial for the proper functioning of the state. For example, the Court of Accounts of the Republic ensures that the expenses of state agencies are made in accordance to the law, the Office of the Procurator for the Defense of Human Rights promotes respect for human rights, and the Supreme Electoral Tribunal is the highest authority in electoral matters.

To know more details about the organization and function of the Salvadoran system, we will discuss the main functions and responsibilities of the nation's primary institutions.

² Constitution of the Republic of El Salvador. Promulgated by the Originating Assembly in 1983. Available at: https://www.oas.org/dil/esp/Constitucion_de_la_Republica_del_Salvador_1983.pdf
For more information visit: <https://www.asamblea.gob.sv/legislacion/constitucion>

³ Ibid. Art 83.

⁴ Ibid. Art. 85.

⁵ Ibid. Art. 86.

I.B. BODIES AND INSTITUTIONS OF THE STATE

B.1 THE EXECUTIVE BODY

The Republic's Presidency, Vice Presidency, Ministries, and Deputy Ministries of State (and their dependents) compose the executive body.⁶ The Salvadoran model of government is presidential, which means all the activity of the executive body is under the command of the President.⁷ The President of the Republic is supported by the Council of Ministers, whose functions are established in Article 167 of the Constitution.⁸

The President holds office for a five year term. The current President is Mr. Salvador Sánchez Cerén, who is in office since June 1, 2014. His term will end on June 1, 2019. Mr. Sánchez Cerén belongs to "Front Farabundo Martí for National Liberation," a socialist party.

The President of the Republic has not expressed a precise position regarding the defense of the right to life from conception, the topic that concerns us in this study. However, by following certain executive actions we can infer that legalizing abortion is not part of his political agenda. For example, until now, he has not made any legal initiatives or constitutional reforms to decriminalize abortion. We can also infer this position from the government's refusal to accede to repeated requests from international organizations, such as Amnesty International, that have called for the decriminalization of abortion on more than one occasion.⁹

A notable achievement of the current President, in terms of the protection of women, is that the Salvadoran government signed a commitment with the Pan-American Health Organization to work to reduce maternal mortality and to improve children's health in El Salvador through the Ministry of Health. This agreement, called "Agenda Post 2015 for Maternal and Child Health"¹⁰ is also relevant to the protection of human life.

⁶ Ibid. Art. 150.

⁷ Ibid. Art. 154.

⁸ Ibid. Art. 167.

⁹ In September 2014, the non-governmental organization Amnesty International made a public request to the Salvadoran government to decriminalize abortion. Press note: <http://diario1.com/nacionales/2014/09/amnistia-internacional-pide-despenalizar-el-aborto-en-el-salvador/>

¹⁰ Press release from the Pan American Health Organization, El Salvador ratifies a commitment in the post 2015 Agenda for maternal and child health: http://www.paho.org/els/index.php?option=com_content&view=article&id=931:el-salvador-ratifica-commitment-in-the-agenda-post-2015-for-health-maternal-and-child & Itemid = 291

B.2 THE LEGISLATIVE BODY

The legislative body, called the Legislative Assembly, is a collegial body composed of deputies, who serve as the representatives of the people.¹¹ The Legislative Assembly's main function is to propose, create, reform, and repeal laws, as well as to ratify international human rights treaties. According to article 13 of the Electoral Code, 84 deputies make up the Legislative Assembly.¹²

According to Article 38 of the Internal Bylaws of the Legislative Assembly,¹³ the Assembly is composed of several types of committees, of which standing committees have higher importance. The committees work in groups composed of Deputies appointed by the Board of Directors of the aforementioned Assembly. These permanent committees¹⁴ do not need to be ratified in each legislative period, as their name indicates they are permanent, but the legislative period is only three years, so the deputies who form them will only be present during that legislative period.

One of these permanent committees is the Committee of Justice and Human Rights. The activity of this body is oriented to the study of legislation for the implementation and validity of human rights standards in the country. It also rules on requests for pardons, amnesties, and on the report of work presented by the Attorney General for the Defense of Human Rights, to whom we will refer later.

B.3 JUDICIAL AUTHORITY

The third organ that preserves the balance of power in the republic is the judicial body. This state body is composed of first-instance tribunals to preside over trials. Additionally, Second Instance Chambers are responsible for appeals. Finally, the Supreme Court of Justice has appellate jurisdiction over cases, and it also has original jurisdiction over certain matters.¹⁵

Each tribunal carries out its judicial functions (to make and enforce judgments) in the territory and matters determined by law.

¹¹ Constitution of the Republic of El Salvador. Originating Assembly 1983. Art. 121.

¹² Electoral Code, approved by Legislative Decree in 2013, art. 13.

¹³ Internal Bylaw of the Legislative Assembly, approved by Legislative Decree in 2005, art. 39.

¹⁴ *Ibid.*, art. 39.

¹⁵ Constitution of the Republic of El Salvador, promulgated by Originating Assembly in 1983, art. 172.

In accordance with article 173 of the Constitution of the Republic, the Supreme Court of Justice is composed of Magistrates and one of them serves as President of the Court.¹⁶

The Judicial Organic Law establishes that the Supreme Court of Justice is composed of fifteen judges, distributed in four Chambers, namely: Constitutional, Civil, Criminal, and Administrative Litigation.¹⁷ According to Article 4 of the Judicial Organic Law, the Constitutional Chamber of the Supreme Court of Justice will be composed of the President of the Court and four members, who are appointed by the Legislative Assembly.

The Constitutional Chamber of the Supreme Court of Justice is responsible for hearing and resolving claims of unconstitutionality of laws, decrees and other regulations, judiciary protection proceedings, habeas corpus, and disputes that may occur between the legislative and executive bodies.

This means that the Constitutional Chamber of the Supreme Court of Justice has the delicate task of ensuring respect for the Salvadoran Constitution, as well as deciding whether any law, decree, or regulation has provisions that violate the Constitution. If a law, decree, or regulation violates the Constitution, it must be removed from the legal system.

B.4 OFFICE FOR THE DEFENSE OF HUMAN RIGHTS

Article 191 of the Constitution of the Republic of El Salvador expressly enumerates the functions of the Attorney General, including the Attorney for the Defense of Human Rights.¹⁸ This attorney performs certain functions through the Office of the Attorney for the Defense of Human Rights.

This attorney has a term of office of three years, and the duties of the office are established in Article 194 of the Constitution. The main functions are to assist alleged victims of human rights violations, to promote judicial or administrative remedies to protect human rights, to promote reforms before the state organs to advance human rights, to publicize public or private conclusions and recommendations, to develop and publish reports, and others.¹⁹

All these duties aim to provide the human rights attorney with sufficient power to guarantee respect for human rights, which is why he is empowered to make

¹⁶ Ibid., art. 173.

¹⁷ Organic Judicial Law, approved by Legislative Decree in 1984, art. 2.

¹⁸ Constitution of the Republic of El Salvador, promulgated by Originating Assembly in 1983, art. 191.

¹⁹ Ibid., art 197.

use of judicial and administrative remedies that guarantee intervention in judicial investigation and control of public activity.

The Attorney General, in addition to his constitutional functions, also has other duties that are established by law, called the Law of the Attorney for the Defense of Human Rights.²⁰

Former Attorney General David Ernesto Morales Cruz, who began his duties on August 9, 2013 and finished his term in August 2016, led the Office of the Attorney for the Defense of Human Rights of El Salvador. Currently, the Office is without an occupant because of the lack of agreement in the Legislative Assembly, which is mandated to choose the Attorney by article 131 of the National Constitution.

While positive things were done during his term (such as numerous reports²¹ that guide political actors in their search for the common good), regarding the defense of life, the former attorney maintained a position in favor of changing the Salvadoran legal system to decriminalize abortion. He also made public statements in September 2014 along with the non-governmental organization Amnesty International²² in which he favored the decriminalization of abortion.

With this panorama of the organization of the political institutions of the country, we will now proceed to analyze its normative plexus. We will analyze the sources of Salvadoran law, placing particular emphasis on written law as one of the most important sources of law. We will also see how the legislative body has been creating laws consistent with fundamental principles established in the Constitution.

II. SOURCES OF LAW IN EL SALVADOR

The Salvadoran legal system expressly mentions the formal sources of law in many different statutes. The first and main source of law is the statutory law. This source is expressly recognized in Article 1 of the Salvadoran Civil Code.²³

²⁰ Attorney for the Defense of Human Rights Act, approved by Legislative Decree in 1992.

²¹ List of reports of the Office of the Attorney for the Defense of Human Rights during the period of Attorney General David Ernesto Morales Cruz on Human Rights: <http://www.pddh.gob.sv/menupress/menunoti>

²² Press release on Amnesty International's pronouncement with the participation of former Attorney General David Ernesto Morales Cruz for the decriminalization of abortion in El Salvador in September 2014. Available at: <Http://www.elsalvador.com/articulo/nacional/reaviva-polemica-por-despenalizar-aborto-pais-59203>

²³ Civil Code approved by Executive Decree in 1859.

Art.1: *The law is a declaration of the sovereign will that, manifested in the form prescribed by the Constitution, commands, prohibits, or permits.*

Another secondary source that exists in Salvadoran law is legal custom,²⁴ which is also recognized as a source of law by the Salvadoran Civil Code, specifically in Article 2, which states: "*The custom is not legally binding, but in cases where the law refers to it.*" Article 1 of the Commercial Code also refers to custom as a source of law and says that: "*Traders, acts of commerce and commercial matters shall be governed by the provisions contained in this code and other mercantile laws in their defect, by the respective uses and customs and lack of these by the norms of the Civil Code. Special and local customs and customs shall prevail over generals.*"²⁵

Other important and complementary sources are case law and legal doctrine, which are referred to in the Code of Civil and Commercial Procedure,²⁶ and articles 212 and 143 of the Code of Criminal Procedure,²⁷ which define in legal terms what a sentence is. Finally, article 522, subsection 3 of the Civil and Commercial Procedural Code²⁸ refers to doctrine as an additional source of law.

From this, we see that the main formal sources of law in El Salvador are statutory law, legal custom, case law, and legal doctrine, the most important being the statutory law.

II. A NORMATIVE HIERARCHY

A.1 THE CONSTITUTION OF THE REPUBLIC

The Salvadoran Constitution is the fundamental governing norm of the country. It was adopted by the Constituent Assembly in 1982, but after numerous discussions and reforms, was finally approved on December 15, 1983 and came into force 5 days later.

²⁴ In Salvadoran law, legal custom is understood to be a uniform repetition of certain collective behavior with the full conviction of complying with a right or with a legally binding behavior. Page 10, "Formal Sources of Law in Salvadoran Legislation" author: Vladimir Platero, published in 2013. Online version available at: <http://www.slideshare.net/edgardpbarrera/grupo-d-las-fuentes-formales-del-derecho-en-la-legislacin-salvadorea-platero-barrera-edgard-vladimir-23215643>

²⁵ Code of Commerce, approved by Legislative Decree in 1970, art. 1.

²⁶ Civil and Commercial Procedural Code approved by Legislative Decree in 2008, art.212, (refers to the types of judicial decisions and to the judgments that are the jurisprudence considered a formal source of Salvadoran law).

²⁷ Code of Criminal Procedure approved by Legislative Decree in 2008, art.143.

²⁸ Code of Civil and Commercial Proceedings approved by Legislative Decree in 2008, art. 522, Inc. 3. There is legal doctrine that when there are 3 or more constant, uniform, and uninterrupted sentences that are resolved in the same way, the equal jurisprudence in similar cases (when joining three or more sentences) become the controlling legal doctrine.

Within the fundamental principles, it establishes a hierarchical order of the laws of the country and places itself at the top²⁹ in order to safeguard the congruence of all laws and conserve the fundamental principles of the country. Article 246, second paragraph, of the Constitution of the Republic expressly states: "*The Constitution shall prevail over all laws and regulations.*" This means that no law, decree or regulation may contain provisions contrary to the Constitution of the Republic, and, in case of such contravention, laws may be declared unconstitutional by the Constitutional Chamber of the Supreme Court of Justice.³⁰

This constitution, which is recognized as one of the most protective of the right to life in the world, has a special characteristic that makes it worthy of such a name. The first title has a single chapter called "The human person and the ends of the State" where Article 1³¹ expressly states that "*the origin and purpose of State activity is the human person and that the State must be organized for the achievement of justice, legal security and the common good.*" Then, in the same article, the writers of the Constitution decided to leave limited the framework of action of the state, recognizing as a human person every human being from the moment of conception.

It is also relevant to the subject of abortion that Article 2 of the Constitution also enshrines the right to life within a broad protection of other human rights. It establishes that *every person has the right to life, physical and moral integrity, to freedom, security, work, property and possession, and to be protected in the conservation and defense of them*³².

These first two articles establish rights of utmost importance for every person, and through them we can see the line of thought with which the Constitution was made, including the desire to establish the foundations of national coexistence focused on respect for the dignity of the human person.

²⁹ Constitution of the Republic of El Salvador promulgated by Constituent Assembly in 1983, art. 246.

³⁰ Constitution of the Republic of El Salvador promulgated by Originating Assembly in 1983, art. 138. This article regulates the status of the presidential veto to a preliminary draft law (which has been previously approved by a qualified majority of the Legislative Assembly) for reasons of unconstitutionality. In this situation, the President of the Republic must send the legal dispute to the Constitutional Chamber of the Supreme Court of Justice, which will decide whether it is unconstitutional.

³¹ Constitution of the Republic of El Salvador promulgated by Constituent Assembly in 1983, Art. 1. Art. 1 - *El Salvador recognizes the human person as the origin and the end of the activity of the state, which is organized for the attainment of the Justice, legal security and the common good.*

It also recognizes as human person every human being from the moment of conception. Consequently, it is the obligation of the state to ensure the inhabitants of the republic, the enjoyment of freedom, health, culture, economic well-being and social justice.

Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/search-documentos-legislativos/constitucion-de-la-republica>

³² *Ibid.*, art. 2.

A.2 INTERNATIONAL TREATIES

Following the hierarchical path traced by the Salvadoran constitution, we must analyze the role played by international treaties in the internal order of El Salvador.

Unlike other countries in Latin America, where treaties are superior to domestic laws, the Constitution in article 144 is very clear that international treaties signed by El Salvador with other States or with international organizations that are ratified come into force and constitute laws of the Republic. Therefore, as mere laws, treaties are subordinated to the preeminence of the Constitution.³³

Thus, the international treaties signed by the government of El Salvador and subsequently ratified by the Legislative Assembly become standards superior to the laws of the Republic, and are obligatory for all inhabitants of the country and the state can demand their compliance, who can demand their Compliance with the State. They become a law subordinate only to the Constitution.

A.3 SUBSIDIARY LAWS

Next, the so-called subsidiary laws, such as the Civil Code, the Criminal Code, the Labor Code or the Family Code, are third in the hierarchy of the Salvadoran legal system.

Art. 133 of the Constitution establishes which officials may make proposals for the creation of laws: the President of the Republic (through the Ministers), the Deputies of the Legislative Assembly, the Supreme Court of Justice in matters relating to the judicial branch, lawyers and notaries, the Municipal Councils with respect to municipal taxes, and the Central American Parliament (PARLACEN)³⁴ which has all the initiative in the integration of the Central American isthmus. This aspect of integration is regulated in Article 89 of the Constitution.

Articles 133-138 and 140 of the Constitution contain provisions on how the legislative process operates,³⁵ which can be summarized in these steps:

³³ Constitution of the Republic of El Salvador promulgated by Constituent Assembly in 1983, art. 144.

³⁴ Central American Parliament (PARLACEN) is a permanent regional organ of political and democratic representation of the Central American Integration System (SICA) with the objective of realizing Central American integration, which is made up of 120 Deputies. The member states are Guatemala, El Salvador, Honduras, Panama, Nicaragua and the Dominican Republic with the Treaty establishing the Central American Parliament and other political bodies to which the treaty gave life. El Salvador ratified this treaty on September 1, 1988.

³⁵ Constitution of the Republic of El Salvador promulgated by Constituent Assembly in 1983, arts. 133 - 140, (governing the lawmaking process).

presentation of a bill, discussion and approval by the Legislative Assembly, sanction of the President (in case of no objection³⁶), and publication.

A.4 THE REGULATIONS

Fourth in the hierarchy are regulations. These are sets of rules that establish practical aspects both for implementing the provisions established in subsidiary laws and for the internal functioning of state institutions. Some examples include the Internal Regulation of the Legislative Assembly³⁷ and the Regulation of Application of the Tax Code.³⁸

A.5 THE ORDINANCES

Finally, the ordinances are a set of rules of administrative nature and of general application within a smaller territory called municipalities, and are promulgated by Municipal Councils.³⁹ Each council governs in one municipality of El Salvador and their ordinances only govern people within their municipality.

II.B NORMATIVE HIERARCHY OF INTERNATIONAL TREATIES IN THE FIELD OF HUMAN RIGHTS

As mentioned, the Salvadoran legal system establishes a constitutional supremacy over all legal bodies; including laws, regulations and ordinances, with international treaties also expressly mentioned in this set of rules.

Article 145 of the Constitution of the Republic of El Salvador expressly states that treaties containing provisions that are contrary to the Constitution cannot be ratified by the Legislative Assembly,⁴⁰ so if a treaty affects constitutional provisions, it cannot become a law of the Republic. This shows the normative supremacy of the Constitution. However, the same article establishes that treaties may be ratified when they are made with reservations to any provisions that would be contrary to the Constitution so that these provisions would not be applied and not considered law.

³⁶ Constitution of the Republic of El Salvador promulgated by Constituent Assembly in 1983, arts. 135, 137 and 138, on Presidential veto.

³⁷ Internal Bylaws of the Legislative Assembly, approved by Legislative Decree in 2005.

³⁸ Bylaws for the Application of the Tax Code, approved by Legislative Decree in 2001.

³⁹ Constitution of the Republic of El Salvador promulgated by Originating Assembly in 1983, art. 204. This article refers to municipal autonomy, including legislative and executive powers protected by constitutional provisions, such as creating local ordinances and regulations; creating, modifying, and suppressing tax rates and public contributions, and others.

⁴⁰ Constitution of the Republic of El Salvador promulgated by Originating Assembly in 1983, art. 145.

Article 146 of the Constitution has a provision prohibiting the ratification of an international treaty (even with reservations) when that treaty has provisions that would alter the order of the government or impair the integrity of the national territory, sovereignty, rights or fundamental guarantees of the human person.⁴¹ However, it clarifies that this does not prevent the Salvadoran government from submitting to decisions of international tribunals in situations of controversy.

Although international treaties are not above the Constitution, they are above national laws. This means that treaties become a law higher than the other laws approved by the Legislative Assembly, a concept which is established in the second paragraph of Article 144 of the Constitution: "*The law may not amend or repeal what was agreed in a treaty in force for El Salvador. In case of conflict between the treaty and the law, the treaty shall prevail.*"⁴² Thus, if there is a contradiction between what is established by a subsidiary law or any legal body of domestic law and treaty, the treaty will prevail.

In short, international treaties are placed on a level where they are below the Constitution but above national laws, and they can be ratified and applied whenever they are congruent with the constitutional provisions.

III. RIGHT TO LIFE

As has already been observed, the Salvadoran legal system establishes a hierarchical order that places the Constitution first, followed by treaties, subsidiary laws, regulations, and ordinances, respectively.

The right to life includes the protection of the life of the human person from conception to natural death. Salvadoran legislation establishes such protection mainly in the Constitution and consequently in the other laws subordinated to it such as the Comprehensive Protection of Children and Adolescents Act, the Family Code, the Civil Code, the Civil and Commercial Procedural Code, and the Criminal Code.

III.A IN THE CONSTITUTION OF THE REPUBLIC

With regard to the protection of the right to life, the Constitution provides:

⁴¹ Ibid., art. 146.

⁴² Constitution of the Republic of El Salvador promulgated by Originating Assembly in 1983, art. 144.

- Article 1, second paragraph: "*Likewise recognizes as a human person every human being from the moment of conception.*"⁴³
- Article 2, first paragraph: "*Everyone has the right to life, physical and moral integrity, liberty, security, work, property and possession, and to be protected in the conservation and defense of themselves....* "
- Article 3, first paragraph: "*All persons are equal before the law. For the enjoyment of civil rights, restrictions based on differences of nationality, race, sex or religion may not be established* "

Through these constitutional provisions, the Salvadoran people expressed in their Constitution the clear recognition of the human person “from the moment of conception,” that is, they recognize the unborn child as a person with rights from that moment, without admitting any exceptions.

Additionally, the Constitution, while enshrining in its normative text the principle of legal equality and non-discrimination,⁴⁴ also recognizes that all the rights enshrined in its text must be defended for all persons on an equal basis and without discrimination. Applying these principles to the right to life, we can see the unborn as persons for whom the Constitution protects these rights in the same way as any other human being that inhabits Salvadoran territory and is subject to its jurisdiction.

III.B SUBSIDIARY LAWS.

B.1 COMPREHENSIVE PROTECTION FOR CHILDREN AND ADOLESCENTS ACT (LEPINA, acronym in Spanish)

The Law on Comprehensive Protection for Children and Adolescents came into effect on April 16, 2010. This law was created to guarantee the full exercise and enjoyment of the rights of children and adolescents, as well as to facilitate the fulfillment of these rights. We will number the most relevant articles and make brief comments on them.

⁴³ In 1999, article 1 of the Constitution of the Republic of El Salvador was amended to add a provision that expressly recognizes the human person from conception, which was the fourth of six reforms that have been made to the Constitution. First, the Legislative Assembly made a constitutional amendment agreement in 1997 and ratified that agreement in 1999.

⁴⁴ Constitution of the Republic of El Salvador. Originating Assembly of 1982. Article 3: "*All persons are equal before the law. For the enjoyment of civil rights restrictions may not be established based on differences of nationality, race, sex or religion. There are no inherited jobs or privileges.*"

Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/constitucion-de-la-republica>

- Art.3, first and second paragraphs: *"The rights and guarantees granted in this law shall be recognized to every person from the moment of conception until the age of eighteen."*

"For the purposes of this law, a girl or a child is everyone from the very moment of conception to the age of twelve, and adolescents are understood from the age of twelve to the age of eighteen."

As can be seen, this article agrees with the recognition of the human person from conception established in Constitution and defines the child as a human being from conception to twelve years of age, so that the protection of the child starts from the earliest stage of embryonic development.

- Art.16: *"The right to life is recognized from the moment of conception. The family, the State and society have the obligation to ensure the survival of children, adolescents and adolescents, optimum growth and integral development in the physical, mental, spiritual, psychological and social spheres in a manner compatible with human dignity.*

The State should create public policies and programs for adequate coverage and prenatal, perinatal, neonatal and postnatal care, as well as interventions to reduce maternal and child morbidity and mortality, and childhood. Every person has the right to be born in familiar, environmental and other conditions that allow him to obtain his complete and normal bio-psycho-social development."

To enforce this protection and promote the integral development of children and adolescents, this law created a national system of protection for children and adolescents made up of multiple national institutions and civil organizations, specifically the Ministries of Education, Health, Labor, Justice and Public Security, the Attorney General's Office, the Corporation of Municipalities of El Salvador, the Silencio Foundation (FUNDASIL),⁴⁵ the Pestalozzi Children's Village Foundation,⁴⁶ and others who, as time goes on, join in this work. All of them work together to ensure that both the protection and the development that this law is intended to promote constitute a reality in the lives of Salvadoran children.

In order to make joint work possible in compliance with this law, the National Council for Children and Adolescents (CONNA in Spanish) was created.⁴⁷ According to article 109 of the LEPINA Act, a national policy must be created to protect and promote development for children and adolescents, and the state

⁴⁵ Silencio Foundation website (FUNDASIL) <http://www.fundasil.org/>

⁴⁶ Aldea Infantil Pestalozzi Foundation <https://www.pestalozzi.ch/>

⁴⁷ CONNA or National Council for Children and Adolescents is directed by a board of directors, which is made up of current representatives of public bodies, public institutions and civil organizations. The first executive council was installed in February 2011, through an Executive Decree.

does so through CONNA, which is in charge of guiding the work of all public and private bodies, entities or institutions that make up the National System for the Comprehensive Protection of Children and Adolescents.

• Art. 17: *"The protection of unborn children or children shall be exercised through the health and psychological care of the pregnant woman, from the moment of conception until birth.*

In order to ensure the right to life of girls and boys, the State is responsible for the free care of women in the prenatal, perinatal, neonatal and postnatal stages, for which, at these stages, services and Specialized medical treatments, drug supplies, nutritional counseling and food support for the mother and daughter or child who are in special health conditions or poverty."

This article emphasizes rights such as physical and psychological health, food, and prenatal healthcare, and is the way the state seeks to protect the unborn during all stages of pregnancy and after birth. It also includes pregnancies that experience difficulties due to health reasons or situations such as poverty, thus valuing the dignity of the human person. The state does this through the Ministry of Health, including the 2011 creation of a department for the management of Comprehensive Care for Women within the Ministry.

Having reviewed the articles of LEPINA that are most relevant to protecting children and adolescents and promoting their optimal development from conception, we will now analyze the Family Code, another law that gives the legal framework to protect and defend the unborn of El Salvador.

B.2 THE FAMILY CODE

The Family Code was created by Legislative Decree and entered into force on October 1, 1994. Its provisions were drafted with strict conformity to the constitutional text under which the human person is protected from conception, and it is one of the laws that contribute to the protection of the unborn.

Articles 144 and 146 make special reference to the rights of the unborn. Article 144⁴⁸ provides for a father to voluntarily recognize his child. Article 146,⁴⁹ second paragraph, safeguards a child's food rights from the time of conception, protects the right of a woman to petition a family judge for recognition of the

⁴⁸ Family Code of El Salvador. Sanctioned on October 1, 1993.

Available at: https://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf

Art. 144: *"The father may recognize the conceived child and the deceased son, by any means established in this Code that may be applicable. The recognition of the deceased son will only benefit his offspring."*

⁴⁹ Ibid.

child. If a father does not voluntarily recognize his child, the process is carried out through a recognition process called "provoked." This recognition can be performed either before or after birth.

B. 3 THE CIVIL CODE

The Civil Code of El Salvador was adopted through an Executive Decree that dates from 1860. Although it has several provisions regarding the protection of the rights of the unborn, it has a provision that was created before the constitutional amendment of 1999, so it is at odds with the protection afforded to the unborn by the present constitutional text.

This provision is Article 72, which states that "The legal existence of every person begins at birth, this is to separate completely from the mother. The creature that dies in the womb, or that perishes before being completely separated from its mother, or that has not survived the separation even for a moment, will be considered as it never to have existed."⁵⁰

This article was tacitly repealed by the adoption of the Constitution. Although this article has not yet been removed from the text of the Civil Code, since the Constitution is hierarchically superior to all other laws, in cases of conflict, the Constitution prevails and is valid. The articles presented here that already existed before the reform and that are compatible with the Constitution are still in force. The Civil Code already had articles that protect the unborn even though it dates from 1860.

Article 73⁵¹ gives judges the ability to take, *ex officio*, any measure of action to preserve the life of the unborn when it is in danger and individuals request such when they detect that the life of an unborn person is in danger.

Articles 486⁵² and 490⁵³ create the position of curator of the rights of the unborn, a position which ends once the person is born. Curatorship is a way of

⁵⁰ Civil Code of El Salvador. Sanctioned by Executive Decree in 1860.

⁵¹ Ibid.

Art. 73.- "The law protects the life of the unborn. The Judge, therefore, shall take, at the request of any person or *ex officio*, all such measures as may appear appropriate to protect the existence of the unborn child, whenever he believes that he is in any way at risk."

⁵² Ibid.

Art.486.- "The curator of the property of an absent person, the curator of a lying inheritance, the curator of the eventual rights of the unborn, are subject in their administration to all the obstacles of the guardians or curators, and In addition they are prohibited from executing other administrative acts than those of mere custody and conservation and those necessary for the collection of the credits and payment of the debts of their respective represented."

⁵³ Ibid.

Art.490 Third paragraph.- "The curation of the eventual rights of the unborn ceases as a result of childbirth."

protecting the economic or patrimonial interests of people who cannot protect their own interests, and is a form of legal representation that can be used with the unborn person.

Article 963⁵⁴ states that the physical existence of a person is sufficient for succession, so that the unborn may, for example, accept an inheritance, but this is done through the legal representation of the parents. The Salvadoran Civil Code, unlike other civil ordinances, does not condition the life of a person upon birth, so he irrevocably acquires the goods he receives during gestation in the womb, as those rights are acquired from his embryonic existence in the womb.

B.4 CIVIL AND COMMERCIAL PROCEDURAL CODE

The Civil and Commercial Procedural Code also contemplates the rights of the unborn.

It is the art. 58 in its first and second subsection, second numeral that says:

“The plaintiff, the defendant and those who may suffer the material effects of the res judicata are parties to the proceedings.

In civil and commercial proceedings may be:

(...)

2 ° - The conceived unborn, for all purposes favourable to him.”

Thus, the unborn can be party to a process by means of legal representation through their parents, or, in their absence, someone appointed by the judge.

B.5 LEGISLATIVE DECREE N ° 738, 1993, "DAY OF THE UNBORN CHILD"

Although the amendment to the Constitution that changed in article 1 to recognize the human person from the moment of conception was in 1999, this spirit expressing the value of the life of the unborn has already been expressed since 1993. This position was focused not only on prohibiting abortion, but also on recognizing that human life should be respected and protected regardless of

⁵⁴ Ibid.

Art. 963.- *“For having legal capacity, it is necessary to exist at the time of opening the succession; Unless it happens by right of transmission, according to article 958, then it will suffice to exist when the succession of the person by whom the inheritance or legacy is transmitted.*

If the inheritance or legacy is left under suspensive condition, it will also be necessary to exist at the time the condition is met.

However, assignments to persons who at the time of the succession do not exist, but are expected to exist, will not be invalidated for this reason if such persons existed before the expiration of thirty years following the opening of the succession.

The assignments offered in prize to those who render an important service will be valued with the same limitation, although the one who lends it did not exist at the time of the death of the testator.”

the stage of development in which it is found. That is why the legislature created this legislative decree declaring that every December 28 is commemorated the "DAY OF THE RIGHT TO BORN". This decree acted as an important precedent before the constitutional reform.

The legislature based this decree not only on philosophical principles, but also on Article 4.1 of the American Convention on Human Rights, and on the Salvadoran Criminal Code which, though not always as restrictive with of abortion, currently criminalizes it.

Thus, Article 1 of the decree was drafted: *"December 28th is hereby declared the Day of the Right to Be Born."*

B.6 THE CRIMINAL CODE

As we have just mentioned in the previous section, abortion is currently criminalized in El Salvador. However, it was not always so. The Criminal Code that was in force from 1973 to 1997 qualified abortion as a crime, but established an exception and allowed for so-called therapeutic abortions. Allowing such a practice is simply an attempt on the lives of the unborn, because a doctor can never choose as a direct means the death of the child to save the life of the mother (although it may be accepted as an indirect and undesired cause of treatments proper to the illness or illnesses suffered by a pregnant woman).

It was only in 1997, two years before the amendment to the constitutional text, that the current Criminal Code⁵⁵ of El Salvador criminalized all forms of direct or induced abortion that is done with any intent to end intrauterine life. It also established provisions criminalizing other crimes relating to human life in gestation.

We will mention several articles:

- Art. 133 Consented and self-induced abortion: *"Anyone who causes an abortion with the consent of the woman or the woman who self induces her own abortion or consents that another person practices it, shall be punished with imprisonment of two to eight years."*⁵⁶

This article penalizes abortion when a woman performs it on herself or when another person performs it with the consent of the woman (in which case it

⁵⁵ El Salvador's Criminal Code. Available at : <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-penal>

⁵⁶ Ibid., art. 133.

would criminalize the conduct of both the woman who consented and the person who performed it).

- Art. 134 Abortion without consent: *“Anyone who causes an abortion, without the consent of the woman, will be punished with imprisonment of four to ten years. The person who practiced the woman’s abortion, having obtained her consent through violence or deception, shall incur the same penalty.”*⁵⁷

This article penalizes situations where someone performs an abortion without the consent of the woman, as well as cases where the consent of the woman is obtained through violence, intimidation, threats, or physical force. It also penalizes deceit in the abortion process, such as misrepresenting health indicators.

- Art. 135 Aggravated abortion: *“If the abortion is committed by a physician, pharmacist or persons who perform auxiliary activities related to the mentioned professions, when they engage in such practice will be punished with imprisonment from six to twelve years. It will also impose the penalty of special disqualification for the exercise of the profession or activity for the same period.”*

Article 135 of the Criminal Code refers to the possibility of a healthcare professional performing direct or induced abortion. It adds disqualification from the profession to the penalty of imprisonment.

- Art. 136 Induction or abortion assistance: *“Anyone who induces a woman or provides her with financial or other means for an abortion will be punished with imprisonment of two to five years. (...)”*

Article 136 looks at times where a woman is incited to receive a direct abortion or give her consent to have it performed. Facilitating the economic means for the abortion involves providing money or other means necessary to carry it out. This article contains an aggravating factor for the penalty, which is for when the progenitor or the father of the conceived induces the woman, assists her in performing the abortion, or procures the means to do so.

- Art. 137 Wrongful Abortion: *“Anyone who willfully causes an abortion will be punished with imprisonment from six months to two years. Miscarriage caused by the pregnant woman herself, and her attempt will not be punishable.”*

This crime is a wrongful misdemeanor, and it means that the result of the action is not born of a direct intention, but rather of the negligence, recklessness, or

⁵⁷ Ibid., art. 134.

imperviousness of whoever produces the death of the unborn. It also covers the case of anyone seeking minor harm who unwittingly produces a greater or more harmful consequence. Those who provoke this abortion (except the pregnant) can be punished.

The last part of this article exempts the attempt of a woman from punishment. Legal doctrine and jurisprudence have specified that it is not a question of whether an abortion was attempted, since if it was there would be a contradiction, as an attempt to commit a crime is always the start of the intentional execution of that crime. Therefore, the attempt to which the article refers is the potential for intentional injuries that the woman can cause the child she is carrying in her womb.

- Art. 138 Injury to the unborn: *“Anyone who causes an injury or illness to an unborn child that seriously damages his normal development or causes a serious physical or mental defect in the same, will be punished with imprisonment of one to ten years, according to the severity of them.”*

Article 138 refers to damages to the physical integrity of the unborn, which implies injuries, diseases that affect development during gestation, or even psychological damages. This can occur in cases of physical violence towards pregnant women which cause damage to the integrity of the person to be born.

- Art. 139 Wrongful injuries to the unborn: *“The culpable that will cause the injuries described in the previous article, will be sanctioned from fifty to a hundred days fine. The pregnant woman will not be sanctioned according to this precept.”*

This article refers to a wrongful offense and is framed in the circumstances explained above. This article is applied to those who in some way cause damage to the physical integrity or cause damage to the health of the unborn.

- Art. 140 Genetic manipulation: *“Any person who, for purposes other than the elimination or diminution of serious illness or disease, manipulates human genes in a way that alters the vital constitutional type, will be punished with imprisonment of three to six years. The person who will experiment or manipulate human cloning cells for the purpose of human reproduction will incur the same penalty. The application of genetic technology to determine sex, without the consent of the parents, will be punished with imprisonment from six months to one year and special disqualification from profession or office from six months to two years.”*

Genetic manipulations are modifications to the genes of an organism to achieve a change in the constitution of the human being. These are permitted if they are for the elimination, treatment, or diminution of diseases or disorders when the

unborn suffers some problem of genetic malformation. These maneuvers should not be performed to damage the individual genetic integrity of the unborn that can end in damages that cause malformations or diseases. It also includes other provisions, such as penalizing human cloning and the use of genetic technology without the consent of parents or parents.

- Art. 141 Wrongful genetic manipulations: *“The person who performs manipulations with human genes and culpably causes damage in the vital type will be sanctioned with a fine of fifty to one hundred days fine.”*

This article refers to the unintentional alteration of the genetics of the unborn through the mentioned manipulations during either the embryo or fetal stages.

- Art. 373 Illegal sale of abortifacients: *“Any person who illegally sells or in any way supplies to other substances or products that serve especially to cause abortions, will be sanctioned with arrest of fifteen to twenty-five weekends and ten to thirty days fine.”*

This article prohibits the commercialization of products that are specifically designed to carry out abortions in El Salvador; neither businesses nor merchants can sell these products.

- Art. 374 Advertising of abortive means: *“Anyone who openly or obscurely announces procedures, drugs, substances and objects intended to cause abortions, shall be punished with a fine of ten to thirty days.”*

This article targets the publicity and promotion of abortion and seeks to avoid any form of open or simulated advocacy against human life in gestation.

IV. THREATS TO THE PROTECTION OF THE LIFE OF THE UNBORN IN EL SALVADOR

IV. A. INTERPRETATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

This Convention⁵⁸ was created to eradicate all forms of discrimination against women and was adopted in 1979 as part of international law. Subsequently, the Protocol for the Elimination of All Forms of Discrimination against Women, also

⁵⁸ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations (UN) General Assembly in 1979 and entered into force as an international treaty in 1981 with the support of 20 UN Member States, including El Salvador. Available at: <http://www.un.org/womenwatch/daw/cedaw/text/sconvention.htm>

known as the "Optional Protocol to CEDAW" (adopted by the General Assembly of the United Nations in 1999), was created.

The way in which this set of international norms is shaped by the treaty and the protocol is that the single signature of the treaty commits the country to the fulfillment of all the obligations mentioned there. The signing of the Protocol is optional for the country, but once a State ratifies the Protocol, it agrees to confer jurisdiction to a treaty compliance committee so that through periodic reviews and recommendations the committee evaluates the nation's fulfillment of the treaty and also recommends measures for the nation to better observe and comply with treaty requirements.

This Committee may also receive complaints submitted by persons or groups under the jurisdiction of the State Party who claim to be victims of a violation by that State of any of the rights in the Convention or Covenant. Thus, the Protocol empowers the Committee to act by carrying out investigations, imposing sanctions, and ordering state remedies to the violation of rights recognized in the Convention.⁵⁹.

Having understood the genesis and functioning of the CEDAW Committee, one could ask why we have listed the interpretations made by the Committee in the threats chapter, and this is what we will now explain.

This committee of 23 people has made numerous inputs that have contributed to the improvement of the situation of women worldwide since its start. However, many times their rulings result in conflict between the rights of women and those of the unborn, and the Committee claims that the decriminalization of abortion is the only way to avoid violating rights such as the life or health of women. Such was the case in Costa Rica where the Committee, when interpreting Article 12 on the right to health, established that this article tacitly includes women's right to abortion.⁶⁰ It made similar pronouncements in General Recommendations that it gave to Mexico when it claimed that not having access to a legal abortion in cases such as rape and incest, therapeutic abortion, and fetal malformations is a form of torture and discrimination, so it recommended the decriminalization of abortion.⁶¹

⁵⁹ CEDAW, adopted by the UN General Assembly in 1979, articles 1 to 6.

⁶⁰ The Committee has interpreted Article 12 of CEDAW, which refers to the right to health, to implicitly contain a right to abortion. This position was expressed in the Committee's Comment No. 32 to Costa Rica in the concluding observations of the forty-ninth session in 2011. Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8421.pdf?view=1>

⁶¹ Such is the case of the United Mexican States, which ratified the Optional Protocol to CEDAW in 2002. The Committee of 23 persons made recommendations in 2012 on "sexual and reproductive health" that would expand its abortion legislation at the national level and guarantee access to this, since Mexico has decriminalized therapeutic abortion for rape, incest, and eugenics in some States, but not at the national level. See Recommendations No. 31, 32 and 33.

What is striking about these recommendations and why we believe these interpretations to be a threat to the protection of the right to life in El Salvador is that the Committee's interpretations create an alleged right to abortion when the Convention (in any of its articles) establishes abortion as a prerogative of women or lists the criminalization of this act as a form of torture or discrimination.

The Optional Protocol does not empower the Committee to make such recommendations. Indeed, when comparing this Protocol with others of a similar nature, we can see that none are granted such prerogatives. Article 21 of CEDAW states that the CEDAW Committee "may make suggestions and recommendations of a general nature based on the examination of reports and data transmitted by States Parties." Article 45 of the Convention on the Rights of the Child says "The Committee may formulate general suggestions and recommendations based on information received under articles 44 and 45 of this Convention". Having made this comparison with other monitoring bodies, we see that none of these bodies has the authority to recognize or establish new rights or interpret that there is a new right.

El Salvador has observed the Committee's conduct when interpreting the Optional Protocol, and has considered the best option to be to decline to ratify the protocol at this time. Accepting a recommendation such as those produced by the Committee could result in the creation of a law or reform of articles that decriminalize abortion in El Salvador if it were to ratify the Optional Protocol, which would be totally contradictory to the constitutional provision that recognizes the human person from conception and prevents anything else that threatens the life of an unborn person.

There is no doubt that both the Convention and its Optional Protocol can be positive tools for the eradication of discrimination against women and for promoting their development as individuals, but, unfortunately, the interpretations produced by the Committee contradict the defense of a fundamental right, and all the positive work to eliminate discrimination against women would go against human rights by permitting the oldest barbarism and the cruelest discrimination against the female gender, abortion.

It should be noted that there have been many attempts to ratify the Optional Protocol to CEDAW to date, without success.⁶²

http://cedoc.inmujeres.gob.mx/documentos_download/CEDAW_C_MEX_CO_7_8_esp.pdf

⁶² On April 6, 2016, the Government of El Salvador held a series of workshops on the Optional Protocol to CEDAW. See information note: <https://vidasv.org/2016/04/07/quieren-aprobar-el-protocolo-abortista-del-cedaw/>

IV. B. RECOMMENDATIONS OF THE UNIVERSAL PERIODIC REVIEW (UPR)

The UPR is a state-led process under the auspices of the Human Rights Council, which offers each state the opportunity to say what measures it has taken to improve the human rights situation in the country and to fulfill its obligations contained in recommendations.⁶³

In 2014, a Universal Periodic Review (UPR)⁶⁴ was held in Geneva, Switzerland. When El Salvador was examined, some recommendations that called for the decriminalization of abortion were made under the guise of not having not respected "sexual and reproductive rights." Such recommendations for the decriminalization of abortion came from countries such as Luxembourg, Norway, Germany, Spain, Slovenia, and others.⁶⁵

On this occasion, through these recommendations that threaten the life of the person to be born and their rights recognized in the Salvadoran legal system, El Salvador has again been the victim of international pressure to decriminalize abortion. However, in defense of its sovereignty and the most vulnerable sectors of the population, El Salvador has chosen not to accept such recommendations.

IV. C. POLITICAL MOVEMENT FOR THE DECRIMINALIZATION OF ABORTION

Another aspect, but internal rather than external, that threatens the protection of the right to be born is the initiative of Salvadoran political parties that work toward the change of criminal legislation to obtain the decriminalization of abortion.

On October 11, 2016, Deputy Lorena Peña, who belongs to the current ruling party, Front for National Liberation ("Farabundo Martí" or FMLN in Spanish), delivered a proposal to the Legislative Assembly for the reform of Article 133 of the Salvadoran Penal Codeto decriminalize abortion under the following

⁶³ Definition and operation of the Universal Periodic Review (UPR): <http://www.ohchr.org/SP/HRBodies/UPR/Pages/UPRMain.aspx>

⁶⁴ In 2014, after the recommendations made to El Salvador in the UPR, Movement VIDA SV, with the help of CitizenGo, campaigned to reject recommendations that go against the rights of the unborn through a letter addressed to the Minister of Foreign Affairs of El Salvador, Exc. Hugo Martinez, with a copy also sent to the ambassadors of the countries that made the recommendations. It turned out to be successful, obtaining political support from Deputies of the Republic, and helped ensure that El Salvador did not accept the decriminalization recommendations of abortion: <http://www.citizenngo.org/en/13294-salvador-orgullosamente-provida>.

⁶⁵ Compilation of Human Rights Recommendations issued to El Salvador by UN mechanisms, specifically recommendations of the 2014 UPR on the right to health, page 170 http://www.ohchr.org/Documents/Countries/SV/CompilationRecommendations2006_2014.pdf.

circumstances: when, in the opinion of a doctor, "the life of the woman is in danger," "when the baby is unwanted because it was the result of a rape," "when the baby has a disease," and when it is a "minor who became pregnant due to rape her parents allow it," all of which are contrary to the constitutional principle set forth in art. 1 already mentioned above.

In response to this request, pro-life organizations like VIDA SV carried out a campaign through the well-known CitizenGo⁶⁶ platform of sending a letter to the Deputies of the Legislative Assembly of El Salvador, which provoked different political forces, such as Nationalist Republican Alliance (ARENA) and the Christian Democrat Party (PDC), to stand against the abortion project

Currently, this reform that would decriminalize abortion in the cases described has not progressed in the legislative process and is still in the Health Commission of the Legislative Assembly.⁶⁷

IV. D. RELEVANT CASE LAW

We will now mention two cases of international relevance that were used and manipulated by international organizations to include abortion in the legislative agenda of El Salvador.

- **CASE "LAS 17"**

One of the main threats that El Salvador has suffered in the last two years has been a campaign called "On the Edge of Death" carried out by local feminist organizations and international NGOs. Among the national organizations is the Citizens' Association for Decriminalization of Abortion,⁶⁸ and the international organizations include Amnesty International.

This campaign was carried out by these organizations, and it consisted of bringing to public light cases of 17 women who were prosecuted and convicted for the crime of aggravated homicide on their children who were born alive.

⁶⁶ Campaign on CitizenGo platform letter to the Deputies of Legislative Assembly of El Salvador: <http://www.citizenngo.org/en/37822-no-al-aborto-salvador>.

⁶⁷ See related journalistic note:

<http://www.lapagina.com.sv/nacionales/122436/2016/10/17/Diputados-comienzan-discusion-para-despenalizar-el-aborto>

⁶⁸ The citizens' group for the decriminalization of abortion in El Salvador is one of the main civilian pro-abortion organizations in El Salvador: <https://www.facebook.com/despenalizacionDelAbortoES/>.

This action's objective was that by requesting pardon of their sentences,⁶⁹ social conscience would be generated about how unfair the criminal laws on abortion can be. Thus, lawmakers motivated by social outcry would have legislative initiatives for the decriminalization of abortion.

However, at the media level, the organizations promoting this campaign sold the idea to the Salvadoran and international population that the cases did not involve sentences for aggravated homicide on their own children who were born alive, but rather sentences for "spontaneous or natural" deaths.⁷⁰ In addition to publishing the 17 cases through social networks, advertising on buses and other media, this campaign gave erroneous information about Salvadoran criminal legislation, claiming that El Salvador penalizes spontaneous abortion with up to 40 years in prison, which is, as we have seen in the previous section, absolutely false, since neither is miscarriage currently penalized nor are convictions for the types of unlawful abortions of such magnitude.⁷¹

The campaign did not achieve its expected goal. It attempted to manipulate the facts to implant an ideology, and its failure was ensured because pro-life activists were able to deny the propagandistic assertions made by these groups and because most of the applications for pardon were denied.

The then-director of the Institute of Forensic Medicine, doctor José Miguel Fortín Magaña provided statements⁷² where he clarified the opinions of the Institute of Legal Medicine based on autopsies of the bodies of children killed. These forensic opinions were introduced into the criminal proceedings in each case and it was found that they were cases of children who were born alive, had breathed, and had then been killed by stoning, suffocation, stabbing, and other forms of homicide, resulting in the conviction of the mothers. This made it clear that these were not direct abortions, nor spontaneous abortions, nor obstetric complications, but rather cruel murders of newborn children.

⁶⁹ Constitution of the Republic of El Salvador, promulgated by Originating Assembly in 1983, art. 131 n. 26. *"Indulge is a legal figure recognized in the Constitution and consists of a total or partial pardon of the sentences imposed by a judge. Its concession corresponds to the Legislative Assembly with previous favorable opinion on the part of the Supreme Court of Justice of El Salvador."*

⁷⁰ Example of the publications made by feminist websites on the case "Las 17" in El Salvador and the media manipulation: <http://www.portaloaca.com/articulos/antipatriarcado/1576-el-aborto-natural-esta-Prison-with-jail-in-5-countries-el-caso-de-el-salvador.html>

⁷¹ Amnesty International carried out a smear propaganda campaign against El Salvador in several of its articles, asserting that women are imprisoned for miscarriage. https://www.amnesty.org/en/latest/news/2015/11/el-salvador-s-total-abortion-ban-sentences-children-and-families-to-trauma-and-poverty/?utm_source=Hootsuite.

⁷² Video statements of Dr. José Miguel Fortín Magaña, on the case "of the 17" https://www.youtube.com/watch?v=wVbdCRx0E_M.

The pro-life movement "VIDA SV - El Salvador's Pro-life Youth" has posted on its website information on each case of the 17 women convicted of aggravated homicide on the sentences of each, the requests for pardon, and the result of that request⁷³ (which was unfavorable for most of them – only two of the murderers were pardoned). In most cases where the Legislative Assembly denied pardon, the denial was because the opinions by the Supreme Court of Justice were extremely unfavorable to the defendant.

• THE CASE OF BEATRIZ

The Beatriz case was the case of a woman with lupus erythematosus aggravated with lupus nephritis⁷⁴ who was pregnant with a girl who was diagnosed with anencephaly⁷⁵.

Beatriz's complex situation was taken and championed as part of a campaign by international and national civil society organizations in favor of abortion. They used the case to put pressure on the government and legislators to achieve the decriminalization of abortion in El Salvador.

Beatriz, who was approached by the promoters of the abortion legalization campaign, was being pressured to have an abortion and to request an abortion, as expressed by Dr. René Fortín Magana who was Director of the Institute of Legal Medicine in 2013 and who examined the woman. Medical doctors Gábor Joya and José Ignacio Sánchez Prepared a report on the Beatriz case for the civil organization Hazte Oír in 2013, "A History of Abortion Manipulation," which contains these and more details.⁷⁶ That report shows that much pressure and confusion lead to the decision to abort not being Beatriz's own, but rather the abortion groups' iron-fisted intention to impose their ideas through the manipulation of the case.

The promoters of abortion filed for judicial protection before the Constitutional Chamber of the Supreme Court of Justice of El Salvador, which was admitted. This protection measure was intended to obtain a sentence that would allow an exception for a "therapeutic" abortion for Beatriz and set a precedent to later seek a decriminalization of abortion, especially for so-called "therapeutic

⁷³ Information on all cases of the 17 women convicted of aggravated homicide: <https://vidasv.org/el-salvador/las17>.

⁷⁴ Lupus is an incurable skin disease. There are several different types of lupus, the most common of which is systemic lupus erythematosus. http://www.niams.nih.gov/Portal_en_english/information_of_health/Lupus/default.asp.

⁷⁵ Anencephaly, a malformation consisting of a lack of part of the brain. <https://medlineplus.gov/spanish/ency/article/001580.htm>.

⁷⁶ See full report: Beatriz Case "A History of Abortion Handling" page 8. <http://hazteoir.org/sites/default/files/documentos/El%20caso%20Beatriz.pdf>

abortions."⁷⁷ Nevertheless, the Court⁷⁸ denied the request and took a position in defense of the life of the unborn and the mother. The judgment recognizes the equality of the value of life and rights of both, an equality that was based on an in-depth analysis of the content of several articles of the Constitution of the Republic, including Article 1, paragraph 2, concerning the right to life from conception.

This decision was a clear legal setback for abortion promoters. In addition, the same events that occurred with Beatriz and her daughter disproved the assertions they made at the time.

There were many lies that were used to justify the request for abortion and the subsequent change in Salvadoran legislation. Below we will explain the main ones and the truths that disprove them:

- Lie: Beatriz would die if the pregnancy was in an advanced state if she did not abort.
 - Truth: The opinion of the Institute of Legal Medicine of El Salvador, as an expert opinion ordered by the Supreme Court of Justice, established that Beatriz was not a woman at risk of death, with a special emphasis that abortion was never necessary to safeguard the life of the mother.⁷⁹
- Lie: Beatriz's daughter's malformation put her Beatriz's health and life at risk.
 - This argument is medically false, since the malformation of her daughter was not absolutely related to the health of the mother, therefore, there was no such risk to allowing continued progress of her pregnancy.⁸⁰

⁷⁷ It is important to clarify that a state that protects life from conception should not permit so-called "therapeutic" abortions. We do not say this because we neglect the mother's health, but because we try to preserve it. Remember that to safeguard the life of the mother, the doctor must seek to save both lives, while recognizing that a possible double effect may culminate in the unintended death of the unborn child. If a doctor seeking to save both lives obtains an unexpected result, he does not commit the crime of abortion. Thus, it is not necessary for states that seek to protect women to include therapeutic abortion as "a permissible abortion."

⁷⁸ Judgment of Amparo of the Constitutional Chamber of the Supreme Court of Justice of El Salvador, with reference 310-2013. Available at:

[Http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2013/05/A00CC.PDF](http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2013/05/A00CC.PDF)

⁷⁹ Journalistic note on the opinion of the National Institute of Legal Medicine of El Salvador on the Beatriz case in 2013. <http://www.elsalvador.com/articulo/nacional/medicina-legal-salud-enfrentan-por-caso-beatriz-33613>.

⁸⁰ Report: Beatriz Case, "A History of Abortion Handling" by Gádor Joya, Dra. En Medicina (specialist in pediatrics) and José Ignacio Sánchez (specialist in obstetrics and gynecology and associate professor at the Universidad Autónoma de Madrid, Spain) for the Civil Organization HazteOir in 2013. <http://hazteoir.org/sites/default/files/documentos/El%20caso%20Beatriz.pdf>.

- Lie: Beatriz had kidney failure.
 - The promoters of abortion intended to make people believe that Beatriz suffered from renal failure since this condition generates a 3 to 66% risk of miscarriage, which would suggest that there were natural possibilities for the baby to die in the womb,⁸¹ so it would not have been so serious to advance this event.
 - The President of the Medical Association of that time, Dr. Milton Brizuela, made public statements asking rhetorically how it was possible to say that Beatriz suffered from renal insufficiency when no doctor (not even the nephrologist of the hospital where she was being treated) had made any evaluation to verify whether or not she suffered from renal failure. There was no evaluation regarding this before the forensic report by the National Institute of Legal Medicine.⁸² After the Institute of Legal Medicine of El Salvador made this medical report as an expert opinion ordered by the Supreme Court of Justice, it came to light that Beatriz did not suffer from renal failure.

- Lie: The medical community supports abortion.
 - The Medical Association of El Salvador made a statement making clear that it took no position in favor of the request for an abortion, and it even pointed out that false information was disseminated in the request.

- Lie: The Inter-American Commission on Human Rights requested the decriminalization of abortion in El Salvador.
 - On May 30, 2013, the Inter-American Commission on Human Rights issued a resolution regarding the Beatriz case, which specifically requested that El Salvador adopt guarantee necessary and effective measures to avoid irreparable damage to Beatriz's life, integrity, and health. The Commission never asked for abortion to be decriminalized, nor did it attempt to change the legislation of El Salvador.⁸³

This shows how Beatriz's situation was turned into a campaign that sought to manipulate the medical reality of her case, including making assertions that were denied by medical science.

⁸¹ See prognosis of renal impairment during pregnancy. Available at: http://bvs.sld.cu/revistas/mgi/vol12_4_96/mgi13496.htm.

⁸² Journalistic note on the statements made by the Medical Association of El Salvador, on Beatriz case, 2013. Available at: <http://www.laprensagrafica.com/beatriz-no-fue-evaluada-por-nefrologo-de-maternidad>.

⁸³ Resolution of the Inter-American Commission on Human Rights, May 29, 2013, "Interim Measures on El Salvador, Case B" http://www.corteidh.or.cr/docs/medidas/B_se_01.pdf.

Beatriz was treated by a multidisciplinary group that ended up opting for an alternative measure consisting of the premature induction of labor (induced delivery), which was effective in safeguarding the woman's life, as well as that of her daughter. Her daughter was born alive, and lived for about 5 hours before passing away. This case showed that abortion is not necessary to save women's lives in cases of illness and pregnancy and that abortion does not cure or treat any disease. The baby girl was born alive, which demonstrated the falsehood that claims that anencephalic children are born dead.⁸⁴

V. FINAL CONCLUSIONS.

El Salvador has a legal system that protects life and enshrines its protection as a fundamental principle. We have also seen that the nation's commitment to the defense of life is not limited to the unborn, nor is it limited to mere prohibitions, but rather, in concrete cases like that of Beatriz, we see that El Salvador puts all state apparatus into operation to safeguard the integrity and health of the nation's women.

We have also shown the threats the nation is facing in the drive for the decriminalization of abortion, notwithstanding that the organizations seeking this decriminalization have not yet had enough force to overthrow this protective wall formed by legislation, case law, and policies.

We would like to close this report by bringing up a section of the judgment of the Constitutional Chamber pronounced in the Beatriz case, which has set a strong precedent and clearly shows that legal texts are not in any way enemies of people, but act as the most effective protection tool for women and their children.

This section reminds us that both the life of the woman and of the unborn are equal in Salvadoran society. It says: "*The rights of the mother cannot be privileged over those of the unborn child (the one to be born) or vice versa; also, there is an absolute impediment to authorize the practice of abortion because it contradicts the constitutional protection granted to the human person from the moment of conception.*"⁸⁵

⁸⁴ Report: The Beatriz Case, "A History of Abortion Manipulation", report prepared by Dr. Gábor Joya and Dr. José Ignacio Sánchez, Hazte.Oir, 2013. <http://hazteoir.org/sites/default/files/documentos/El%20caso%20Beatriz.pdf>.

⁸⁵ Judgment of Amparo of the Constitutional Chamber of the Supreme Court of Justice of El Salvador, reference number 310-2013. Available at: <http://www.jurisprudencia.gob.sv/DocumentosBoveda/D/1/2010-2019/2013/05/A00CC.PDF>

Because of this section, we can see how this collegial body establishes in a clear, precise, and forceful way that neither the life of the unborn is worth more than that of the mother, nor vice-versa. Both have equal value and any hierarchy that pretends to be rooted in the supposed rights of women throws away the principles of equality and non-discrimination enshrined in the Constitution and is contrary to the maintenance of an authentically democratic and constitutional state of law in El Salvador.

Pressures for weaker or less-developed countries to give in to abortion activists are still common, not only in El Salvador but in many Latin American countries, but El Salvador refuses to give up the principles that consecrate the protection of the human person starting at conception.

We are confident that the policies and actions of El Salvador will continue to protect life in accordance with its laws and principles.