

Recommendations to the IACHR

Extract from the *amicus curiae* submitted to the Inter-American Court of Human Rights on 5 April 2023 in the case of *Beatriz and others v El Salvador*

Background

On 22 and 23 March 2023, the Inter-American Court of Human Rights (IACHR) held a hearing to determine whether the State of El Salvador has failed to meet its human rights obligations in the case of *Beatriz and others v El Salvador*. The Court's decision, expected in the last quarter of 2023, could set an important legal precedent for the rights of women and people who can become pregnant throughout the region. In light of this context, Lawyers Without Borders Canada filed an *amicus curiae* ("friend of the court") before the IACHR on April 5, 2023. Below are the conclusions and recommendations, translated from Spanish to English.

Conclusions and recommendations

It is the obligation of States to undertake all legislative, administrative, judicial or other measures to prevent acts of gender-based violence, torture or other cruel, inhuman and degrading treatment in any territory under its jurisdiction. As stated in the *amicus curiae*, the absolute prohibition of abortion and its criminalization by the State of El Salvador may subject women and people who can become pregnant to gender-based violence and mental and physical suffering that may amount to torture or other cruel, inhuman and degrading treatment. In the same vein, States must prevent, investigate and punish cases of gender-based violence, as well as cases of torture or other cruel, inhuman or degrading treatment promptly and effectively, and provide reparation for victims and their families.

Laws that criminalize abortion services constitute gender-based discrimination, disproportionately affecting women. Within the health care system, women and people who can become pregnant are subjected to other types of discrimination based on various factors, including social, economic or cultural. Therefore, to ensure that all women and people who can become pregnant receive the appropriate health care services, States must adopt measures taking into account a gender and intersectional perspective.

Lawyers without Borders Canada respectfully requests this Honorable Court, at the time of issuing its judgment in the case of *Beatriz and others v El Salvador*, to take into consideration the international and regional standards raised in this *amicus*. In that regard, the Honorable Court has a unique opportunity to promote a regional jurisprudence that will contribute in guaranteeing the rights of all women and people who can become pregnant to enjoy the best possible state of health, to not be subjected to acts of torture or other cruel, inhuman and degrading treatment or acts of gender-based violence.

We respectfully recommend the Honorable Court to:

- I. Reaffirm that human rights must be interpreted and guaranteed through a gender and intersectional perspective, taking into account the structural discriminations against women and people who can become pregnant that persist in the region.
- II. Request the State of El Salvador to :
 - a. Adopt the necessary reforms that take into account the structural discrimination suffered by women and people who can become pregnant and how it can affect their rights in a differentiated manner. They must seek to correct and transform factors of discrimination to guarantee the human rights of all women and people who can become pregnant, without discrimination.
 - b. Develop training and educative workshops addressed to health care and judicial professionals on structural violence and how their actions or omissions can contribute to such violence. Training sessions should also cover the appropriate response to obstetric emergencies, the respect of victims' confidentiality, the prevention of torture or other cruel, degrading or inhuman treatment, and how to include a gender and intersectional perspective and human rights based approach in their work.
 - c. Clearly disseminate the importance of respecting the right of women and people who can become pregnant to receive appropriate health care services during their pregnancy, to receive clear and complete information about their health status in a language they understand, and to have their preferences, choices and needs heard by health care professionals.
 - d. Adopt protocols to ensure that preliminary investigations and judicial processes in cases relating to discrimination and gender-based violence are conducted with due diligence, using a gender and intersectional perspective. These protocols should be disseminated to judicial actors, and to any public officials who are involved directly or indirectly in the care,

prevention, investigation, prosecution, punishment and/or reparation addressed to women and people who can become pregnant.

- e. Promote and pursue the investigation of alleged acts of torture or other cruel, degrading or inhuman treatment with due diligence and within a reasonable timeframe through officials trained in the care of victims of discrimination and gender-based violence to avoid revictimization. Thorough and systematic investigations must be undertaken, without any discrimination, to identify, prosecute and punish those allegedly responsible of violence, torture or other cruel, degrading or inhuman treatment against women and people who can become pregnant.
- f. Take effective legislative, administrative, judicial or other measures to prevent gender-based violence, torture or other cruel, degrading or inhuman treatment. These measures should clarify the legal conditions under which abortion services can be provided and should facilitate access to such services through, *inter alia*, the inclusion of guidelines in the curriculum of medical students on how to provide abortion services or facilitate and legally authorize nurses and other qualified health professionals to prescribe abortion pills.
- g. Repeal all discriminatory laws and policies, including articles 133 and 135 of the Criminal Code, and article 87 of the Code of Medical Ethics and Deontology.
- h. Repeal all provisions from ethical and deontological instruments that may lead to medico-legal conflicts and unequivocally establish the ethical responsibility of health care professionals to conduct abortion services especially, but not only, when the life of the woman or the person who can become pregnant is in danger or there is a fetal malformation making it non-viable.
- i. Adopt protocols and guidelines for health care professionals to practice safe abortions at least in the three cases recognized by international law, that is, in cases of rape or incest, when the life of the woman or the person who can become pregnant is in danger or the fetus is non-viable.
- j. Take measures of non-repetition that also pursue a transformative objective.

Lawyers without Borders Canada appreciates the consideration of the *amicus curiae* by the Honorable Inter-American Court of Human Rights, in accordance with article 44 of its Rules of Procedure.