

INTER-AMERICAN COURT OF HUMAN RIGHTS

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MANUELA AND FAMILY V. EL SALVADOR

BRIEF OF AMICI CURIAE HUMAN RIGHTS ORGANIZATIONS

ABOGADOS POR LA VIDA, AMERICAN COLLEGE OF PEDIATRICIANS, AMERICANS UNITED FOR LIFE, AFI, ASOCIACION CHILENA DE JURISTAS CATOLICOS, C-FAM, CHARLOTTE LOZIER INSTITUTE, COMITÉ PROVIDA, FAMILY WATCH INTERNATIONAL, FAFCE, FUNDACIÓN SI A LA VIDA, GLOBAL LIFE CAMPAIGN, INSTITUTO CONSERVADOR-LIBERAL, INTERNATIONAL HUMAN RIGHTS GROUP, INTERNATIONAL ORGANIZATION FOR THE FAMILY, ISHRI, JEROME LEJEUNE FOUNDATION, JURISTES POUR L'ENFANCE, MOVIMIENTO RESTAURADOR VIVA MEXICO, ORDO IURIS INTERNATIONAL LAW CENTER, PRIESTS FOR LIFE, PROJECT FOR HUMAN DEVELOPMENT, RED FAMILIA, SUSAN B. ANTHONY LIST, UNITED FAMILIES INTERNATIONAL, UNIVERSITY OF ST. THOMAS PROLIFE CENTER, VIDA SV, WORLD YOUTH ALLIANCE

IN SUPPORT OF EL SALVADOR

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TABLE OF CONTENTS

I. Table of Authorities	2
II. Statement of interest	6
III. The petitioners seek impunity for infanticide as a step towards legalization of abortion in El Salvador	6
IV. The case facts characterize infanticide, not abortion	7
V. The American Convention and international human rights law do not require impunity for infanticide	9
VI. Enforcing penalties against infanticide does not violate international human rights law	11
VII. El Salvador has an international duty to investigate and prosecute homicides against all children	12
VIII. Conclusion	14
ADDENDUM	19

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II. Statement of interest

Amici curiae consist of non-profit, civil society organizations from around the world that are committed to promoting universal human rights, in particular the fundamental right to life of children, whether born or unborn. A full description of each *amici* appears in the Addendum. Organizations accredited before the Organization of American States include World Youth Alliance, Priests for Life and the International Solidarity and Human Rights Institute.

Amici are deeply concerned that the Inter-American Commission on Human Rights (IACHR) requests this Court to order El Salvador to carry out procedural and substantive criminal law reforms that would directly inhibit the investigation and prosecution of crimes against the life of newborn children when committed by their own mothers in El Salvador.¹ *Amici* are equally concerned that the said reforms would deter reporting of potential crimes against newborns by physicians and impose sanctions on those who report the suspected homicide of a newborn child in El Salvador.²

Amici write to inform the court's decision on whether El Salvador is allowed, under international human rights law, to enforce its criminal statutes on crimes against newly born children. Our brief provides the court with an understanding of why El Salvador's ban on infanticide not only does not violate, but is required by international human rights law, in particular but not limited to, the American Convention on Human Rights.³

Amici state that they have no conflict of interest, no financial benefit or profit to be gained from the outcome of the *Manuela v. El Salvador* case before this court.

III. The petitioners seek impunity for infanticide as a step towards legalization of abortion in El Salvador

The lawsuit against El Salvador was filed by the Commission on behalf of United States based and local proabortion organizations designated as plaintiffs in the lawsuit, namely the Center for Reproductive Rights and its main affiliate in El Salvador the *Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico* [Citizen's group for decriminalization of therapeutic, ethical and eugenic abortion] and the *Colectivo Feminista para el Desarrollo Local de El Salvador* [Feminist collective for local development of El Salvador]. Both local organizations receive funding from the United Kingdom-based International Planned Parenthood Federation (IPPF).⁴

¹ CIDH, Informe No. 153/18, Informe de Fondo, OEA/Ser.L/V/II.170, Doc. 175, para. 160 (7 diciembre 2018); IACHR, Report on Merits No. 153/18, OEA/Ser.L/V/II.170, Doc. 175, para. 160 (Dec. 7, 2018).

²*Id.*

³ See also Joint Statement "Strengthening the Family and the Rights of Women of All Ages" (Oct. 22, 2020), U.S. MISSION TO THE ORGANIZATION OF AMERICAN STATES, <https://usoas.usmission.gov/joint-statement-on-strengthening-the-family-and-the-rights-of-women-oasga-2020/> (recognizing "the sovereign right of nations to make their own laws related to the protection of life from the moment of conception")

⁴ Nancy Flanders, *International Planned Parenthood is helping to free El Salvador women who stabbed and strangled newborns*, LIVE ACTION (Aug. 5, 2020).

For several years prior to filing the *Manuela* lawsuit, the petitioning organizations in this lawsuit have litigated for impunity of infanticide while demanding legalization of abortion in El Salvador. They have litigated at the national level to free at least 23 female convicts (called “las 17+” in the media) who have been criminally tried and convicted in El Salvador’s courts for aggravated homicide of their newborn children.⁵ Most of their appeals and requests for amnesty have been denied by the national Supreme Court for lack of merit, but at least 14 inmates have been freed via parole procedures or executive discretionary action.

According to campaigns by proabortion organizations funded by IPPF in El Salvador, female perpetrators of infanticide, not their children, are victims of human rights violations. Newborn babies who could have been safely delivered and placed with adoptive families are called “fetuses” and their deaths presented as “spontaneous abortions” or “obstetric emergencies”, despite overwhelming forensic and medical evidence proving infanticide.⁶ Media campaigns by these and other proabortion organizations have celebrated the release of female perpetrators of infanticide as heroes who have unfairly suffered the consequences of El Salvador’s abortion ban; the Inter-American Commission has supported those efforts and has repeatedly demanded that El Salvador set “the 17+” inmates free.⁷ *Manuela* is the oldest case in this litigation and the only one where the mother convicted for aggravated homicide against her child has been deceased for almost 10 years.

IV. The case facts characterize infanticide, not abortion

The lawsuit’s facts clearly characterize a prosecution for the crime of infanticide, not “obstetric emergency” or abortion: “Manuela” was convicted by a Salvadorian court for aggravated homicide of her newborn baby by violently ripping the umbilical cord off his body and throwing him into a latrine where the baby drowned in excrement.⁸ The court evaluated

⁵ See U.S. Department of State, *El Salvador 2016 Human Rights Report*, 23 (describing complaint by human rights organizations that 17 women had been convicted for abortion in El Salvador and indicating that the Legal Medicine Institute responded that the women had committed infanticide instead). See also Schumacher-Matos, *Abortion Or Infanticide In El Salvador?* (pointing out inaccuracy in NPR reporting about El Salvador’s prosecution of Cristina Quintanilla for abortion, where her case was actually involved infanticide and mercy killing not abortion). See also Baklinski, *NPR says El Salvador mom was charged for ‘having an abortion’ - but evidence shows she murdered her newborn* (indicating that abortion complaint against El Salvador actually involved infanticide not abortion).

⁶ See Ligia De Jesus Castaldi, *The 17+ Women in El Salvador: A Case of Infanticide Impunity in the Name of Abortion Rights*, THE PUBLIC DISCOURSE (Feb. 10, 2020).

⁷ See IACHR Press Release, *IACHR Urges El Salvador to End the Total Criminalization of Abortion* (indicating that the IACHR calls on El Salvador to launch a moratorium on the enforcement of Criminal Code Article 133 and to review the convictions of 27 women allegedly convicted for abortion, citing Commissioner Macaulay’s statements to that effect). E.g. IACHR, *Thematic hearing “HR Situation of Women Deprived of Liberty due to Obstetric Emergencies during Pregnancy in El Salvador”* (where several NGOs including Center for Reproductive Rights and Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico de El Salvador [Citizens group for the decriminalization of therapeutic, ethical and eugenic abortion] state that women have been imprisoned for obstetric emergencies in the country, while El Salvador state representatives categorically reject such allegations). See also IACHR, *Thematic hearing “Situación de derechos humanos de las mujeres y las niñas en El Salvador”* (where Commissioners Tracy Robinson, Rose Marie Antoine and Rosa Maria Ortiz express their concern over El Salvador’s full ban on abortion and alleged wrongful prosecution of women who miscarry, argued by IPAS, CEJIL and other non-governmental organizations).

⁸ *Manuela and family v. El Salvador*, Petition 424-12, Inter-Am. Comm’n H.R., Rep. No. 29/17, Admissibility, March 18, 2017, OEA/Ser.L/V/II.161, Doc. 36, para. 4, 5. <https://www.oas.org/en/iachr/decisions/2017/ESAD424-12EN.pdf>

medical and forensic evidence relating to Manuela and her newborn son's body; her family apparently provided crucial evidence regarding the circumstances of the child's death.⁹

Manuela was not investigated or tried for abortion but instead for aggravated homicide (El Salvador's statutory equivalent of infanticide). The trial court heard evidence on her mental capacity and found that she met the required statutory standard, that is, that she was mentally able to distinguish between right and wrong at the time that she committed the crime.¹⁰ Still, the court gave her the lowest possible penalty for aggravated homicide of one's own child in El Salvador, a 30-year prison sentence.

The Inter-American Commission on Human Rights (IACHR) itself concedes that the facts of the *Manuela v. El Salvador* case do not relate to elective abortion but, instead, to the crime of aggravated homicide against a newborn child:

“La Comisión toma nota de la criminalización del aborto, sin causales excluyentes de responsabilidad en El Salvador, lo cual ha sido materia de múltiples pronunciamientos por parte de los referidos organismos. Dado que en el presente caso Manuela fue condenada por el delito de homicidio, la CIDH no profundizará en dicho contexto. [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. *Given that in the present case Manuela was convicted for the crime of homicide, the IACHR will not look into this context.*]”¹¹

The Commission made no recommendation on the decriminalization of voluntary abortion in the lawsuit's recommendations to the court.¹² It did not dispute Manuela's mental capacity at the time of the crime either, or the psychological evidence proving that she was legally sane, suffering “no mental alternation or incapacity that prevented her from understanding the illicit nature of her actions”.¹³

The Commission, however, asks that El Salvador adopt immediate legal reforms that would inhibit prosecution of suspected infanticide and abortion cases, and subsequent reforms to promote impunity for infanticide and legalization of abortion in its jurisdiction, which the commission demands be done via executive order, without the usual legislative checks that the lawmaking process normally requires.¹⁴ It seeks a court judgment declaring that El Salvador's enforcement of criminal penalties against Manuela for the aggravated homicide of her newborn son, Dolores Gabriel, violates the American Convention on Human Rights, even though that treaty explicitly protects *all* human life from the moment of conception in article 4(1): “Every

⁹ *Id.* at para. 5.

¹⁰ *Id.*

¹¹ CIDH, Informe No. 153/18, Informe de Fondo, OEA/Ser.L/V/II.170, Doc. 175, para. 32 (7 diciembre 2018); IACHR, Report on Merits No. 153/18, OEA/Ser.L/V/II.170, Doc. 175, para. 32 (Dec. 7, 2018). The section in italics was omitted from the English translation; the document nevertheless indicates that the original version is in Spanish language.

¹² CIDH, Informe No. 153/18, Informe de Fondo, OEA/Ser.L/V/II.170, Doc. 175, para. 160 (7 diciembre 2018); IACHR, Report on Merits No. 153/18, OEA/Ser.L/V/II.170, Doc. 175, para. 160 (Dec. 7, 2018).

¹³ CIDH, Informe No. 153/18, Informe de Fondo, OEA/Ser.L/V/II.170, Doc. 175, para. 59, 64 (7 diciembre 2018). This acknowledgement is also omitted from the English version.

¹⁴ CIDH, Informe No. 153/18, Informe de Fondo, OEA/Ser.L/V/II.170, Doc. 175, párr. 160 (7 diciembre 2018); IACHR, Report on Merits No. 153/18, OEA/Ser.L/V/II.170, Doc. 175, para. 160 (Dec. 7, 2018).

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.”

Baby boy Dolores Gabriel Hernandez, the victim of the crime, goes unnamed and ignored in the lawsuit even though the evidence weighed by the trial court shows that he suffered unspeakable violence and died in a degrading and inhumane manner by bleeding to death and drowning among human waste in a rural septic tank. Law enforcement officers who rescued his body were unable to save his life but made sure he got proper burial and, as indicated in the court record, got him a birth certificate giving him the evocative name of Dolores Gabriel Hernandez;¹⁵ Dolores meaning pains or sufferings in Spanish, and Gabriel, the archangel’s name.

Amici are deeply concerned that the court has rejected to hear the only witness who would have testified about the child’s autopsy, Dr. Alfredo Romero Díaz, a chief forensic medical doctor who would have spoken about the child’s live birth and death, a fundamental issue in this case.¹⁶ The court has denied the state’s request to allow Dr. Romero to appear at the case’s public hearing in March 2021 for procedural reasons, while admitting all of the plaintiffs and Commission’s witnesses regardless of procedural objections, which seems unreasonable, specially given the relevance of his testimony.¹⁷

V. The American Convention and international human rights law do not require impunity for infanticide

The human rights norm that prohibits the killing of children by their own parents is universally recognized under international human rights law; the killing of one’s own child is a crime in every nation. Enforcing criminal penalties for the crime of infanticide therefore does not violate international human rights law; on the contrary, governments have an obligation to implement, comply with, and enforce such laws. Nor does enforcement of such human rights norms related to protecting children constitute discrimination against women, specially where a statute’s language on aggravated homicide is gender neutral and equally applies to the mother or the father as does El Salvador’s Criminal Code.¹⁸

All states parties to the American Convention have ratified the Convention on the Rights of the Child (CRC).¹⁹ The CRC clearly and explicitly creates an international obligation to legally protect the child’s life. The Convention Preamble explicitly stipulates that “*the child*, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate

¹⁵ VIDA SV, a pro-life organization from El Salvador, has published trial court documents containing greater detail about the case’s facts, Dolores Gabriel’s autopsy, photographic evidence, trial, conviction and appeals in Salvadoran courts, *see Infanticidio por aborto: El caso Manuela, El Salvador ante la CIDH*, FUNDACION VIDA SV.

¹⁶ Corte IDH. Caso Manuela y otros Vs. El Salvador. Convocatoria a audiencia, 2 de diciembre de 2020 [Resolution of Inter-American Court President of December 2, 2020].

¹⁷ *Id.*

¹⁸ CÓDIGO PENAL [CRIMINAL CODE] art. 129(1) (El Sal.)

¹⁹ *See* U.N., MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 1 APRIL 2009, at 389–91, U.N. Doc. ST/LEG/SER.E/26, U.N. Sales No. E.09.V.3 at 389-91 (2009).

legal protection, before as well as after birth”.²⁰ Article 41 of the CRC prohibits *restrictive interpretations* of the rights contained therein. The Human Rights Committee has indicated that the convention provides that when taking special measures of protection, “[s]tates parties should be guided by the *best interests of the child*, by the need to ensure the survival and development of *all children and their well-being*” in articles 3 and 6.²¹

All states parties to the American Convention have ratified the International Covenant on Civil and Political Rights (ICCPR), which contains a universal right to life of every human being, using language similar to that of the American Convention: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”²² All states parties to the American Convention have signed the Universal Declaration of Human Rights (UDHR), which establishes a universal, unrestricted right to life in article 3: “Everyone has the right to life, liberty and security of person”.²³ No global or regional international treaty ratified by states parties to the American Convention contains a human right to take the life of one’s newly born child in impunity.

The newborn child holds an equal right to life as any other person under international human rights law. For example, Article 1 of the UDHR states: “All human beings are born free and equal in dignity and rights.” If an adult were injured and thrown into a septic tank without the ability to escape, and drowned in the waste, everyone would unquestionably find it to be a horrific crime and a violation of his human rights. Not many would deny that it is just as or more horrific to do the same to an innocent and helpless baby with his or her entire life yet to be lived. Indeed, Article 35 of the Universal Declaration of Human Rights (UDHR) stresses that children “are entitled to special care and assistance.”

The aggravated homicide of newborn children should not be treated differently from crimes against the life of other children or other persons under international law. The right to life should be read within the context of the American Convention. For example, that treaty’s non-discrimination clause in article 1(1) provides that states ought to “ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color [...] *birth, or any other social condition*”. Article 24 of the American Convention states: “*All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.*” A domestic law that would grant practical impunity for the killing of a newly born child by his own mother, as suggested by the petitioners and the Commission, would constitute discrimination on the basis of age and unequal protection of the law in clear violation of article 1 and 24 of the American Convention on Human Rights.

²⁰ Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386(XIV), Preamble (Nov. 20, 1959); Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25, Preamble ¶6 (Nov. 20, 1989) (emphasis added).

²¹ Human Rights Committee (HRC), *General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 30 Oct. 2018, CCPR/C/GC/36, ¶60 (emphasis added)

²² International Covenant on Civil and Political Rights, art 6(1), Dec. 16, 1966, S. TREATY DOC. 95-20, 999 U.N.T.S. 171.

²³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 25(2), U.N. Doc. A/RES/217(III), at 76 (Dec. 10, 1948).

VI. Enforcing penalties against infanticide does not violate international human rights law

Criminal bans on the killing of newly born children and their enforcement are directly related to the American Convention's duty to legally protect, investigate, punish offenders and prevent future violations of the right to life. The court has articulated a state duty to prevent violations of this right stemming from article 1(1) on the state "obligation to respect rights": "The obligation to guarantee the rights to life and personal integrity presuppose the duty of States to prevent the violation of those rights".²⁴ It has held that the convention's article 4(1), which states that the right to life shall be "protected by law . . . from the moment of conception," requires not only legislative action, but also public health measures, investigation of deaths, identification of perpetrators, punishment of offenders, victim compensation and the prevention of certain forms of violence and life-threatening situations.²⁵

This court has found that the duty to respect the right to life obligates states and all of their agencies to refrain from engaging in collaboration, acquiescence or tolerance thereof.²⁶ The court has also found state responsibility where private parties carried out right to life violations, for failure to comply with its duty to protect, prevent and respect the right to life.²⁷

Forcing health care providers to conceal potential crimes against newly born children, according to the Commission's proposed redefinition of *secreto profesional* (professional confidentiality), would be a perverse interpretation of the American Convention and would violate the treaty duty to prevent and protect children.²⁸ Neither the American Convention nor international human rights law require or condone prosecuting or sanctioning medical doctors who report possible instances of infanticide. In the case of *Gonzales Lluy v. Ecuador*, this court held that the state has an "obligation to monitor and supervise the provision of health care services [...] and of the *obligation not to endanger life*, which violates Article 4".²⁹

The Inter-American Court has interpreted article 4(1) to contain both a negative state duty to ensure that no one is arbitrarily deprived of their right to life, and a positive state obligation to "adopt all the appropriate measures to protect and preserve the right to life", to "adopt a normative

²⁴ Case of Human Rights Defender et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs. Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 139 (Aug. 28, 2014).

²⁵ See Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 167, 176 (June 17, 2005); Case of Velásquez Rodríguez v. Honduras. Merits. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174 (July 29, 1988); Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 496 (Nov. 14, 2014); Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 306, ¶ 98 (Nov. 17, 2015); Case of Landaeta Mejía Brothers et al. v. Venezuela, Preliminary Objection, Merits, Reparations and Costs. Inter-Am. Ct. H.R. (ser. C) No. 281, ¶ 217 (Aug. 27, 2014).

²⁶ See Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 120 (Sept. 15, 2005).

²⁷ See Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶¶ 88-90, 150 (July 4, 2006); Case of Velásquez Rodríguez v. Honduras. Merits. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166, 176 (July 29, 1988).

²⁸ IACHR, Report on Merits No. 153/18, OEA/Ser.L/V/II.170, Doc. 175 at 23 (Dec. 7, 2018).

²⁹ Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Inter-Am. Ct. H.R. (ser. C) No. 298, ¶ 191 (Sept. 1, 2015).

framework that dissuades any threat to life”, and to “establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals”.³⁰ Enforcement of criminal bans on infanticide makes investigation and prosecution possible, prohibitions on enforcement such as those requested by the Commission would make it *impossible*.

States parties should not only be legally permitted but expressly required to enforce their criminal laws on any practice that intentionally causes the death of a newly born child, such as the aggravated homicide at issue in this case. They should also be legally able to discourage those practices and to encourage non-violent alternatives for parents facing an unplanned pregnancy, such as financial assistance, psychological support, and adoption placement services.

VII. El Salvador has an international duty to investigate and prosecute homicides against all children

This Court has emphasized the “particular gravity” of violations of the right to life against children.³¹ When it comes to the right to life of children, state parties to the American Convention have twofold obligations under article 4 and article 19 of the American Convention, it has said. The state obligation to respect the right to life of every person under its jurisdiction takes on special dimensions in the case of children, and it becomes an obligation to “prevent situations that might lead, by action or omission, to breach it”, compounded by the added obligation established in article 19 of the American Convention to promote the rights of the child.³²

The Court has also indicated that article 19 of the Convention must be understood as complementary to article 4, requiring special measures of protection for children, due to their physical and emotional development.³³ In Advisory Opinion on the Juridical Status and Human Rights of the Child, the Inter-American Court indicated that the child’s right to life enshrined in article 4 included a state obligation “to provide the measures required for life to develop under decent conditions”.³⁴ A *pro homine* interpretation of the Convention would therefore find that criminal and procedural reform aimed at inhibiting the investigation and prosecution of crimes

³⁰ See Case of Ortiz Hernández et al. v. Venezuela; Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 338 ¶100 (Aug. 22, 2017); Case of García Ibarra et al. v. Ecuador; Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 306 ¶97 (Nov. 17, 2015); Gómez-Paquiyaui Brothers, ¶129; Case of the Massacres of El Mozote, ¶ 172; Case of the Barrios Family v. Venezuela. Merits, reparations and costs. Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 48 (Nov. 24, 2011); Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs. Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 81 (July 4, 2007).

³¹ Case of Coc Max et al. (Massacre of Xamán) v. Guatemala, Merits, Reparations and Costs. Inter-Am. Ct. H.R. (ser. C) No. 356, ¶115 (Aug. 22, 2018). See also Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17, para. 59 (Aug. 28, 2002).

³² See Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs. Judgment of September, Inter-Am. Ct. H.R. (ser. C) No. 134 ¶14 (Sep. 15, 2005); Gómez-Paquiyaui Brothers, ¶ 124, 171; Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶138 (Sep. 18, 2003).

³³ See Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 148 ¶244 (July 1, 2006); Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 134 ¶152 (Sep. 15, 2005); Case of the “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 112 ¶147 (Sep. 2, 2004); Case of Servellón-García et al. v. Honduras. Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 152 ¶113 (Sep. 21, 2006).

³⁴ Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, Inter-Am. Ct. H.R. (ser. A) No. 17, para. 80 (Aug. 28, 2002).

against newly born children when committed by their mothers, constitutes not only a violation of article 4(1) but also a violation of article 19 for the state's failure to prevent the violation of the rights of the child and to ensure special measures to protect her life and development.

The commission has recognized that the right to life, especially that right belonging to children, is a norm of *jus cogens*, that is, a norm that cannot be validly derogated whether by treaty or by the unilateral objection of a state but only by the formation of a subsequent customary rule to the contrary.³⁵ In 2002, in *Michael Domingues v. United States*, the Commission held that the prohibition against imposing the death penalty on children was an international *jus cogens* norm.³⁶ It explained that norms of *jus cogens* derive their status from fundamental values held by the international community; peremptory norms, the violations of which are considered to shock the conscience of humankind and therefore bind the international community as a whole, such as the prohibition of genocide, slavery, forced disappearance and torture.³⁷

Likewise, in *Villagrán Morales*, the commission, in its final arguments before the court, underscored the *jus cogens* nature of the right to life referring to children, in particular, and the fact that it is the essential basis for the exercise of the other rights. It emphasized that “[t]he right to life cannot be annulled” and that “[t]he violation of that norm [...] has not been the object of any corrective”.³⁸ In their concurring opinion, Inter-American court Judges Cançado Trindade and Abreu-Burelli agreed that “there can no longer be any doubt that the fundamental right to life belongs to the domain of *jus cogens*”.³⁹ Since the child enjoys right to life protection from the moment of conception, the same standard should apply to violations of his or her right to life immediately after birth under the convention. This point is made clear in the preamble of the CRC, which as noted earlier states that “*the child*, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate *legal protection, before as well as after birth*.”⁴⁰

Per Article 19 of the American Convention, as a result of “his condition as a minor” every minor child has the right to protection not only by the state but also by his family. Similarly, Articles 7, 9 and 19 of the CRC grants the child a right to be with and to be cared for by his parents from the time of his birth—unless there is physical violence, maltreatment, abuse, or neglect. To grant impunity for infanticide caused by a child's parents who are also responsible to protect the child would be in direct contradiction with these international human rights norms.

³⁵ *Michael Domingues V. United States*, Case 12.285, Inter-Am. Comm'n H.R., Report N° 62/02, Merits ¶49, 85 (2002).

³⁶ *Id.*, ¶5, 85.

³⁷ *Id.*, ¶49.

³⁸ See *Villagrán-Morales*, ¶ 137-139.

³⁹ *Id.* (Joint Concurring Opinion Of Judges A.A. Cançado Trindade and A. Abreu-Burelli), ¶2.

⁴⁰ Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386(XIV), Preamble (Nov. 20, 1959); Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25, Preamble ¶6 (Nov. 20, 1989) (emphasis added).

VIII. Conclusion

Amici trust that this court, remaining an impartial judicial body, will avoid lending political support to the promotion of impunity for infanticide as a vehicle to legalize abortion. The lawsuit against El Salvador was brought before this court by national and international proabortion organizations that have unethically litigated for impunity of infanticide in order to legalize elective abortion in El Salvador, a country that legally protects prenatal life from the moment of conception as required by the American Convention. The Commission's lawsuit itself, however, acknowledges that the *Manuela* case is one involving infanticide, not abortion, and leaves the issue of decriminalization of abortion for another day.

El Salvador's prosecution of "Manuela" for the aggravated homicide of her own child, Dolores Gabriel, did not violate international human rights law. On the contrary, it is consistent with a state's obligation under human rights treaties to ensure enforcement of children's rights. The Commission's complete disregard for children's rights in this lawsuit, particularly the death and sufferings of Dolores Gabriel, a newborn baby boy who died in the most horrific and undignified manner, undermine its credibility as human rights organization.

The American Convention and international human rights law do not require that homicidal crimes against newly born children be left in impunity simply because the perpetrator is the mother. As the CRC recognizes, parents have an obligation under international human rights law to protect their children from physical harm. Enforcing penalties against aggravated homicide of a child by any perpetrator, including her parents, does not violate international human rights law. The trial court took all factors into consideration in sentencing Manuela, including the mother's lower educational level and the cruelty of the child's death, and yet gave *Manuela* the lightest possible penalty allowed by El Salvador's law.

International human rights law requires investigation, prosecution and punishment of serious crimes against children, such as homicide. Requiring sanction or prosecution of medical doctors who report possible instances of infanticide, homicide of a newly born child or abortion would violate the international duty to investigate and prosecute homicides against any children established in articles 4 and 19 of the American Convention as well as a whole host of conscience rights of the medical profession. It would also violate other major international treaties, such as the ICCPR and the CRC, which equally establish the international legal duty of a state to enforce legal prohibitions on the killing of children, including newborn children.

For the foregoing reasons, *Amici* respectfully request that this Court find in favor of El Salvador and reject the Inter-American Commission's request for criminal reform that would inhibit or prevent prosecution of homicidal crimes against children as a vehicle to legalize abortion in the country.

Respectfully submitted,

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ADDENDUM

The American College of Pediatricians (ACPed) is a national organization of pediatricians and other healthcare professionals dedicated to promoting the optimal health and wellbeing of children from the moment of conception.

Americans United for Life (AUL) actively advocates the systematic, incremental adoption and implementation of life-affirming laws in the United States and internationally. AUL provides lawmakers, law enforcement officials, and public policy advocates with proven legal strategies and tools that protect human life. Through its Defending Life Latin America project, AUL collaborates with hundreds of legal and policy advocates in dozens of nations to protect and extend the right to life for all persons.

Asociación La Familia Importa (AFI) is a network that strengthens and defends values to sustain a solid Guatemalan society through the protection of life, family and religious freedom. We engage in political advocacy, education and communication in different spheres, at the national and international level.

C-Fam is a non-partisan, non-profit research institute dedicated to reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person. C-Fam personnel have participated in every major UN social policy debate since 1997 including the Rome Statutes of the International Criminal Court, the Convention on Disabilities, Cairo+5, Beijing+5 and dozens of others. C-Fam publishes and promotes scholarship related to the proposition that the UN and other international institutions harm a true understanding of international law and in the process undermine the family and other institutions man requires for a just, free and happy life.

The Charlotte Lozier Institute is committed to bringing the power of science, medicine, and research to bear in life-related policy making, media, and debates to promote a culture and polity of life. Founded in 2011, and named for Dr. Charlotte Denman Lozier (1844–1870), an early feminist and contemporary of Susan B. Anthony and a model and inspiration for medicine, science, and research devoted to the cause of life, Charlotte Lozier Institute (CLI) brings together physicians, sociologists, statisticians, and policy researchers to do both original and interpretative research on a wide range of life issues.

Comité Provida of Honduras (Prolife Honduras) was founded in 1981, with the purpose of raising a voice against the glaring violation of the Right of Human Life since the moment of conception. Our organization seeks to ensure the rights of all the unborn and create awareness of the importance of the family as the basic foundation of our society.

Family Watch International is a nonprofit organization in consultative status with the United Nations, which is dedicated to protecting the natural family.

The Federation of Catholic Family Associations in Europe (FAFCE) represents 28 national and local organisations: we are the voice of families from a Catholic perspective at the European level. FAFCE holds a participatory status with the Council of Europe since 2001 and is a member of the Fundamental Rights Platform of the European Union.

Fundación Si a la Vida (Foundation Say Yes to Life) in El Salvador is an eminently charitable and apolitical organization that offers solutions to the economic, social and moral crisis that the Salvadorean society is living through education, strengthening of the family and by defending human rights to life, liberty, to a family and the right of parents to educate their children.

The Global Life Campaign conducts research on abortion and is considered as a trustworthy source for data and analysis on abortion worldwide. This research is compiled and published in the “Abortion Worldwide Report: 1 Century, 100 Nations, 1 Billion Babies.” GLC advocates for the preborn and their mothers by recommending policies and practices that protect the sanctity of human life, from conception to natural death and that honor the Laws of Nature and of Nature’s God. The vision of GLC is that there will be communities of people within all nations who love one another and protect all human life.

International Human Rights Group is a global legal advocacy organization committed to strategically defend and advance the inalienable rights of the human person in multilateral international organizations. Our work spans from advocacy for the rights of migrants to the defense of the right to life and the rights of conscience of all people.

The International Organization for the Family (IOF) Unites and Equips Leaders Worldwide to Promote the Natural Family through projects such as The World Congress of Families (WCF), which convenes major international public events to unite and equip leaders, organizations, and families to affirm, celebrate, and defend the natural family as the only fundamental and sustainable unit of society.

The International Solidarity and Human Rights Institute (ISHRI) is committed to establishing solidarity among people worldwide by promoting authentic human rights based on Natural Law principles, as set forth in such documents as the Declaration of Independence, the Universal Declaration of Human Rights, and the Charter of the Rights of the Family. The Institute’s mission is informed and motivated by respect for the inherent dignity and equality of all human beings as endowed by God and as understood by the universal Teaching Office of the Catholic Church.

The Jérôme Lejeune Foundation, France’s number one funder for research in genetic intelligence disorders, develops and funds programmes in France and abroad. The Foundation implements and supports research programmes designed to develop treatments for Down syndrome (trisomy 21) and other intellectual disabilities of genetic origin. It created and funded the Jérôme Lejeune Institute, a centre for specialised medical and paramedical consultations; it defends life and patients’ dignity.

The Association Juristes pour L'enfance has for object according to article 2 of its statutes, "the defense of the interest of the children born, to be born or to come, and for the protection of the childhood in any form whatsoever". In particular, the purpose of the JPE association is "to initiate any action, (...) for the defense of children born or unborn, and for the protection of children in any form whatsoever; (...) to initiate any administrative or legal action and to grant any guarantee" for this purpose.

The Movimiento Restaurador Viva México (Viva Mexico Restorative Movement) is a social movement that came up as a humanist response to the great need to promote human beings' essential values in the country in all activities, through the union of civil society efforts for fundamental human rights: life, family, freedom, quality education, dignified work, health and housing. As a civil organization, its purpose is to incentivize the development of a coordinated communication and participation process among different institutions of organized civil society, while seeking to optimize the Mexican nation's maximum potential. Viva Mexico works to unite each organization's efforts and those of Mexican citizens who wish to serve their country in different ways.

The Ordo Iuris Institute for Legal Culture is an independent legal organization incorporated as a foundation in Poland. It gathers academics and legal practitioners with the aim of promoting a legal culture based on respect for human dignity and rights. Ordo Iuris pursues its objectives by means of research and other academic activities, as well as advocacy and litigation. Ordo Iuris has intervened as a third party in Polish and international court and administrative proceedings, including before the Polish Supreme Court, the European Committee of Social Rights and the European Court of Human Rights. Ordo Iuris has had the honour of being permitted by the presidents of the European Court of Human Rights to make written observations in numerous cases, inter alia, *Bodnariu v. Norway* (n° 73890/16), *Annen v. Germany* (n°70693/11), *Rabczewska v. Poland* (n° 8257/13), and *Cupiał v. Poland* (n° 67414/11).

Red Familia is a network of over one thousand civil society organizations that annually assist more than one million families in Mexico through prevention and treatment of issues related to lack of communication, education, violence, family disintegration and dysfunction, addictions and abandonment. For 17 years, we have connected and supported the work of civil society to the strengthen and promote the family. Our objective is to create constructive dialogue to improve Mexican social welfare, with the conscience that the family is the solution to the main problems affecting Mexico and the world.

Priests for Life represents a family of ministries that reach and enrich every aspect of the pro-life movement, for clergy and laity alike, in a wide variety of activities in the effort to end abortion and euthanasia.

The Project for Human Development (PHD), headquartered in Lagos, Nigeria, is a non-for-profit trans-cultural, trans-religion Non-Governmental Educational Organization (NGO), fully registered in Nigeria. PHD promotes fundamental values in society, & endeavours to sustain Human Development.

SBA List is a nationwide network of more than 900,000 Americans. We combine politics with policy, investing heavily in voter education to ensure that pro-life Americans know where their lawmakers stand on protecting the unborn, and in issue advocacy, advancing pro-life laws through direct lobbying and grassroots campaigns.

United Families International (UFI) is a 501c3 nonprofit association working in the pro-life/pro-family arena for over 40 years. With Economic/Social Council — Consultative Status in the United Nations system, UFI works with like-minded diplomats and citizens from around the world. UFI's mission includes respect for marriage, respect for the family, respect for life (from conception until natural death), respect for parental rights, respect for religion and respect for national sovereignty. UFI is dedicated to helping individuals and families flourish through shaping laws, policies, opinions and lives.

The University of St. Thomas ProLife Center promotes effective legal protection for human life by training law students and lawyers in the defense of life, assisting government officials in drafting, passing, and defending laws to protect human life, and developing needed legal scholarship on constitutional, regulatory, and cultural barriers to creating a Culture of Life in the United States.

The World Youth Alliance (WYA) works to promote the dignity of the person by building a global coalition of young people able to articulate, defend and live the dignity of the person in their lives and influence the communities and world in which they live. The World Youth Alliance participates directly at the United Nations, European Union, and Organization of American States.