**Comments from the Center for Reproductive Rights on the impact of discrimination against women and girls in prison and detention submitted to the Working Group on Discrimination Against Women in Law and in Practice**

1. Introduction

The Center for Reproductive Rights (the Center)—an international non-profit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Kathmandu, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill. Since its inception twenty-five years ago, the Center has advocated for the realization of women and girls’ human rights on a broad range of issues, including the right to sexual and reproductive health; preventing and addressing sexual violence; and ending criminalization for seeking reproductive health care. We are pleased to provide this submission to the Working Group on Discrimination Against Women in Law and in Practice.

This submission details different ways that deprivation of liberty is often a result of women and girls seeking out reproductive health care. This submission also looks at how other women and girls are deprived of reproductive health care and services because of the conditions of their detention. The Center has conducted fact-finding in El Salvador, Honduras, Nepal, the Philippines, and Rwanda, where women and girls are prosecuted and sometimes sent to jail for having an abortion. The fear of prosecution often deters women and girls from seeking necessary post-abortion care. In Kenya and Nigeria, the Center has documented cases of women and girls being detained for inability to pay hospital fees. Out of this fact-finding, the Center has litigated cases of detention of women and girls post-delivery wherein the detention has resulted in serious health consequences and even death. In the United States, women and girls who are detained in prisons and immigration detention centers are shackled during pregnancy, labor, and delivery, while others are denied access to abortion services.

1. Prosecuted and imprisoned for having abortion
   1. El Salvador

Before 1998, El Salvador allowed abortion only on specific grounds.[[1]](#endnote-1) El Salvador enacted a new Criminal Code in 1998 criminalizing abortion under any circumstances.[[2]](#endnote-2) It also criminalizes health professionals, working either in hospitals or clinics, who perform abortion.[[3]](#endnote-3) The Criminal Code also provides that health professionals must report to the authorities a pregnant woman or an adolescent girl whenever they suspect that they may have had, or attempted to have, an abortion. El Salvador further amended its Constitution in 1999 to recognize an embryo as a human being from “*the moment of conception*.”[[4]](#endnote-4) A person who performs or self-induces an abortion can be prosecuted for homicide, facing imprisonment of up to 50 years.[[5]](#endnote-5) Women and girls who seek out medical care after suffering obstetric emergencies, including miscarriage or stillbirth, risk being reported to the authorities and prosecuted; as a result, many choose not to seek out necessary care.

Between 2000 and mid-2011, an estimated 129 women and girls in El Salvador were charged with self-inducing an abortion. Of those, 26 were prosecuted and found guilty of having an abortion.[[6]](#endnote-6) During prison visits, Center researchers documented the case of Maritza de Jesus Gonzalez, who had an obstetric emergency and was sentenced to 30 years in prison.[[7]](#endnote-7) At the time of imprisonment, she was pregnant with twins. While in prison at *Ilopango*, she gave birth to the twins but one of the babies died. She was later transferred to *Centro Penitenciario La Granja de Izalco*, the maternal detention center, with her other baby, who received inadequate health care. Maritza’s story is similar to many others who are detained in prisons with insufficient medication stock, undrinkable water, and lack of access to medical care.[[8]](#endnote-8)

The international human rights community has repeatedly called on El Salvador to liberalize its abortion law. For instance, in 2007, the UN Committee on Economic, Social and Cultural Rights (CESCR Committee) expressed concern at the discrimination faced by women in El Salvador and the illegality of abortion leading to clandestine abortions being among the principal causes of death among women, urging the state to reform and consider exemptions to its abortion legislation.[[9]](#endnote-9) In 2014, the CESCR Committee reiterated its concern at the continuing total criminalization of abortion, noting that the ban affected “poor and less educated women in particular.”[[10]](#endnote-10) The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has also called on El Salvador to overturn its legislation criminalizing abortion and strengthen measures to ensure access to sexual and reproductive health services.[[11]](#endnote-11)

Furthermore, on December 17, 2014, the UN Human Rights Council Working Group on the Universal Periodic Review submitted its Report on El Salvador,[[12]](#endnote-12) calling on El Salvador to decriminalize life-saving abortion and abortion in the cases of pregnancies resulting from rape or incest; to immediately and unconditionally release all women and girls incarcerated for having undergone an abortion, or for having endured one spontaneously; and to remove their criminal records.[[13]](#endnote-13) In December 2017, the UN High Commissioner for Human Rights, Mr. Zeid Ra’ad Al Hussein, issued a statement urging El Salvador “to launch a moratorium on the application of article 133 of the Penal Code, and review all cases where women have been detained for abortion-related offences, with the aim of ensuring compliance with due process and fair trial standards.”[[14]](#endnote-14) Finally, in March 2018, the Inter-American Commission on Human Rights called on El Salvador to review carefully the convictions of at least 26 women and to amend the legislation that currently bans abortion in all circumstances, to bring it into line with international human rights law.[[15]](#endnote-15) Despite the many international calls for change, El Salvador has failed to repeal the total criminalization of abortion.

* 1. Honduras

Abortion in Honduras is criminalized in all cases. Women and girls who consensually undergo an abortion procedure face between three to six years of imprisonment. [[16]](#endnote-16) Additionally, in Honduras, there is a ban on contraceptives, including emergency contraceptives.[[17]](#endnote-17) The total ban on abortion and contraceptives disproportionately affect survivors of SGBV, women and girls from marginalized communities and groups, and adolescent girls, especially those who live in rural areas.[[18]](#endnote-18)

In May 2017, the Honduran government rejected the proposal to amend the law to legalize abortion in cases of rape, fetal disability, or where continuing the pregnancy would pose a risk to the life of the mother, despite significant international pressure on Honduras to do so.[[19]](#endnote-19) In a 2017 report, UN experts noted, “Denying women and girls access to safe abortion services, in cases involving health reasons, fatal impairment of the foetus and pregnancy resulting from rape or incest, causes excessive and irreversible physical and psychological suffering to many women. It is also the most blatant form of instrumentalisation of women’s bodies and denial of their autonomy.”[[20]](#endnote-20) Moreover, “Women living in poverty and social exclusion are most likely to be subject to unsafe abortions, in contravention of the State's obligation under international human rights law to respect, protect and to realize the right of women to health, including sexual and reproductive health.”[[21]](#endnote-21) Honduras instead reauthorized the Penal Code.[[22]](#endnote-22)

According to Centro de Derechos de Mujeres, the largest reproductive rights organization monitoring the situation in the country, despite the criminalization of abortion there are between 50,749 to 82,135 abortions still taking place every year in Honduras.[[23]](#endnote-23) Furthermore, estimates put clandestine abortions obtained by women and girls survivors of rape as high as 17 percent.[[24]](#endnote-24) In countries where abortion is criminalized, women and girls are forced to undergo unsafe procedures.[[25]](#endnote-25) In Honduras, up to five percent of maternal deaths are associated with unsafe abortions.[[26]](#endnote-26) This means that the criminalization of abortion and the ban on emergency contraceptives has led to preventable deaths of Honduran women and girls.

* 1. Nepal

In 2002, abortion was legalized in Nepal. The new law permits abortion on request until 12 weeks of gestation, and following instances of rape or incest, abortion is permitted up to 18 weeks of gestation.[[27]](#endnote-27) Under the new law, there is no gestational limit for a woman to have an abortion if the pregnancy threatens the woman’s life or physical or mental health, or if there is a fetal impairment.[[28]](#endnote-28)

Despite law reform, women and girls continue to be prosecuted and imprisoned for having abortions from untrained, unlicensed providers. According to a fact-finding study conducted by the Forum for Women, Law and Development (FWLD) and the Center in 16 districts of Nepal, there were 13 cases against women and girls for terminating their pregnancies between 2011 and 2016.[[29]](#endnote-29) Women and girls who were suspected of having abortions were charged and then held in police custody while the initial investigation was conducted. Many of these women and girls are from low-income families but were not provided legal aid support, compounding the effects of discrimination against low-income and marginalized women and girls who lack knowledge of the abortion laws and access to regulated, safe abortion facilities and care.

Overall, the fact-finding study found that five women and girls had been convicted. In cases where women and girls were convicted, they did not know that abortion was legal, nor did they know where legal abortion services were available, forcing them to seek illegal abortion from untrained providers. Four of the women and girls were prosecuted for seeking illegal abortions to end pregnancies that were the result of rape. In one case, the court convicted a 15-year-old victim of rape, who terminated her pregnancy at around 20 weeks by consuming medical pills bought by her father from a local drug seller.[[30]](#endnote-30)

Many Nepali women and girls are unaware that abortion is legal in the country.[[31]](#endnote-31) A 2018 study by Nepal’s Center for Research on Environment Health and Population Activities (CREHPA) found that over half of women and girls seeking abortion are still getting illegal or unsafe abortions.[[32]](#endnote-32) Since January 2018, all abortion services that are provided by the government are available at no cost.[[33]](#endnote-33) Many women and girls, especially those living in rural areas, however, do not know that this program had been put in place, compounding the multiple and intersecting forms of discrimination faced by already marginalized women and girls who seek abortions.

In 2011, the CEDAW Committee expressed concern about the intersecting forms of discrimination that prevent poor women, including those from rural villages and marginalized communities, from accessing abortion care.[[34]](#endnote-34) In its review, the Committee noted “the high rate of unsafe abortion, in particular for women living in poverty, women from rural villages and women from marginalized communities within urban areas, in spite of the legalization of abortion in 2002” and called on Nepal to “[p]rioritize programmes that ensure access to a full range of maternal health services, including antenatal, postnatal and emergency obstetric care, in particular for poor women, rural women and young mothers.”[[35]](#endnote-35) In 2016, the CESCR Committee also called on Nepal to “[c]onduct dissemination campaigns on the legality of abortion in the State party” and to “[e]nsure access to sexual and reproductive health services and safe abortion services.”[[36]](#endnote-36)

* 1. The Philippines

The abortion law in the Philippines is one of the strictest in the world. The Revised Penal Code (RPC) penalizes abortion without any clear exceptions.[[37]](#endnote-37) As in other countries, criminalization of abortion does not prevent abortions or unintended and unwanted pregnancies; instead, it leads to increasing levels of unsafe abortions and contributes to rising maternal deaths. Estimates show that the incidence of abortion in the Philippines has increased from 560,000 in 2008 to 610,000 in 2012.[[38]](#endnote-38) The continued criminalization of abortion has led to actual and threatened deprivations of liberty for women and girls in the Philippines. Local media continue to report arrests of women and girls seeking abortions.[[39]](#endnote-39)

After they are arrested, some women and girls plead guilty so that they qualify for probation. Kaye, a young woman from Manila, was terrified and hemorrhaging after taking an unregistered drug to induce an abortion. When she sought medical treatment at a government hospital, instead of receiving prompt and compassionate care, she was verbally abused by the staff and had to wait for almost 24 hours before receiving life-saving treatment for her complications. Hospital workers refused to provide treatment until Kaye admitted that she had self-induced an abortion. After the forced confession, she was immediately reported to the police by hospital staff. Police officers came to the hospital and brought Kaye to jail, where she was charged and detained for illegally inducing abortion. In exchange for pleading guilty, she was given six months of probation instead of time in prison.[[40]](#endnote-40)

Women and girls seeking post-abortion care often face aggressive questioning and pressure to admit that they have undergone illegal abortions. The same is not true for women and girls who are able to afford and obtain care in private health facilities. Some health providers have acknowledged that women and girls are often treated harshly when suspected of having induced abortion.[[41]](#endnote-41) The harsh treatment includes: interrogating them; coercing them to admit that they induced abortions; scolding; and telling them that they will be sent away if they induced the termination. The interrogation is often accompanied by threats of arrest and imprisonment, as well as coercion to sign disclosures that range from testifying that they did not induce an abortion intentionally to granting permission to the hospital to report the women and girls to the police if traces of abortion-inducing drugs are found.[[42]](#endnote-42) This treatment is more likely to occur in public hospitals, where women and girls with limited resources must go to obtain care,[[43]](#endnote-43) again compounding the effects of the discrimination faced by low-income women and girls who seek abortion care. Based on women and girls’ testimonies, the threat of being reported by a healthcare provider has the same effect as a legal reporting requirement of deterring women and girls from seeking healthcare.

In April 2015, the results of the CEDAW Committee’s special inquiry on reproductive rights in the Philippines were published.[[44]](#endnote-44) The Committee found the Philippines violated women’s human rights—particularly their right to freedom from discrimination—by denying thousands of women the full range of reproductive health services and failing to remove barriers to access.[[45]](#endnote-45) The Committee further found that the country’s abortion ban “particularly harmed disadvantaged groups of women, including poor women and adolescent girls, as well as women in abusive relationships.”[[46]](#endnote-46) In 2016, the Committee reiterated its demand that the state legalize abortion under certain circumstances.[[47]](#endnote-47) Similarly, in 2016, the CESCR Committee called on the state to “take all measures necessary to reduce the incidence of unsafe abortion and maternal mortality, including by amending its legislation on the prohibition of abortion to legalize abortion in certain circumstances.”[[48]](#endnote-48) The Committee against Torture (CAT Committee) has also weighed in on the abortion ban, calling on the Philippines to legalize abortion and also “[d]evelop a confidential complaints mechanism for women subjected to discrimination, harassment or ill-treatment while seeking post-abortion or post-pregnancy treatment or other reproductive health services.”[[49]](#endnote-49)

* 1. Rwanda

In Rwanda, a woman who induces her own abortion can face imprisonment for one to three years and a fine of fifty thousand to two hundred thousand Rwandan francs.[[50]](#endnote-50) In 2012, the revised penal code reduced the penalty for a woman that induces her own abortion or consents to an abortion from 2-5 years[[51]](#endnote-51) to 1-3 years. The penalty is still heavy,[[52]](#endnote-52) and the law is aggressively enforced, resulting in the frequent arrest, prosecution, and imprisonment of women and girls for procuring an unlawful abortion.[[53]](#endnote-53)

Research published by Ipas in 2015 revealed that from July 2013 to April 2014, 313 women and girls were imprisoned in five prisons for illegal abortions.[[54]](#endnote-54) Women and girls who were imprisoned for illegal abortions accounted for nearly a quarter of the total female prisoners in these prisons.[[55]](#endnote-55) In 2016, the Guttmacher Institute published its findings that despite the legal restrictions and cultural stigma around abortion, an estimated 22 percent of unintended pregnancies end in induced abortion, with a disproportionate amount of abortions occurring in Kigali City, Rwanda’s capital.[[56]](#endnote-56) The study further found that approximately 17,000 women and girls are treated in health facilities for complications from induced abortions.[[57]](#endnote-57) An estimated 40 percent of clandestine abortions lead to complications that require treatment in a healthcare facility, though about one-third of women and girls experiencing such complications do not receive treatment.[[58]](#endnote-58) Abortions amongst poor women and girls—from rural and urban areas—are far more likely to result in complications.[[59]](#endnote-59)

In its 2017 review of Rwanda, the CEDAW Committee expressed concern about the “alarming number of women [who] are serving prison sentences for abortion-related offences, many of whom were arrested when seeking emergency health care following abortion complications.”[[60]](#endnote-60) The Committee called on the government to decriminalize abortion in all cases and remove cumbersome requirements for access to legal abortion.[[61]](#endnote-61) Similarly, in 2016, the Human Rights Committee was also concerned about the legal obstacles[[62]](#endnote-62) preventing women from having legal abortions. In 2013, the CESCR Committee expressed disapproval of the high number of clandestine abortions.[[63]](#endnote-63)

* 1. Violations under international human rights law

Treaty monitoring bodies, including the CEDAW Committee, the Human Rights Committee, the CESCR Committee, and the CAT Committee, have found that restrictive abortion laws violate a range of human rights, including the rights to life, health, privacy, freedom from gender discrimination or gender stereotyping, and freedom from ill-treatment.[[64]](#endnote-64) Treaty monitoring bodies repeatedly recognize the connection between restrictive abortion laws and high rates of unsafe abortion and maternal mortality.[[65]](#endnote-65)

U.N Special Rapporteurs have expressed concern over the imprisonment of women and girls who seek reproductive health care, including abortions. In 2018, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health expressed concern that criminal laws and legal provisions that restrict access to sexual and reproductive health goods and services and can sometimes result in imprisonment. In particular, the Special Rapporteur noted, “Where abortion is illegal, women may face imprisonment for seeking an abortion and emergency services for pregnancy-related complications, including those due to miscarriages. Fear of criminal punishment for ‘aiding or abetting’ abortions can lead health-care providers to report people suffering from pregnancy complications to authorities.”[[66]](#endnote-66) The Special Rapporteur stressed, “It is unacceptable that States continue to use detention and confinement as a preferred tool to promote public safety, ‘morals’ and public health, doing more harm than good to social justice, public health and the realization of the right to physical and mental health.”[[67]](#endnote-67)

Like the Special Rapporteur, the treaty monitoring bodies have called on countries to decriminalize abortion in all circumstances.[[68]](#endnote-68) They also have found that states should ensure that abortion is legal, at a minimum, when a woman’s life or health is at risk, in cases of rape and incest, and in cases of severe or fatal fetal impairments.[[69]](#endnote-69) States must also eliminate punitive measures for women and girls who undergo abortions and for health care providers who deliver abortion services; criminalization of these services has been found to be a form of discrimination and a violation of the rights to health, life, and freedom from torture or ill-treatment.[[70]](#endnote-70)

Criminalization of abortion disproportionately impacts marginalized women and girls. The Special Rapporteur on violence against women, its causes and consequences draws attention to how marginalized women and girls experience the intersection of different types of discrimination, which create a “greater risk of long-term health consequences.”[[71]](#endnote-71) “Women who are lacking social and cultural capital, due to their minority or immigration status, language barriers, religious or ethnic affiliation, sexual orientation and/or gender identity or educational attainment, are… at greater risk of long-term health consequences.”[[72]](#endnote-72) Women who live in rural communities where no health services are available and women who suffer from cognitive and/or physical disabilities face additional discrimination.[[73]](#endnote-73) In her report, the Special Rapporteur calls on governments to acknowledge the structural aspects and factors of discrimination and also analyze the social and economic hierarchies between women and men and also among women.[[74]](#endnote-74)

1. Inability to pay hospital fees resulting in detention
   1. Kenya

Many women and girls in Africa seeking reproductive health services endure serious human rights violations, including physical and verbal abuse and detention in health facilities for inability to pay the hospital fees they incurred for labor and delivery services.[[75]](#endnote-75) The inability to pay hospital fees and the subsequent detention of these women has obvious and disproportionate effects on low income and marginalized women. In one detention case, Millicent Awuor (Maimuna) gave birth to a baby girl at Pumwani Maternity Hospital, Kenya’s largest public maternity hospital. When it was time to be discharged, Maimuna did not have the money to pay the hospital fees. Instead of releasing her pending payment, the hospital staff detained her at the hospital in an overcrowded ward for 24 days, the time it took for her family to gather the necessary funds to pay her bill. During this time, Maimuna gave her bed to her newborn daughter and slept on the ﬂoor next to a ﬂooding toilet, causing her to contract pneumonia. During her detention, she did not receive post-natal care and was mistreated by the nurses. Furthermore, she was constantly worried about her other children, who were at home by themselves.[[76]](#endnote-76)

Another woman, Margaret Anyoso Oliele, was detained and abused twice at Pumwani while seeking delivery services during different pregnancies. During the ﬁrst visit, she was supposed to be discharged ﬁve days after her Cesarean section but was instead detained due to an inability to pay her bill in full. After undergoing another Cesarean section, she was again detained because she was unable to pay the bill in full. During Margaret’s detention, hospital nurses refused to dress her surgery wounds and would not let her go outside, as they were concerned she would run away. After ﬁve days, she was ﬁnally released and had to go to a private clinic for treatment for her infected surgical wound.[[77]](#endnote-77)

The Center filed a petition before the High Court of Kenya, claiming that the arbitrary detention, abuse, and mistreatment of these two women for seeking maternal healthcare services and the lack of accountability mechanisms to address these abuses is in clear violation of the Constitution of Kenya and the international and regional human rights treaties that Kenya has ratiﬁed. In its groundbreaking decision,[[78]](#endnote-78) the High Court recognized that the actions of the staff of Pumwani Maternity Hospital violated the petitioners’ fundamental rights and ordered the government to take steps to prevent future detention, mistreatment, and abuse of women and girls seeking maternal health services. Specifically, the Court found that detention of the petitioners violated their liberty and freedom of movement,[[79]](#endnote-79) their right to health,[[80]](#endnote-80) their right to dignity,[[81]](#endnote-81) their right to be free from cruel, inhuman, and degrading treatment,[[82]](#endnote-82) and their right to be free from discrimination.

The CEDAW Committee has expressed concern over the post-delivery detention of women and girls who are unable to pay their medical bills and has called on Kenya to end all post-birth detention of mothers for failure to pay medical bills.[[83]](#endnote-83) Similarly, the CAT Committee and the CESCR Committee have also told Kenya to eradicate the practice of post-delivery detention of mothers for the non-payment of fees, including in private facilities.[[84]](#endnote-84) To achieve this, the CESCR Committee instructed Kenya to “take concrete measures to ensure free maternal-health care services and to prevent the incidence of post-delivery detention in health-care facilities.”[[85]](#endnote-85)

* 1. Nigeria

In Nigeria, women and girls seeking reproductive health services also face detention in hospital facilities for inability to pay the hospital fees. A major obstacle to Nigerian women and girls who attempt to access maternal health facilities is the cost of services. When unable to pay the hospital fees, many women and girls are detained in healthcare facilities without due process and are refused medical treatment, often leading to grave consequences to their life and health, which can discourage others from seeking skilled maternal care to avoid detention.[[86]](#endnote-86)

In 2014, Oduyoye was referred and admitted to the Lagos University Teaching Hospital for complications that arose after she gave birth through a caesarean operation at the Midas Touch private clinic in Lagos.[[87]](#endnote-87) She was treated successfully and discharged, but she was subsequently detained without due process when her family was unable to pay the medical bill in full.[[88]](#endnote-88) Despite her husband’s numerous pleas and attempt to partially pay the hospital fees, she was detained for six weeks in a heavily guarded ward that lacked a toilet, electricity, or mosquito netting. She was denied medical treatment, even when she started having serious health complications.[[89]](#endnote-89) As a result, Oduyoye died from puerperal sepsis and pneumonia.[[90]](#endnote-90) The Women Advocates Research and Documentation Centre and the Center filed a case before the Federal High Court of Nigeria, seeking government accountability for failure to ensure Oduyoye’s access to maternal health services. Particularly, the case sought financial reparations, a public apology, and a declaration that the detention of Oduyoye was illegal, unconstitutional, and in violation of her rights to life, health, liberty, freedom from arbitrary detention, non-discrimination, dignity, and freedom from cruel, inhuman and degrading treatment.[[91]](#endnote-91) In May 2018, the Court dismissed the case due to a procedural irregularity that should not be applicable if the Court had addressed the case as a human rights violation case.[[92]](#endnote-92)

The detention of women and girls who cannot pay their medical bills is widespread across Nigeria. For example, in a study of 446 women and girls who had given birth at Enugu State University Teaching Hospital in 2012, 98 reported having been detained because they could not pay their medical bills.[[93]](#endnote-93) Women and girls like 23-year-old Amarachi Amadi, who as of July 2016 had been detained with her child in a hospital in Abia State for four months with no foreseeable way to pay her bills, are known as Awaiting Bill Settlement patients.[[94]](#endnote-94) They must look after themselves and their newborns while they are prohibited from leaving the hospital until they settle their bills. While some married women and girls can rely on their husbands to bring them food, single mothers may receive no outside support.[[95]](#endnote-95) In some instances, the health facilities release the women and girls but detain their babies for lack of payment. The women and girls then have to come every day to breastfeed and take care of their newborn until they are able to settle the bills and take the baby home.

The CEDAW Committee and other treaty monitoring bodies have found preventable maternal mortality to be a violation of women’s and girls’ right to health and life in certain circumstances.[[96]](#endnote-96) The CEDAW Committee has repeatedly drawn attention to the high incidence of maternal death in Nigeria.[[97]](#endnote-97) The Committee has urged the government to address the issue, as a matter of priority, including through the allocation of “adequate resources to increase women’s access to affordable health services, particularly pre-natal, post-natal, and obstetric services, as well as other medical and emergency assistance provided by trained personnel, particularly in rural areas.”[[98]](#endnote-98) During the 2013 Universal Periodic Review (UPR), it was also recommended that Nigeria implement measures to reduce the high maternal mortality rate.[[99]](#endnote-99) Similarly, in 2015, the African Commission on Human and Peoples’ Rights (African Commission) condemned the country’s high rate of maternal mortality[[100]](#endnote-100) and urged the state to strengthen ongoing initiatives to reduce the high rate of maternal mortality by “eliminating all barriers to maternal health services in the country, increasing budgetary allocation to the health sector in line with the Abuja Declaration, and promoting human rights-based private-sector investment in the health sector.”[[101]](#endnote-101)

* 1. Violations under international human rights law

The right to maternal health care encompasses a woman’s right to the full range of services in connection with pregnancy and the postnatal period and the ability to access these services free from discrimination, coercion, and violence.[[102]](#endnote-102) Furthermore, treaty monitoring bodies have found that social and other determinants of health must be addressed in order for women to be able to seek and access the maternal health services they need.[[103]](#endnote-103) Finally, women must be able to exercise reproductive autonomy in determining the number and spacing of their children, have adequate information about maternal health care, and be empowered to utilize maternal health services.

The treaty monitoring bodies recognize that the failure to provide women with quality maternal health services violates the rights to equality and non-discrimination, because these are services that only women need to meet their specific health needs.[[104]](#endnote-104) The Committees have also indicated that ensuring equality of health results—including by lowering the maternal mortality rate—is an important indicator of a state’s success in fulfilling reproductive rights.[[105]](#endnote-105) Treaty monitoring bodies have specifically recognized that intersectional discrimination can hinder women’s access to reproductive health services. Treaty monitoring bodies have then recommended that states put a particular focus on the maternal health needs of marginalized groups of women, including adolescents, poor women, minority women, rural women, and women with disabilities.[[106]](#endnote-106)

Treaty monitoring bodies have also addressed the needs of poor and minority women when accessing maternal health services, including the need to collect disaggregated data to track progress on reducing disparities in maternal mortality.[[107]](#endnote-107) In its 2011 decision in Alyne da Silva Pimentel v. Brazil, the CEDAW Committee found that Brazil had discriminated against Alyne, an Afro-Brazilian woman who died following pregnancy and post-natal complications, on the basis of her gender, race, and socioeconomic status when she was denied maternal health services.[[108]](#endnote-108) The CEDAW and ESCR Committees have recognized that maternal health services—including skilled birth attendants, maternal, and postnatal care—are often geographically inaccessible to women in rural areas.[[109]](#endnote-109) There can also be long waiting periods for appointments to receive sexual and reproductive health services.[[110]](#endnote-110) They have called on states to pay particular attention to ensuring access for rural women, including by increasing the number of health facilities, funding for health care, and training of providers to work in rural areas.[[111]](#endnote-111)

1. Pregnancy care and access to abortion services while detained or imprisoned
   1. United States

This year, the United States reversed a recent policy change, eliminating the general presumption that the immigration agency should release pregnant individuals in immigration detention except in extraordinary circumstances and removing reporting requirements regarding the treatment of pregnant individuals. Since ending the policy last year, the Administration has detained more than 500 pregnant women, often in conditions in which they do not have access to appropriate prenatal medical care.[[112]](#endnote-112)

Indeed, in the United States, imprisoned or detained women and girls[[113]](#endnote-113) are routinely denied appropriate medical care and humane conditions.[[114]](#endnote-114) For instance, one immigrant woman who miscarried while in government custody earlier this year was informed by her doctor that the detention conditions were a contributing factor. She described the experience as “a punishment I will never forget.”[[115]](#endnote-115)

Though abortion is legal in the United States, women and girls who are detained are denied access to abortion services. In 2015, the U.N. Working Group on the issue of discrimination against women and girls in law and in practice conducted an official mission to the United States and found that “immigrant women and girls face severe barriers in accessing sexual and reproductive health services.”[[116]](#endnote-116) The Working Group expressed particular concern for immigrant women and girls and minors in detention centers,[[117]](#endnote-117) and also recommended that the U.S. government take steps to ensure that women and girls can exercise their existing Constitutional right to terminate a pregnancy.[[118]](#endnote-118)

A recent court case filed against the United States government details the experience of Jane Doe, Jane Moe, Jane Poe, and Jane Roe (the Janes).[[119]](#endnote-119) The Janes are pregnant, unaccompanied immigrant minors, who while being held in immigration detention centers, were denied access to abortion services, when the government refused to allow the Janes to attend pre-arranged appointments during which they planned to terminate their pregnancies.[[120]](#endnote-120) The Janes’ experiences demonstrate a larger pattern of young people in immigration custody who choose to end a pregnancy but are systematically blocked from exercising that right because government officials have engineered immigration policies and detention programs in ways that create and justify added barriers to abortion access.

Those who decide to continue their pregnancies often experience mistreatment by correctional guards and staff during their pregnancies, lack of access to adequate nutrition and healthcare providers, and inhumane conditions during birth.[[121]](#endnote-121) Women in immigration detention facilities “are often denied adequate medical care, even when in dire need of it, are shackled around the stomach while being transported between facilities, and have been physically and psychologically mistreated.”[[122]](#endnote-122) Critically, women who have had miscarriages while in detention have reported that they did not receive adequate medical care before or after the miscarriage, and many suffered physical and psychological harm as a result.[[123]](#endnote-123) There are documented cases of pregnant women denied access to medical care in more than six detention centers across the country.[[124]](#endnote-124)

In the United States, incarcerated and detained women and girls are at risk of poor maternal health outcomes because they experience disproportionately high levels of violence, poor physical and mental health, and substance use in higher proportion than the average population.[[125]](#endnote-125) Two large studies published in 2009 found that U.S. prisons lack adequate nutrition and hygiene and other conditions suitable for pregnant women and girls.[[126]](#endnote-126) Fewer than half of U.S. jails provide OB/GYN services to assist pregnant women and girls in prison, and 38 states have no policies on pre-natal care for prisoners.[[127]](#endnote-127)

In addition, the United States is one of the few countries in the world that continues to use restraints on pregnant incarcerated women and girls during transport, labor, delivery, and recovery.[[128]](#endnote-128) Shackling pregnant women and girls is needlessly punitive and traumatizing and can cause otherwise avoidable health risks for the woman and the fetus.[[129]](#endnote-129) When a woman is shackled, she is at an increased risk of falling and will not be able to protect herself by breaking her fall due to the restraints.[[130]](#endnote-130) During the birthing process, shackles hamper a woman’s ability to move to alleviate the pain of her contractions, which increases stress on the woman’s body and may decrease the flow of oxygen to her baby.[[131]](#endnote-131) The use of restraints may also delay the doctors’ ability to perform an emergency caesarean section.[[132]](#endnote-132) Finally, leg shackles inhibit a woman’s recovery, as many experts recommend walking to rehabilitate muscles after a delivery.[[133]](#endnote-133)

* 1. Violations under international human rights law

Treaty monitoring bodies have consistently recognized that the denial of abortion information and services profoundly affects women and girls’ lives and health and hinders the fulfillment of a range of civil, political, economic, and social rights.[[134]](#endnote-134) Furthermore, the Committee on the Rights of the Child has called on states to establish a legal presumption stating that adolescents are competent to seek and have access to sexual and reproductive health commodities and services, including abortion,[[135]](#endnote-135) which includes having access to reproductive health facilities and even while subject to detention.

Moreover, there is growing recognition that states ought to consider alternatives to detention of pregnant women and girls in order to avoid placing them in a vulnerable situation. For example, in addition to stating that “[i]nstruments of restraint *shall never be used* on women during labour, during birth and immediately after birth,”[[136]](#endnote-136) the U.N. Rules for the Treatment of Women Prisoners favor non-custodial measures for pregnant offenders and impose a duty on States to take special care to ensure the health and safety of pregnant prisoners.[[137]](#endnote-137) The Special Rapporteur on the situation of migrants has similarly concluded that “as a general rule [concerning migrants in administrative detention], the detention of pregnant women in their final months and nursing mothers should be avoided.”[[138]](#endnote-138)

The CAT Committee has condemned the practice of shackling as a form of cruel, inhuman and degrading treatment prohibited under Article 16 and has called on states to revise the practice of shackling incarcerated pregnant women and girls.[[139]](#endnote-139) Furthermore, the Human Rights Committee (HRC) has made it clear that women and girls “should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children…”[[140]](#endnote-140) Additionally, three U.N. Special Rapporteurs have added to the treaty bodies’ concern on this issue, signifying clear international consensus that the U.S. practice of shackling pregnant women and girls violates the right to be free from ill treatment.[[141]](#endnote-141) Specifically, in her 2011 report on the United States, the U.N. Special Rapporteur on violence against women and girls called on the U.S. to “[a]dopt legislation banning the use of restraints on pregnant women, including during labor or delivery, unless there are overwhelming security concerns that cannot be handled by any other method.”[[142]](#endnote-142)

We are grateful for this opportunity to input in the Working Group’s report. Should the mandate need any additional information, please do not hesitate to reach out to Rebecca Brown, Director for Global Advocacy, at [rbrown@reprorights.org](mailto:rbrown@reprorights.org).

1. Specifically, abortion is permitted: (a) to save a woman’s life; (b) when abortion resulted from a crime; (c) when pregnancy resulted from rape; and (d) in case of serious fetal impairment. Decreto N° 270, Código Penal (1973), Art. 169, *available at* <http://es.scribd.com/doc/60806391/Codigo-Penal-1973>. [↑](#endnote-ref-1)
2. Performing an abortion on another carries a penalty of imprisonment of up to twelve years, and self-inducing an abortion carries a penalty of imprisonment of up to eight years, see Decreto N° 1030, Código Penal (1998) (hereinafter "1998 Criminal Code"), Arts. 133-137. *See* also Código de Ética y Deontología Médica (2015) (hereinafter "2015 El Salvador Doctors’ Code of Ethics and Deontology"), Art. 87, which provides that “*performing abortion constitutes serious misconduct according to the Criminal Code*”. [↑](#endnote-ref-2)
3. 1998 Criminal Code, Art. 312. [↑](#endnote-ref-3)
4. Constitution, Art. 1. [↑](#endnote-ref-4)
5. 1998 Criminal Code, Arts. 128-132. [↑](#endnote-ref-5)
6. Andrea Rowan, *Prosecuting Women for Self-Inducing Abortion: Counterproductive and Lacking Compassion*, 18 Guttmacher Policy Review 3, 73 (Summer 2015). [↑](#endnote-ref-6)
7. Press release, Center for Reproductive Rights, New Human Rights Case Filed on Behalf of Salvadoran Women Who Miscarried and Are Wrongfully Imprisoned (December 3, 2015), https://www.reproductiverights.org/press-room/new-human-rights-case-filed-on-behalf-of-salvadoran-women-who-miscarried-and-are-wrongful. [↑](#endnote-ref-7)
8. Visit by CRR researcher to “La Granja”, June 27, 2018. [↑](#endnote-ref-8)
9. CESCR Committee, *Concluding observations: El Salvador,* paras. 10, 25 and 44,UN Doc. E/C.12/SLV/CO/2, (2007). [↑](#endnote-ref-9)
10. CESCR Committee, *Concluding Observations: El Salvador*, paras. 22-23, U.N Doc. E/C.12/SLV/CO/3-5 (2014). [↑](#endnote-ref-10)
11. CEDAW Committee, *Concluding Observations: El Salvador,* paras. 22(a), 30(a) & (b), 31, 34, 35, 36 & 37, U.N. Doc. CEDAW/C/SLV/CO/8-9 (2017). [↑](#endnote-ref-11)
12. Human Rights Council, *Report of the Working Group on the Universal Periodic Review – El Salvador*, U.N. Doc. A/HRC/28/5 (17 December 2014). [↑](#endnote-ref-12)
13. *Id.* at paras. 103.41, 103.51, & 105.51-105.62. [↑](#endnote-ref-13)
14. Press Release, OHCHR, Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the end of his mission to El Salvador (November 17, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E> [↑](#endnote-ref-14)
15. Press release, Inter-American Commission on Human Rights, IACHR Urges El Salvador to End the Total Criminalisation of Abortion (March 7, 2018), http://www.oas.org/en/iachr/media\_center/PReleases/2018/042.asp. [↑](#endnote-ref-15)
16. Under Honduran law, abortion is defined as “the murder of a human being during pregnancy or at the moment of delivery,” meaning that abortion-related crimes are considered homicide. United Nations Population Division, Abortion Policies: A Global Review (Honduras) (2002), *available at* www.un.org/esa/population/publications/abortion/doc/honduras.doc. [↑](#endnote-ref-16)
17. Secretaría de Salud, Acuerdo No. 2744 (Honduras) (2009); Center for Reproductive Rights, *Honduras: Sexual Violence and Total Bans on Emergency Contraception and Abortion* (2015), *available at* <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/25MAR15%20GLP_LAC_Honduras_Factsheet_Final%20AS%20FILED%20(1).pdf>. [↑](#endnote-ref-17)
18. *See* Committee on the Elimination of Racial Discrimination (CERD Committee), *Concluding Observations: Honduras*, U.N. Doc CERD/C/HND/CO/1-5 (March 13, 2014). [↑](#endnote-ref-18)
19. *See* Human Rights Committee, *Concluding Observations: Honduras*, paras. 16-17, U.N. Doc. CCPR/C/HND/CO/2 (2017); CEDAW Committee, *Concluding Observations: Honduras*, paras. 36-37, U.N. Doc. CEDAW/C/HND/CO/7-8 (2016); Committee Against Torture (CAT Committee), *Concluding Observations: Honduras*, paras. 47-48, U.N. Doc. CAT/C/HND/CO/2 (2016); CESCR Committee, *Concluding Observations: Honduras*, paras. 53-53, U.N. Doc. E/C.12/HND/CO/2 (2016); CRC Committee, *Concluding Observations: Honduras*, paras. 64-65, U.N. Doc. CRC/C/HND/CO/4-5 (2015). [↑](#endnote-ref-19)
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28. *Id*. [↑](#endnote-ref-28)
29. Center for Reproductive Rights and Forum for Women, Law and Development, *Reforms Required in Laws Related to Abortion and Its Enforcement*(English-language factsheet forthcoming). [↑](#endnote-ref-29)
30. *Id*. [↑](#endnote-ref-30)
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32. Mahesh Puri, *et al.*, *Abortion Incidence and Unintended Pregnancy in Nepal*, 42 Guttmacher Institute 197 (December 2016), *available at* https://www.guttmacher.org/journals/ipsrh/2016/12/abortion-incidence-and-unintended-pregnancy-nepal. [↑](#endnote-ref-32)
33. Tara Todras-Whitehill, *Is abortion legal in Nepal?, supra* notexxxi*.* [↑](#endnote-ref-33)
34. *See* CEDAW Committee, *Concluding Observations: Nepal*, U.N. Doc. CEDAW/C/NPL/CO/4-5 (2011). [↑](#endnote-ref-34)
35. *Id*. at paras. 31-32. [↑](#endnote-ref-35)
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46. *Id*. at para. 24. [↑](#endnote-ref-46)
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48. CESCR Committee, *Concluding Observations: Philippines*, paras. 51-52, U.N. Doc. E/C.12/PHL/CO/5-6 (2016). [↑](#endnote-ref-48)
49. CAT Committee, *Concluding Observations: Philippines*, para. 40, U.N. Doc. CAT/C/PHL/CO/3 (2016). [↑](#endnote-ref-49)
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51. United Nations Population Division, Abortion Policies: A Global Review (Rwanda) (2002), *available at* http://www.un.org/esa/population/publications/abortion/. [↑](#endnote-ref-51)
52. Pursuant to the Penal Code, a person might face imprisonment of anywhere from one year up to twenty years and fine of 50,000 to 2,000,000 Rwandan francs as criminal liability for abortion. *See* Organic Law instituting the penal code, Nº 01/2012/OL of 02/05/2012, Official Gazette nº Special of 14 June 2012, Chapter III, Section 5, Articles 162-164. [↑](#endnote-ref-52)
53. *See, e.g.*,IPAS, when Abortion Is A Crime: Rwanda (2015) *available at* http://www.glihd.org/wp-content/uploads/2015/10/STUDY-WHEN-ABORTION-IS-A-CRIME-RWANDA.pdf; *See also* Association Rwandaise pour le Bien-Être Familial (ARBEF), Abortion and Young People in Rwanda (2012) (unpublished research) (on file with the Center for Reproductive Rights). [↑](#endnote-ref-53)
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61. *Id*. [↑](#endnote-ref-61)
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63. CESCR Committee, *Concluding Observations: Rwanda*, para. 26, U.N. Doc. E/C.12/RWA/CO/2-4 (2013). [↑](#endnote-ref-63)
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97. *See* CEDAW Committee, *Concluding Observations: Nigeria*, para. 170, U.N. Doc. A/59/38/Rev. 1 (1998); *Nigeria*, paras. 307–08, U.N. Doc. A/59/38, (Supplement No. 38) (Part I) (2004); *Nigeria*, para. 33, U.N. Doc. CEDAW/C/NGA/CO/6 (2008); *Nigeria*, paras. 40-41, U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017). [↑](#endnote-ref-97)
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99. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nigeria*, para. 135.105, U.N. Doc. A/HRC/25/6 (2013). [↑](#endnote-ref-99)
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101. *Id.*, para. 117. [↑](#endnote-ref-101)
102. Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 12, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980), U.N.T.S. 13 (entered into force Sept. 3, 1981). [↑](#endnote-ref-102)
103. CEDAW and CRC Committees, *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014). *See also* CRC Committee, *Concluding Observations: Mongolia*, para. 51(a), U.N. Doc. CRC/C/MNG/CO/3-4 (2010); ESCR Committee, *Concluding Observations: Australia*, para. 28, U.N. Doc. E/C.12/AUS/CO/4 (2009). [↑](#endnote-ref-103)
104. Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc’n No. 17/2008, paras. 7.6- 7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011); CRC Committee, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, para. 59, U.N. Doc. CRC/C/GC/20 (2016). [↑](#endnote-ref-104)
105. See CEDAW Committee, Gen. Recommendation No. 24, para. 21, *supra* note lxiv. See also Human Rights Committee, *Concluding Observations: Rwanda*, U.N. Doc. CCPR/C/RWA/CO/4 (2016). [↑](#endnote-ref-105)
106. *See, e.g.*, CEDAW Committee, *Concluding Observations: Thailand*, paras. 42-43, U.N. Doc. CEDAW/C/THA/CO/6-7 (2017); *Lesotho*, paras. 32-33, U.N. Doc. CEDAW/C/LSO/CO/1-4 (2011). [↑](#endnote-ref-106)
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108. Alyne da Silva Pimentel Teixeira v Brazil, CEDAW Committee, Commc’n No. 17/2008, paras. 7.3- 7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011). [↑](#endnote-ref-108)
109. *See, e.g.*, CEDAW Committee, *Concluding Observations: Sierra Leone*, para. 32, U.N. Doc. CEDAW/C/SLE/CO/6 (2014); ESCR Committee, *Concluding Observations: Djibouti*, para. 32, U.N. Doc. E/C.12/DJI/CO/1-2 (2014). [↑](#endnote-ref-109)
110. CEDAW Committee, *Concluding Observations: Estonia*, paras. 30-31, U.N. Doc. CEDAW/C/EST/ CO/5-6 (2016). [↑](#endnote-ref-110)
111. *See, e.g.*, CEDAW Committee, *Concluding Observations: Cameroon*, para. 33, U.N. Doc. CEDAW/C/CMR/CO/4-5 (2014). [↑](#endnote-ref-111)
112. Emma O’Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BuzzFeed News (Jul. 9, 2018), <https://www.buzzfeed.com/emaoconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.hoJNbWrPj#.fi7GqAanJ>. [↑](#endnote-ref-112)
113. In the United States, women and girls face deplorable treatment both when they are imprisoned for criminal offenses and also when they are immigrants who have been detained following an immigration violation. Detained immigrant woman and girls often have not committed any crime and may be in the United States seeking asylum. [↑](#endnote-ref-113)
114. *See, e.g*., Letter from ACLU *et al.* to Cameron Quinn, Officer for Civil Rights and Civil Liberties, Dep’t of Homeland Sec., and John Roth, Inspector General, Dep’t of Homeland Sec. (Nov. 13, 2017), https://www.aclu.org/sites/default/files/field\_document/revisedcomplaintcrcl\_oigpr

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115. *Id.* [↑](#endnote-ref-115)
116. Human Rights Council, *Rep. of the Working Group on the Issue of Discrimination Against Women in Law and in Practice on Its Mission to the United States of America,* para. 68, U.N. Doc. A/HRC/32/44/Add.2 (2016). [↑](#endnote-ref-116)
117. *Id*., at para. 80. [↑](#endnote-ref-117)
118. *Id*., at para. 90(g). [↑](#endnote-ref-118)
119. Alex M. Azar II. v. Rochelle Garza, On Appeal from the United States District Court for the District of Columbia No. 17-cv-02122-TSC (2018). [↑](#endnote-ref-119)
120. *Id*. [↑](#endnote-ref-120)
121. Victoria Law, *U.S. Prisons and Jails are Threatening Lives of Pregnant Women and Babies*,

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123. *Id.*  [↑](#endnote-ref-123)
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125. *See* Angela Brown *et al.*, *Prevalence and Severity of Lifetime Physical and Sexual Victimization among Incarcerated Women*, 22 Int’l J. of Law & Psychiatry (1999). [↑](#endnote-ref-125)
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