

September 13, 2013

Human Rights Council
Office of the High Commission for Human Rights of the United Nations
Palais des Nations
CH-1211 Geneva 10, Switzerland.

RE: United Nations Universal Periodic Review (UPR) Report on Costa Rica, set for the 19th session of the UPR Working Group of the Human Rights Council, April and May, 2014

Distinguished members of the Council:

1. The Center for Reproductive Rights (CRR) is an NGO dedicated to promoting the equality of women around the world by guaranteeing their reproductive rights as human rights. The “Grupo a Favor del In Vitro” (Pro-In Vitro Group) is a group of individuals and couples who suffer from infertility, along with other individuals who are in favor of in vitro fertilization (hereinafter IVF) but do not have that disability. Pursuant to Resolution 5/1 (2007) issued by the Human Rights Council, CRR and the “Grupo a Favor del In Vitro” file this report as JOINT organizations that are particularly concerned over Costa Rica’s compliance with its international commitments on the guarantee of access to health of persons without discrimination, a concern that is based on: i) Costa Rica’s failure to comply with the orders of the Inter-American Court of Human Rights (hereinafter Inter-American Court) in the case of *Artavia Murillo et al. v. Costa Rica*¹ (hereinafter the *Artavia Case*) regarding access to reproductive health services without discrimination; and ii) Costa Rica's failure to comply with its international obligation to respect and guarantee human rights as concerning the guarantee of access to legal abortion when the life and/or health of the woman are in danger.

I. Legal Framework

2. Costa Rica has ratified a number of international human rights treaties whose provisions recognize and protect the sexual and reproductive rights of persons, without distinction.² These rights include, among others, the right to personal autonomy, the prohibition of arbitrary interference in private life, the right to have a family and the right to life, as well as the right to health, personal integrity, and freedom from cruel, inhuman or degrading treatment or punishment.

¹ Case of *Artavia Murillo et al.* (“In vitro fertilization”) v. Costa Rica, [hereinafter *Artavia Case*] Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257 (Nov. 28, 2012).

² Universal Declaration of Human Rights, adopted on Dec. 10, 1948, art. 3, G.A. Res. 217A (III); Convention on the Elimination of All Forms of Discrimination against Women, adopted on Dec. 18, 1979, G.A. Res. 34/180 [hereinafter CEDAW]; Convention on the Rights of the Child, adopted on Nov. 20, 1989, G.A. Res. 44/25; International Covenant on Civil and Political Rights, adopted on Dec. 16, 1966, G.A. Res. 2200 A (XXI); International Covenant on Economic, Social and Cultural Rights, adopted on Dec. 16, 1966, art. 6, G.A. Res. 2200 A (XXI). [hereinafter ICESCR]; American Convention on Human Rights [hereinafter American Convention] adopted on November 22, 1969, art. OAS Treaty Series N° 36, OAS/Ser. LV/II.23.doc.21. (in force for Costa Rica since March 02, 1970).

3. In this context, a number of negative and positive obligations arise for Costa Rica from its ratification of a series of international treaties that recognize these human rights, as well as from their recognition in the national Constitution. Not only is the Costa Rican State required to neither interfere with nor harm recognized human rights (negative obligations); it is also required to take certain adequate and effective measures to guarantee the enjoyment of such rights (positive obligations). The positive obligations include obligations to act that are based on specific needs to protect rights holders, particularly a framework that would prevent third parties from violating human rights.

4. The Committee on Economic, Social and Cultural Rights of the United Nations has established that the fulfillment of State obligations regarding the right to health entail, , the positive obligation to offer a broad array of accessible and good quality health services, including sexual and reproductive health services.³ Obligations to guarantee access to sexual and reproductive health services, understood as the guarantee of access to health services without discrimination, must be immediately executed, as opposed to obligations that due to their nature imply rendering services requiring progressive compliance.⁴

5. General Recommendation No. 24 of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) establishes that States Parties are required “*to refrain from obstructing action taken by women in pursuit of their health goals*” and indicates that States Parties also have the duty to take “*action to prevent and impose sanctions for violations of rights by private persons and organizations.*”⁵

6. The Inter-American Court has established the existing connection between the right to personal integrity, the right to life, and the right to health,⁶ finding that “*the rights to life and humane treatment are directly and immediately linked to human health care.*”⁷ Consequently, the Inter-American Court has found that “*States are responsible for regulating and supervising the rendering of health services, so that the rights to life and humane treatment may be effectively protected.*”⁸

7. The obligation, of immediate application, to guarantee the right to sexual health in the context of discrimination should be translated, for example, into the implementation of public and legislative

³ICESCR, *supra* note 2, Art. 12(1); Committee on Economic, Social and Cultural Rights [hereinafter CESCR], General Comment No. 14: *The right to enjoy the highest attainable standard of health* (Article 12 of ICESCR), para. 1, UN Doc.E/C.12/2000/4 (Aug. 11, 2000).

⁴ Committee on Economic, Social and Cultural Rights. *Substantive Issues Arising in the- Implementation of the International Covenant on Economic, Social and Cultural Rights, General comment No. 14*, UN Doc. E/C.12/2000/4 (April 25-May 12, 2000).

⁵ Within the Inter-American system, one must turn to the interpretation of the Additional Protocol to the American Convention on Human Rights on the Subject of Economic, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights in order to understand the scope of the right to health. These instruments establish in their articles 10 and 12, respectively, that this right implies the enjoyment of the highest level of physical, mental and social well-being, without discrimination. Also see the Committee on the Elimination of Discrimination against Women, General Recommendation No. 24 (Article 12): Women and Health, chap. I, paras. 14 and 15, UN Doc. A/54/38/Rev.1 (Jan. 19 - Feb. 5, 1999) [hereinafter CEDAW, General Recommendation No. 24].

⁶ Case of Albán Cornejo *et al.* v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 171, paras. 117 to 130 (Nov. 22, 2007) [hereinafter Case of Albán Cornejo *et al.*]; Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs, Inter-American Court (ser. C) No. 214, paras. 203-208 (Aug. 24, 2010).

⁷ Inter-American Court, Case of Albán Cornejo *et al.* v. Ecuador, *supra* note 6, para. 117.

⁸ *Ibid.*, para. 121; *See also*: Case of Ximenes Lopes v. Federative Republic of Brazil, Preliminary Objection, Inter-American Court (ser. C) No. 139, para. 99 (Nov. 30, 2005).

policies that safeguard and guarantees this right. Pursuant to General Recommendation 33b of the CEDAW Committee, Costa Rica must remove the ban on IVF such that persons may benefit from these types of medical treatments without discrimination.⁹ Likewise, following General Recommendations No. 33c and d - also from the CEDAW Committee- Costa Rica must draw up and disseminate healthcare protocols on abortion, in addition to broadening the circumstances under which it is legal.¹⁰

8. The issue that we wish to highlight in Costa Rica's universal periodic review (UPR) is its failure to guarantee the right to access to reproductive health services without discrimination as set forth in past recommendations of the UPR. Specifically we want to ask the Human Rights Council to recommend Costa Rica to: *i*) comply with the orders rendered by the Inter-American Court in the Artavia Case, by taking the necessary legal measures for infertile couples to have access to IVF reproductive health services, without discrimination; and *ii*) adopt healthcare protocols that regulate access to legal abortion and protect not only risks to a women's life and her physical health, but also risks to her mental health.

II. - Failure to comply with the recommendations made in the 2009 Costa Rica's Universal Periodic Review

9. During the sessions of the last Universal Periodic Review (UPR) of Costa Rica, the State received 102 recommendations. Costa Rica accepted 16 totally or partially, left four pending, rejected two and fully complied with three. However, the Costa Rican State declared that 77 of the recommendations were "under way before the universal periodic review."¹¹ Costa Rica stated that these recommendations "coincide with decisions and policies of the Government of Costa Rica that were adopted well before the universal periodic review took place and are being implemented ex officio."¹² The Costa Rican State claimed that they "comprise part of the everyday work of the Government,"¹³ something that had been demonstrated through the implementation of specific actions. Out of these recommendations determined as under way, four relate to the guarantee of access to health services - including sexual and reproductive health - without discrimination. Specifically, they addressed the right to health, the right to reproductive health and the right to family planning.¹⁴

⁹The Committee urges Costa Rica to "Consider lifting the ban on in vitro fertilization and adopting legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children in accordance with article 16 (e) of the Convention; and ensure access to assisted reproductive services, including in vitro fertilization, in line with the recommendations of the Inter-American Commission of Human Rights (2010)." Committee on the Elimination of Discrimination against Women [hereinafter CEDAW], General Recommendation No. 33b, CEDAW/C/CRI/CO/5-6 (July 11- 29, 2011).

¹⁰ The Committee urges Costa Rica to "(c) Elaborate clear medical guidelines on access to legal abortion and widely disseminate them among health professionals and the public at large; (d) Consider reviewing the law relating to abortion with a view to identifying other circumstances under which abortion could be permitted, such as abortions in cases of pregnancies resulting from rape or incest." *Ibid*, General Recommendation No. 33 c and d.

¹¹Human Rights Council, Working Group Report on Universal Periodic Review. Views of the State of Costa Rica on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/13/15 Add. 1, 2 (March 1, 2010).

¹² *Ibid*.

¹³ *Ibid*.

¹⁴All these rights are enshrined in: ICESCR, *supra* note 2, Art. 12(1), 12(2), CEDAW, *supra* note 2 Art. 10(h), 12(1), 12(2) and 14(2); and Convention on the Rights of the Child, *supra* note 2, Art. 24(1) and 24(2).

10. In this report, we will address Costa Rica's degree of compliance with the recommendations made by the working group during the sixth period of sessions of the UPR, regarding the guarantee to access reproductive health services without discrimination.¹⁵

11. Recommendations number 63, 65, 66 and 91(12) (which Costa Rica declared to the UPR to be under way) were formulated by the States of Bulgaria, Azerbaijan, Colombia and the United Kingdom, respectively. These specify that Costa Rica should:

“[...] N° 63. Continue its efforts to further improve **access** to education, housing, social security, **health** and employment, **especially for people living in poverty or extreme poverty**, and to increase even more the resources and social benefits aimed at reducing poverty and extreme poverty in the country [...]”¹⁶

“[...] N° 65. **Further focus its national spending on improving health** and education services and increasing the availability of social housing [...]”¹⁷

“[...] N° 66. Continue advancing in its efforts to achieve **universal coverage of its Maternity, Disease and Health Care Programme** [...]”¹⁸

“[...] 91(12) Enhance and enshrine in law services aimed at **protecting women and provide women with adequate information** on how to **access such support and medical care**, including **permitted abortions** [...]”¹⁹

12. These recommendations, insofar as they address access to reproductive health, establish that Costa Rica should: i) broaden access to health, especially access for individuals who live in poverty; ii) increase investment in healthcare services; iii) extend maternity, illness and primary care, with the goal of universal coverage; and iv) guarantee women's access to healthcare services, including legal abortion.

13. Failure to comply with what the Inter-American Court has ordered in the Artavia Case comprises a failure to comply with recommendations No. 63, 65 and 66, given that access to healthcare services - in this case to reproductive healthcare services through IVF treatment - is still prohibited and far from improving, and universal coverage is even a further away goal. .

14. The cases of Aurora and AN, which will be explained in detail, evidence that Costa Rica has not taken all the necessary measures to guarantee access to legal abortion. Such failure also constitutes lack of compliance with recommendation 91(12). Costa Rica has not taken any measures to guarantee access to legal abortion, particularly when the continuation of the pregnancy represents a health threat for the woman. Specifically, Costa Rica has not defined healthcare protocols to ensure access to legal and safe abortion in cases in which the woman's life and physical and mental health are at risk which is a determinant factor so that cases like the ones of AN and Aurora are prevented.

¹⁵Human Rights Council, Working Group Report on Universal Periodic Review, *Draft report of the Working Group on the Universal Periodic Review - Costa Rica*, November 30 to December 11, 2009, UN Doc. A/HRC/WG.6/6/L.14 (Dec. 30, 2009).

¹⁶*Id.*, General Recommendation No. A3

¹⁷*Id.*, General Recommendation No. 65.

¹⁸*Id.*, General Recommendation No. 66.

¹⁹*Id.*, General Recommendation No. 91(12).

a) The Costa Rican State has denied in vitro fertilization healthcare services to sterile couples, affecting their right to reproductive health in a discriminatory fashion

15. Costa Rica legalized and authorized IVF for the first time in 1995.²⁰ In 2000, the Constitutional Chamber of the Supreme Court of Costa Rica issued a ruling finding that IVF was unconstitutional because it infringed upon the life and dignity of a human being. The court found that as of the moment the egg is fertilized, it becomes a person with a right to life that is absolutely inviolable. Costa Rica became the only State in the world that banned IVF. In January 2001, nine couples suffering from infertility who were not able to receive IVF treatment filed a case before the Inter-American Commission against Costa Rica for violating human rights protected under the American Convention with the ban on IVF. On July 29, 2011, the Inter-American Commission presented the case before the Inter-American Court, determining that Costa Rica was responsible for the violation of the rights to privacy, family and equal protection.²¹ On November 28, 2012, the Inter-American Court found Costa Rica responsible for the violation of the rights to personal integrity (Article 5(1)), personal liberty (Article 7(1)), privacy (Article 11(2)) and family life (Article 17(2)), as well as discrimination in the exercise of these two rights on the part of the State.

16. The decision noted that the World Health Organization (hereinafter WHO) has found that “*infertility is a disease of the reproductive system defined by the failure to achieve a clinical pregnancy after 12 months or more of regular unprotected sexual intercourse.*”²² The illness “*can affect both men and women and may have differentiated disproportionate impacts owing to the existence of stereotypes and prejudices in society.*”²³ The negative consequences are intensified around psychological issues and can include depression, stress, personal suffering and anxiety, thus affecting the right to psychological integrity.²⁴

17. The Inter-American Court condemned Costa Rica and ordered the relevant State authorities to: 1) take the appropriate measures to nullify the ban on IVF treatment as quickly as possible; and: 2) report within six months on the measures taken.²⁵ The Costa Rican State had to take all the necessary and pertinent legal actions to remove the ban by May 28, 2013, at the latest, as this was the only way people would have access to IVF treatment without discrimination by the deadline set by the Inter-American Court.

²⁰Executive Decree No. 24029-S, Feb. 3, 1995, Ministry of Health (Costa Rica), available at: http://www.pgr.go.cr/scij/scripts/TextoCompleto.dll?Texto&nNorma=25469&nVersion=26946&nTamanoLetra=10&strWebNormativa=http://www.pgr.go.cr/scij/&strODBC=DSN=SCIJ_NRM;UID=sa;PWD=scij;DATABASE=SCIJ_NRM;&strServidor=\\pgr04&strUnidad=D:&strJavaScript=NO

²¹American Convention, *supra* note 3, Art. 11(2) (protection of private life), 17(2) (right to marry and start a family) and 24 (equal protection), with regard to Art. 1(1) (obligation to respect the different rights) and 2 (duty to adopt domestic measures).

²² Artavia Case, *supra* note 1, para. 288.

²³ *Id.*, para. 294.

²⁴ *Id.*, para. 282.

²⁵ *Id.* Para. 336. Likewise, the judgment ordered that people who wish to make use of IVF treatment be able to do so without any barriers to the exercise of the rights that were found to have been violated.

18. The decisions of the Inter-American Court are binding for States party to the American Convention pursuant to articles 62(3) (jurisdiction of Court recognized by States party) and 68(1) (obligation to comply with the judgments of the Court). As a State party to the Convention, Costa Rica has not only the possibility but the obligation to implement the decision.

19. The Inter-American Court recognized in the case that fertility is a disability on establishing that *“infertility is a functional limitation recognized as a disease and that persons with infertility in Costa Rica, faced with the barriers created by the Constitutional Chamber’s decision, should consider that they are protected by the rights of persons with disabilities, which include the right to have access to the necessary techniques to resolve reproductive health problems. This condition requires special attention in order to have reproductive autonomy.”*²⁶ In this sense, the Inter-American Court understood first that the ban on IVF was discriminatory against people with disabilities and second, that the right to reproductive freedom requires special healthcare for persons with disabilities. The findings in the decision require Costa Rica to take the necessary legal measures to allow IVF treatment without discrimination.

20. Thus far, Costa Rica has not taken the measures necessary to guarantee access to IVF. Effectively, as a result of this situation, the attorneys for “Grupo A Favor del In Vitro” have requested the Inter-American Court to sanction Costa Rica because the country has not taken any steps to allow the practice within the six month compliance period.²⁷ According to its report on compliance, *“[...] the efforts the Costa Rican government has taken to comply with the Inter-American Court’s judgment are insufficient, and as of this time, they have not put the country in compliance with the judgment’s fundamental point, which is the non-prohibition of IVF and that the CCSS [Costa Rican social security agency] must provide the services.”*²⁸

21. Costa Rica’s Office of the Ombudsman agrees with such assessment and has noted that *“[...] at its various levels of authority, the State has advanced partially in complying with the Court’s resolution. However, with regard to the fundamental ruling of the Court to lift the ban, which guarantees the non-repetition of State conduct upon other victims, the State has not complied within the six months it was given to do so. Nor has it done so through regulatory rules guaranteeing the adaptation and authorization of the required facilities and practices, given that they are dependent on a law, whose protection is subject to a slow, regular and complex legislative procedure.”*²⁹

²⁶ *Id.* Para.293.

²⁷ YESSSENIA ALVARADO, *PIDEN SANCIONES CONTRA EL PAÍS POR ATRASOS EN APLICACIÓN DE FIV*, [SANCTIONS SOUGHT AGAINST COUNTRY OVER DELAYS IN IVF APPLICATION] Teletica.com, (Aug. 29, 2013), available at <http://www.teletica.com/Noticias/17889-Piden-sanciones-contr-el-pais-por-atrasos-en-aplicacion-de-FIV.note.aspx>. On July 30, 2013, suit was filed against the State and the CCSS. It alleges that the effects of the Inter-American Court’s judgment are immediate, and in addition, that the judgment has become part of the basis of the administrative legal system and has the rank of the law it interprets, that being the American Convention on Human Rights.

²⁸ Grupo a Favor del In Vitro. Communication sent to the Inter-American Court. Reference: Gretel Artavia Murillo *et al.* v. Costa Rica (Personal translation).

²⁹ Office of the Ombudsman, *Defensoría afirma que Costa Rica irrespetó resolución de una Corte Internacional* [Office of the Ombudsman states that Costa Rica failed to abide by the resolution of an International Court] (June 27, 2013), available at <http://www.dhr.go.cr/boletines/seguimientoinvitro.pdf>. (Personal translation) The Office of the Ombudsman of Costa Rica attributes the denial and lateness of legalization to the following reasons: 1.-Obstructive actions on the part of certain deputies; 2. Failure to understand the

22. The unjustified delays in complying with the orders issued by the Inter-American Court in the Artavia Case represent both a failure to comply with the duty to guarantee the rights to personal integrity, personal liberty, private life, privacy, reproductive freedom, access to reproductive health services, and to start a family,³⁰ as well as a failure to comply with the recommendations in the 2009 UPR.

23. Access to health, and specifically access to reproductive health, is being limited to the extent that IVF remains prohibited (Recommendation No. 63). The right to reproductive health of infertile couples in Costa Rica continues to be violated. It has been reported that there is a group of individuals who have been identified who need IVF and have had to travel to other countries after the Inter-American Court's ruling, given that the prohibition remains in place.³¹ According to the "Grupo a Favor del In Vitro," after the Inter-American Court's judgment, 500 couples have had to travel to other countries, 13 of which have filed formal complaints with Costa Rica's administrative courts. Such reality perpetuates a disparate effect in the enjoyment of the right to access healthcare for low income individuals who don't have the resources to seek IVF treatment in other countries.

24. National expenditures are not being increasingly directed toward these types of reproductive health services (Recommendation No. 65). The State is not promoting efforts towards making reproductive healthcare coverage universal, nor the coverage of IVF, (Recommendation No. 66), given that it is not even promoting the necessary legal measures to allow IVF in cases of sterility, something that has been classified not only as an illness but also as a disability. This means that Costa Rica is failing to comply with the recommendations to provide reproductive healthcare services without discrimination, in addition to its failure to comply with a binding decision of a regional human rights body.

25. CRR and the "Grupo a Favor del In Vitro" respectfully request that the Human Rights Council urge the Costa Rican State to effectively comply with the recommendations established as under way - No. 63, 65 and 66, regarding the right to health – by adopting all measures in order to comply with the judgment in the Artavia Case; and to legally authorize the access to IVF treatment.

b.- The Costa Rican State has not guaranteed access to legal abortion when the health of women is in danger, thereby failing to comply with recommendation 91(12)

26. The termination of a pregnancy when the life or health of the woman is in danger is legal in Costa Rica.³² Nevertheless, in practice there are a series of obstacles to access to legal abortion, as there are no healthcare protocols that establish the steps to provide abortions, neither in cases of risk to life nor in

regional human rights system and Costa Rica's role in that system; and 3. Technical actions not joined by political action to move legislative procedure forward.

³⁰ Artavia Case, *supra* note 1, para. 314.

³¹ These individuals are identified in *amicus curiae* presented by the Grupo a Favor del In Vitro in the Artavia Case. Artavia Case, *supra* note 1, para. 13.

³² Penal Code (Costa Rica) Art. N21: "Abortion performed with the consent of the woman by a doctor - or by an authorized obstetric professional where the doctor's participation is not possible - is not punishable by law if it is performed in order to prevent danger to the life or health of the mother and said danger is not preventable by other means."

cases of risk to a woman's physical and mental health. Two petitions brought before the Inter-American Commission asking that Costa Rica should be held internationally responsible for the violation of the human rights of two women who were not permitted access to legal abortion when their health and lives were at risk, demonstrate Costa Rica's present failure to comply with recommendation 91(12), as well as its failure with regard to its obligations to respect and protect the right to personal integrity and health, among other rights.³³

27. In 2007, AN, a 26-year-old Costa Rican woman, went to the hospital after experiencing vomiting and bleeding. She was diagnosed a six-week high risk pregnancy with "threat of miscarriage." The doctors diagnosed the fetus with occipital encephalocele (lack of a brain), a fetal pathology that is not compatible with life outside the womb. The diagnosis was confirmed by further tests. AN fell into a deep depression and decided to request the termination of her pregnancy. Over time, the situation led her to develop suicidal thoughts. Her request for the termination of her pregnancy was denied a number of times, even with the awareness that depression and suicidal thoughts were threatening her health and life. While receiving healthcare from the Costa Rican public healthcare system, AN was also victim of mistreatment, at the hands of medical personnel, who in general ignored the danger posed to her life and health by the pregnancy, as well as the psychological suffering that the pregnancy was causing her. AN requested the procedure through a writ of protection of fundamental rights. The decision, despite recognizing that the life and health of the woman were at risk, did not find that the risk was connected to the pregnancy. The decision denied her request to terminate the pregnancy on the basis that the requirements were not met for a legal abortion. AN had to spend seven hours in labor, upon which she gave birth to a stillborn.

28. In 2012, Aurora, a 32-year-old Costa Rican woman, began to feel ill several weeks into her pregnancy. The doctors diagnosed the fetus with Abdominal Wall Defect, a malformation that takes place when the bladder and kidneys do not develop correctly, leaving the fetus unviable. Aurora asked for a therapeutic abortion. The doctors repeatedly rejected her request, saying that pregnancy termination was only allowed if her life was in danger. The doctors did not take into account that Aurora's health was deteriorating rapidly.

29. Aurora filed an *amparo* (writ of protection of fundamental rights) before the Supreme Court of Costa Rica, asking the protection of her right to health, among other rights, and to be granted an induced early birth given that the condition of her pregnancy was having a negative effect on her mental health. Aurora had an emergency cesarean section and gave birth to a fetus that died immediately. Meanwhile, the Court took 36 days to rule on her request. In its ruling, it agreed with the hospital, finding that there had been no risk to her health when she filed the request.

³³ CENTER FOR REPRODUCTIVE RIGHTS [hereinafter CRR], *DESPITE COUNTRY'S OWN LAWS, COSTA RICA CONTINUES TO DENY WOMEN LEGAL ABORTION*, Aug. 23, 2013), available at <http://reproductiverights.org/en/press-room/despote-country%E2%80%99s-own-laws-costa-rica-continues-to-deny-women-legal-abortion>

30. In these two cases, not only did public healthcare services block access to legal reproductive healthcare services, but also the country's judicial system failed to protect their human rights.³⁴ Today, both women are receiving psychological treatment to help them deal with the difficult situation that they faced.³⁵

31. The above-described situation has been repeatedly denounced. A variety of organizations have stated that *"even though the State allows therapeutic abortion, it is almost never performed, which puts in danger the health and life of the women who meet the medical conditions for needing it."*³⁶ In 2011, the CEDAW expressed concern with regard to the inadequate recognition and protection of the sexual and reproductive rights of women in Costa Rica. In particular, it expressed its concern over the fact that women do not have access to legal abortion due to undefined and unclear healthcare protocols with the necessary procedural specifications regarding how to handle a legal abortion.³⁷

32. The failure to comply with the obligation to guarantee the right to health without discrimination in the case of these women also constitutes a State violation of the duty to not subject persons to cruel, inhuman or degrading treatment. The United Nations Human Rights Committee established in the case of *KL v. Peru*³⁸, that on having denied a woman the legal termination of her pregnancy despite the fact that the fetus had been diagnosed with anencephaly- a deformity not compatible with life outside the uterus- and having forced the woman to complete her pregnancy, Peru had violated the right to be free from cruel, inhuman or degrading treatment. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Committee against Torture has been emphatic in establishing that restrictions on access to abortion violate the ban on torture and cruel treatment.³⁹ In the cases of AN and Aurora, as in that of KL, denial of access to legal abortion under circumstances in which the life and health of women are at risk, meant that they were forced to complete the pregnancy, something that has been framed as cruel, inhuman and degrading treatment.

³⁴Supreme Court of Justice, Constitutional Chamber Writ of Amparo. Case File No. 07-007740-0007-CO, Res. No. 2007007958 (June 7, 2007) (Costa Rica); Supreme Court of Justice, Constitutional Chamber Writ of Amparo CASE FILE No. 12-017233-0007-CO (Feb. 22, 2012) (Costa Rica).

³⁵ *CRR*, *supra* note 33.

³⁶Joint Submission 1: American Association of Jurists (AAJ); Alianza Por Tus Derechos; Asociación Demográfica Costarricense; Asociación Proyecto Caribe (APC); Asociación Servicio de Promoción Laboral (ASEPROLA); Centro de Derechos Sociales de las Personas Migrantes (CENDEROS); Centro Feminista de Información y Acción (CEFEMINA); Center for Justice and International Law (CEJIL); Comisión Costarricense de Derechos Humanos (CODEHU); Defensa de Niñas y Niños Internacional (DNI-Costa Rica); Foro por los Derechos Humanos de las Personas con Discapacidad; Frente Nacional de Pueblos Indígenas (FRENAPI); Fundación Acceso; Fundación Maikol; Fundación para los Derechos Humanos de Centroamérica (FUNDEHUCA); Instituto de Investigaciones Jurídicas de la Facultad de Derecho de la Universidad de Costa Rica; Women's International League for Peace and Freedom (WILPF); Mesa Nacional Indigenista; Movimientos Diversidad; Fundación PANIAMOR; Programa Jurídico de la Iglesia Luterana Costarricense (ILCO); Red Costarricense de Personas Ceropositivas al VIH (REDCOR+); Servicio Paz y Justicia (SERPAJ); World Vision. in Human Rights Council, Working Group Report on Universal Periodic Review Sixth Period of Sessions, Summary Prepared by the Office of the High Commissioner for Human Rights with Adjustments to paragraph 15(c) of the addendum to resolution 5/1 of the Human Rights Council, UN Doc. A/HRC/WG.6/6/CRI/3 (Nov. 30 - Dec. 11, 2009) p. 9 (Personal translation).

³⁷ *Supra* note 9, General Recommendation No. 32.

³⁸ Human Rights Committee, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003, para. 6(3) (Nov. 22, 2005).

³⁹ Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, para. 49 and 50, (Feb. 1, 2013).

33. The cases of AN and Aurora, in which the rights to personal integrity and to be free from cruel, inhuman or degrading treatment were violated, among others, demonstrate the need for the State to adopt immediate measures to guarantee women's access to reproductive healthcare services without discrimination, particularly in order to access legal abortion. The denial of essential healthcare services that only women need, such as abortion when the life or health of the woman are in danger, is a form of State discrimination that violates the right to health, equality and personal integrity, among other rights. Costa Rica has an obligation to provide healthcare services without discrimination that guarantee women's right to health through the adoption of measures that ensure access to legal abortion.⁴⁰

34. The two cases described demonstrate that although the Costa Rican State has argued that recommendation 91(12) of the UPR is under way, in practice it is far from being complied with.

IV. - Recommendations

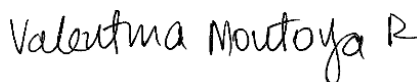
35. Respectfully and based on the foregoing, we request that the Human Rights Council make the three following recommendations to the Costa Rican State with regard to its failure to comply with original recommendations No. 63, 65, 66 and 91(12) issued by the States parties of the UPR Working Group.

- i. That the State adopts the necessary legal measures to allow access to IVF reproductive health services for infertile couples, without discrimination, in compliance with the Artavia case; and
- ii. That the State adopts a healthcare protocol to regulate and guarantee access to legal abortion, taking into account not only the risk to life and physical health of women, but also the risk to their mental health.

Cordially,



Mónica Arango Olaya
Regional Director for Latin America and the Caribbean
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⁴⁰CEDAW, Concluding observations: Colombia, para. 23, Doc. UN CEDAW/C/COL/CO/6 (2007); CEDAW, Mexico, para. 33, Doc. UN CEDAW/C/MEX/CO/6 (2006).