Crónica de Jurisprudencia Iberoamericana

Beatriz et al. v. El Salvador. Scope and limits of a step forward for reproductive justice before the Inter-American Court of Human Rights

Beatriz y otros vs. El Salvador. Alcance y límites de un paso adelante para la justicia reproductiva ante la Corte Interamericana de Derechos Humanos

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Abstract

Beatriz et al. v. El Salvador, decided by the Inter-American Court of Human Rights in 2024, is the first judgment in which the Court directly confronted the effects of an absolute abortion ban. The decision raises the broader question of the compatibility of such a regime with the American Convention on Human Rights, particularly in light of the State's positive obligations in the field of reproductive health. The judgment articulates an integrated framework grounded in the rights to personal integrity, privacy, health, and effective judicial protection. It requires States to secure clear legal frameworks, evidence-based clinical protocols, timely medical decision-making, and effective remedies in obstetric emergencies. In doing so, it establishes a standard capable of immediate operational relevance for domestic authorities. At the same time, the ruling reveals a measure of judicial restraint. Rather than addressing *in abstracto* whether an absolute abortion ban is, in itself, compatible with the Convention, the Court concentrates on the concrete consequences of legal uncertainty and the absence of adequate medical guidance. *Beatriz* therefore marks an important, yet incomplete, step in the development of Inter-American reproductive rights jurisprudence: it consolidates the justiciability of reproductive health obligations while leaving unresolved the recognition of an explicit right to abortion under Inter-American law.

Keywords: Inter-American Court of Human Rights, American Convention on Human Rights, reproductive rights, abortion ban, reproductive health, positive obligations, obstetric violence, El Salvador.

Resumen

Beatriz y otros vs. El Salvador, resuelto por la Corte Interamericana de Derechos Humanos en 2024, constituye la primera sentencia en la que la Corte abordó directamente los efectos de una prohibición absoluta del aborto. La decisión plantea la cuestión más amplia de la compatibilidad de ese régimen con la Convención Americana sobre Derechos Humanos, particularmente a la luz de las obligaciones positivas del Estado en materia de salud reproductiva. La sentencia articula un marco integrado basado en los derechos a la integridad personal, la vida privada, la salud y la tutela judicial efectiva. Exige a los Estados garantizar marcos normativos claros, protocolos clínicos basados en la evidencia, una toma de decisiones médicas oportuna y recursos efectivos en situaciones de urgencia obstétrica. De este modo, establece un estándar de inmediata relevancia operativa para las autoridades internas. Al mismo tiempo, la decisión revela cierta contención judicial. En lugar de pronunciarse *in abstracto* sobre si una prohibición absoluta del aborto es, en sí misma, compatible con la Convención, la Corte se concentra en las consecuencias concretas de la incertidumbre jurídica y de

la ausencia de directrices médicas adecuadas. *Beatriz* representa así un paso importante, aunque incompleto, en el desarrollo de la jurisprudencia interamericana sobre derechos reproductivos: consolida la justiciabilidad de las obligaciones en materia de salud reproductiva, pero deja sin resolver el reconocimiento explícito de un derecho al aborto en el derecho interamericano.

Palabras clave: Corte Interamericana de Derechos Humanos, Convención Americana sobre Derechos Humanos, derechos reproductivos, prohibición del aborto, salud reproductiva, obligaciones positivas, violencia obstétrica, El Salvador.

Summary

Introduction; I. A landmark decision on reproductive rights; II. A cautious stance on the existence of a right to abortion; Conclusion.

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Introduction

Across the Americas, sexual and reproductive rights are characterised by significant normative heterogeneity[1]. While several Latin American countries have recently liberalised access to voluntary termination of pregnancy, including Argentina, Colombia, and Mexico[2], others, such as Honduras, the Dominican Republic, and Nicaragua, maintain the ban[3]. In the United States, the Supreme Court, in *Dobbs v. Jackson Women's Health Organization* (2022), overruled *Roe v. Wade*, replacing federal protection with a patchwork of State-level prohibitions and restrictions[4]. Although the United States is not a party to the 1969 American Convention on Human Rights, this jurisprudence shift has nonetheless fuelled region-wide debates over access to reproductive care and the scope of treaty-based guarantees within the Inter-American system.

It was in this highly polarised climate that, on 22 November 2024, the Inter-American Court of Human Rights delivered the first judgment in which it directly confronted the effects of an absolute abortion ban: *Beatriz et al. v. El Salvador*[5]. The case arose in a regional context in which several Latin American States still criminalise abortion without exception, including where there is a life-threatening or serious risk to a woman's health. By its subject matter (access to essential obstetric care) and

1 On this question, see, e.g., Norma Graciela Chiapparrone, "El derecho al aborto en América Latina y el Caribe," *Revista Internacional de Estudios Feministas* 3 (2018): 192-223; Priscila Parente, "A legislação sobre o aborto nos países da América Latina," *Comunicação em Ciências da Saúde* (2019); Delphine Lacombe, *L'avortement en Amérique latine, enjeux politiques et sociaux (II). Les femmes sous tutelle* (Paris: Éditions ESKA, 2020); Cora Fernández Anderson, *Fighting for Abortion Rights in Latin America: Social Movements, State Allies and Institutions* (New York: Routledge, 2020); Alison Brysk, *Abortion Rights Backlash: The Struggle for Democracy in Europe and the Americas* (Oxford: Oxford University Press, 2025).

2 In Argentina, Law No. 27.610 on "*Acceso a la interrupción voluntaria del embarazo*", published in the *Boletín Oficial* on 15 January 2021, enshrines access to abortion up to 14 weeks, with exceptions thereafter. In Colombia, the Constitutional Court, Judgment C-055/2022 (21 February 2022), decriminalised abortion up to 24 weeks. In Mexico, the First Chamber of the *Suprema Corte de Justicia de la Nación*, in *Amparo en revisión* 267/2023 (6 September 2023), declared unconstitutional the Federal Criminal Code provisions criminalising abortion, thereby requiring its provision in federal health facilities.

3 In Honduras, the constitutional reform approved on 28 January 2021 inserted into Article 67 an absolute ban on abortion and raised the amendment threshold, making any subsequent liberalisation particularly difficult (OHCHR, "UN Experts Deplore Further Attacks against Right to Safe Abortion in Honduras", press release, 19 January 2021; Center for Reproductive Rights, "Honduras Bans Abortion by Amending its Constitution", 2 January 2021). In the Dominican Republic, the legislature in 2025 confirmed the continued total criminalisation of abortion in the new Penal Code (Amnesty International, "Dominican Republic: New Penal Code Does Not Guarantee the Rights of Women and Girls", 12 August 2025). In Nicaragua, the therapeutic abortion exception was abolished in 2006, and the 2008 Penal Code entrenched the general criminalisation of abortion, with penalties for women and health professionals (Amnesty International, *The Total Abortion Ban in Nicaragua*, London, 2009).

4 In *Dobbs v. Jackson Women's Health Organization*, 597 US 215 (2022), the US Supreme Court held that the Constitution does not confer a right to abortion and expressly overruled *Roe v. Wade*, 410 US 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 US 833 (1992), returning to the States the primary authority to regulate abortion.

5 Inter-American Court of Human Rights, *Beatriz et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of 22 November 2024, Series C No. 549 (in Spanish).

its scope (organisation of health systems and conventionality control), the decision places a structural question at the heart of the Inter-American dispute: to what extent can a State restrict access to essential care without disregarding the guarantees of the American Convention and related instruments, particularly the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) and the 1985 Inter-American Convention to Prevent and Punish Torture?

The origins of the dispute date back to 2013. Beatriz, a young Salvadoran woman living in poverty and suffering from an autoimmune disease (lupus with kidney damage), discovered she was experiencing a second high-risk pregnancy. Between the 13th and 15th week, tests confirmed foetal anencephaly, a lethal malformation incompatible with extrauterine life. At the hospital, the medical committee repeatedly recommended therapeutic termination to protect the patient's life and bodily integrity; she was already the mother of a young child and had a complicated obstetric history. However, since Salvadoran law prohibits abortion under all circumstances, neither the health authorities nor the Attorney General gave approval, while the Constitutional Chamber of the Supreme Court (*Sala de lo Constitucional*) rejected her *amparo* appeal on 28 May 2013. Noting the lack of effective protection and the medical emergency, the Inter-American Commission on Human Rights, on 29 May 2013, requested provisional measures from the Inter-American Court pursuant to Article 63(2) of the American Convention. The same day, the Court ordered the State to guarantee the necessary medical procedures without delay. On 3 June 2013, at approximately 26 weeks of amenorrhea, a caesarean section was performed; the newborn died a few hours after birth. Beatriz died in 2017, following a road accident, without having seen her struggle culminate in a final judgment.

Procedurally, in 2020, the Inter-American Commission adopted a *Merits Report* finding violations of multiple rights under the American Convention on Human Rights: the right to life (Article 4(1)); personal integrity (Articles 5(1) and 5(2)); judicial guarantees (Article 8(1)); the principle of legality (Article 9); privacy (Articles 11(2) and 11(3)); equality before the law (Article 24); judicial protection (Article 25(1)); and economic, social and cultural rights under Article 26, including the right to health, all in relation to Articles 1(1) and 2. It also found violations of Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Belém do Pará Convention[6]. In the absence of satisfactory implementation of its recommendations, the Commission referred the case to the Court in 2022. Public hearings were

6 Inter-American Commission on Human Rights, *Report No. 9/20, Case 13.378, Beatriz v. El Salvador*, 3 March 2020 (in Spanish), § 215: "*La Comisión concluye que el Estado de El Salvador es responsable por la violación de los derechos a la vida, integridad personal, garantías judiciales, vida privada, igualdad ante la ley, protección judicial, y derecho a la salud establecidos en los artículos 4.1, 5.1, 5.2, 8.1, 9, 11.2, 11.3, 24, 25.1, 26 de la Convención Americana en relación con las obligaciones establecidas en los artículos 1.1 y 2 del mismo instrumento. Asimismo, la Comisión declaró la vulneración de los artículos 1 y 6 de la Convención Interamericana para Prevenir y Sancionar la Tortura, y del artículo 7 de la Convención de Belém do Pará*".

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held in March 2023, at which the Court heard submissions from relatives, experts, civil society organisations and representatives of the respondent State.

The 2024 judgment is significant in several respects. At the declaratory level, the Court recognised the violations suffered by Beatriz and her family members, articulating the cumulative interferences with their integrity, health, privacy, and access to an effective remedy in a context of regulatory uncertainty and total criminalisation, characterised as obstetric violence. This articulation is significant: it situates the medical decision within a continuum of protections in which health and bodily integrity are inseparable from dignity, autonomy, and, more broadly, the principle of equality[7]. At the operative level, the Court ordered both individual and structural reparation measures: free and immediate access, upon request, to medical, psychological, and psychiatric care for family members; official publication and dissemination of the judgment; and compensation. It also mandated guarantees of non-repetition, requiring the adoption of clinical and judicial protocols and guidelines grounded in the best available scientific evidence and legal certainty, together with a training plan for health and justice professionals, as part of domestic compliance obligations[8].

The decision's central contribution lies in the chain of positive obligations it clarifies. First, the State must adopt a clear normative framework that ensures legal certainty and timely decision-making in high-risk pregnancies. Second, it must provide clear clinical and judicial guidelines or protocols enabling timely, safe and evidence-based care. Third, the Court reaffirmed the centrality of conventionality control: judges and administrative authorities must interpret and apply domestic law in the light of Inter-American standards, which implies rejecting, on a case-by-case basis, interpretations incompatible with protected rights. Finally, the recognition of family members as victims and the emphasis on concrete rehabilitative measures broaden the understanding of the collateral harms caused by absolute prohibition regimes, exposing women to serious and foreseeable risks and imposing lasting impacts on those around them.

However, the Court adopted a cautious approach. Rather than deciding *in abstracto* on the compatibility in principle of an absolute ban on abortion with the American Convention, the Court focused on the unlawfulness of the concrete effects produced by normative uncertainty and the absence of medical protocols. It thus favours the path of positive obligations to organise services and protect bodily integrity, rather than proclaiming an autonomous subjective right to abortion. This methodological choice

7 Inter-American Court of Human Rights, *Beatriz et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of 22 November 2024, Series C No. 549, §§ 130-157 (violations of personal integrity, privacy and health, and the right to live a life free of violence; no violation of the right to life found), §§ 172-179 (violation of the right to judicial protection), §§ 184-194 (violation of the right to personal integrity of family members).

8 *Ibid*., § 199 (medical, psychological and/or psychiatric care for next of kin, upon request), § 203 (publication and dissemination of the judgment), § 212 (adoption of clinical and judicial protocols and guidelines), § 217 (training plan for health and justice personnel), § 228 (equitable compensation and reimbursement of costs), §§ 238-244 (modalities of payment, monitoring and compliance).

has immediate advantages for bringing health systems into compliance: the Court sets out actionable procedural, medical and governance standards, leaving States a margin for adjustment while delineating a minimum core of protection. But it has also attracted criticism: some see it as a missed opportunity to consolidate reproductive rights normatively as an explicit corollary of personal autonomy, dignity and equality[9]. The separate opinion of Colombian Judge Humberto Antonio Sierra Porto illustrates these interpretative tensions, calling for a bolder reading of the American Convention.

Beyond the specific case, *Beatriz* forms part of a jurisprudential trend in which sexual and reproductive health has become a testing ground for the Inter-American system. On the one hand, the Inter-American Court consolidates robust procedural and organisational principles (due diligence in healthcare, primacy of medical criteria, elimination of normative and practical obstacles, expeditious remedies). On the other hand, it leaves open the principled question of the compatibility of absolute prohibitions with the American Convention, particularly in the light of Article 26 (progressive realisation of economic, social and cultural rights), the principle of non-discrimination, and specialised instruments such as the Belém do Pará Convention. This balance – pragmatic but unfinished – calls for an interpretation that takes into account the progressive nature of social rights and the justiciability of positive obligations in health matters.

With this in mind, this commentary proposes to examine the decision from two complementary perspectives. First, it analyses the judgment's contribution to the recognition and operationalisation of States' positive obligations regarding reproductive rights and high-risk healthcare, clarifying the duties of prevention, organisation, information, training and oversight. Second, it highlights the limitations of the Court's proceduralist approach, as well as the grey areas left by its refusal to rule explicitly on the compatibility of a total ban on abortion with Inter-American law, and the likely trajectory of future normative strengthening.

In short, *Beatriz* constitutes a pivotal decision: it sets standards of protection that can be immediately mobilised by practitioners, while leaving open the explicit determination of a subjective right to abortion within the Inter-American system. It is this fertile tension between prescriptive pragmatism and normative incompleteness that this commentary aims to illuminate.

9 See, *inter alia*: Alicia Ely Yamin and Sabrina Ochoa, "A Deafening Silence: The Inter-American Court's Failure to Address Abortion in *Beatriz v. El Salvador*", *Opinio Juris*, 24 July 2025 (who criticise the judgment for failing to affirm a right to abortion and for focusing on protocols/legal uncertainty, note that El Salvador is among five countries in Latin America and twenty-three worldwide with total bans lacking life, health or bodily-integrity exceptions, and characterise the ruling as a "missed opportunity to consolidate the Court's jurisprudence on sexual and reproductive health and rights and defend the legitimacy of international human rights law"); Belissa Guerrero Rivas and Salvador Herencia-Carrasco, "La Corte IDH en el caso *Beatriz*: Omisiones que afectan la vida y autonomía de las mujeres", *Agenda Estado de Derecho*, 13 February 2025; Bernardo Carvalho de Mello, "*Beatriz v. El Salvador*: Denial of Abortion and the Failure to Protect Women's Reproductive Rights", *Exeter Human Rights & Democracy Forum Blog*, 1 September 2025 ("The Court's prioritisation of procedural clarity over substantive rights misses crucial opportunities to align regional standards with evolving global norms that recognise reproductive autonomy as essential to human dignity and gender equality").

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I. A landmark decision on reproductive rights

In *Beatriz et al. v. El Salvador*, the Inter-American Court set out an integrated framework grounded in the interdependence of the rights to personal integrity, privacy, and health[10]. It interpreted the American Convention through Articles 5, 11, and 26, read together with the general obligations in Articles 1(1) and 2, and situated the case within the fight against gender-based violence by reference to Article 7 of the Belém do Pará Convention[11]. Regarding the right to health, the Court reaffirmed the justiciable AAAQ standard (availability, accessibility, acceptability, quality), with heightened vigilance during pregnancy, childbirth, and the postpartum period. The right to privacy is linked to the protection of physical and psychological integrity and to the need to take Beatriz's views into account in decisions concerning her medical care. As for personal integrity, it covers protection against avoidable physical and psychological harm when administrative or judicial delays expose a pregnant woman to serious and foreseeable risks. Finally, Article 25 completes this framework by requiring effective remedies capable of preventing harm or bringing it to an end in a timely manner, especially when medical emergencies make time decisive[12].

Transposed to the facts, this matrix highlights three contentious points: the medical necessity of a therapeutic termination, the impact of an absolute criminal prohibition, and the effectiveness of available remedies. Following a thorough evidentiary analysis, the Court held that the medical teams converged, on several occasions, on the indication for terminating the pregnancy to protect Beatriz's life and integrity in the face of foetal anencephaly[13]. The legal uncertainty generated by the blanket ban, combined with the lack of clear clinical protocols, first bureaucratised and then judicialised the care pathway, delaying the indicated medical procedure, prolonging hospitalisation, and aggravating the anxiety and invasion of privacy of the person concerned[14]. This combination of elements led the Court to characterise the situation as obstetric violence, not a mere organisational failing, but the effect of a regulatory framework that blocks access to required obstetric care and exposes health professionals to criminal liability[15]. The Court did not, however, infer the commission of torture or cruel treatment within the meaning of the Inter-American Convention to Prevent and Punish Torture, considering that the cumulative elements were not met[16]. Nor did

10 Inter-American Court of Human Rights, *Beatriz et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of 22 November 2024, Series C No. 549, § 119.

11 *Ibid*., § 155.

12 *Ibid*., §§ 170-179.

13 *Ibid*., § 149.

14 *Ibid*., §§ 153-154.

15 *Ibid*., § 155.

16 *Ibid*., § 147 (while the Court did not characterise the ill-treatment as torture, it found that Beatriz suffered gender-based obstetric violence: prolonged delays and legal uncertainty led to dehumanising treatment and inadequate, untimely care in a context of particular vulnerability, § 149).

it find a causal link between the care provided in 2013 and the death that occurred in 2017[17]. By contrast, it concluded that Articles 5, 11 and 26 had been violated, read in conjunction with Articles 1(1) and 2, as well as Article 7 of the Belém do Pará Convention. It rejected the State's argument that there was no imminent risk to life: the serious and foreseeable risk to health and integrity, documented by the medical team, was sufficient to trigger the State's positive obligations[18].

At the procedural level, the Court distinguished between a remedy available in law and a remedy that is effective in practice[19]. The *amparo* was indeed admitted and the Supreme Court ordered measures, but its judgment of 28 May 2013 remained ambiguous: it referred the final decision to the doctors without removing the legal obstacle created by the criminal prohibition and without providing a clear directive that would secure the lawfulness of the act[20]. In the context of an obstetric emergency, such ambiguity amounts to a failure: it delays intervention and aggravates the infringement of substantive rights[21]. The Court therefore found a violation of Article 25, read in conjunction with Article 1(1), without separately examining reasonable time, as the ineffectiveness of the remedy alone suffices to establish the breach[22].

The remedial scheme underscores the judgment's structural ambition. In addition to individual measures – free and immediate access to medical, psychological and psychiatric care for relatives; publication and dissemination of the decision; and fair compensation – the Court ordered guarantees of non-repetition that give concrete content to the State's positive obligations: the adoption of clinical and judicial guidelines and protocols grounded in the best available scientific evidence, ensuring legal certainty and domestic compliance; and a training plan for health and justice personnel rooted in a rights-based and gender-sensitive approach[23]. This block confirms that, in the field of reproductive rights, organisational obligations are as central as prohibitions on harm: a State that fails to build the necessary normative and clinical infrastructures fails in its duty to guarantee human rights.

In terms of normative scope, the judgment's major contribution lies in the densification of the content of Articles 5, 11 and 26 without recognising an autonomous subjective right to abortion[24]. The Court opted for a pragmatic path – protocols, training, swift decision-making, and robust conventionality control – immediately mobilisable by practitioners and stabilising the justiciability of the right to health in

17 *Ibid.*, § 156.

18 *Ibid.*, § 175.

19 *Ibid.*, §§ 172-174.

20 *Ibid.*, § 176.

21 *Ibid.*, § 177.

22 *Ibid.*, §§ 178-179.

23 *Ibid.*, §§ 205-220.

24 *Ibid.*, §§ 149-157.

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an obstetric context thanks to precise criteria and verifiable positive obligations[25]. The solution remains measured: the Court did not rule *in abstracto* on whether a blanket prohibition is, in itself, compatible with the Convention. Rather, it declared unlawful the consequences of a system which, through normative uncertainty and the absence of protocols, prevents access to essential care and exposes patients to serious and foreseeable risks[26]. This caution has drawn criticism – a missed opportunity to consolidate an explicit framework of reproductive rights as a corollary of dignity, autonomy, and equality – though it furnishes a powerful operational standard to guide immediate domestic reforms and to support future litigation[27].

The *Beatriz* ruling sets a standard of protection that combines normativity and effectiveness. It recognises substantial violations, sanctions litigation-driven delays to indicated medical care, and specifies a core set of positive organisational, preventive and oversight obligations that condition effective access to reproductive health services. As such, it is a landmark decision for the region and a practical benchmark for courts, health authorities, and medical teams acting within the framework of conventionality control[28].

II. A cautious stance on the existence of a right to abortion

The Court's ruling is significant not only for what it says but, above all, for what it leaves unsaid, these omissions having concrete consequences. Indeed, the Court had the opportunity to rule on the compatibility of a blanket prohibition on abortion with the American Convention on Human Rights, but did not address this substantive issue, leaving it open. While it recognised the violations of Beatriz's rights, it did not explicitly affirm the existence of a right to abortion, preferring to emphasise the legal uncertainty resulting from the absence of clear medical protocols for high-risk pregnancies. From a normative perspective, however, El Salvador's absolute ban – rooted

25 *Ibid*., §§ 210-213.

26 *Ibid*., §§ 153-155 (normative uncertainty, absence of protocols, and the creation of a serious risk to health and personal integrity).

27 *Ibid*., § 212: "*este Tribunal considera pertinente que el Estado adopte, en el plazo de un año contado a partir de la notificación de la presente Sentencia, todas las medidas normativas necesarias para brindar directrices y guías de actuación al personal médico y judicial frente a situaciones de embarazos que pongan en riesgo la vida y la salud de la mujer*".

28 *Ibid*., § 213: "*este Tribunal recuerda su jurisprudencia constante que refiere que cuando un Estado ha ratificado un tratado internacional como la Convención Americana, todos sus órganos y autoridades están sometidos a aquel, lo cual les obliga a velar por que los efectos de las disposiciones de la Convención no se vean mermados por la aplicación de normas contrarias a su objeto y fin, o por la ausencia de medidas normativas que desarrollen su protección, lo que exige tomar en cuenta no solamente el tratado, sino también la interpretación que de este ha hecho la Corte Interamericana, intérprete última de la Convención Americana. Por consiguiente, todas las autoridades internas están en la obligación de ejercer ex officio un control de convencionalidad entre las normas internas y la Convención (…)*".

in gender stereotypes – produces structural harms to women and undermines rights the Inter-American system protects[29].

In this regard, the partially dissenting opinion of Judge Humberto Antonio Sierra Porto – whose term ended shortly after the judgment – offers a structural critique: the majority focused on the lack of clinical protocols and normative uncertainty instead of addressing the root cause of the violations, namely the absolute criminalisation of abortion in El Salvador, including in cases of serious risk to the woman's life or health and foetal unviability[30]. In his view, this methodological choice under-qualifies the systemic nature of the rights violations and obscures the dimension of gender discrimination. The partially dissenting judge considers that the State should have been held responsible for violations of the rights to integrity, liberty, privacy, equality and non-discrimination, in connection with the right to health and the obligation to eradicate violence against women, but also Beatriz's right to life and reproductive autonomy. Correlatively, the Court should have found a violation of Article 2 of the American Convention on Human Rights and Article 7(e) of the Belém do Pará Convention, and ordered legislative reform: protocols alone do not neutralise the criminal deterrent effect that paralyses doctors and exposes patients[31].

The partially dissenting opinion relies on previous Inter-American jurisprudence on the balance between the rights of a pregnant person and those of a foetus, jurisprudence that the majority does not fully engage with. Since *Artavia Murillo v. Costa Rica* (2012), the protection of prenatal life under Article 4(1) ("in general, from the moment of conception") has been understood as neither absolute nor unconditional, and

29 *Ibid*., §§ 153-155 (normative insecurity and absence of protocols leading to the bureaucratisation/judicialisation of care and serious and foreseeable risks to health and integrity). See also Alicia Ely Yamin and Sabrina Ochoa, "A Deafening Silence: The Inter-American Court's Failure to Address Abortion in *Beatriz v. El Salvador*", *op. cit.*, noting that "the Court departed from its record of eschewing formalistic interpretations of rights obligations and holistically analyzing the effective enjoyment of rights in terms of State acts and omissions within specific institutional contexts"; and observing that "[a]cross a region with high indices of social and economic inequality, impoverished women invariably suffer from a lack of access to care and abuses within the public health system. In El Salvador, the majority of women prosecuted under the ban are young, of low socioeconomic status and educational attainment, and come from rural areas".

30 See the concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto, in *Beatriz et al. v. El Salvador*, Judgment of 22 November 2024, section on sexual and reproductive rights and their lack of application to the case (§§ 5 ff.), criticising the omission to confront the absolute criminalisation head-on and recalling prior jurisprudence on autonomy and dignity and arguing that the root cause of the violation lies in the absolute criminal prohibition of abortion, and not simply in the absence of protocols (§ 39).

31 *Ibid*., § 54.

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reproductive autonomy is articulated with dignity, privacy and equality[32]. *I.V. v. Bolivia* (2016) places free and informed consent and access to information in reproductive health at the centre[33]. *Manuela v. El Salvador* (2021) recognises the justiciability of the right to health (Article 26), highlights the discriminatory effects of criminalisation, and affirms the primacy of medical confidentiality in obstetric emergencies[34]. *Brítez Arce et al. v. Argentina* (2022) and *María v. Argentina* (2023), followed by *Rodríguez Pacheco v. Venezuela* (2023), characterise dehumanised care, informational deficits and procedural obstacles as obstetric violence, requiring effective remedies[35]. Against this jurisprudential backdrop, Judge Humberto Antonio Sierra Porto criticises the majority for not fully mobilising these standards: Beatriz's clearly expressed autonomy is not recognised as such; the gender perspective and the differentiated effects of criminalisation on poor women are insufficiently integrated; and the violence is attributed to clinical practices when its source is primarily normative (criminal law and constitutional decision preventing the indicated medical act)[36]. He therefore argues that the State's preventive duties under Articles 4, 5 and 26 also warranted finding a violation of the right to life, even in the absence of imminent risk to life in the narrow sense, given the serious and foreseeable risk established[37].

32 *Ibid*., § 38, referring to: Inter-American Court of Human Rights, *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, Merits, Reparations and Costs, Judgment of 28 November 2012 (on the interpretation of Article 4(1) of the American Convention on Human Rights ("in general, from the moment of conception"), the Court held that the provision does not establish absolute protection and requires balancing against the rights of women and couples (privacy, autonomy, equality)). Judge Humberto Antonio Sierra Porto argued: "*la noción de protección gradual e incremental de la vida en el marco de la Convención Americana exige privilegiar los derechos de la madre, cuando su vida o integridad personal están en riesgo por causa del embarazo, o cuando la vida extrauterina del feto es inviable, sin temores a que pueda ser penalizada por proteger su vida e integridad y por ejercer su autonomía. Exigir a las mujeres privilegiar la vida del feto por sobre la suya o llevar a término un embarazo de un feto cuya vida es inviable, supone además un sufrimiento y angustia excesivas – que puede llegar a constituir tratos crueles, inhumanos o degradantes –, es desproporcionado, y resulta en una injerencia arbitraria en la vida privada cuando la voluntad de la madre se ha manifestado en el sentido de querer interrumpir el embarazo*" (§ 46).

33 *Ibid*., § 11, referring to: Inter-American Court of Human Rights, *I.V. v. Bolivia*, Merits, Reparations and Costs, Judgment of 30 November 2016 (foundations of prior, free, full, and informed consent in sexual and reproductive health, and its articulation with personal integrity, private life, and access to information).

34 *Ibid*., § 13, referring to the case: Inter-American Court of Human Rights, *Manuela et al. v. El Salvador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 2 November 2021 (justiciability of Article 26 (right to health); violations arising from the criminalisation of obstetric emergencies; breaches of privacy/medical confidentiality and inhuman treatment).

35 *Ibid*., §§ 17-19, referring to: Inter-American Court of Human Rights, *Brítez Arce et al. v. Argentina*, Merits, Reparations and Costs, Judgment of 16 November 2022, Series C No. 474 (first explicit application of the notion of obstetric violence; requirements regarding information, quality of care, and effective remedies); *María et al. v. Argentina*, Merits, Reparations and Costs, Judgment of 22 August 2023, Series C No. 494, and *Rodríguez Pacheco et al. v. Venezuela*, Merits, Reparations and Costs, Judgment of 1 September 2023, Series C No. 504 (confirmation and further development of the notion; duties of prevention and access to remedies).

36 *Ibid*., §§ 28-30 and 56-57.

37 *Ibid*., §§ 34 and 36.

A comparative perspective reinforces this criticism. In Europe, the European Court of Human Rights has not established an autonomous right to abortion, but it imposes robust procedural and organisational obligations where abortion is permitted under domestic law. In *Tysiąc v. Poland* (2007) and *R.R. v. Poland* (2011), the European Court held that where domestic law permits therapeutic abortion the State must ensure a clear, prompt, and accessible procedure so that access is practical and effective; in *R.R.*, it further found that obstructing timely prenatal diagnostics and information can amount to degrading treatment[38]. In *A., B. and C. v. Ireland* (2010), it criticised the absence of a reliable mechanism for determining eligibility for a lawful abortion in life-threatening circumstances[39]. Without creating a right *ex nihilo*, the European Court controls the legal architecture to prevent permitted exceptions from becoming illusory. Transposed to *Beatriz*, this approach would have advocated a more incisive incidental review of Salvadoran criminal law, rather than focusing solely on protocols[40].

Conversely, the African system reflects an explicit normative choice. Under Article 14(2)(c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), States must authorise medical abortion in cases of rape, incest or sexual assault, as well as where the pregnancy endangers the woman's physical or mental health, or the life of the mother or the foetus[41]. The African Commission has repeatedly affirmed the binding nature of this obligation, calling for legislative reforms and coherent clinical protocols to guarantee effective access[42]. This positive foundation contrasts with Inter-American caution: while the

38 European Court of Human Rights, *Tysiąc v. Poland*, No. 5410/03, 20 March 2007 (violation of Article 8 for lack of a clear, prompt, and accessible procedure to obtain a therapeutic abortion permitted by domestic law); *R.R. v. Poland*, No. 27617/04, 26 May 2011 (violations of Articles 3 and 8 due to delays and obstruction of access to prenatal testing and information, amounting to degrading treatment and depriving the lawful-abortion framework of practical effect). See also *P. and S. v. Poland*, No. 57375/08, 30 October 2012 (violations of Articles 3 and 8 regarding a minor rape victim facing procedural obstacles and degrading treatment).

39 European Court of Human Rights, (GC), *A., B. and C. v. Ireland*, No. 25579/05, 16 December 2010 (violation of Article 8 for the third applicant due to the absence of an effective and accessible procedure to establish eligibility for a lawful abortion where her life might be at risk).

40 On the requirement of clear, prompt, and accessible procedures and on the European Court's review of the practical effectiveness of domestic-law exceptions permitting abortion, see *Tysiąc v. Poland*, No. 5410/03, 20 March 2007, §§ 124-130; *R.R. v. Poland*, No. 27617/04, 26 May 2011, §§ 196-204; and *A., B. and C. v. Ireland* (GC), No. 25579/05, 16 December 2010, §§ 256-264.

41 Maputo Protocol, Article 14(2)(c): "States Parties shall take all appropriate measures to: (…) c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus".

42 African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14 (sexual and reproductive rights): affirms the direct implementation of Article 14(2)(c) and calls for legislative reforms and for standards/guidelines/protocols to ensure effective access. See also the Statement by The African Commission on Human and Peoples' Rights on the Occasion of International Safe Abortion Day (28 September 2025), urging States Parties to domesticate and implement Article 14 and to remove legal and policy obstacles.

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African system requires decriminalisation in specified cases, *Beatriz* does not order penal reform and instead confines itself to organising the health system, leaving the underlying criminal framework untouched[43].

This reading is supported by specialised Inter-American and UN bodies. The Committee of Experts of MESECVI (the monitoring mechanism of the Belém do Pará Convention) considers that forcing a woman to continue a pregnancy, particularly in cases of rape or risk to life or health, constitutes institutional violence that may amount to torture; it recommends decriminalisation in these cases, together with the adoption of care protocols[44]. The Committee on the Elimination of Discrimination against Women (CEDAW), in its General Recommendation No. 35 (2017), calls for the repeal of discriminatory provisions, especially those that penalise abortion or disproportionately affect women, and insists on the obligation to remove obstacles to effective access to sexual and reproductive health services[45]. Finally, the Human Rights Committee, in its General Comment No. 36 (2018) on Article 6 (right to life) of the International Covenant on Civil and Political Rights, clarifies that abortion regulation must not violate the rights of women and girls, and that States must provide safe, legal and effective access to abortion where the woman's or girl's life or health is at risk, and most notably where the pregnancy results from rape or incest or is not viable[46]. In the same vein, three recent Views of the Human Rights Committee – *Norma v. Ecuador*, *Susana v. Nicaragua* and *Lucía v. Nicaragua* (2024) – hold that forcing minors who are victims of rape to continue pregnancy and motherhood violates multiple rights under the International Covenant on Civil and Political Rights (including Articles 6(1), 7, 17 and 19), and require individual reparations and policy reforms guaranteeing safe, legal and effective access to abortion and information[47].

43 See Centre for Human Rights (University of Pretoria), *A Guide to the General Comments on Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Pretoria, 2015).

44 Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights (19 September 2014): characterises restrictions and absolute prohibitions on abortion – and denial of post-abortion care – as forms of institutional violence that may contravene the prohibition of torture and ill-treatment; urges States to legalise termination of pregnancy on therapeutic grounds and in cases of rape, and to adopt clinical protocols/standards to ensure effective access.

45 Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 35 (2017), on gender-based violence against women, updating General Recommendation No. 19, UN Doc. CEDAW/C/GC/35, 26 July 2017.

46 Human Rights Committee, General Comment No. 36 on Article 6: right to life (2018), UN Doc. CCPR/C/GC/36, 30 October 2018.

47 Human Rights Committee: *Susana v. Nicaragua,* CCPR/C/142/D/3626/2019, Views adopted on 30 October 2024; Norma v. Ecuador, CCPR/C/142/D/3628/2019, Views adopted on 31 October 2024; Lucía v. Nicaragua, CCPR/C/142/D/3627/2019, Views adopted on 31 October 2024. This aligns with the Committee's consistent position in *K.L. v. Peru* (2005), *L.M.R. v. Argentina* (2011), *Mellet v. Ireland* (2016) and *Whelan v. Ireland* (2017), recognising that hindering access to abortion or requiring people to travel abroad may constitute cruel, inhuman or degrading treatment and an invasion of privacy, and even, in some cases, discrimination.

In light of these standards, the *Beatriz* ruling presents a lack of normative coherence. The majority has established a useful operational benchmark – evidence-based clinical and judicial protocols with a gender perspective, training, and conventionality control – intended to improve clinical practice and legal certainty[48]. However, it leaves intact the criminal framework that continues to generate uncertainty and a climate of fear for patients and medical teams. From a hierarchy-of-norms perspective, an administrative protocol cannot guarantee an intervention that remains criminalised under the Penal Code, while the State bears a positive obligation under international law to prevent serious and foreseeable risks to women's health and bodily integrity[49].

The corrective path drawn by the partially dissenting opinion is graduated and structural: (i) note that, in cases of serious risk to life or health and foetal unviability, minimal decriminalisation is required under Article 2 of the American Convention on Human Rights (duty to adopt domestic measures), in conjunction with Article 7(e) of the Belém do Pará Convention; (ii) order legislative reform to remove the criminal deterrent effect and ensure protections for providers; and (iii) maintain the majority's operational tools (protocols, training, access channels) within a legal framework that enables their effective operation[50]. Otherwise, the risk is twofold: a precedent too timid for the region and fragile implementation, where laudable protocols collide with the primacy accorded to criminal law.

In short, Beatriz marks an operational yet incomplete step forward. It fills gaps in health governance; it does not obviate the need for normative consolidation. The future trajectory of the Inter-American system will hinge on this shift – from health to legislative, from operational to normative – which the partially dissenting opinion explicitly invites States and the Court to undertake, echoing European case law, the Maputo Protocol and the practice of the UN treaty bodies.

Conclusion

Ultimately, the *Beatriz* ruling reveals the dual trajectory – and hesitation – of Inter-American jurisprudence. On the one hand, the Inter-American Court is moving forward: it recognises substantial violations and imposes operational remedial measures (clinical protocols, staff training, publication, compensation), likely to improve care immediately and prevent certain blockages. On the other hand, it refrains from requiring repeal or amendment of the national regime of absolute prohibition of

48 Inter-American Court of Human Rights, *Beatriz et al. v. El Salvador*, Merits, Reparations and Costs, Judgment of 22 November 2024, Series C No. 549, esp. § 212: "*este Tribunal considera pertinente que el Estado adopte, en el plazo de un año contado a partir de la notificación de la presente Sentencia, todas las medidas normativas necesarias para brindar directrices y guías de actuación al personal médico y judicial frente a situaciones de embarazos que pongan en riesgo la vida y la salud de la mujer*".

49 *Ibid.*, concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto, §§ 54-55.

50 *Ibid.*

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abortion and does not set out legal consequences should that criminal framework persist despite incompatibility with women's rights. The result is normative vagueness: the Inter-American system neither enshrines an explicit right to abortion nor formulates a clear obligation to lift general criminal prohibitions. This half-measure leaves protection incomplete. As long as criminal law remains unchanged, the deterrent effect on medical teams and the insecurity for patients persist, with the risk of repeating tragedies similar to the one experienced by Beatriz.

In other words, the judgment outlines an operational path but does not cross the ultimate normative threshold. Responsibility now rests with national legislatures and with the Inter-American Court's consolidation of a standard that clearly articulates organisational obligations alongside the lifting of criminal barriers, so that reproductive-rights protection under the Inter-American system is no longer conditional but fully effective.