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Beatriz v. El Salvador: a loss for eugenic & health grounds for abortion in international human rights law

Abstract: *Beatriz v. El Salvador* is an international judgment issued in December 2024 by the Inter-American Court of Human Rights involving a claim against El Salvador's abortion ban. The Inter-American Court is an international tribunal with jurisdiction over most Latin American and Caribbean countries including El Salvador that oversees enforcement of the American Convention on Human Rights. The treaty contains a unique provision that establishes a "right [to life of every person to] be protected by law and, in general, from the moment of conception". That provision has been repeatedly challenged in cases against Costa Rica and El Salvador. *Beatriz* is the latest judgment in that line of cases.

Poised to become the regional court's first abortion ruling, *Beatriz v. El Salvador* challenged El Salvador's full ban on induced, elective abortion, similar to that of eight other Latin American and Caribbean states parties to the Convention. The case was litigated by the Inter-American Commission on Human Rights in conjunction with abortion advocacy organizations for more than a decade, leading to a mixed decision by the Inter-American Court that endorsed a progressive interpretation of the right to health and the concept of obstetric violence, but stopped short of creating abortion rights in the American Convention.

Keywords: Inter-American Court of Human Rights, abortion, *Beatriz*, Manuela, El Salvador, therapeutic abortion, eugenic abortion, anencephaly, obstetric violence

Introduction

In December 2024, the Inter-American Court of Human Rights issued *Beatriz v. El Salvador*, an international judgment involving a claim against El Salvador's abortion ban. The Inter-American Court is an international tribunal with jurisdiction over most Latin American and Caribbean countries including El Salvador.

The court oversees the implementation of a treaty: the American Convention on Human Rights (ACHR). The treaty contains a unique provision that establishes a “right [to life of every person to] be protected by law and, in general, from the moment of conception” [ACHR 1969, art. 4(1)]. That provision has been repeatedly challenged in cases against Costa Rica and El Salvador. *Beatriz* is the latest judgment in that line of cases.

Poised to become the regional court’s first abortion ruling, *Beatriz v. El Salvador* challenged El Salvador’s full ban on induced, elective abortion [Ranieri de Cechini & Calderone 2024: 11-33] similar to that of eight other Latin American and Caribbean states parties to the Convention (Dominica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Paraguay and Suriname). The case was litigated by abortion advocacy organizations in conjunction with the Inter-American Commission on Human Rights (Commission) since 2013, for more than a decade, leading to a mixed decision by the Inter-American Court that failed to create either a right to eugenic abortion or a right to abortion on the ground of health risks to the mother. As of this writing, the judgment has not been yet translated into English.¹

Beatriz was a 21-year-old pregnant woman from El Salvador who suffered from lupus and gestated an anencephalic female fetus. Beatriz and her boyfriend were already parents to a 9-month-old child when she got pregnant for the second time. Her first pregnancy was medically problematic, and her son was born prematurely at 32 weeks gestation, which caused him subsequent health problems. Medical doctors advised Beatriz to get sterilized, but she refused, expressing her desire to be a mother again [IACHR 2020b, paras. 35-36].

In 2013, during her second pregnancy, a group of non-governmental organizations (NGOs) that advocate for the creation of abortion rights sought out Beatriz’s consent to legally demand, on her behalf, that she be given an immediate abortion at a local public hospital on “therapeutic” and eugenic grounds. The group of NGOs included Ipas, an organization that sells abortion surgical devices and trains poor and uneducated women in developing countries on how to give themselves abortions, [IPAS 2021] CEJIL, a human rights organization that litigates for progressive causes before the Inter-American human rights system, and two local sister NGOs: the Feminist Collective for Local Development (Colectiva Feminista

¹ Non-official translations to English in this paper are the author’s.

para el Desarrollo Local) and the Citizen's Group for the Decriminalization of Therapeutic, Ethical and Eugenic Abortion in El Salvador (Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugénico de El Salvador) [IACHR 2020b: 2 note 1; I/A Court H.R., Case of Beatriz 2024a: note 316].² The latter are local affiliates of the U.S.-based Center for Reproductive Rights [CRR 2023].

Constitutional actions of *amparo* (a writ for individual protection of fundamental constitutional rights) were brought by the NGOs both before domestic tribunals and before the Commission. The Commission escalated the case to the Inter-American Court to request an abortion as a provisional measure, demanding an order that El Salvador provide a direct and immediate abortion for Beatriz and end its full abortion ban. The court stopped short of ordering an abortion and instead ordered general measures to protect Beatriz's right to life, health and personal integrity [I/A Court H.R., Matter of B. 2013: para. 17, 1]³.

Beatriz's pregnancy was terminated at 26 weeks via c-section at the local public hospital. Her anencephalic newborn daughter, whom she named Leilani Beatriz, was delivered alive, given neonatal care and issued a birth certificate [IACHR 2020b: para. 75]. The child passed away approximately five hours after her premature birth [ibid.: 49-51].⁴ She was buried and received a funeral [YouTube 2023(a): at 1:21].

Four years and four months later, in November 2017, Beatriz also died. While riding as a passenger in a motorcycle, she was involved in a traffic accident where she sustained injuries that led to her hospitalization and subsequent death from hospital-borne pneumonia [IACHR 2020b: para. 83].

In 2020, the Commission and the NGOs brought a formal international lawsuit on the merits against El Salvador back to the Inter-American Court, arguing that El Salvador had violated Beatriz's right to life, health and personal integrity by not

² Indicating that both organizations are incorporated under one name under Salvadoran law, and therefore, only one of them should receive reimbursement for legal fees.

³ Court ordering general measures to ensure that Beatriz's medical team could "adopt, without any interference, the medical measures that are considered opportune and convenient" to protect her right to life and personal integrity).

⁴ In addition, from the view of the Catholic faith, having a child born who will live for only a few hours after birth allows the child to be baptized, a potentially important consideration in heavily Catholic countries such as El Salvador.

terminating her pregnancy through an induced abortion rather than a c-section [I/A Court H.R., Case of Beatriz 2024a: paras. 90-92]. They pointed to El Salvador's "absolute prohibition of abortion" as the "main obstacle" to the termination of Beatriz's pregnancy and asked the Inter-American Court to create abortion rights under the American Convention under health and eugenic grounds [IACHR 2020b: paras. 3-6].

The Commission and the plaintiff NGOs prompted the Inter-American Court to order a general decriminalization of abortion in El Salvador, at least under therapeutic and eugenic grounds, but also more generally under any grounds, as expressed by the NGOs at the public hearing, where they admitted that decriminalization under several grounds would be "insufficient" to protect women's health and personal integrity [YouTube 2023(a): at 43:30]. The Commission's expert witness, Professor Isabel Jaramillo, was also emphatic that only the creation of a right to abortion on demand, coupled with suppression of conscience rights, would meet the plaintiffs' demand for justice for Beatriz [YouTube 2023(b): at 1:27:26].

The Commission also requested the court to order a moratorium on prosecution of abortion in the country that would explicitly grant immunity to abortion providers [IACHR 2020b: paras. 3-6]. The plaintiff NGOs asked the court to use its authority to unilaterally strike down El Salvador's criminal code provisions banning induced abortion, and to order it to adopt executive regulations allowing abortions before the judgment was issued [I/A Court H.R, Case of Beatriz 2024a: para. 207-208].

In December 2024, 11 years after the *amparo* claim was first filed at the domestic supreme court, the Inter-American Court ruled on the case holding El Salvador internationally liable for violation of the right to health through "obstetric violence" against Beatriz, the right to privacy, the right to personal integrity and the right to judicial protection [ibid.]. The judgment, however, found no state duty on the part of El Salvador to legalize and provide induced abortions, whether on therapeutic, eugenic or any grounds, which the bitter dissenting vote by Judge Humberto Sierra Porto characterized as a "gross omission" [I/A Court H.R, Case of Beatriz 2024b: para. 26].

This paper addresses the effect of this Inter-American Court's latest judgment on abortion's legal status and the unborn child's right to life under the American

Convention, and the decision's relevance to international human rights law in general, particularly to countries like Poland, which have been systematically pressured by international human rights bodies and the European Court of Human Rights to authorize eugenic abortion and overall liberalize its abortion law [Puppink 2024]. The article also touches on other procedural and substantive debates such as the creation of new rights, rules of international treaty interpretation and the doctrine of a margin of appreciation.

I. Eugenic grounds for abortion and children's rights

a. The anencephalic child's humanity and disability

Beatriz's daughter, Leilani Beatriz, was prematurely born on June 3, 2013, when the pregnancy was terminated by cesarean section. Her name and female gender were rarely mentioned in the lawsuit [I/A Court H.R., Matter of B. 2013: para. 6]. The anencephalic child was born alive and had neonatal care, as reported by the State: "a female newborn was extracted [...], evincing a total absence of a skull shell and brain tissue", "she was provided with care by [the] neonatology team, who decided to admit her to provide her with necessary care, and [...] she died at 7:01 p.m." [ibid.: para. (6)(c), 7].

The Commission and the plaintiffs referred to Leilani Beatriz as a "fetus" or a "product", even though she was born alive and survived several hours outside the womb [IACHR 2020b: paras. 3, 5, 8, 9, 102, 142, 143, 148, 153, 167, 179]. Despite the fact that the Commission and the petitioning NGOs had all the information about her live birth, they did not refer to her as a newborn at the time of her death either, nor did they show any sensitivity to her suffering caused by her premature birth at 26 weeks. The state's defense attorney, Law Professor Juana Acosta of La Sabana University in Colombia, pointed out that plaintiffs and the Commission thus attempted to render Leilani "invisible", in spite of her having a birth registry and a funeral [YouTube 2023a: at 1:21].

Judge Sierra Porto, in his dissenting opinion, said that the state's arguments on Leilani's rights were "unacceptable" and opposed treating the girl's anencephaly as a disability [I/A Court H.R., Case of Beatriz 2024b: para. 30; cf. Lafferriere 2024: 199-210]. Citing a previous case on IVF, the *Artavia* judgment, and its *dicta* on "gradual and incremental" protection of the unborn child, he admitted that the "fetus's life enjoyed some degree of protection", but argued that the said protection could never be equated to that of a disabled child, due to its "incompatible with extrauterine life" diagnosis" [I/A Court H.R., Case of

Beatriz 2024b: para. 30]. Leilani Beatriz survived outside the womb for several hours, however, and probably could have survived for longer if she had not been prematurely delivered.

The Commission spoke of Leilani as a life that had not yet materialized: “[t]he Commission understands that the non-viability of the life of the fetus breaks the means-to-end relationship between criminalization and the end it supposedly pursues, since the protected interest, the life of the fetus, will inevitably not be able to materialize in reality despite the criminal conduct prohibition.” [IACHR 2020b: para. 148]. Leilani Beatriz’s life, however, had already materialized from the moment of conception and already enjoyed international treaty protection under the American Convention, until her death several hours after her birth.

b. The demand for automatic abortion of an “unviable” child

According to expert witness testimony by Dr. Rafael Barahona, the medical committee’s plan was to perform a cesarean section at 28 weeks to minimize the risks of surgery for both Beatriz and Leilani. The termination, however, was performed earlier, at week 26 weeks to prevent a risk of polyhydramnios (excessive amniotic fluid) [YouTubE 2023(c): at 5:16:30; YouTubE 2023(a): at 1:18:20] that is, to reduce health risks to the mother, even though an earlier termination would clearly minimize the child’s likelihood of survival.

No attempt was made to save the newborn’s life at all costs when Beatriz’s pregnancy was terminated since the standard protocol for premature birth, which would have consisted of administering drugs to delay delivery and minimize the probability of infant mortality, was not followed [I/A Court H.R., Matter of B. 2013: para. 6(a)(b)]. Attending health care personnel reported not doing so “because it is contraindicated in fetuses with fetal anomalies incompatible with life” [ibid.: para. 6(a)(b)]. Beatriz continued to be monitored and was discharged from the hospital a week later [ibid.: paras. (6)(d)-(h)].

The complaint, however, presented eugenic abortion as a right to which Beatriz ought to be automatically entitled without authorization from any authority, excluding any medical opinion on the medical benefits for the mother and on the protection of the unborn child [Corte Suprema de Justicia 2013a: para. I (1)]. The Commission asked the Inter-American Court to ignore the rights of the child and order El Salvador to legalize eugenic abortion when the unborn child is given an

“incompatible with life” diagnosis. This request was first made to the Court in the provisional measures in 2013 and the Court did not order such eugenic abortion as a provisional measure then, just as it did not order it as a reparation in 2024 [IACHR 2020a: 51].

The Commission and the NGOs also asked the Court to carry out a proportionality calculus that would relativize the newborn girl’s right to life, which the court did not do either. Such a calculation would have included a balancing of “the interests at stake and the degree of sacrifice of one in relation to the other”, [IACHR 2020b: para 145] rather than a balancing of the rights of the mother and those of the unborn child [IACHR 2020a: 58-59].

The *Beatriz* judgment ignored all the Commission and NGO plaintiffs’ requests on this matter. Even though the court heard arguments on “proportionality of the absolute ban on abortion”, it did not rule on it in any regard [I/A Court H.R., Case of *Beatriz* 2024a: paras. 111-113]. It did not apply the Commission’s proportionality calculus. It did not order legalization of eugenic abortion nor any criminal reform to that effect. It did not create a right to eugenic abortion that would have required a formal abolition of El Salvador’s full abortion ban.

Nevertheless, the judgment did not recognize any rights of the child either, nor her human dignity [see Carozza 2024: 37-51; Zambrano 2024: 101-102]. Leilani’s right to life or right to health in the form of end-of-life (palliative) health care went unmentioned [Lafferriere 2024]. It did not recognize eugenic abortion as a violation of the disabled child’s right to equality under the American Convention, [see Aldana, Quirós 2023: 9-13] even though Commissioner Stuardo Ralón, who was also the Commission’s Rapporteur on Persons with Disabilities at the time of the complaint, had pointed out a few years earlier that article 4(1) of the Convention “obligates States—in light of Articles 1(1) and 2 of the treaty—to provide broad protection for the right to life from conception. This, *even if the unborn child is an anencephalic baby who will live only a few hours after birth*, as happened in the present case” [IACHR 2020b: at 48-49].

It was no doubt a missed opportunity, since in past decades, the Inter-American Court had acknowledged the unborn child’s humanity by repeatedly referring to unborn children as “children,” “minors,” and “babies”, for instance, in *Gómez-Paquiyaury Brothers v. Peru*, *Miguel Castro-Castro Prison v. Peru*, and *Goiburú et al. v. Paraguay* [I/A Court H.R., Case of the Gómez 2024: 71; I/A Court H.R., Case

of the Miguel 2006: 61; I/A Court H.R., Case of Goiburú 2006]⁵. Even in *Artavia v. Costa Rica*, the court referred at least a dozen times to the human fetus as an “unborn child,” despite its conclusion that human embryos created in vitro are not “persons” under the convention [I/A Court H.R., Case of Artavia Murillo 2012: paras. 222, 224–26, 231, 236, 252, 261, 269].

The Inter-American Court had also recognized an entitlement of unborn children to prenatal health in previous decisions. In 2006, in *Sawhoyamaya Indigenous Community v. Paraguay* [I/A Court H.R., Case of the Sawhoyamaya Indigenous Community 2006] the court interpreted the convention’s article 19 on the rights of children to mean that measures of protection owed to children “shall also be granted to pregnant women” [ibid.: para. 177]. It indicated that, especially during pregnancy, delivery, and breastfeeding, the state must guarantee vulnerable indigenous women access to health services, while adopting special measures based on the best interests of the child, according to children’s rights enunciated in article 19 of the American Convention. In the same way, the court could have recognized Leilani’s independent right to life and health here, but it did not.

c. Pregnancy with an anencephalic child as torture

According to the complaint by the Commission and plaintiff NGOs, the doctors erred in allowing the pregnancy to continue for eight weeks after the abortion was first requested at week 18 [I/A Court H.R., Case of Beatriz 2024a: para 50] and in allowing Beatriz’s child to be born alive and die naturally as a result of premature birth. Their complaint explicitly argued that the baby girl’s life should have been taken before birth, in her mother’s womb [IACHR 2020b: para. 143].

The Commission and the plaintiff NGOs argued that giving Beatriz a c-section procedure in lieu of an induced abortion on demand constituted torture, cruel, inhuman and degrading treatment [IACHR 2020b: para. 95-96]. They claimed

⁵ In the 2004 *Gómez-Paquiyaauri Brothers v. Peru* judgment, the court granted reparations to a pregnant mother for the miscarriage of her unborn child following the murder of her family members, and specifically referred to Jorge Javier, the deceased fetus, as a “baby” and a “child.” In the 2006 ruling of *Miguel Castro-Castro Prison v. Peru*, dealing with a military bombing of the Miguel Castro-Castro Prison in Peru, three pregnant inmates were among the victims of the attack. The court granted them compensation for their nonpecuniary damages, such as “feelings of anguish, despair, and fear for the lives of their children.” In *Goiburú et al. v. Paraguay*, the court found that Paraguay committed human rights violations against a pregnant woman and her unborn child, Carlos Marcelo Mancuello Ríos. It ordered reparations for Carlos Marcelo in compensation for his gestation and birth in prison, indicating he was a “minor” before birth.

that continuing to carry the pregnancy caused “pain” and suffering, “sadness, frustration and uncertainty” to Beatriz, all amounting to torture at the hands of the state [I/A Court H.R., Case of Beatriz 2024a: para. 223]. Judge Sierra Porto, the dissenting judge, agreed with this position [I/A Court H.R., Case of Beatriz 2024b: para. 46].

Commissioner Ralón, as Rapporteur on Persons with Disabilities, emphatically rejected the Commission’s assertion that allowing Beatriz to conceive and give birth constituted torture: “allowing the birth of Beatriz’s anencephalic daughter did not imply that El Salvador had committed any act of torture against her [...]. The most elementary common sense allows us to conclude that: *Allowing the birth of an anencephalic girl, and not providing the means to perform an abortion that ends her life, is in no way comparable* to the application of terrible and grotesque illegitimate coercion by a public official to obtain the statement of a victim. or simply to make her suffer. Equating the two is totally inappropriate. Not only is the nature of the two actions different, but so are the ends” [IACHR 2020a: 66; See also Lázaro 2024: 211-247].

The Inter-American Court ultimately found no torture. The judgment on the merits did not give much reasoning, it simply held that there was no proof in the instant case, “no elements to demonstrate that the state’s conduct constituted torture” [I/A Court H.R., Case of Beatriz 2024a: para. 147]. This was perhaps one of two major victories for the state and for the prolife cause in international human rights law.

II. Beatriz’ right to life and therapeutic grounds for abortion

Since 2007, El Salvador’s Supreme Court has repeatedly affirmed the constitutionality of the country’s full abortion ban [Corte Suprema de Justicia 2013a: paras. V(1)(A), VI(1)(A)]. Specifically, it has ruled that the legislative intent in approving the protection of the right to life from conception in the National Constitution was to prevent the possible creation of a right to abortion: “the woman cannot claim a ,right to her own body or to her own womb’, nor a ,right to the interruption of pregnancy’ that would nullify the right to life of the unborn” [Corte Suprema de Justicia 2013c: III(3)].

The Constitutional Chamber has also held that the right of the unborn to life does not have “the character of *absolute* in relation to the fundamental rights of the pregnant woman” [Corte Suprema de Justicia 2013a: paras.V(1)(A), VI(1)(A)].

It noted that some exceptions to abortion penalties may apply for the same exonerating or mitigating factors that apply to other crimes, for example, state of necessity, lack of intentionality, lack of consent, or mental incapacity [ibid.: paras.V(1)(A)].

In Beatriz's *amparo* decision, Supreme Court Judge Florentín Meléndez, who is also former member of the Inter-American Commission (2004-2007) [Meléndez, IACHR], held that the full ban on abortion in El Salvador was compatible with international human rights law, since it provides for a legitimate exception due to a state of necessity, that is, to avoid serious risk to the life of the mother [Corte Suprema de Justicia 2013b]. He also pointed out that the defense of both lives, the unborn and the mother, is mandated "by the Constitution and international law", citing the jurisprudence of the Inter-American Court on the right to life, specifically, the *Villagrán Morales* case regarding the non-derogability of the child's right to life and the positive duty to legally protect human life.

a. Life and health grounds for abortion and El Salvador's full abortion ban

Beatriz died in 2017, following a traffic accident [IACHR 2020b: 84].⁶ She did not die as a result of having cesarean surgery rather than an induced abortion. The Commission and the NGOs presented no evidence before the Inter-American Court that Beatriz's surgery or premature delivery were either the proximate or actual cause of her death four years later, so their right to life violation argument was probably their weakest.

The Inter-American Court found in Beatriz that there was "no clear and conclusive proof that allows the establishment of a *causal relationship* between Beatriz's tragic death in 2017 and the medical care during her second pregnancy in 2013. Therefore [...] *a violation of Beatriz's right to life has not been proven.*" [I/A Court H.R., Case of Beatriz 2024a: para. 156]. In that regard, the court sided with the Commission's dissent, Commissioner Ralón, who pointed out that Beatriz's death was "in no case attributable, in medical terms, to the premature birth practiced by Beatriz's treating physicians in 2013" [IACHR 2020a: at 51].

The Inter-American Court admitted the Commission's evidence on El Salvador's criminalization of abortion [I/A Court H.R., Case of Beatriz 2024a, para. 27] but

⁶ Plaintiffs admit that the cause of death was determined as „nosocomial pneumonia and systemic lupus erythematosus”.

refused to find a causal relationship between the abortion ban and any violation of Beatriz's right to life. More importantly, it refused to order abortion decriminalization in any way by stating: "This Court finds that the measures of regulatory adequacy and training ordered in this chapter are sufficient and appropriate to the characteristics of the present case and does not consider it necessary to order other measures of non-repetition" [ibid.: para. 220].

The argument that El Salvador criminalized all termination of pregnancy, even in situations of risk to the life of the mother did not persuade the Inter-American Court or even the entire Commission. Neither El Salvador nor any state party to the American Convention criminally punishes parties involved in non-abortifacient procedures to preserve the life of a pregnant woman. A non-abortive procedure such as a cesarean section, followed by neonatal care for the newborn does not fall within the legal definition of abortion in any state party to the American Convention, nor does it constitute a punishable offense according to state practice. To that effect, Commissioner Ralón expressed that: "This type of intervention, typical of the medical *ars*, does not represent in any case [an] instance of abortion and is not prohibited by Article 4(1) of the Convention" [IACHR 2020a: at 61].

El Salvador allows termination of pregnancy through non-abortifacient procedures in cases of "necessity", namely where there is a serious risk to the life or health of the mother, and this was clearly established in the 2013 *amparo* judgment of the Constitutional Chamber of the Supreme Court of Justice on the appeal filed on behalf of Beatriz. In that ruling, the Constitutional Chamber pointed out that the criminalization of abortion in El Salvador contemplates a legitimate exception, that of the interruption of pregnancy due to a "state of necessity" to avoid "serious risk to the life of the mother" [Corte Suprema de Justicia 2013a: para. 10(vi); Corte Suprema de Justicia 2013b].

In 2013, Beatriz's *amparo* action provoked a Constitutional Chamber decision that established a clear distinction between induced abortion that involves an intent to take the unborn child's life, which is prohibited by the Constitution of El Salvador, and the termination of pregnancy via non-abortifacient procedure that seeks the protection of the mother and child's life, not fetal destruction [Corte Suprema de Justicia 2013a: para. VII(5)(C); I/A Court H.R., Matter of B. 2013: para. 10(xvii)]. The Commission and plaintiff NGOs ignored this distinction, stating that "the absolute criminalization of abortion in [...] El Salvador" was the "main obstacle" to Beatriz's medical treatment [I/A Court H.R., Matter of B. 2013: para. 4(ii)(b)].

The distinction, however is important in practice, given that it involves two completely different surgical procedures: the legal interruption would be a cesarean section or an induced labor with subsequent neonatal care for the newborn, seeking to protect both lives [Corte Suprema de Justicia, Opinion 2013: para. I(2)(C)(b), VII(3)(D)(a)]. Illegal abortion would be the procedure that aims at the deliberate destruction of the human fetus which, according to the Union of Doctors of the Rosales National Hospital and the President of the Medical College of El Salvador, does not in itself produce any therapeutic benefit for the mother: “there is no situation in current medical practice that supports the interruption of human life in gestation for the purpose of saving the life of the mother” [Corte Suprema de Justicia 2013c: II(3)].

By unanimous agreement, the Constitutional Chamber elucidated that an interruption of pregnancy where doctors tried to save the life of the mother and child would not be subject to criminal sanctions under Salvadoran law, even if such a procedure indirectly resulted in the death of the unborn child [Corte Suprema de Justicia 2013a: para. VII(5)(C); I/A Court H.R., Matter of B. 2013: para. 10 (xvii)]. Judge González Bonilla, in his concurring opinion, reiterated this point and added that such a procedure “would not constitute the crime of abortion [...], or in any case would be a case susceptible to the application of the grounds of article 27 of this same Code (on defenses to criminal liability, including the ‘state of necessity’ defense in paragraph 3) [Corte Suprema de Justicia 2013c: IV(2)].

In its 2013 ruling on provisional measures, the Inter-American Court had examined the claim by the Commission and the NGO petitioners that failure to obtain an induced abortion would have caused an alleged harm to Beatriz’s health, and also found that the argument was unfounded, holding that “*the representatives did not present any medical documentation to support that assertion*” [I/A Court H.R., Matter of B. 2013: para. 14]. Three months after issuing the provisional measures, when it supervised compliance, the court determined that the situation that gave rise to the measures no longer existed and declared the matter adjourned on August 19, 2013 [ibid.: paras. 14, 1-3]. Just as in that finding, the 2024 judgment on the merits found no violation of Beatriz’s right to life for failure of the state to provide her with an induced abortion.

b. Request for regressive measures in implementation of article 4(1)

In *Beatriz*, the Commission and plaintiff NGOs specifically requested the court to order a rollback of Salvadoran legislation that protects the life of the unborn

child and prohibits induced abortion. They specifically requested the court to order the abolition of the 1997 penal reforms and a regression to the old criminal legislation of 1974, which allowed so-called therapeutic and eugenic abortion, as well as abortion of a child conceived in rape [I/A Court H.R., Case of Beatriz 2024a: paras. 105-106]. Ironically, they accused El Salvador of having taken regressive and non-progressive measures by not legalizing abortion, [IACHR 2020b: paras. 105-106] even though there is no such obligation under the American Convention.

The Inter-American Court ultimately ignored the Commission and the plaintiffs' request for regressive measures. It made no order or recommendation whatsoever in regard to El Salvador's criminal law on abortion, to Judge Sierra Porto's dismay [I/A Court H.R., Case of Beatriz 2024b: para. 56]. On one hand, the court ignored the Commission and plaintiff NGOs' argument that El Salvador's full ban on abortion was an "arbitrary or abusive interference with private life" of the type prohibited by article 11(2) of the American Convention [I/A Court H.R., Case of Beatriz 2024a: paras. 108, 111-112, 114-115]. On the other, it also ignored their argument characterizing El Salvador's abortion ban as "intersectional violence and discrimination", a new feminist political concept promoted as soft law to create new forms of multiple, compounded discrimination that would lead to aggravated penalties for alleged compounded human rights violations [Bardel, Vazzano, Sparaino 2024].⁷

Judge Sierra Porto's support for abortion rights in this decision seemed to be limited to abortion on life and health of the mother grounds, and a limited eugenic abortion right for children diagnosed as suffering from "incompatible with extra-uterine life" conditions [I/A Court H.R., Case of Beatriz 2024b: para. 45-46]. He argued a violation of the American Convention only in these two situations [ibid.: para. 49, 57, 58], not in a broader context of abortion on demand or at will.

c. Rejection of health grounds for abortion

The claim that Beatriz's health and personal integrity were negatively affected by El Salvador's full abortion ban was also rejected on the merits by the Inter-American Court in the *Beatriz* judgment in December 2024. No violation of Beatriz's right to life was found at all, [I/A Court H.R., Case of Beatriz 2024a: para. 156] and

⁷ For a sympathetic explanation of "intersectionality" concept, which the authors characterize as a "political" soft law concept, a product of feminist vindications. The article also explains the concept's origins and use in the Inter-American Human Rights system, see also [Serrano 2025].

violations of the right to health and personal integrity were only found on the basis of a lack of regulation, juridical insecurity, bureaucratization of the process, as explained below; they were not found to arise from the state's failure to terminate her pregnancy via elective abortion, according to the judgment.

The majority opinion emphasized that specific forms of violence and mistreatment as well as "the lack of adequate medical care" or "problems of accessibility to certain procedures" may constitute a violation of article 5 of the Convention on the right to personal integrity [I/A Court H.R., Case of Brítez Arce 2022: para. 74; I/A Court H.R., Case of Beatriz 2024a: para. 129]. The Inter-American Court did not, however, include induced abortion among the said "certain procedures". The judgment did not find that El Salvador's full abortion ban violated the convention's right to health, or any unwritten reproductive rights.

III. Due process violations and the right to judicial protection

The Inter-American Court ordered the state of El Salvador to adopt regulations dealing with adequate treatment in pregnancies that represent a risk to the life and health of the mother, but the court did not imply that adequate treatment includes induced abortion [I/A Court H.R., Case of Beatriz 2024a: para 217]. The court gave El Salvador a great deal of flexibility in adopting the said regulations [ibid.: para. 211]⁸.

Specifically, the court said that the state "may comply with this obligation through the amendment of existing protocols, issuing a new protocol or any other norm that ensures juridical security in dealing with situations such as those of the instant case" [ibid.: para. 211]. This holding was certainly more respectful of the principle of subsidiarity and complementarity than the *Manuela* ruling against El Salvador two years earlier, which dictated the terms of a new protocol to be adopted by the state as a form of reparation [I/A Court H.R., Case of Manuela 2021: para. 286; Abbot 2019]. The *Beatriz* judgment also orders that once the regulations are issued, the state begin planning training and sensitivity programs for public health care personnel, judiciary and law enforcement employees [I/A Court H.R., Case of Beatriz 2024a: para. 217].

IV. Conclusion

Beatriz is the second of two Inter-American Court judgments upholding El Salvador's full abortion ban, and the third case challenging national laws that

⁸ See also para. 7 at 80 (operative paragraph).

protect human life before birth. Like the judgments in *Artavia*, *Gomez* and *Manuela*, the ruling in *Beatriz* failed to order decriminalization of abortion. Thus, as indicated by Judge Sierra Porto, it implicitly declined to meet the lawsuits' central purpose "at the center of this lawsuit" of creating either a limited right to abortion under life, health and eugenic grounds or a general right to abortion in the Inter-American system [I/A Court H.R., Case of *Beatriz* 2024b: para. 3-5, 6, 54, 55; see also I/A Court H.R., Case of *Beatriz* 2024a: para. 98-100]⁹. The judgment "did not acknowledge that the cause for the violation of *Beatriz*'s rights was the absolute criminalization of abortion in El Salvador, ratified by the Constitutional Chamber", he said [I/A Court H.R., Case of *Beatriz* 2024a: para. 39, 50, 55].

The reasons for the rejection of substantive arguments on abortion are not explained in the judgment, as the arguments are simply ignored. An informed observer may reasonably speculate that the case was a poor choice for strategic litigation on abortion in the first place. Rife with substantive defects such as the claim's mootness, the lack of a causal relationship between *Beatriz*'s death and the state's failure to provide an abortion, conflicts of interest on the part of at least one plaintiff NGO and an expert witness, a prior negative provisional measures order, among others, made the case unsuitable for escalation to the Inter-American Court of Human Rights to begin with.

The case was not a case showing alleged cruelty of full abortion bans in states parties to the American Convention: *Beatriz*'s pregnancy was in fact terminated, neither she nor her doctors were prosecuted or imprisoned, no credible evidence of violence, or harm to her health or life was submitted. Therefore, the Commission and NGO plaintiffs' claim that the pregnancy should have been terminated via an abortion procedure rather than a c-section was a weak one; the claim that *Leilani*'s life should have been ended *in utero*, rather than after birth, that she should not have been allowed to be born alive was a shocking one.

⁹ Before becoming a judge at the Inter-American Court of Human Rights, Judge Humberto Sierra Porto had been a judge at the Constitutional Court of Colombia, where he wrote judgment C-355, which created four grounds for decriminalized abortion in that country. That judgment gave an even more restrictive interpretation of the American Convention than the *Artavia* decision, arguing that the human fetus, or *nasciturus*, is not recognized as a human person entitled to the right to life therein and that any eventual rights would have to be outweighed by female autonomy and dignity. As a constitutional court judge, Sierra Porto also minimized the prenatal constitutional right to life and promoted the recognition of elective abortion as a "fundamental right" in Colombia. He actively restricted conscience rights of physicians and health care institutions, particularly those of religious institutions that morally object to performing abortions.

The Inter-American Court should have probably declined to hear the case in the preliminary exceptions phase or ruled in favor of El Salvador on the merits. Although rejections of this type have been a rare occurrence, the court has rejected a few cases at the preliminary stage in the past, as in the *Case of Cayara v. Peru*, *Case of Alfonso Dodd v. Mexico*, *Case of Rico v. Argentina*, and the *Case of Brewer Carias v. Venezuela*, where it rejected claims for procedural reasons [See I/A Court H.R., *Case of Cayara* 1993; I/A Court H.R., *Case of Alfonso Martín del Campo Dodd* 2004; I/A Court H.R., *Case of Rico* 2019; I/A Court H.R., *Case of Brewer Carías* 2014]. The court has also occasionally found for the state and against the Commission on the merits in some cases in the past including the *Case of Scot Cochran v. Costa Rica* (finding no state violation of the right to consular assistance or the right to a fair trial against a convicted serial pedophile) [I/A Court H.R., *Case of Scot Cochran* 2023] or in *Case of Hendrix v. Guatemala* (finding no right to practice as a notary public in a foreign country), [I/A Court H.R., *Case of Hendrix* 2023] or in *Case of Habbal v. Argentina* (finding no right to retain a country's nationality at all costs) [I/A Court H.R., *Case of Habbal* 2022] and in other cases where human rights violations were not properly proven at trial by the Commission such as in the *Case of Palma Mendoza v. Ecuador*, *Case of Castillo Gonzalez v. Venezuela*, and *Case of Arrom Suhurt v. Paraguay*, involving alleged lack of due diligence in investigating individual murders and forced disappearances [I/A Court H.R., *Case of Palma Mendoza* 2012; I/A Court H.R., *Case of Castillo González* 2012; I/A Court H.R., *Case of Arrom Suhurt* 2019].

Yet, at the *Beatriz* public hearings some judges seemed sympathetic to the Commission and the NGOs' arguments to find that El Salvador's full abortion ban violated the American Convention. Judge Sierra Porto and Judge Pérez Manrique suggested that the state should have allowed Beatriz's termination of pregnancy "at the mother's will", dismissing any medical considerations of gravity, urgency or imminent risk [YouTube 2023(c): at 5:24:10 and 5:45:20] Judge Verónica Gómez and Judge Sierra Porto seemed to suggest that her mental health condition alone could have warranted the abortion [ibid.: at 5:00:00, and 5:24:10; YouTube 2023a: at 1:31]. Judge Ferrer McGregor expressed disagreement with the state's requirement of "imminent" risk to the mother's life favoring a lower requirement of non-imminent risk for termination of the pregnancy [YouTube 2023(c): at 5:29]. None of the judges expressed any agreement with Dr. Barahona on state interests involved in maximizing preservation of fetal life when delaying termination of pregnancy, or any sympathy for his explanation that medical doctors were reluctant

to “kill” the child before birth through abortion rather than a non-abortifacient procedure [ibid.: at 5:20:28].

Something seems to have subsequently neutralized some judges’ support for the Commission and the plaintiff NGOs after the hearing. Judge Sierra Porto’s dissent makes a vague allusion to the court making decisions based on “circumstantial considerations, based on political projects that are more or less progressive” [I/A Court H.R, Case of Beatriz 2024b: para. 59]. It is unclear what the judge meant with his statement’s vague allusion to progressive politics, since the majority did not give in to the most important progressive causes being promoted in the litigation. In fact, Judge Sierra Porto himself was the only judge who publicly embraced the Commission and the plaintiff NGOs’ progressive abortion advocacy agenda in *Beatriz*, so it seems ironic that he would try to dissociate himself from this position his dissenting opinion.

Judge Sierra Porto also warned the court that “[t]he position of *governments* and *interest groups in the region* cannot determine the direction of the court’s decisions” [ibid.: para. 59]. The allusion could refer to anything or anyone, perhaps to El Salvador President Nayib Bukele’s tense relationship with the Commission over imprisonment of gang members in his country, or over his criticism of the Inter-American Court, or over his evolving stance towards an anti-abortion position [YouTube 2020].¹⁰

It could allude to a fear that newly elected U.S. President Trump may withdraw funding from the Inter-American human rights bodies, as he did during his first administration when then Secretary of State Mike Pompeo withdrew funding from the Commission for promoting abortion [Morello 2019]. Judge Sierra Porto’s statement could also be referring to intense campaigns by prolife organizations calling on the court to refrain from creating abortion rights [Marmora 2024], and to Catholic and Christian prayers for a ruling that would not order legalization of abortion, which seemed to highly irritate plaintiff NGOs and abortion rights advocates.¹¹

¹⁰ Where President Bukele calls abortion “genocide”. See also [Mahtani 2023].

¹¹ See [Larin 2025] describing outcome of *Beatriz* case as a spiritual battle and discussing abortion advocates’ negative reactions to prayers, rosaries and vigils organized by prolife religious groups.

Other political factors that could have affected the outcome may include the expert witness testimony of Commissioner Paolo Carozza on the right to life from conception according to the American Convention on Human Rights,¹² who reminded the judges that any lawful interpretation of the Convention cannot interpret its text *contra legem*, against its plain ordinary meaning [YouTube 2023(b): at 1:47:50]. Former European Court of Human Rights Judge and Spanish Supreme Court Justice Javier Borrego Borrego, also an expert witness for the state, echoed this particular point.¹³ In addition, unwanted academic criticism of the ruling could have also deterred the court from satisfying all of the Commission and plaintiffs' proabortion demands.¹⁴

The *Beatriz* judgment could have been, as suggested by Sierra Porto, the product of a political compromise under which the court clearly decided not to create any abortion rights in El Salvador or in the Inter-American human rights system, at least for the moment, but the court did not leave the plaintiff NGOs and the Commission go empty handed. While it did not recognize the much sought after right to abortion in the American Convention, it did endorse a progressive interpretation of the right to health and the concept of obstetric violence, as well as granting some of the reparations requested by the Commission and the plaintiff NGOs.

On the other hand, the *Beatriz* judgment left abortion advocates very little to no language in the decision to support the creation of abortion rights under the American Convention in the future. The court made no reference to the existence of reproductive rights, which leaves them with a mixed result that completely ignores and sidesteps the issue of abortion. For that reason, the decision might be remembered in the future as lame-duck decision for abortion rights and a snubbing to abortion advocacy in the Inter-American human rights system.

The judgment will not leave prolife contingencies satisfied either, however, in the sense that it did not specifically reject abortion rights in the Inter-American

¹² See [Wager 2023] containing link to Commissioner Carozza's full expert witness testimony delivered on March 22, 2023 at the Inter-American Court's public hearing on the case.

¹³ See [I/A Court H.R., Matter of B. 2013: note 129] citing expert witness testimony by Judge Borrego Borrego, omitting his titles.

¹⁴ See [Ranieri de Cechini 2024: 53] academic critique of Commission and NGO claims in *Beatriz* by 14 different Latin American academics). See, in particular [Cianciardo 2024] on the court's tendency towards "hermeneutical populism" in its interpretation of article 4 in *Artavia* and its potential effects on the *Beatriz* judgment.

human rights system which, as Law Professor Gabriela García Escobar has pointed out, means it could address the issue of abortion differently in future cases.¹⁵ The judgment did not recognize the unborn child's right to life either. The one major holding for the prolife cause in *Beatriz*, on the other hand, seems to be that pregnancy with an anencephalic child does not constitute torture under the American Convention or international human rights law.

In an era where international human rights bodies and courts engage in judicial activism for the creation of abortion rights, the *Beatriz* sets an interesting contrary international precedent. Countries such as Poland which has been pressured by the European Court of Human Rights since 2007 to authorize abortion in general, and eugenic abortion in particular, through judgments such as *Tysiac, R.R., P. and S., and M.L. v Poland*, could invoke *Beatriz* as an international human rights judgment that defeats the general trend of international human rights court in favor of the creation of abortion rights. A judgment that lets a country's full abortion ban stand without pressuring it to create and enforce particular grounds for eugenic abortion is worth citing, at least as a persuasive source of international legal authority.

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¹⁵ See [Escobar 2025a; 2025b].

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