

Master of Laws: Advanced Studies in International Children's Rights



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**Sexual and Reproductive Health Rights of Adolescent Girls in Central America: A
case study of Guatemala, Honduras, and El Salvador**

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For the final examination of Advanced

LL.M in International Children's Rights

Declaration statement



Date: 01 July 2024

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Executive Summary

The present thesis intends to analyze to what extent do the legislation, policies, and practices of Guatemala, Honduras, and El Salvador (also known as the Northern Triangle of Central America) comply with their international obligations put forward in the CRC to properly safeguard the sexual and reproductive health rights of adolescent girls within their jurisdictions. To provide a more specific approach, the context of armed violence, particularly organized crime, will be analyzed alongside these state obligations as one of the most influential factors affecting SRH rights in the region.

This study has examined international, regional, and domestic frameworks in the areas of healthcare, education, and violence, thus providing a full picture of current country contexts and their responses to pressing issues that affect the daily lives of adolescent girls. This study aims to provide an intersectional analysis on the various socioeconomic, cultural, and legal elements that influence the fulfillment of SRH rights of adolescent girls in the region. In addition, the nexus between organized crime and SRH rights is further examined, as well as states' obligations towards tackling this pressing issue that permeates throughout Central American society.

To conclude, the present study aims to present its findings on the evolution of domestic frameworks and their effectiveness towards upholding sexual and reproductive well-being in the lives of girls, as well as provide additional recommendations to improve the applicability of these rights in the foreseeable future.

Overview of main findings

To this day, Central America has the countries with the highest rates of teenage pregnancies, femicides, and rates of sexual violence in the Latin American region. Regretfully, Guatemala, Honduras and El Salvador – better known as the Northern Triangle countries – are the states who remain among the leaders of these rates. These contexts provide hostile environments for adolescent girls to grow and develop and instigate major violations to their sexual and reproductive health (SRH) freedom. To address these issues, it is relevant to examine the levels of legal protection for SRH rights in each of these three states and address their significant gaps in implementation and enforcement.

The present study recognizes that examining the implementation of SRH rights in adolescent girls requires an intersectional approach that addresses various factors in a country's national context. One of these elements lies in socioeconomic and cultural barriers within the Northern Triangle. These include widespread poverty, gender-based discrimination, and patriarchal norms that impede the accessibility and quality of SRH services and education for adolescent girls. These factors permeate society at a systemic level, from their constitutional frameworks to daily social behaviors, thus enforcing a legal and social culture that weakly recognizes and implements the realization of sexual and reproductive health as a human right for everyone.

In addition, it is important to recognize the role that armed violence – particularly though organized crime – has on exacerbating the vulnerabilities of adolescent girls, as well as states' capacities to respond to these violations. This leads to significant risks of sexual violence, exploitation, forced unions and early pregnancies in girls. Considering the Northern Triangle's history of armed conflicts and present violence, organized crime has strongly established in these societies, undermining most government efforts to protect and promote the SRH rights of adolescent girls.

Following the mentioned issues, it is crucial to examine the state obligations and international standards that the Northern Triangle countries are subject to in the subject of SRH rights. It has been addressed that Northern Triangle states are failing to meet their duties under international frameworks like the CRC and CEDAW Conventions. In addition, they are accountable for human rights violations to the sexual and reproductive freedom of adolescent girls, which has been generally characterized by the states' lack of due diligence in response to violations, accompanied with harmful gender discrimination behaviors directed towards girls. As a result, there is a critical need for intense measures that tackle the root cause of discrimination in all sectors of society and implement comprehensive policies that address both legal and social issues of SRH rights. This also includes education and awareness programs of SRH that tackle harmful gender stereotypes within families, schools and communities, since it remains the most pressing issue among most vulnerable populations.

In conclusion, recommendations are directed towards the strengthening the recognition of SRH rights in legal frameworks from the constitutional level to cascade its enforcement within legislative and regulatory frameworks. Moreover, it is important to address governments' responses to armed violence, and drift away from punitive measures that instill a culture of institutional violence. Consequently, more policies and government actions should be directed to tackling the root causes of violence and increase budget efforts on safeguarding SRH rights through education, public awareness and safe healthcare services. Finally, it has been proven that to improve access to quality health services for adolescent girls, states must include training efforts directed to the work of midwives and acknowledge their crucial role in attending women's health in marginalized communities.

List of Abbreviations and Acronyms

SRH – Sexual and Reproductive Health

CRC – Convention on the Rights of the Child

CEDAW – Convention on the Elimination of Discrimination against Women

OAS – Organization of American States

IACHR – Inter-American Commission on Human Rights

IACtHR – Inter-American Court on Human Rights

STI – Sexually Transmitted Infection

1 Introduction

1.1. Background of the study: Contextual Analysis of the Northern Triangle

Throughout the 20th century, Central American countries experienced authoritarian regimes, armed conflicts, and political instability, leading to fragile democratic systems. As a result, the 21st century has been marked by violence and uncertainty, affecting all generations, including children and adolescent girls. In regions plagued by armed violence, navigating girlhood and adolescence becomes particularly challenging, especially in the Northern Triangle of Central America.

Understanding the sexual and reproductive health (SRH) rights of adolescent girls in this region requires a contextual analysis. The Central American sub-region consists geographically of seven countries: Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama. Throughout the 20th century, these countries faced economic crises, political unrest, and social inequality, leading to civil wars and guerilla movements. Central America underwent a series of revolutionary events that led to decades of political and socioeconomic turmoil. By the end of the century, constitutional democracies were established, but the region still struggles with systemic threats to its democratic institutions.¹

The Northern Triangle countries of Central America, consisting of El Salvador, Honduras, and Guatemala, have been selected for the purpose of this study due to their social and political similarities, which strongly influence the states' response to the protection of the rights of adolescent girls. The organized crime phenomenon, primarily led by gangs or *maras* funded in the 1990s during post-conflict eras, has shaped the social, economic and political contexts of the Northern Triangle.

The present study aims to provide an intersectional assessment on how Northern Triangle states comply with the obligations set forth in the UN Convention on the Rights of the Child (CRC) and other relevant global and regional frameworks to safeguard the SRH rights of adolescent girls, particularly in the context of organized crime settings.

1.2. Problem Definition

El Salvador, Honduras, and Guatemala present legal and policy frameworks that do not adequately reflect their ratification of the Convention on the Rights of the Child, particularly Article 24 regarding the right to the highest standard of health. This provision also applies to the sexual and reproductive health rights (SRH) of adolescent girls, and its lack of enforcement results in inconsistencies with other human rights, ambiguities in policies, and lack of accountability mechanisms. As legislation and policies dedicated to protecting the SRHR of adolescent girls are weak and rather punishable, this contributes to systematic violations of such rights, including discrimination, lack of access to services, and perpetuating cycles of inequality and marginalization.

In particular, the context of armed violence or organized crime within these countries enhances girls' lack of access to reproductive healthcare, protection mechanisms, and sexual education. Known as one of the

¹ Booth, J. A. (2020). Understanding Central America: Global forces and political change.

most dangerous areas in the world for children, the Northern Triangle suffers levels of violence that even surpass those of armed conflicts. In violent areas affected by organized crime, adolescent girls are subjected to sexual violence from gang members and other criminal groups, who often target them as objects of sexual exploitation. Fearing for their lives and physical integrity, families confine girls to their homes, preventing them from accessing education, health services, and having a good quality of life.

The impact of organized crime permeates an already fragile education system, which experiences a great absence of economic and human resources. Sexual education programs in these three countries lack a holistic children's rights approach that will provide accurate information to adolescents about their SRH rights, which leads to misconceptions, fear, and stigma. This is a highly inducing factor of unplanned pregnancies, sexually transmitted infections, early marriages, and sexual violence. These consequences are particularly prevalent among girls who are targets of harassment and threats from gangs.

The lack of accountability mechanisms within El Salvador, Honduras, and Guatemala to protect the SRH rights of adolescent girls is an obstacle for the fulfillment of the rights to health, education, and protection from violence, as regulated in the CRC. This results in weak oversight, limited transparency, and insufficient remedies for victims. Consequently, a culture of impunity among perpetrators pervades societal norms, fostering fear and mistrust of state authorities and healthcare providers. Moreover, this culture of impunity is strengthened by the failure of states parties to provide effective remedies, prompt access to justice, and redress mechanisms for adolescent girls who have been subjected to sexual violence and intimidation by organized crime groups.

1.3. Objective of the Research

The main objective of the research is to assess how the implementation of the CRC within the Northern Triangle countries can safeguard the sexual and reproductive health rights of adolescent girls, particularly considering the local and regional challenges posed by organized crime.

1.4. Main Research Question

The main research question of this study is the following: How do policies, legislation, and practices in the Northern Triangle countries of Central America intersect with international children's rights legal frameworks to either facilitate or impede the access of adolescent girls to sexual and reproductive health services and education, particularly in the context of organized crime?

1.5. Scope of the Research

The study will focus on the Central American countries El Salvador, Honduras, and Guatemala. Specific areas within these countries will be selected based on prevalence of gang/drug conflict, violence, and other socio-economic factors impacting adolescent girls' access to sexual and reproductive health services. The research will focus on adolescent girls ages 12-18 living in the mentioned areas, particularly those affected by armed violence and socio-economic marginalization.

1.6. Theoretical Framework

The research intends to analyze the countries' compliance with international children's rights, its optional protocols, and additional international frameworks regarding the access of adolescent girls in the Northern Triangle to sexual and reproductive health services and education within the context of organized crime.

1.7. Methodology of the Research

The data in this research will be collected through a desk-based approach, also by using case law, articles, international reports, and legislation to analyze the countries' compliance with a children's rights approach to the sexual and reproductive health rights of adolescent girls in the Northern Triangle.

2 The Sexual and Reproductive Health Rights of Adolescent Girls under International Children's Rights Law

2.1. Introduction

Sexual and reproductive health (SRH) rights are essential to the integral well-being of adolescent girls. The neglect of these rights may lead to harsh consequences in their healthy development and contribute to the social detriment of a state. Within international children's rights law, particularly the Convention on the Rights of the Child (CRC), several guidelines, general comments, and legal instruments are employed in order to safeguard the SRH rights of adolescent girls. However, putting these frameworks in practice is a singular experience for every state, posing different strengths and challenges that vary based on cultural, social, and political factors. This chapter intends to analyze how international frameworks recognize the SRH rights of adolescent girls through a children's rights lens.

2.2. Definition and Scope of Sexual Reproductive Health Rights

According to the World Health Organization (WHO), sexual and reproductive health are defined as follows:

- Sexual Health: *"A state of physical, mental, and social well-being in relation to sexuality, which is not the absence of disease, dysfunction, or disability. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence."*²
- Reproductive Health: *"A state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so."*³

The provided definitions of sexual and reproductive health promote a comprehensive and holistic approach to sexuality and the freedom of reproduction, which does not merely involve the absence of negative health outcomes. It acknowledges sexual and reproductive well-being on a positive, rights-based approach by stating that it counts with legal protections and guarantees from coercion, discrimination, and violence.

2 WHO. World Association of Sexology, (2002). Defining Sexual Health: Report of a technical consultation on sexual health.

3 World Health Organization. Reproductive health. Retrieved May 28, 2024, from <https://www.who.int/westernpacific/health-topics/reproductive-health>

Women and girls in particular face the most significant challenges when sustaining their sexual and reproductive health. The Committee on the Elimination of Discrimination against Women (CEDAW), in its General Recommendation No. 24 regarding the Convention's article 12 on women and health, points out key factors that separate women's needs from men. Among these factors are the menstrual cycle, higher exposure to sexually transmitted diseases, being targets of different forms of violence that damage their health, and discriminatory treatment from healthcare workers.⁴ Considering such vulnerabilities, states must implement a gender-based approach within their policies and measures to properly comply with women's sexual and reproductive well-being. In addition, efforts should be made to properly train healthcare workers and lawmakers to reject discriminative practices of victimization, shaming, and sexism in regulations that will prejudice the health of women and girls.

The recognition of sexual and reproductive health as a human right has become an increasingly prominent demand in various contexts. Ensuring that sexual and reproductive health (SRH) is accessible to everyone, according to their individual needs and interests, underscores the importance of an intersectional approach. This approach involves understanding and addressing the multiple layers of these rights, ensuring they are upheld for all individuals, regardless of race, sexual orientation, social context, age, and other factors. In this study, the intersectional approach to SRH rights will focus on addressing the specific needs and interests of adolescent girls living in violent contexts in the Northern Triangle of Central America.

2.3. Addressing SRH rights from a children's rights perspective

Less than a year after ratifying the U.N. Convention on the Rights of the Child (CRC), the World Summit for Children was held in New York in 1990. It marked the first historical gathering that consisted of 71 heads of state and 88 senior officials that assembled for the first time to discuss a plan of action for the global needs of children. The key commitments involving this plan involve children's health, the role of the family, basic education, a healthy environment, protection of children in armed conflict, and the rapid implementation of the CRC overall.⁵ Reproductive rights were limited within the frame of family planning and on the role and status of women. However, it would serve as a reference for further recognition. In 1994, the agreements made during the International Conference on Population and Development (ICPD) in Cairo make reference to the Children's Summit agreements and acknowledge sexual and reproductive healthcare as part of the fundamental right to the highest attainable standard of health.⁶ Moreover, the Programme of Action acknowledges the needs of the girl child and commits countries to develop integral approaches to the reproductive health and social needs of girls and young women.⁷ Later in 1995, the Fourth World Conference on Women held in Beijing addressed discrimination against girls, their lack of access to sexual and reproductive health information and services, and right to privacy. Moreover, it committed states to take the necessary actions to remove discriminatory practices against girls,

⁴ CEDAW General Recommendation 24, para. 12 (a-d).

⁵ Nations, U. (n.d.). World Summit for Children. United Nations; United Nations. Retrieved May 29, 2024, from <https://www.un.org/en/conferences/children/newyork1990>

⁶ Programme of Action - Adopted at the International Conference on Population and Development, Cairo, 5-13 September 1994. Principle 8.

⁷ Supra. Para. 4(20)

particularly in the fields of sexual and reproductive health, as well as guaranteeing integral education programs regarding reproductive and sexual health.⁸

Since the ratification of the CRC, the international community has made rapid efforts to recognize SRH rights as human rights, particularly for adolescent girls, considering their higher vulnerability to discriminatory practices within society, and the best interest of the child as a primary consideration. In practice, however, the implementation of these rights for adolescent girls remains lacking and almost nonexistent in many countries. In order to protect the highest attainable standard of health for adolescent girls, states have the obligation to implement gender-focused services that allow girls to adopt informed decisions regarding their sexual and reproductive health, exert their rights to privacy and confidentiality, and proper access to redress mechanisms in cases of violations. To analyze these factors, it is important to address the intersectionality of the CRC provisions that come with guaranteeing the integral protection of sexual and reproductive health in adolescent girls, as well as its primary challenges and misconceptions.

2.3.1. Definition of a Child

The CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁹ Achieving a unanimous agreement of beginning and ending of childhood has been a prominent challenge between states until today. Firstly, states have taken different stands regarding when does childhood begin, thus creating a complicated environment for SRH rights to develop. In Latin America, for instance, states like El Salvador and Honduras recognize childhood from the moment of conception in their legislations, thus attributing legal identity and rights to the unborn child in every developmental stage. As a result, abortion is criminalized, and information regarded to sexual healthcare is limited.

International bodies tend to avoid addressing the definition of childhood. For example, the International Covenant on Civil and Political Rights prohibits imposing the death penalty on pregnant women,¹⁰ which acknowledges the vulnerability of both the pregnant woman and the unborn child. However, it does not explicitly define any definition or reference to the rights of the unborn child. Additionally, the CRC urges states to ensure appropriate pre-natal care for mothers to guarantee the right to health,¹¹ but has avoided to delimit the beginning of childhood explicitly within Article 1. The CRC Committee emphasizes that quality healthcare before, during, and after pregnancy is crucial for the health and development of children. It also recognizes the obligation of states to provide healthcare systems that address the sexual and reproductive health needs of adolescents, including family planning and abortion services, to reduce rates of adolescent pregnancies and sexually transmitted diseases.¹²

Although different state jurisdictions are left to define additional provisions regarding the age delimitations of childhood, the CRC Committee urges state parties to provide a holistic approach to healthcare services

⁸ Fourth World Conference on Women. Beijing, China. September 1995. Para. 281 (c) (e)

⁹ CRC, Article 1.

¹⁰ International Covenant on Civil and Political Rights. Article 6(5).

¹¹ CRC. Art. 24 (d).

¹² CRC General Comment 24. Para. 56.

directed to every developmental stage of children, including the unborn child. The Committee also acknowledges that abortion services are an essential part of sexual and reproductive healthcare, indicating that one right does not overrule the other but must be assessed in the best interest of the child.

The definition of childhood also determines children's role within society, particularly regarding special protection measures that are given due to their vulnerability. Although the CRC Committee recommends states to balance protection with evolving capacities,¹³ facilitating access to adolescents for the exercise of their sexual and reproductive rights remains taboo. Because adolescents are typically considered part of the population under eighteen years old, states and caregivers often impose restrictive and paternalistic protection measures that conflict with their evolving capacities and autonomy. As children transition into adolescence, the need for accurate and accessible information and services about their health becomes crucial for their healthy development.

2.3.2. Right to Non-Discrimination

The right to non-discrimination regulated in Article 2 of the CRC is a fundamental principle that supports the entire legal framework. To effectively link the non-discrimination principle to the SRH rights of adolescent girls, it is useful to employ Abramson's (2008) analysis is particularly useful. Abramson breaks down this provision three key elements: Differential treatment on a forbidden ground, injury, and protected interests.¹⁴

The first element involves treating right-holders of the CRC differently based on certain characteristics such as race, sex, religion, or social origin. Abramson also notes that the terms 'distinction' and 'discrimination' can be used interchangeably in this context, indicating that while their connotative meaning may differ, their denotative meaning remains the same. The second element emphasizes that discrimination must be accompanied by a negative implication, suggesting that this type of differential treatment adversely affects the general well-being of the rights holder. Finally, Abramson states through the third element that states are prohibited to impair right holders from the enjoyment of the rights regulated in the CRC.¹⁵

Within the frame of SRH rights, the non-discrimination principle is infringed when adolescent girls suffer a direct discrimination that occurs "where a person is treated less favorably on the grounds of his/her sex than someone of the opposite sex."¹⁶ Eriksson (2021) describes that direct discrimination on the grounds of sex occurs when the victim's sex has a casual connection with the treatment received, and its unfavorable manner is established by comparing it with someone from the opposite sex. The CEDAW Committee states that, one of the primary measures to eradicate discrimination against adolescent girls in the healthcare sector, services must be "consistent with the human rights of women, including the rights

¹³ CRC General Comment 20, para. 40.

¹⁴ Abramson, B. (2008). A Commentary on the United Nations Convention on the Rights of the Child, Article 2: The Right of Non-Discrimination.

¹⁵ Supra. Para. 49.

¹⁶ Eriksson, M. K. (2021). Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law. Chapter 2 Non-Discrimination and Gender Equality – Some Conceptual Deliberations.

to autonomy, privacy, confidentiality, informed consent and choice.”¹⁷ This is further supported by both the CRC and CEDAW’s joint general comment on Article 31, which highlights that harmful practices against girls are justified on the grounds of patriarchal norms, power imbalances and gender based violence that proliferates discrimination based on sex.¹⁸

2.3.3. Right to Health

There is a clear connection between the principle of non-discrimination and the right to health within the children’s rights framework. In this case, adolescent girls face both age and gender-based discrimination, which significantly impedes their access to sexual and reproductive healthcare services. Gender stereotypes and patriarchal norms often associate the SRH needs of girls with promiscuity and immoral behavior. It is not uncommon for healthcare staff and caregivers in various countries to be guided by this mindset, and thus instill an environment of shame around the subject, which also causes girls to resort to clandestine and unsafe measures that attempt against their lives and well-being. Wrongful use of birth control medication and clandestine abortions are an example of this.

As mentioned before, paternalistic measures of protection imposed on children often limit the exercise of the SRH rights of adolescent girls. The recognized vulnerability of children, accompanied by the rights and responsibilities of parents to protect them, often overshadows the evolving capacities of adolescents to be capable of making autonomous decisions over their bodies. When assessing the right to sexual and reproductive health, states should make a child rights-based approach regarding the best interest of the child, their right to survival and development, as well as their right to be heard.¹⁹ This requires decisionmakers to find a balance between the protection of adolescent girls against high-risk situations (like unwanted pregnancies, sexual exploitation, and gender-based violence) and their right to fulfill their sexual and reproductive health needs in an informed and safe manner.

2.3.4. Right to Education

Education is directly linked to the sexual and reproductive welfare of adolescent girls. However, in some contexts education regarding sexuality and reproduction has been implemented on grounds of discriminative conceptions of girls. For example, in an effort to stop the rising numbers of adolescent pregnancies, Tanzania opted for the prohibition of pregnancy in public schools. As a result, Tanzanian schools focused sex education on abstinence, forbid romantic relationships, and subjected girls to mandatory pregnancy testing after every holiday.²⁰ As a response, the CRC Committee urged the state party to guarantee the enrolment of pregnant adolescent girls and adolescent mothers, as well as the complete halt on mandatory pregnancy testing.²¹ These actions portray the need for educational policies

¹⁷ CEDAW General Recommendation 24. Para. 31(e).

¹⁸ CEDAW and CRC Joint general recommendation No. 31. Paras. 6-9.

¹⁹ Zermatten, J. (2014). Protecting and Promoting Adolescent Rights: The Contribution of International Law and Policy. In J. Bhabha (Ed.), *Human Rights and Adolescence* (pp. 23-38)

²⁰ Lövgren, L. (2024). Which rights matters: Girls’ education at the expense of their sexual and reproductive rights? *World Development Perspectives*, 33.

²¹ CRC Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania. 3 March 2015. Para. 62-63.

that respect and support the SRH rights and well-being of adolescent girls, promoting inclusive and comprehensive sex education rather than punitive measures.

2.3.5. Right to Freedom from all forms of Violence

The CRC defines violence as “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”²² The presence of violence in children’s lives jeopardizes their right to life, survival, and development. It is important to note that Article 19 of the Convention is not the only one that refers to state’s obligations to protect children from violence. In its General Comment No. 13, the CRC Committee underscores that Article 19 must be applied with relevance to the core principles of the convention, plus articles 5, 9, 18 and 27. Moreover, the Committee also acknowledges the devastating effects of violence in the health of children, including mental health problems such as anxiety, depression, and suicide attempts.²³ In regions like Latin America, adolescent girls are a heavily targeted group in violent contexts. This targeting may involve sexual exploitation, harassment, femicide, and sexual abuse. For the purpose of this study, the impact and relevance of organized crime in the SRH rights of adolescent girls will be specifically assessed in Chapter 3.

2.4. Analysis of the Inter-American System on SRH Rights

The Inter-American System is a regional legal framework with 35-member state parties that conform the Organization of American States (OAS). Its two main regulating entities are the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), which lever on individual and collective complaints submitted against states for human rights violations. Additional bodies that support the implementation of the Convention and other international and regional treaties include the Inter-American Commission of Women and Commissioners like the Rapporteurship on the Rights of the Child.²⁴ Since the present study is made within the context of Central American countries, an overview of the Inter-American framework on the subject is relevant.

The American Convention on Human Rights does not explicitly regulate the human rights of women and girls. However, it does destine an article to the rights of the child.²⁵ This provision is further supported by the Protocol of San Salvador, which recognizes the child as a rights-holder entitled to protection from the family, society, and state.²⁶ In general, these provisions still lack precision in their content regarding special protections, and further principles or guidelines have not been installed to support the mentioned articles.²⁷

²² CRC. Article 19(1).

²³ CRC General Comment No. 13. Para. 15(a).

²⁴ Inter-American Human Rights System. (2009, December 20). International Justice Resource Center.

²⁵ American Convention, Art. 19.

²⁶ Protocol of San Salvador. Art. 16.

²⁷ Beloff, M. (2024). The Rights of the Child According to the Inter-American Court of Human Rights. In *The Impact of the Inter-American Human Rights System*.

To analyze the role and contributions of the Inter-American human rights system in the SRH rights of adolescent girls in the region, an analysis of different legal regional interpretations must be taken into consideration, in addition to relevant case studies that have shaped the system's approach to SRH rights in the region.

2.4.1. Inter-American Legal Framework on SRH Rights

The Inter-American system has contributed to significant changes in the American region regarding sexual and reproductive health. The Court has previously acknowledged that sexual and reproductive health is part of the human right to health, and attributes the elements of availability, acceptability, quality and accessibility to this branch of health.²⁸ More recently, the Inter-American Commission on Human Rights (IACHR) has also acknowledged the permeating historical barriers that prevent women and girls from accessing these rights, including harmful gender norms that prioritize the reproductive capacity of women, adolescent and girls over the rest of their human rights.²⁹ As a result, "this historical and structural discrimination is reflected in the violence fostered by laws that absolutely criminalize the voluntary interruption of pregnancy, limiting the legal, safe, and opportune options to do so."³⁰

These assessments have significantly influenced and challenged the region's legal stance on the most conservative domestic frameworks regarding sexual and reproductive health, particularly in terms of abortion. Several member states, such as Honduras and El Salvador, enforce constitutional protections for the right to life from the moment of conception, leading to the criminalization of abortion practices, often without exceptions. For instance, in the case *Artavia Murillo et al. v. Costa Rica (2012)*, the Court made a pivotal interpretation of article 4 of the American Convention on Human Rights regarding the right to life. The court's analysis emphasized that states should not treat the right to life as an absolute right that overrides other essential guarantees, and its stringent protection should not come at the expense of other rights regulated in the American Convention.³¹ The interpretation set a regional precedent regarding the regulation of abortion in domestic legislations and opened the door for more cases related to sexual and reproductive health rights to be brought before the Court.

Moreover, the Inter-American Court has emphasized in previous advisory opinions the obligation of states to incorporate the CRC's core principles in the protection of children. Firstly, the nondiscrimination principle is highlighted by the Court, which recognizes that children are entitled to the same rights as adults and should fully enjoy the rights enshrined by the American Convention, along with additional special rights and protections due to their status as children.³² This principle is reflected in the *Artavia Murillo et al. v. Costa Rica (2012)* case, where the Court ordered Costa Rica to implement permanent

²⁸ See Advisory Opinion Oc-29/22 of May 30, 2022. Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty. Para. 150.

²⁹ See *IACHR calls for progress in the recognition and protection of reproductive rights in the region*. Retrieved June 18, 2024, from https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/011.asp

³⁰ *Supra*, Para. 2.

³¹ IACHR (2015). Case of *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*: Judgment of November 28, 2012 (Preliminary Objections, Merits, Reparations and Costs). Para. 258-259.

³² Advisory Opinion Oc-17/2002 Of August 28, 2002, Requested by The Inter-American Commission on Human Rights. Juridical Condition and Human Rights of the Child. Para. 54.

courses and training programs on human rights, reproductive rights and nondiscrimination practices for judicial officials.³³ Although this case concerns invitro fertilization, the Court finds deemed it crucial for the judicial sector to uphold and protect SRH rights as human rights, without distinctions.

In addition, the Court has considered the guiding principles of the CRC to evaluate the extent to which evolving capacities are recognized in a child's autonomy, particularly in cases involving gender identity and sexual orientation. In its advisory opinion on this matter, the Court also references the CRC Committee's stance on adolescents' rights "to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy."³⁴ This connection with the CRC underscores the importance of prioritizing the best interests of the child, while acknowledging evolving capacities and the right to be heard in decisions concerning their body.

2.4.2. Influence of the Inter-American Commission in the Region

The Inter-American Commission on Human Rights conducts periodic reviews of each OAS member state to assess their compliance with the human rights outlined in the American Convention. Additionally, the Commission publishes annual reports to identify regional trends in human rights situations, report on the status of thematic rapporteurships, and follow up on recommendations made to each country. In the context of sexual and reproductive rights, the both the Inter American Commission and Court not only evaluate the compliance with the American Convention but also reference member states' obligations under the CRC. This section examines the involvement of the IACHR and the IACtHR in the Americas and its oversight of the SRH rights of adolescent girls from a children's rights perspective.

The Inter-American system has increasingly permeated the domestic frameworks of its state parties. It is argued that the Court has enhanced its involvement in domestic law over the years through its international case law, extending its recommendations to domestic judges. Fuentes (2021) states that, to enforce its regional influence, the Court has empowered domestic judges to implement the American Convention in their rulings, thereby providing stronger checks and balances against the legislative branch.³⁵ This shift is evident when comparing the Court's previous opinions, which refrained from commenting on domestic frameworks,³⁶ to its current stance that acknowledges the necessity for the domestic judicial branch to uphold the provisions of the American Convention and consider the Court's interpretations.³⁷

Following the same trend, the IACHR conducts periodic reports of every OAS member state to evaluate their compliance with the human rights standards set by the American Convention. Additionally, the Commission publishes annual reports to identify regional trends in human rights situations, the status of thematic rapporteurship, and to follow up on recommendations made to each country. In the context of

³³ Supra note 48. pg. 107.

³⁴ See Advisory Opinion Oc-24/17 Of November 24, 2017. Requested By the Republic of Costa Rica. Gender Identity, And Equality and Non-Discrimination of Same-Sex Couples. Para. 154.

³⁵ Fuentes Torrijo, X. (2021). The evolution of the normative relationship between the Interamerican System of Human Rights and national jurisdictions. *International Journal of Constitutional Law*, 19(4), 1207–1212.

³⁶ See IACtHR. (1994). Advisory Opinion OC-14/94. Para. 34.

³⁷ Supra note. 36. Pg. 1211.

sexual and reproductive rights, the IACHR not only assesses compliance with the American Convention but also references the obligations of member states under the CRC. For instance, the 2023 annual report includes follow-ups on recommendations made to Mexico regarding the high rates of violence against women. The IACHR urges the state to adopt necessary measures to prevent, punish, and eradicate these acts.³⁸ Following this assessment, the Commission examines the progress made by the state in preventing, punishing and eradicating violence against children and adolescents.

The increasing involvement of the Inter-American system in domestic frameworks has been reflected on the Court's Advisory Opinions and rulings over the years, as well as the Commission's human rights monitoring reports. Following up on these assessments, it is important to provide a closer examination of specific case studies that reflect the Inter-American framework's interventions in the context of sexual and reproductive health rights of adolescent girls.

2.4.3. Analysis of Case Studies and their Impact

Ramírez Jacinto, et al. v. Mexico (2007)

In 1999, Paulina del Carmen, a 14-year-old girl from Baja California, Mexico, was raped in her home. This event resulted in a pregnancy, and which led to Paulina and her mother to recur to an abortion as the best alternative. Although the Baja California Criminal Code legalizes abortion on the cause of rape, Paulina faced a bureaucratic healthcare and legal system that significantly delayed her procedure, shamed her on religious grounds, and showed her violent videos of abortions to scare her from going through with it. As a result, the petition was filed to the IACHR on behalf of Paulina against the state of Mexico, for preventing her from exercising her right to abortion.³⁹ The case finalized with a settlement agreement between both parties, which included pecuniary remedies for Paulina and her son, along with a public acknowledgment of responsibility from the government of Baja California. In addition, the case led to the enforcement of legislation and policies at a national level to improve services given to victims of domestic and sexual violence against women.⁴⁰

Following the settlement, the Commission approved of the agreements reached and made reference to the Belem do Pará Convention, referring that "victims of sexual violence are entitled to the recognition, enjoyment, exercise, and protection of all their human rights, including the civil, political, economic, social, and cultural rights enshrined in regional and international human rights instruments."⁴¹ Discrimination based on gender and morality from the state prevented Paulina, a victim of sexual violence, to exercise her freedom of choice and have access to the safe, legal abortion she was entitled to. This case highlights the importance of states guaranteeing access to sexual and reproductive healthcare for adolescent girls, particularly in cases of sexual violence.

Velásquez Paiz et al. v. Guatemala (2015)

³⁸ See Annual Report 2023. Inter-American Commission on Human Rights (IACHR). Chapter 5. Para. 222.

³⁹ See IACtHR. Ramírez Jacinto, et al. V. Mexico. Para. 9-15.

⁴⁰ Supra. Para. 16.

⁴¹ Supra note 39. Para. 19.

This case concerns Guatemala's failure to protect the right to life and personal integrity of Claudina Isabel Velásquez Paiz. On August 12, 2005, after Claudina did not return home, her parents reported her disappearance to the local authorities. However, their report was rejected because they were told they would have to wait 24 hours before it could be considered valid. The following day, Claudina's body was found bearing signs of extreme violence, including sexual violence.⁴²

After the complaint was submitted to the IACHR, the Commission noted a direct connection between the Claudina's death and the pervasive discrimination against women in Guatemala.⁴³ Witness statements indicated that the investigation into Claudina's death was heavily influenced by gender-based discrimination and. Authorities initially dismissed her case, suggesting "her profile corresponded to that of a gang member or to that of a prostitute," "whose death does not have to be investigated."⁴⁴ These discriminatory stereotypes were further reinforced throughout the case, perpetrating a culture of victim-blaming and hindered an effective investigation.

As a result, the IACtHR unanimously ruled that the state violated Claudina's right to life and personal integrity, regulated in arts. 4 and 5 of the American Convention, as well as the right to equality before the law. Recognizing the discriminatory nature of the case, the Court ordered Guatemala to permanently incorporate nationwide educational programs aimed at eradicating gender discrimination, gender stereotyping, and violence against women.⁴⁵ This case shows the significance of tackling gender-based discrimination and enforcing effective measures to protect the rights of adolescent girls, ensuring that access to justice is not ostracized by harmful social conducts.

I.V. v. Bolivia (2016)

The present case involves I.V., a Peruvian woman who obtained refugee status in Bolivia and underwent a c-section birth when the doctors did a sterilization procedure without her prior consent. Although this case is not specifically involving an adolescent girl, the Court's ruling established an important precedent regarding personal integrity and consent in the healthcare sector. The IACtHR affirmed that consent "must be given in a free, voluntary and autonomous manner, without pressure of any kind, without using it as a condition for submission to other procedures or benefits, without coercion, threats or disinformation."⁴⁶

Based on this framework of consent, the Court stated that the sterilization of I.V. during her C-section violated her reproductive freedom and autonomy, noting that she was never consulted about the procedure and that healthcare staff attempted to obtain consent from her husband instead. Consequently, the Court found the state of Bolivia responsible for violating several rights under the American Convention, including humane treatment, personal liberty, privacy, freedom of thought and expression, and the right to raise a family, all within the principle of non-discrimination.⁴⁷ Moreover, the Court recognized Bolivia's

⁴² See IACtHR. Velásquez Paiz et al. V. Guatemala. Para. 1.

⁴³ Supra. Para. 2

⁴⁴ Supra note 42. Para. 181.

⁴⁵ Supra note 42. Ch. IX. Para. 13.

⁴⁶ See IACtHR. I.V. v. Bolivia. Para. 181.

⁴⁷ Supra note 46. Para. 256.

failure to comply with article 7(a)(b) of the Convention of Belém do Pará, which outlines the state's negative obligation to refrain from engaging in practices of violence against women and to apply due diligence in preventing, investigating, and penalizing such acts.

Among the Court's directives, it is important to highlight the order for Bolivia to implement permanent education and training programs for members of the health and social security systems on informed consent, gender-based discrimination and stereotypes, and gender-based violence.⁴⁸ This case is relevant to SRH rights as it underscores how violence against women and girls is a systemic issue that infiltrates even the healthcare sector. It highlights the broader concerns for the rights to reproductive autonomy and informed consent, which are crucial for the wellbeing of adolescent girls.

2.5. State Obligations

To establish the foundation for the present analysis of the SRH rights of adolescent girls, it is crucial to review the state's obligations at both international and regional levels. In this context, it is important to recall the nature of states' obligations under the provisions of the CRC. According to article 4 of the CRC, states must implement all appropriate legislative, administrative and other measures ensure the realization of CRC rights. Additionally, the CEDAW Convention mandates states to uphold detailed standards of legislative and administrative measures to combat discrimination against women.

Within the Inter-American system, the American Convention imposes similar obligations, with a particular emphasis on states' constitutional processes⁴⁹ to ensure the highest level of guarantees for the Convention's rights and freedoms. Rishmawi (2005) notes that both the IACHR and the IACtHR have underscored the importance of state parties' obligations to "prevent, regulate, monitor, conduct impact studies, and the duty to remove structural obstacles."⁵⁰ Overall, both universal and regional instruments provide standards and guidelines for states to fulfill their duty of safeguarding human rights.

As previously mentioned, protecting the SRH rights of girls involves not only the right to health, but also the core principles of the CRC and other relevant provisions, such as the rights to education and protection from violence. Regarding the latter, the CEDAW Convention addresses violence against women as a form of discrimination. In its General Recommendation 19, the CEDAW Committee highlights that state parties have inadequately implemented legislation and policies addressing the link between discrimination against women, gender-based violence, and violations of human rights.⁵¹ This observation calls for addressing violence and discrimination as a systemic issue that influences the measures states put in practice. In the case of gender-based violence, Holtmaat (2009) argues that it is not enough for states to prohibit behaviors of violence, but also to actively aim for structural changes that address the

⁴⁸ Supra note 46. Para. 372(12).

⁴⁹ American Convention. Art. 2.

⁵⁰ See Rishmawi, M. (2005). *A Commentary on the United Nations Convention on the Rights of the Child, Article 4: The Nature of States Parties' Obligations*. Para. 22.

⁵¹ CEDAW General Recommendation No. 19: Violence against women. Para. 4.

root causes of violence.⁵² According to Holtmaat (2009), these structural changes must be applied with efforts on combating gender stereotypes in both the public life and the frameworks of law and policies.⁵³

These observations are particularly relevant to the lives of adolescent girls and their sexual and reproductive freedom. However, adolescent girls face additional discrimination beyond gender. The CRC Committee has affirmed that the life stage of adolescence itself can be a source of discrimination, as this group is often stereotypically viewed as problematic, incompetent, and incapable of making decisions about their lives.⁵⁴ Respecting the evolving capacities of adolescent girls is crucial, involving the recognition of their autonomy over their own bodies and the right to accessible and comprehensible information to make informed decisions about their physical and mental autonomy. To achieve this, the CRC Committee urges state parties to “adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination.”⁵⁵

2.6. Conclusion

The present chapter focused on examining the level of recognition and impact the international and regional frameworks have on the sexual and reproductive health (SRH) rights of adolescent girls. Through the examination of provisions of the CRC, the chapter underscore how the rights to non-discrimination, health, education and protection from violence are relevant and crucial for the safeguarding of SRH rights in girls, both at a global and regional scale within the Inter-American system. It was noted how discrimination based on gender and age affect the accessibility of sexual and reproductive healthcare services and education for girls, and hinder access to justice when their rights are violated.

The chapter also demonstrated how the Inter-American Court’s interpretations and rulings, along with the field work done by the IACHR, have established a robust system of legal precedents and monitoring of human rights across the region. By examining specific cases, it is clear that the IACtHR has influenced the children’s rights framework in the advancement of SRH rights of adolescent girls across the region. The mentioned cases of Mexico, Guatemala and Bolivia have highlighted crucial recognitions of the Court regarding personal integrity, informed consent, and protection from gender-based violence.

It is important to note that challenges remain for guaranteeing the full implementation of SRH rights within the region. Access to both health and justice continues to be hindered by gender stereotypes and patriarchal norms. In the case of violence against women and girls, particularly violence perpetrated by private actors, Duhaime and Tapias (2022) argue that a State’s international responsibility towards human

⁵² See Holtmaat, R. (2009). Preventing violence against women: The due diligence standard with respect to the obligation to banish gender stereotypes on the grounds of Article 5(A) of the CEDAW convention. Pg. 70.

⁵³ Supra. Pg. 73.

⁵⁴ See CRC Committee. General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence para. 21.

⁵⁵ Supra. Para. 59.

rights violations arises when the State does not act on due diligence to prevent, investigate and sanction these acts.⁵⁶

Finally, the constant factor of violence severely affecting the SRH rights of girls cannot be ignored. As observed in the analyzed case studies, the states' lack of due diligence in events of violence committed against girls and women remains a pressing issue that has been constantly addressed by the Inter-American framework, proving that violence is not only present in public life, but also comes within governmental structures which serve as an obstacle for the fulfillment of SRH rights in adolescent girls. Within the need to address its root causes, states must address how violence vulnerates the lives of adolescent girls and apply proper mechanisms to aid girls living in violent contexts.

3 The Intersection of Organized Crime and Adolescent Girls' Sexual and Reproductive Health Rights in the Northern Triangle

3.1. Introduction

Girls face multiple factors that influence their exposure to different types of vulnerabilities. For example, being in an environment with armed violence increases a girl's risk of encountering sexual violence in and outside the home. In vulnerable areas of El Salvador, Guatemala, and Honduras, organized crime significantly impacts the extent to which adolescent girls can enjoy free and healthy development. To comprehensively address these vulnerabilities and their effects on the sexual and reproductive health (SRH) rights of adolescent girls in these contexts, an intersectional approach is essential.

Intersectionality in women's rights was first introduced by Kimberlé Crenshaw in 1989. She critiqued the limitations of a single-axis approach to addressing discrimination against Black women, arguing that a comprehensive understanding requires examining factors beyond just racism and sexism.⁵⁷ Applying this to Central America, linking the effects of organized crime in the SRH of girls requires an analysis of multiple intersecting factors.

According to the World Health Organization (WHO), organized crime is defined as "the instrumental use of violence by people who identify themselves as members of a group against another group or set of individuals, in order to achieve political, economic or social objectives."⁵⁸ WHO also acknowledges that a series of factors contribute to the development of organized crime within a specific territory, including the absence of effective democratic processes, social inequalities, unilateral control of natural resources, and a state's inability to provide essential services and employment opportunities.⁵⁹ The Inter-American Commission on Human Rights addresses organized crime in Central America as a transnational issue, noting that some of these crimes extend beyond the territorial jurisdiction of a state. These cross-border

⁵⁶ Duhaime, B., & Tapias Torrado, N. (2022). *The Inter-American System's Recent Contributions to the Development of Women's Human Rights Standards*. Pg. 226.

⁵⁷ See Crenshaw, K. (1991). *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*.

⁵⁸ WHO. *World Report on Violence and Health*. 2002. pg. 6.

⁵⁹ *Supra*.

crimes include drug trafficking, sexual exploitation of children, adolescents, and adults, extortion, kidnapping.⁶⁰ In Central America, gangs are the most predominant representation of organized crime. Gangs permeate almost every sector of society. Whether they are present in a specific area or not, the general presence of gangs, also known as *maras*⁶¹, has given El Salvador, Honduras, and Guatemala levels of violence comparable to countries suffering from armed conflict.⁶² As a result, the Northern Triangle has become one of the most dangerous places in the world for children.⁶³ Girls in particular, suffer from crimes of sexual violence in alarming rates. This can lead to devastating consequences for their lives, such as dropping out of school, early pregnancies, sexually transmitted diseases, and mental health issues, all contributing to the deprivation of their SRH rights. This chapter will discuss key elements that connect organized crime and the SRH rights of girls, including violence, poverty, access to healthcare and education, and social norms.

3.2. Background Context of Organized Crime in the Northern Triangle

Several theories and definitions have been proposed over the decades to accurately conceptualize gangs. However, their rapid evolution has seen gangs transform from problematic youth groups into prominent, systematic criminal organizations. Within this broad spectrum of criminal groups, Klein and Maxson (2006) offer to define street gangs as “any durable, street-oriented youth group whose involvement in illegal activity is part of its group identity.”⁶⁴ It is important to note, however, that not all street gangs develop into organized crime groups. Most local gangs operate within a designated territory and have rotating leadership, and their criminal operations remain confined to that area. It takes a complex level of organization, hierarchy, and influence for gangs to get involved in transnational crimes, which is what Central American gangs in the Northern Triangle have achieved.⁶⁵

The most prominent transnational crime organizations in Central America are gangs Mara Salvatrucha (MS-13) and Eighteen Street Gang (Mara 18). Their origins trace back to El Salvador’s civil war during the 1980s, which led to significant migration of Salvadorans looking for asylum in the United States. After weak systematic social integration efforts, Salvadoran street gangs were established, most notably in Los Angeles, California. As a result of escalating crime rates among rival gangs in the streets of Los Angeles, several gang members were then deported back to El Salvador in the 1990s. El Salvador, having just ended a 12-year civil war in 1992, was starting the difficult road to economic recovery. With a weak

⁶⁰ Northern Central America: Organized Crime and the Rights of Children, Adolescents and Young People: Current Challenges and State Actions. IACHR 2023. p. 15.

⁶¹ *Maras*: Central American street gangs.

⁶² Pastor, C. A. (2014, May 31). Other situations of violence in the Central American Northern Triangle and Humanitarian Impact. IECAH.

⁶³ Save the Children. In the Crossfire: The impact of mara and gang violence on education in the Northern Triangle of Central America. June 25, 2019, pg. 9

⁶⁴ Klein, M. W., & Maxson, C. L. (2006). *Street Gang Patterns and Policies*. Oxford University Press.

⁶⁵ Miguel Cruz, J. (2010). Central American maras: From youth street gangs to transnational protection rackets. *Global Crime*, 11(4), 379–398.

criminal justice system, a deteriorating economy, and poor social reintegration, the newly arrived presence of both gangs rapidly gained territory and influenced other criminal groups as well.⁶⁶

Currently, there is no accurate report that will portray the number of gang members present in the Northern Triangle. Measuring the gang membership flow requires the consideration of factors such as those who are members, sympathizers, external collaborators, and allies, making it difficult for local and international entities to accurately quantify the expansion of gangs. However, latest approximations provided by the Inter-American Commission on Human Rights in 2021 show an estimated of 60,000 *mara* members from MS-13 and 18th operating in El Salvador, along with 500,000 additional external collaborators.⁶⁷ In Guatemala, between 10,000 and 20,000 *mara* members were identified in 2020; and 30,000 members in Honduras.⁶⁸

The strong presence of gangs in these territories puts communities under significant intimidation and children at great risk. Children living in contexts of violence and poverty have limited access to essential services and are prone to be subject to recruitment and exploitation by criminal groups.⁶⁹ Adolescent girls living in these contexts face the risk of being sexually exploited, forced into coercive relationships with gang members, and even subjected to slavery by them.

3.3. SRH Right Challenges Faced by Adolescent Girls in the Northern Triangle

The presence of organized crime groups like *maras* make adolescent girls and their families live deprived of their human rights, particularly because of fear of sexual violence. Gang members use sexual violence on women and girls as a form of intimidation and punishment for those who do not comply with the rules established in a controlled territory.⁷⁰ These tactics are commonly employed as a way of maintaining the control and obedience of communities. It is common for parents and caregivers to confine girls in their homes in an effort to prevent them from becoming targets of gang members living in their neighborhoods. Consequently, girls cannot attend school, don't have access to healthcare services, and are significantly exposed to high-risk sexual conducts, early pregnancies, sexually transmitted diseases, and unsafe abortions.⁷¹

Gang violence in both urban and rural areas of Central America have contributed greatly to crimes against women and girls. Studies show that environments with high criminal activity accentuate misogynistic conducts that objectify women and girls, making them targets of rape and other forms of sexual assault.⁷² These patriarchal contexts vulnerate adolescent girls and make them especially prone to

⁶⁶ Bruneau, T. (2011). Introduction. In *Maras: Gang Violence and Security in Central America* (pp. 1-20). New York, USA.

⁶⁷ IACHR. Situation of Human Rights in El Salvador. October 14, 2021, para. 30.

⁶⁸ *Supra* note 60 pg. 15.

⁶⁹ IACHR. Poverty and Human Rights, OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, para. 346.

⁷⁰ See UNDP. *The Hidden Face of Insecurity: Violence against Women in Central America and the Dominican Republic*. 2020. Pg. 61.

⁷¹ See *Sexual Violence in El Salvador, Guatemala, Honduras, and Nicaragua: Analysis of Primary and Secondary Data*. UNFPA. 2012.

⁷² *Supra*.

be victims of sexual violence, forced relationships with gang members, and human trafficking. In addition, girls are unlikely to report these cases for fear of retaliations from gang members and weak support from public safety institutions.

The expansion of *maras* has instilled a fear-lead culture among adolescents in the Central American region, particularly within the Northern Triangle countries. A UNICEF report (2017) shows that homicide is the leading cause of death among adolescents in Latin America and the Caribbean. Five countries with the highest adolescent homicide rates in the world are found in Latin America, and two of them (Honduras and El Salvador) are in the Northern Triangle.⁷³ Additionally, Guatemala, Honduras, and El Salvador have also been reported by UNICEF (2017) as part of the ten most deadly countries for adolescent girls in the world, portraying the highest mortality rate of adolescent girls by homicide from ages 10 to 19 years old.⁷⁴ Consequently, the pervasive presence of *maras* undermine adolescent girls' ability to access education, healthcare, and public spaces within their communities. Addressing the issue of violence perpetuated by *maras* in the Northern Triangle countries has not only become a pressing need for public safety, but also a priority for the life, survival, and development of adolescent girls in the region.

3.4. Intersection of Organized Crime and Sexual Reproductive Health Rights

It is important to view the relation between organized crime and sexual reproductive health (SRH) rights from an intersectional approach. This should analyze how factors like age, gender, socioeconomic status, cultural norms, and geographic location influence the different experiences of adolescent girls exposed to environments of high-rate violence. In addition, it must be noted how organized crime promotes harmful gender norms in society that end up prejudicing the daily lives of girls and increase their vulnerability. Although the CRC Committee does not explicitly mention the link between organized crime and SRH rights, it does refer to the high costs of denying children protection from violence, including poor quality of life, the discontinuation of education, early and forced marriage, and sexual violence.⁷⁵

The sexual exploitation of adolescent girls and further violations to their SRH rights is an essential mechanism for organized crime groups to gain control of territories in Guatemala, Honduras, and El Salvador. For example, Mara Salvatrucha's main motto is "kill, rape, control," thus showing a culture of gender-based violence as part of the gang's core identity.⁷⁶ In addition, victims of sexual violence by MS-13 are classified as "girlfriends of the gang," and women, particularly adolescent girls, are trapped in a cycle of violence difficult to escape.⁷⁷ The prevalence of *maras* and other groups of organized crime in communities contribute to the normalization of patriarchal norms, leading discrimination and violence against girls within the private and public spheres of society.

As mentioned before, poverty and low socioeconomic opportunities pave the way for organized crime to expand in a community. In these settings, being affiliated to a gang can represent a high rank in social

⁷³ See UNICEF. (2017). A Familiar Face: Violence in the lives of children and adolescents.

⁷⁴ Supra.

⁷⁵ CRC General Comment 13. Para. 16.

⁷⁶ Mara Salvatrucha (MS-13) | Britannica. (n.d.). Retrieved June 6, 2024, from <https://www.britannica.com/topic/Mara-Salvatrucha>

⁷⁷ Papworth, E., & Hunegs, K. (2023, November 2). Gang Violence and the WPS Agenda: Analyzing Gendered Realities in Central America and the Caribbean. IPI Global Observatory.

status that grants protection, identity, belonging, and economic opportunities.⁷⁸ The CRC Committee sustains this by stating that gang membership or association provides a source of livelihood to adolescents whose socioeconomic context prevent them from achieving this in a legitimate way, thus depriving adolescents from the realization of their human rights.⁷⁹ It is common for girls to engage in relationships with gang members as a way to potentiate their economic opportunities or escape violence from their homes. However, this affiliation always comes with a price. In the sphere of SRH rights, girls and women who engage in relationships with gang members have a higher risk of suffering partner violence and engaging in unhealthy sexual behaviors. In addition, studies made in gang-controlled neighborhoods have shown that adolescent girls who have a relationship with a male gang member have a higher pregnancy incidence by 90%.⁸⁰

The presence of violence hijacks direct access to healthcare, especially for women and girls. For example, pregnant women and adolescents living in violent areas are less likely to attend medical checkups because travelling involves exposure to violence.⁸¹ When seeking aid, particularly in the healthcare sector, adolescents are often faced with “legal and financial barriers, discrimination, lack of confidentiality and respect, violence and abuse, stigma and judgmental attitudes from health-care personnel.”⁸² Adolescent girls in Central America face a culture that stigmatizes sexual violence, which adds an additional hurdle for them to seek healthcare assistance for fear of being discriminated by healthcare providers.

3.5. States’ Obligations Safeguarding the SRH Rights of Girls in the Context of Organized Crime

In their commitment to ensure the protections of the CRC and other human rights instruments, states must implement the necessary measures to protect children against all forms of violence and secure their wellbeing. With this comes the positive obligation from the states to implement efforts to prevent and reduce violence against children in all sectors, as well as to provide proper redress mechanisms for victims. To properly address the multiple harms that organized crime poses to adolescent girls, the issue must also be tackled with an intersectional approach. This approach must acknowledge those risk factors that lead to the proliferation of gangs and other criminal groups, like poverty, social inequality, and lack of access to essential services, while addressing the impact these factors have on the vulnerability of adolescent girls. Northern Triangle states often put insufficient efforts into mitigating these risk factors and implement a punitive system that focuses on achieving short term results like massive incarcerations (El Salvador being the latest example), instead of addressing the root social causes of criminal activity. When states avoid protection and preventive methods, this results in “violent gangs proliferating, turning more

⁷⁸ Minnis, A. M., et al. (2015). Social Network Recruitment for Yo Puedo: An Innovative Sexual Health Intervention in an Underserved Urban Neighborhood—Sample and Design Implications. *The Journal of Primary Prevention*, 36(1), 51–64.

⁷⁹ CRC General Comment 20. Para. 83.

⁸⁰ *Supra*.

⁸¹ Vargas, L., et al. (2022). The Permeating Effects of Violence on Health Services and Health in Mexico. *Journal of Interpersonal Violence*, 37(13–14).

⁸² *Supra* Note. 54 Para. 56.

organized, continuing to recruit children and adolescents, and transforming into more complex and challenging phenomena to law enforcement, democratic institutions and human rights protection.”⁸³

It is important to note that one of the key factors that makes Central American gangs like MS-13 and Eighteen Street regarded as highly structured criminal organizations is their strong incidence over governments. State corruption in all sectors enforces organized crime activities, facilitating their infiltration in different areas of society, and the orchestration of agreements between state officials and gang leaders for political and economic gain. One example of this is El Salvador’s attempt to minimize homicide rates by arranging a pact between gangs and the state in 2012, better known as the “truce.” This agreement, led by former president Mauricio Funes, consisted in the compromise of gangs to reduce homicide rates in exchange for better prison conditions and benefits, as well as the halt in the prosecution of their relatives and other gang members.⁸⁴ This kind of negotiation gave the Salvadoran gangs political power over the state, which transmitted a message of impunity granted towards criminal organizations. As a result, the population’s mistrust towards the state increased, as well as victims’ fear to report crimes.

Judicial involvement and the respect of due process is an essential duty that states must put into practice when addressing violations to the SRH rights of girls, especially when perpetrators are members of criminal organizations. The CRC Committee urges states to apply these judicial procedures through strict application of criminal law to abolish de facto impunity, treat child victims in a sensitive manner, and applying the principle of celerity.⁸⁵ In addition, in order to ensure effective monitoring, states must also count with a reliable national data collection system that allows them to measure and evaluate the effectiveness of policies, and provides visibility of further vulnerabilities⁸⁶ on the SRH rights of girls.

Furthermore, states must properly incorporate the provisions of the CRC into their domestic legislation, allowing the Convention to be binding in all instances of the law and making sure the CRC prevails if it falls in conflict with legislation.⁸⁷ However, the compliance of these obligations are insufficient in the context of the SRH of adolescent girls. When seeking access to sexual and reproductive health services, adolescents face legal obstacles regarding minimum age, third-party authorizations or marital status.⁸⁸ Adolescent girls are especially vulnerable to suffer gender-based discrimination from healthcare providers. Consequently, states have the obligation to implement affirmative action methods in legislation and policies that prevent conditions of direct and indirect discrimination based on age, gender, and any other grounds.⁸⁹ These multidimensional efforts are essential for the safeguarding of adolescent girls living in violent contexts and ensuring the protection of their sexual and reproductive health as a human right.

⁸³ Supra note 60. Para. 296.

⁸⁴ Arévalo, K. (2023, May 29). What was the pact between the gangs and the government of El Salvador for which Funes was convicted? *Voz de América*.

⁸⁵ Supra note. 75. Para. 54.

⁸⁶ Supra note 75. Para. 42.

⁸⁷ CRC General Comment 5. Para. 20.

⁸⁸ World Health Organization. (2017). Leading the realization of human rights to health and through health: Report of the High-Level working group on the health and human rights of women, children and adolescents. Pg. 22.

⁸⁹ Supra note 79. Para. 21.

3.6. Case Studies

To address the incidence of crime organizations in the Northern Triangle, it is relevant to examine case studies on the violation of SRH of girls and their link to criminal violence. In Honduras, a man was convicted of aggravated rape against a 10-year-old girl, who after committing the act, proceeded to order the girl not to tell anyone and threatened her with his “evil friends.”⁹⁰ It is relevant to note that the crime was committed in the district of Comayagua, which is among the top 10 districts in Honduras with the highest criminal rates from gangs like MS-13 and 18th Street.⁹¹ Although there was no evidence presented that suggested the perpetrator was a member of a criminal group, intimidating the child through threats of calling “evil friends” suggest the use of the presence of criminal groups in the area to instill fear in the victim. These declarations portray how Central American gangs influence abuses of power dynamics to violate the physical integrity of girls.

The case *Veliz Franco and Others v. Guatemala (2014)* is a relevant example to analyze the measures that the state takes into condemning violent crimes against girls. In the case of the girl’s homicide, the Inter-American Court of Human Rights declared that the state of Guatemala violated a 15-year-old girl’s right to life and personal integrity from the American Convention, and the state’s obligation to guarantee her rights without discrimination.⁹² According to the court’s ruling, the state of Guatemala failed to carry the necessary due diligence to investigate gender-motivated factors of the homicide, including the corroboration of sexual violence. This case highlights the state’s judicial ineffectiveness regarding case-by-case analysis of violence against women and girls, which proliferates a culture of impunity and prevents access to justice mechanisms.

The mentioned cases demonstrate both direct and indirect violations to the SRH rights of adolescent girls from the Northern Triangle countries. An environment of impunity is shown from the perpetrator’s actions to the state’s response and treatment of victims. Discriminative practices from state actors are also reported. In the case of Honduras, medical reports provide gender-based discriminative conclusions by stating that, since the victim’s hymen was still intact, there could not have been any type of forced penetration. It has been scientifically proven that vaginal penetration does not always break a person’s hymen, and that this is an inaccurate medical method to prove the existence of sexual assault in a victim.⁹³ Moreover, the IACtHR confirmed that state officials in charge of investigating a girl’s violent death in Guatemala proceeded to blame the victim for her own murder, thus reinforcing harmful and discriminative gender perceptions.

4 Domestic Frameworks Related to Adolescent Sexual and Reproductive Health Rights within the Northern Triangle

⁹⁰ Sentence CP-458-16. Honduras.

⁹¹ See Analysis of information for the axes of prevention and control of violence and crime. Honduras. February 2023.

⁹² See *Veliz Franco and others V. Guatemala*. IACtHR. 2014.

⁹³ Abriat, F., Benali, L., & Gromb, S. (2012). Hymenal examination of underage children with a context of sexual assault. *Gynecologie, Obstetrique & Fertilité*, 40(2), 129–133.

4.1. Introduction

The global discourse on sexual and reproductive health rights has seen considerable progress in recent decades. Following the 1994 International Conference on Population and Development in Cairo, 179 states acknowledged these rights as fundamental human rights and committed to ensuring universal access to sexual and reproductive health services. Bearinger (2007) highlights the substantial advancements in shaping the Cairo agenda for SRH rights, especially within developing nations like Mexico and Brazil. However, Bearinger also underscores the neglect of adolescents' unique needs within this framework, as they continue to be a low priority in the allocation of resources by both developing and developed states.⁹⁴

Currently, the challenge of integrating the health needs of adolescent girls in national agendas persists. For instance, in Latin America and the Caribbean, 32% to 35% of unmarried, sexually active adolescent girls lack access to contraception.⁹⁵ This disparity elevates the risk for early pregnancies, contraction of sexually transmitted infections, and unsafe abortions. Additionally, Morris and Rushwan (2015) follow up on these consequences by stating that the risk of death as a result of pregnancy is four times more likely to occur in adolescent girls than in young women in their twenties, since they have not yet completed the full physical development of their bodies.⁹⁶

These disparities are particularly acute in Central America, notably within the Northern Triangle sub-region comprising Guatemala, Honduras, and El Salvador. These countries are affected by the constant issues of poverty, violence, gender inequality, and limited access to healthcare services. Consequently, adolescent girls in the region face substantial barriers in exercising their sexual and reproductive health (SRH) rights, leaving the vulnerable to health risks, educational deprivation, and various forms of violence.

Studies conducted by the International Planned Parenthood Federation/Western Hemisphere Region in Guatemala reveal alarming gaps in HIV knowledge among adolescents and young individuals, showing that only 24% of young men and 20% of young women aged 15-19 have comprehensive awareness on this matter.⁹⁷ These concerning gaps show that the need for comprehensive sexuality education is crucial. Similarly alarming statistics emerge from Honduras, which presents one of the highest rates of adolescent pregnancies in Latin America and the Caribbean, with 108 births per 1,000 girls between the ages of 15

⁹⁴ Bearinger, L. H., Sieving, R. E., Ferguson, J., & Sharma, V. (2007). Global perspectives on the sexual and reproductive health of adolescents: Patterns, prevention, and potential. *The Lancet*, 369(9568), 1220–1231.

⁹⁵ Woog, V., Singh, S., Browne, A., & Philbin, J. (2015). Adolescent Women's Need for and Use of Sexual and Reproductive Health Services in Developing Countries.

⁹⁶ Morris, J. L., & Rushwan, H. (2015). Adolescent sexual and reproductive health: The global challenges. *International Journal of Gynecology & Obstetrics*, 131(S1), S40–S42.

⁹⁷ See *Beyond barriers: Recommendations for adolescent sexual and reproductive health policies and programs in Belize, Guatemala, and Honduras* | Health and Education Resource Centre.

and 19 years old.⁹⁸ In El Salvador, sexual violence against children surged to 2,086 reported cases in 2020, in which nine out of ten victims were girls.⁹⁹

The purpose of this chapter is to analyze domestic legal and policy frameworks relevant to the sexual and reproductive health (SRH) rights of adolescent girls in the Northern Triangle countries of Guatemala, Honduras, and El Salvador. Beginning with background context of the Northern Triangle region, this chapter will delve into the socioeconomic and cultural factors influencing the SRH rights of girls, alongside an overview of the current state of adolescent sexual and reproductive health in the region. Furthermore, the strengths and weaknesses of these frameworks will be assessed through the examination of constitutional provisions, legislation, and policies applied by each country. By examining these domestic frameworks and to what extent they safeguard the SRH of girls, this chapter intends to evaluate the compliance of these nations with the UN Convention on the Rights of the Child (CRC), along with additional relevant international frameworks like the CEDAW Convention, the International Covenant on Economic, Social and Cultural Rights, and other relevant protocols and guidelines. Additionally, the efficacy of the nations' frameworks will be explored and how the contexts of organized crime and armed violence impede their implementation. Recommendations will be proposed regarding policy improvements, implementation strategies based on a children's rights approach, as well as international cooperation avenues.

4.2. Background Context of the Northern Triangle Region

Access to sexual and reproductive health services and education in Central America have progressively increased over time. However, the Northern Triangle countries face specific socio-economic challenges that affect the fulfillment of SRH rights in the region. The Northern Triangle remains among the poorest of Latin America; the World Bank (2021) ranks Guatemala, Honduras, and El Salvador among the ten poorest countries for gross domestic product (GDP) per capita within the region.¹⁰⁰ Significant poverty levels among these countries develop throughout a series of interconnected factors. For instance, low-income levels, hunger, insecurity, and climate change contribute to poor living conditions, which also lead to forced migration and internal displacement.¹⁰¹ Within these contexts, the World Food Programme (WFP) has identified that increasing levels of violence, perceived deteriorations of standards of living, and natural disasters and phenomena are heavily associated with the migrating decisions of Hondurans, Guatemalans, and Salvadorans.¹⁰² Women and girls are not excluded from these harsh conditions: El Salvador and Honduras reported the highest rates of women killed by gender-based violence (also known as femicide) in 2022.¹⁰³ The proliferating violence contributes to the deterioration of society at an

⁹⁸ Supra. Pg. 3.

⁹⁹ UNICEF El Salvador Country Office Annual Report 2020 | UNICEF. (n.d.). Retrieved June 11, 2024, from <https://www.unicef.org/reports/country-regional-divisional-annual-reports-2020/El-Salvador>

¹⁰⁰ Central America's Turbulent Northern Triangle | Council on Foreign Relations. (n.d.). Retrieved June 11, 2024, from <https://www.cfr.org/background/central-americas-turbulent-northern-triangle>

¹⁰¹ Soto, A. G. R. Charting a New Regional Course of Action: The Complex Motivations and Costs of Central American Migration.

¹⁰² Supra. Pg. 14.

¹⁰³ Femicide or feminicide. Gender Equality Observatory.

economic and social level, and vulnerates the fundamental rights of girls by exposing them to sexual violence, lack of access to sexual and reproductive healthcare, education, and poor access to justice mechanisms. Moreover, widened economic inequalities among these nations, making sexual and reproductive healthcare services, including contraceptives, inaccessible for women and girls living in poverty. In addition to these socioeconomic barriers, cultural factors also impede the exercise of SRH rights for adolescent girls in the Northern Triangle.

Structural factors within society affect adolescent girls in the Northern Triangle. The Inter-American Commission on Human Rights (2023) identifies an ever-present gender-based violence within the Northern Triangle occurring in every developmental stage of a girls' life, and observes discriminatory practices and gender stereotypes that are passed on through generations within families, relationships, communities, work environments, among others.¹⁰⁴ These practices are portrayed within the study, which also highlights that gender violence against women and girls has been normalized and tolerated. In the case of Honduras, 51% of women living in rural contexts justify receiving violence from their male partners in cases of infidelity.¹⁰⁵ In El Salvador, 34.1% of women living in urban areas conceive that they must obey their husbands even if they disagree with them.¹⁰⁶ Similarly in Guatemala, 78% and 52.7% of women living in rural and urban areas, respectively, have stated that they should take orders from their spouses or partners.¹⁰⁷

Ethical and moral expectations also considerably affect access to SRH services such as contraception and sexual education. In the Northern Triangle, 95 to 97% of the population identifies as Christian, in which the strongest denominations are catholic and protestant.¹⁰⁸ In this context, churches promote the belief that sexual relations should only be allowed after celebrating religious matrimony and exercised strictly for purposes of procreation.¹⁰⁹ These beliefs permeate in social behaviors and contribute to the shaming of adolescents for seeking information regarding sexual wellbeing and the acquisition of contraception.

"Have you heard about sex?

"No."

And your mother did not even talk to you about menstruation?

"She did tell me about that, that when you are menstruating you should not have sexual relations with the men. You must take care of yourself in terms of cleanliness, but most families don't talk about those things with their daughters, they feel fear and shame."

¹⁰⁴ IACHR. (2023). Report on Impact of Organized Crime on Women, Girls, and Adolescents. Para. 30.

¹⁰⁵ Supra. Para. 34.

¹⁰⁶ Supra.

¹⁰⁷ Supra.

¹⁰⁸ Custom Dataset | National Profiles | World Religion. (n.d.). Retrieved June 11, 2024, from https://www.thearda.com/world-religion/np-sort?var=ADH_415

¹⁰⁹ See Rice, M. (1991). Sociocultural Factors Affecting Reproductive Health in Latin America and the Caribbean. *International Quarterly of Community Health Education*, 12(1), 69–80.

– Interview extract with an adolescent girl in Guatemala¹¹⁰

This quote underscores the harmful silence and taboo that surrounds discussions of sexual and reproductive health within families. In this example, cultural norms and fear prevent parents from discussing with their daughters topics regarding menstruation and sexual health. These conceptions of ethics and morality also translate to the healthcare sector. Young women and girls looking for sexual and reproductive healthcare services are often shamed by clinic staff and receive moral lectures instead.¹¹¹ To analyze how these socioeconomic and cultural dynamics intersect with states' legal obligations, it is important to examine the domestic legal frameworks of the selected Central American countries regarding the SRH of adolescent girls.

4.3. Domestic Legal Frameworks

Domestic legal frameworks reflect a state's approach to its duty to safeguard human rights. Regarding the sexual and reproductive health rights of adolescent girls, the domestic frameworks of Guatemala, Honduras, and El Salvador reveal the following findings:

4.3.1. Guatemala

4.3.1.1. Constitutional Provisions

International law is present within Guatemala's constitutional framework, within different types of applications according to domestic law. The Guatemalan constitution regulates the prevalence of international treaties and conventions over domestic law,¹¹² which should establish the grounds for conventions like the CRC and CEDAW to be used as binding instruments of law during judicial and administrative proceedings. This reflects the functionality of a monist legal system in Guatemala, which gives international treaties a supralegal rank, meaning that these prevail over domestic law, but cannot modify the country's constitution.¹¹³ Rohrmoser (2002) points out that although the supremacy of international treaties related to human rights is not explicitly mentioned in constitutional jurisprudence, the Guatemalan constitution regulates mechanisms, such as Article 46, that allow the summoning of these treaties within a judicial context.¹¹⁴ It is important to note that the supralegal rank only applies to those treaties that are within the human rights contexts; other international frameworks are subjected to article 204 of the constitution, which grants the judicial body the faculty to overrule any treaty on grounds of constitutional principles.¹¹⁵ Rohrmoser (2002) refers to this practice as obsolete and does not keep up with the advancements and applications of international law.¹¹⁶

¹¹⁰ See PAHO (2010). *Sexual and Reproductive Health and HIV of Indigenous Youth and Adolescents in Bolivia, Ecuador, Guatemala, Nicaragua, and Peru*. Washington D.C. pg. 28.

¹¹¹ Supra Footnote 109. Pg. 76.

¹¹² Political Constitution of Guatemala. Art. 46.

¹¹³ See De Colmenares, Carmen M. (2003). *Application of International Human Rights Law in the Field of Domestic Law of Guatemala*.

¹¹⁴ Rohrmoser Valdeavellano, Rodolfo (2002). *Application of international human rights law in Guatemalan domestic law*. Instituto de Investigaciones Jurídicas, UNAM. Recuperado de <https://repositorio.unam.mx/contenidos/5010479>

¹¹⁵ Political Constitution of Guatemala. Art. 204.

¹¹⁶ Supra Footnote 114. Pg. 271.

The Guatemalan Constitution regulates the protection and guarantees of human rights early within its provisions. One of its core individual rights lies in the principle of liberty and equality, which guarantees equal opportunities and responsibilities between men and women, also recognizing that all human beings have the same right to be treated with respect to their inherent dignity.¹¹⁷ This provision also reflects the core principle of non-discrimination within the CRC, and complies with the obligation of states under CEDAW to condemn discrimination against women in all its forms and uphold the principle of equality of men and women in their national constitutions.¹¹⁸ The fundamental principle of the right to life is also acknowledged, and regulates that the state will protect human life since its conception.¹¹⁹ Although abortion is permitted in case the mother's life is in danger, this constitutional provision serves as a barrier for further legislation to be emitted regarding abortion.

Furthermore, the constitution also makes reference to the protection of family as a social right, and commits the state to promote equality between spouses, responsible parenthood, and the right of every person to choose the amount of children they wish to have.¹²⁰ This provision calls attention to the sexual and reproductive health of all individuals as a human right, thus establishing constitutional grounds for the development of further legislation and policies that ensure adolescent girls access to comprehensive sexual and reproductive health, as well as education that allow them to make informed decisions. Moreover, the universal right to health and social assistance is also regulated in articles 93 through 95. These rights are reaffirmed in matters regarding children's rights within the constitution in article 51, which claims the state's obligation to protect the physical, mental, and moral health of minors and elders.

Other relevant constitutional provisions include the right to receive an education without discrimination and obliges the state to grant basic levels of education free of charge and accessible to all.¹²¹ Additionally, the constitution also acknowledges the rights of parents to choose the type of education their children will receive. This provision, although it acknowledges one of the rights and duties of parents regarding the care and development of their children as stated in the CRC, has also paved the way for more conservative movements to prevent the full implementation of sexual and reproductive education in schools.

It is also crucial to acknowledge that approximately 44% of Guatemala's population¹²² belongs to an indigenous group, and their special rights and guarantees are also regulated within the country's constitution. However, adolescent girls from indigenous groups must be entitled to broader intersectional protections from the state that guarantee the fulfillment of their SRH with services and education available in their languages and dialects.

In general, Guatemala portrays ample constitutional provisions that enable further safeguarding of the SRH rights of adolescent girls in secondary legislation. However, its constitution still contains significant legal hurdles that limit the sexual and reproductive health rights of adolescent girls, particularly abortion services.

4.3.1.2. Legislation

Guatemala established the Law of Comprehensive Protection of Children and Adolescents in 2003. The law proceeds to specify its applicability within the groups of children and adolescents; the first group

¹¹⁷ Supra note 112. Art. 4.

¹¹⁸ CEDAW. Art. 2.

¹¹⁹ Supra note 112. Art. 3.

¹²⁰ Supra note 112. Art. 47.

¹²¹ Supra note 112. Arts. 71, 74.

¹²² Guatemala—IWGIA - International Work Group for Indigenous Affairs. (n.d.). Retrieved June 12, 2024, from <https://www.iwgia.org/en/guatemala.html>

being considered boy or girls since the moment of conception up to 13 years of age; and the second group being recognized from the ages of 13 through 18.¹²³ This primary legislation regulates all provisions related to the protection of children and adolescents, including the establishment of policies that must emanate from the present law, government commissions responsible for upholding the compliance of the law and other policies, as well as proper redress mechanisms for the access to justice and remedies for children. In addition, the law establishes an obligation of the state to design and implement programs of sexual education, prevention of sexually transmitted diseases, and other elements relevant to the SRH of children and adolescents.¹²⁴

The Law of Social Development of 2001 is an additional legislative body that encompasses the rights and services of sexual and reproductive health adolescents are entitled to. The law specifically regulates a definition of reproductive health and assigns to the Ministries of Health and Education the obligations to establish a national program of reproductive health that encompasses all needs of men and women without discrimination of any kind.¹²⁵ Particular attention is given to the social group of adolescents, and their right to receive comprehensive services of healthcare and education, without discrimination, regarding their sexual and reproductive needs.¹²⁶ Furthermore, the Law and Guidelines of Universal and Equal Access to Family Planning Services (2005) reinforces both Ministries' obligations to review and modify the academic curriculum of schools in order to guarantee an updated access to information on sexual and reproductive health, as well as the facilitation of contraceptives and other relevant resources.¹²⁷ Additional laws that regulate the promotion of SRH education and healthcare services include the General Law for the Combat of the HIV Virus and AIDS.

Regarding the specific legal protection of women and girls against all forms of violence, the state of Guatemala has also enacted legislation such as the Law Against Femicide and Other Forms of Violence against Women (2008) and the Law of Comprehensive Awareness of Women's Dignity (1999). Both legislations refer to the state's commitments put forward on the CEDAW Convention and the Inter-American Convention for the Prevention, Sanctioning and Eradication of Violence Against Women. They implement methods of affirmative action within the national legal system by designating resources to grant specialized attention to crimes committed against the life and physical integrity of women, including girls.¹²⁸

Regarding abortion, Guatemala's Penal Code criminalizes the interruption of pregnancies in all scenarios, except when the mother's life is at risk, which is defined as therapeutic abortion.¹²⁹ Due to the strict limitations of abortion access and harsh criminal consequences, the country faces up to 65,000 unsafe induced abortions each year, most of them coming from poor, rural, and/or indigenous women.¹³⁰ Medical research also points out unsafe abortion as the fourth leading cause of maternal deaths for the past 10

¹²³ See Decree 27-2003. Law on Comprehensive Protection of Children and Adolescents. Art. 2.

¹²⁴ *Supra*. Art. 76(h).

¹²⁵ Guatemala. Decree 42-2001, Social Development Law. Art. 26.

¹²⁶ *Supra*. Art. 26(4).

¹²⁷ Decree 87-2005. Law on Universal and Equitable Access to Family Planning Services and its Integration into the National Reproductive Health Program.

¹²⁸ Decree 22-2008. Law against Femicide and other Forms of Violence Against Women. Art. 21.

¹²⁹ Decree 17-73. Penal Code. Art. 136.

¹³⁰ Kestler, E. (2012). Obstetrician–gynecologists' knowledge of and attitudes toward medical abortion in Guatemala. *International Journal of Gynecology & Obstetrics*, 116(2), 120–123.

years.¹³¹ Furthermore, growing concern has spiked from international non-state actors and civil society regarding Guatemala's recent approval of the Law for the Protection of Life and Family (2022), which strengthens the criminalization of abortions, adds additional legal hurdles for therapeutic abortions, and prohibits sexual education that includes sexual diversity groups.¹³²

Even though Guatemala counts with a variety of legislation that upholds the state's obligations to safeguard the SRH of adolescent girls without discrimination, the implementation efforts of these legislations remain insufficient in practice. Duggan et. Al. (2008) argues that to provide access to justice for violations of women and girls' SRH rights, particularly sexual violence, Guatemala fails to implement a reparations program with a gender-focused approach; this also includes women and girls that have been victims of sexual violence during the country's civil war and are still seeking reparations from the state.¹³³ Duggan (2008) also insists on the need for public recognition and discourse for Guatemala's previous and current mistakes in addressing sexual violence through inefficient and discriminative policies.¹³⁴ For example, victims of rape have been reported to be presented in public community ceremonies and granted checks from the state that say 'victim of rape.'¹³⁵ These insensitive attempts for reparations from the state only promote drastic revictimization and subject victims to further discrimination and shame.

4.3.1.3. Policies and Programs

Through the design and implementation of national programs, Guatemala has applied efforts throughout recent decades to prevent and address violations to the sexual and reproductive health rights of adolescent girls. Based on its children's rights legislation, the Ministry of Health and Social Security implemented the National Program of Reproductive Health (PNSR in Spanish), which aims to provide the population with inclusive access to family planning supplies, aid in the prudent planning of procreation, and decrease transmission rates of STIs.¹³⁶ The program presents a particular focus on adolescent health by imparting guidelines to healthcare providers that promote the confidentiality and respect that adolescents are entitled to while requesting SRH counseling.¹³⁷

Other crucial components to the SRH rights of adolescent girls include the National Program for Comprehensive Healthcare of Children and Adolescents, established in 2003. This includes the creation of institutions destined to attend adolescent girls who are victims of sexual violence and other forms of abuse, exercised by the National Secretary of Social Welfare.¹³⁸ In 2009, friendly spaces are created in schools and clinics to prevent risk factors in adolescents, education of sexual and reproductive health, and healthcare services directed exclusively to adolescents. This program rapidly grew to 311 friendly

¹³¹ Supra.

¹³² Initiative 5272. March 8 2022. Law for the Protection of Life and Family.

¹³³ Duggan, C., Bailey, C. P. y P., & Guillerot, J. (2008). Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru. *The International Journal of Transitional Justice*, 2(2), 192–213.

¹³⁴ Supra. Pg. 207.

¹³⁵ Supra note 134. Pg. 208.

¹³⁶ National Strategy of Family Planning 2015-2020. Universal Access to Family Planning Services. Guatemala. March 2015.

¹³⁷ OSAR_GT. (2023, January 25). Regulations: National Reproductive Health Program – OSAR Guatemala. <https://osarquatemala.org/normativa-programa-nacional-de-salud-reproductiva/>

¹³⁸ Department of Protection of Children and Adolescents Victims of Sexual Violence with a Gender Approach. Secretaría de Bienestar Social.

spaces across the country, along with five clinics destined to the attention of adolescents in national hospitals.¹³⁹

Although Guatemala has implemented a variety of programs to safeguard the SRH of adolescent girls, academic media sources report that the country does possess a specific national policy to guarantee the access to sexual reproductive health rights.¹⁴⁰ The state's most ambitious project for the economic and social advancement of the population is the National Plan K'atun 2032, which aims to create a common national policy that drives all Guatemalan governments to concentrate on five priority axis:

1. Urban and rural Guatemala
2. Wellbeing for all
3. Wealth for everyone
4. Natural resources for the present and future
5. The State as guarantor of human rights and conductor of development¹⁴¹

This national plan has been created in an effort to fulfill the global agenda for the sustainable development goals. Within the subject of SRH rights, the national plan aims to guarantee the availability of these services without discrimination, imparting them in Mayan languages for indigenous communities, and enhance its comprehension through friendly terminology. However, national critics argue that three governments have assumed the executive since the creation of the plan, and these subjects have not been given enough priority. In addition, other policies destined to address the SRH the population, particularly women and girls, only focus on the reproductive sector and avoid comprehensive information on sexuality.¹⁴²

4.3.2. Honduras

4.3.2.1. Constitutional Provisions

The state of Honduras also counts with a monist legal system that positions international treaties related to human rights prevail over domestic law (art. 18). The Honduran constitution regulates a specific chapter dedicated to address the rights of the child, reaffirming the duties of the state to protect children from all forms of violence and exploitation, as well as the guarantees of their fundamental human rights. However, such provisions still regulate the rights of the child from an adult-centered approach that could be interpreted as discriminative against children. One example of this can be found in article 120, which classifies a group of children who have physical and mental deficiencies as well as irregular conducts, be subjected to a legal framework of rehabilitation, vigilance and protection.¹⁴³ Firstly, the concepts used to classify these groups of children are significantly vague and can be subject to wrongful interpretation. Additionally, the provision identifies children as a group that must solely be protected and supervised but does not mention the state's responsibility to guarantee the integration of children into society. Overall, the chapter identifies the universal rights of children in a general, brief way, and avoids including provisions that recognize children as right holders, such as the right participation, non-discrimination, among others.

¹³⁹ UNFPA. October 2015. Legal Analysis of the right of adolescents and young people to contraception and balanced counseling in health services in Guatemala. pg. 11.

¹⁴⁰ Guatemala does not have a public policy to guarantee sexual and reproductive rights. Plaza Pública. Retrieved June 12, 2024, from <https://plazapublica.com.gt/content/guatemala-no-tiene-una-politica-publica-para-garantizar-derechos-sexuales-y-reproductivos>

¹⁴¹ Guatemala. Consejo Nacional de Desarrollo Urbano y Rural. Plan Nacional de Desarrollo K'atun: nuestra Guatemala 2032. Guatemala: Conadur/Segeplán, 2014. Pg. 11.

¹⁴² Supra note 141.

¹⁴³ Decree 131. Political Constitution of Honduras. 1982. Art. 120.

Furthermore, Honduras is considered to have some of the most stringent and restrictive constitutional provisions concerning sexual and reproductive health in the Latin American region. Although it acknowledges fundamental principles like the universal right to life, health, and education, its constitution also regulates literal prohibitions regarding same-sex unions and adoptions. In 2021, the Honduran Congress approved a reform to the article 67 of the Constitution, which incorporates a specific prohibition on abortion.¹⁴⁴ Although abortion was already criminalized in Honduras without exceptions, prohibiting the practice at a constitutional level makes future reform proposals on criminal law almost impossible.¹⁴⁵ These strict prohibitions on sexual diversity and abortion have harmful implications for the sexual reproductive health (SRH) rights of women by depriving them from access to legal healthcare. Also, these rigid provisions only reinforce social stigma towards SRH, and promotes and environment of discrimination towards adolescent girls that seek these services.

4.3.2.2. Legislation

Through its Code of Health, Honduras recognizes sexual and reproductive health as a human right.¹⁴⁶ However, these rights are only mentioned once throughout the legislation, and only regarding the reception of appropriate information concerning sexual education and family planning. There is no reference to access to healthcare services or any provisions relating to the highest attainable standard of health in this sector, which makes it problematic for the creation of policies and programs that emanate from this law.

In addition, the country's Code of Childhood and Adolescence does not regulate the sexual reproductive health rights of children in any stage of their development. The primary law on the rights of children only focuses on provisions relating to violence and the occasional mention of sexual abuse as one of the elements that categorize children to be in a situation of risk or danger. The lack of overall recognition of SRH rights in children's rights legislation is highly concerning for the access to healthcare services and sexual education that guarantees the adequate fulfilment of these rights. Consequently, the CRC Committee expresses high concerns regarding the high level of pregnancy in adolescent girls, as well as the omission of SRH education in Honduran school curriculums.¹⁴⁷

To mitigate adolescent pregnancy levels, the Honduran Congress approved the initiative to implement the Law of Comprehensive Education for the Prevention of Early Pregnancies in 2023, which promoted comprehensive sexual education as a crucial element of the country's academic curriculum. In a country where 1 in 4 births come from a girl below 19 years of age, the legislation was welcomed and applauded by civil society and the international community.¹⁴⁸ Following four months after the approval of Congress, President Xiomara Castro proceeded to veto the law as a response to public protests who resisted the incorporation of sexual diversity concepts within the Honduran legislation. As a result, human rights activists declared the executive move as a rejection of the sexual and reproductive rights of women and girls.¹⁴⁹

¹⁴⁴ Ellas hoy - Honduras: Constitutional reform reinforced the absolute prohibition of abortion. (2021, February 10). France 24.

¹⁴⁵ Booth, Amy. (2021). The Lancet. World Report. Honduras changes constitution to ban abortion.

¹⁴⁶ Decree 65-91. Honduras. Code of Health. Art. 10.

¹⁴⁷ CRC 3 July 2015. Concluding observations on the combined fourth and fifth periodic reports of Honduras. Para. 65.

¹⁴⁸ S. W. I. (2023, March 9). Honduras approves comprehensive education law to prevent early pregnancies. SWI swissinfo.ch.

¹⁴⁹ Hernández, B. (2023, August 4). Presidential veto is considered a setback to the recognition of women's rights. Criterio.hn.

In general, Honduras presents almost a total absence of sexual and reproductive health rights for all groups of its population within its primary and secondary laws. The omission to add SRH rights as part of its legislation influences the application and effectiveness of policies and programs that are directly related to the health and wellbeing of adolescent girls.

4.3.2.3. Policies and Programs

The Public Policy for the Comprehensive Development of Early Childhood was approved by the executive branch in 2012 and aims to guide state and non-state actors in the development of strategies and projects that guarantee the rights to survival, development and protection of children since the moment of conception up to six years of age.¹⁵⁰ This policy is also drafted with the intention of fulfilling the country's Concluding Observations given by the CRC Committee, particularly its observation number 7 regarding education, leisure and cultural activities.¹⁵¹ In general, the mentioned recommendations encompassed the need for the country to increase its efforts on improving school conditions and the quality of its education, as well as decreasing the school dropout rates among the country.¹⁵²

Moreover, Honduras incorporated two major instruments for the long-term development of the country, regardless of the political party in office. These are the plans Vision for the Country 2010-2038, and the National Plan 2010-2022. The first is based on four main objectives that address poverty, democracy, sustainability and transparency. However, the CRC Committee points out that such plans have an adult-centered approach, and do not cover all children's rights under the Convention.¹⁵³

Through its state policies and programs, the state also aims to fight against its alarming rates of adolescent pregnancies, sexual violence, and the proliferation of HIV/AIDS. However, the state continues to avoid acknowledging the need to guarantee SRH rights as part of its obligation to uphold the population's health.

4.3.3. El Salvador

4.3.3.1. Constitutional Provisions

Like its two neighboring countries, El Salvador operates under a monist legal system that incorporates international covenants into its domestic law.¹⁵⁴ However, if an international treaty conflicts with constitutional provisions, the Constitution will prevail (art. 146). After examining the stringent constitutional reforms enacted in Honduras, it is essential to emphasize the critical importance of upholding children's rights in a country's primary legal charter, as subsequent legislation and policies will be shaped by these foundational principles.

Furthermore, the constitution grants every judge or tribunal the faculty to interpret the constitution within their jurisdiction. In other words, the judicial system has the power to declare the inapplicability of constitutional provisions and provisions emanating from international conventions (if they are contrary to the constitution), without previous consultation.¹⁵⁵ Although most judicial rulings can be appealed to in a

¹⁵⁰ Secretary of Development and Social Inclusion. 2012. Public Policy for the Comprehensive Development of Early Childhood.

¹⁵¹ UNCR. 3 May 2007. Consideration Of Reports Submitted by States Parties Under Article 44 Of The Convention. Concluding Observations: Honduras.

¹⁵² *Supra*. Para. 67.

¹⁵³ *Supra* note 148. Para. 9.

¹⁵⁴ Constitution of El Salvador. Article 144.

¹⁵⁵ Tinetti, José Albino. (2007). La justicia constitucional en El Salvador [Constitutional Justice in El Salvador].

higher court, it is relevant to note the constitutional authority that is granted to judges within the Salvadoran legal system, particularly to point out their role in the access to justice of adolescent girls victims of sexual violence and other transgressions made against their SRH rights.

The Salvadoran constitution guarantees the fundamental economic, social, and cultural rights for all. The state acknowledges its primary obligations since article 1 to guarantee the rights to liberty, health, culture, economic wellbeing and social justice.¹⁵⁶ The state also acknowledges its obligations to promote and safeguard the rights of children for a healthy development, as well as creating the relevant institutions for protecting motherhood and childhood (art. 34).

Moreover, the same article 1 also recognizes human life from the moment of conception, which strongly influences how the state defines childhood in further legislations, and the rights and guarantees the unborn child is entitled to. Daby and Moseley (2023) attribute the institutionalization of Christianity within constitutional provisions the most influential factor that attempts to limit sexual and reproductive rights, including access to healthcare services like abortion.¹⁵⁷ In El Salvador, just like its neighbors from the Northern Triangle, the Catholic Church has constitutional recognition and is granted a legal identity.¹⁵⁸

4.3.3.2. Legislation

In 2023, El Salvador entered into force the Growing Together Law, a legislation that replaced previous children's rights legislations. The law's main objective is to guarantee the rights of children and adolescents through the compliance of the Constitution and international treaties ratified by the state, particularly the CRC.¹⁵⁹ The country recognizes its obligations to develop programs designed to attend the sexual and reproductive health of both children and adolescents, based on their evolving capacities.¹⁶⁰ These obligations are further elaborated on the drafting of a specific article dedicated to addressing sexual and reproductive health education (art. 33). According to this provision, it is an obligation of the family, society and the state to guarantee children and adolescents the proper access to comprehensive sexual education, as well as social attitudes and values that will aid in their health and well-being, dignity, prevention of sexual abuse and the fostering of responsible relationships.¹⁶¹

The law guarantees other principles within the SRH of children and adolescents, including their right to confidentiality and personal integrity. One factor that differentiates this legislation from other legal instruments is the explicit prohibition of any form of discrimination within academic institutions based on sexual orientation.¹⁶² This is a significant advancement within the country's legislation in one of the first recognitions of sexual diversity, thus amplifying the principle of non-discrimination within its legal protections. Moreover, the law also guarantees to grant children and adolescents special protection and reparations regarding sexual violence, thus establishing a legal basis that motivates the creation of further institutions, plans and policies dedicated to the application of these rights at a national level.

El Salvador also counts with additional legislations dedicated to protecting women and girls, such as the Special Comprehensive Law for a Life Free of Violence for Women (LEIV in Spanish). The law, established in 2010, is sanctioned as part of affirmative action movements implemented to recognize the

¹⁵⁶ Supra note 155. Art. 1.

¹⁵⁷ Daby, M., & Moseley, M. W. (2023). Mobilizing for Abortion Rights in Latin America. Elements in Contentious Politics.

¹⁵⁸ Supra note 155. Art. 26.

¹⁵⁹ El Salvador: Law Growing Together, 22 June 2022. Art. 1.

¹⁶⁰ Supra. Art. 27(c).

¹⁶¹ Supra note 160. Art. 33.

¹⁶² Supra note 160. Art. 57.

different vulnerabilities women and girls face when facing all forms of violence, including sexual violence and femicide.¹⁶³ One of the benefits that came with this law is the creation of a specialized courts solely dedicated to addressing violations to this law, which aims to strengthen access to justice and redress mechanisms.

In general, El Salvador has developed provisions that recognize the SRH rights of children and adolescents and has also implemented specialized legislation directed to the protection of women and girls from all forms of violence. However, the CEDAW Committee has expressed recent concern in the lack of enforcement of these provisions. Its main concern radiates around strong patriarchal stereotypes that still permeate the judicial and law enforcement systems, as well as bottlenecks for the application of the LEIV.¹⁶⁴ In addition, the CRC Committee has also expressed deep concern regarding violence against children, particularly coming from gangs or *maras*. It also urges the country to robust its efforts on the adoption of measures to prevent further violations against children, particularly regarding sexual violence and exploitation committed against girls by the *maras*.¹⁶⁵

4.3.3.3. Policies and Programs

In efforts to involve the sexual and reproductive health of adolescents within the national strategy, El Salvador emitted the General Act on Young People 2010-2024, which aimed to cover the needs and wellbeing of young people, including children and adolescents. Factors like the promotion of sexual education, integration of sexual identities, and access to sexual and reproductive healthcare were strongly present in the main objectives of the policy.¹⁶⁶ In addition, the Child and Adolescent Protection Act also acknowledged the state's responsibility to provide better access to sexual and reproductive healthcare for both children and adolescence, particularly to those in higher risk of suffering sexual violence within vulnerable contexts such as the presence of gang organizations in urban and rural communities.¹⁶⁷ The CRC Committee acknowledged the implementation of these policies, but urged the state to significantly increase their budget allocations for health and education, and implement a budget that finances public policies on the long-term.¹⁶⁸ These observations reflect that to achieve sustainable progress in the country's policies, it is crucial that the state secures the necessary financial resources and ensures the full and effective implementation of these initiatives.

4.4. State Obligations under International Legal Frameworks

When considering the states' obligations to uphold the SRH rights of adolescent girls under international law, particularly the CRC, an intersectional analysis is essential to comprehensively examine the various rights and principles that must be safeguarded. Sexual and reproductive health rights compass the CRC's right to health (art. 24), to be protected against all forms of violence (art. 19), and to education (art. 28). In evaluating these provisions, the CRC's general principles must also be considered: right to nondiscrimination (art. 2), best interests of the child (art. 3), right to life survival and development (art. 6),

¹⁶³ El Salvador: Law for a Life Free of Violence for Women (LEIV).

¹⁶⁴ CEDAW. 9 March 2017. Concluding observations on the combined eighth and ninth periodic reports of El Salvador. Para. 12.

¹⁶⁵ UNCRC. 29 november 2018. Concluding observations on the combined fifth and sixth periodic reports of El Salvador. Para. 27.

¹⁶⁶ El Salvador. Ed. 2013. General Act on Young People 2010/2024.

¹⁶⁷ El Salvador. Child and Adolescent Protection Act. 2013-2023.

¹⁶⁸ Supra note 166. Para. 8.

and the right to be heard (art. 12). This section aims to analyze these rights and principles within the scope of the Northern Triangle states' obligations.

4.4.1. The right to health

In article 24, the CRC compromises state parties to recognize that children are entitled to the enjoyment of the highest attainable standard of health. However, it is important to define what this right entails for the obligations of the state towards children's health. Tobin (2019) states that this right does not give children guaranteed health, "but rather an entitlement to enjoy conditions that will maximize the potential for a child to enjoy his or her health in light of his or her personal circumstances and the resources available to a state."¹⁶⁹ The Committee on Economic, Social and Cultural Rights (ESC Committee) points out that the right to health entails both freedoms and entitlements.¹⁷⁰ As part of one of those freedoms, the Committee explicitly mentions sexual and reproductive freedom to be part of every person's right to control one's health.¹⁷¹ As a result, both the CRC and CEDAW Committees have urges states to designate particular resources on attending the sexual reproductive health of adolescents, giving specialized attention to their needs considering their vulnerabilities to different factors, like sexual violence and gender-based discrimination.¹⁷²

Regarding the state's application of this right, the ESC Committee suggests this to be done through four principal elements: availability, accessibility, acceptability, and quality.¹⁷³ Regarding availability, the ESC Committee states that there must be functioning public health and healthcare facilities that have enough supplies and services to give the necessary services. For example, in its last Concluding Observations to El Salvador, the CRC Committee expressed concern over the lack of specialized health facilities for children older than 12 years old and recommended the state to put efforts in the installation of these to further contribute to the needs of adolescent health.¹⁷⁴

On the side of accessibility, the ESC Committee highlights that health facilities, goods, and services must be accessible to all without discrimination, be within safe physical reach, be affordable to all, and impart health information to all.¹⁷⁵ Regarding adolescent health in Guatemala, the CRC Committee recommended that the state should ensure that "all girls and boys including those who are out of school and those in rural areas, receive confidential and child-friendly sexual and reproductive health information and services, including access to contraceptives."¹⁷⁶ The CRC Committee's recommendation to Guatemala underscores the need for accessible sex education programs and related health information for all children, with special emphasis on those living in marginalized groups living in rural areas and out of school.

Furthermore, the ESC Committee refers to the importance of states ensuring the acceptability of health services, which means these should adhere to medical ethics, respectful of individuals, minorities,

¹⁶⁹ Tobin, J. (2019). Art.24 The Right to Health. Oxford Public International Law.

¹⁷⁰ General Comment No. 14 (2000). The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Para. 8.

¹⁷¹ Supra.

¹⁷² General recommendation No. 24: Article 12 of the Convention (women and health). CEDAW Committee.

¹⁷³ Supra note 171. Para. 12.

¹⁷⁴ CRC 2015. Concluding observations on the combined fifth and sixth periodic reports of El Salvador. Para. 37.

¹⁷⁵ Supra note 171. Para. 12(b).

¹⁷⁶ CRC 2024. Concluding observations on the seventh periodic report of Guatemala. Para. 35 (b).

sensitive to gender and enhance confidentiality.¹⁷⁷ This statement is further enforced by the CRC Committee during its Concluding Observations to El Salvador (2018), by urging the state to take rapid measures to ensure that health services are available to teenage girls and boy, and granted with a gender-sensitive approach and with respect to confidentiality.¹⁷⁸ The element of acceptability in healthcare for adolescent girls becomes crucial for states like El Salvador, Guatemala, and Honduras due to the cultural and social barriers that prevent them from accessing the adequate care. Tobin and Cashmore (2019) highlight that to correctly apply the element of acceptability, consultation with children must be respected (article 12 CRC), as well as consultation with parents and other representatives to fully address very child's needs on a case-by-case basis.¹⁷⁹

Finally, the states must uphold good quality in their healthcare services, including counting with skilled medical professionals, scientifically approved and unexpired drugs, adequate sanitation, among others.¹⁸⁰ For instance, the CRC Committee (2015) recommends Honduras to “improve the coverage and quality of services, paying particular attention to rural and indigenous neglected populations.”¹⁸¹ Through the prioritization of these elements, Northern Triangle states can progress in the fulfillment of their international obligations to the highest attainable standard of health, safeguarding the wellbeing of adolescent girls.

4.4.2. The right to be protected against all forms of violence

The states' obligations to protect children against all forms of violence, based on art. 19 of the CRC, circles around their duty to take “all appropriate measures” to protect children from harm. These measures must be both preventive and responsive against violence. Regarding economic measures to guarantee this right, it is common that states mention a lack of resources when justifying ineffective efforts put towards the protection of children against violence. To address the issue of resources, Tobin and Cashmore (2019) mention the need for states to first resort to international efforts to expand financial, human, and technical resources from their own jurisdictions.¹⁸² Secondly, states must consider what harms pose a higher risk to the health, safety and integrity of the child and prioritize on those. By doing so, it will be possible to diminish the risk of these harms from occurring, and states will have focused their resources on the most pressing issues.¹⁸³

The involvement of maras in the lives of children remains a common and pressing issue for all countries of the Northern Triangle. The CRC Committee urges states to strengthen measures to prevent maras from targeting adolescents, particularly those living in marginalized communities and in poverty situations.¹⁸⁴ In addition, the Committee insists on states prioritizing the special needs of girl victims when responding to violence by the maras,¹⁸⁵ and tackle the structural causes of violence such as internal

¹⁷⁷ Supra note 171. Para. 12(c).

¹⁷⁸ Supra note 166. Para. 36(a).

¹⁷⁹ Supra note 170. Pg. 920.

¹⁸⁰ Supra note 171. Para. 12(d)

¹⁸¹ CRC 2015. Concluding observations on the combined fourth and fifth periodic reports of Honduras. Para. 61(c).

¹⁸² Tobin, J., & Cashmore, J. (2019). *Art. 19 The Right to Protection against All Forms of Violence*. Oxford Public International Law. Pg. 706.

¹⁸³ Supra.

¹⁸⁴ Supra note. 175. Para. 28.

¹⁸⁵ Supra note. 175. Para. 38(a).

displacement, gender-based discrimination and violence.¹⁸⁶ The recurring concerns and recommendations from the CRC Committee to these 3 states regarding the high presence of maras in their societies portray the alarming degree of impact gangs have on the lives of children, particularly adolescent girls.

4.4.3. The right to education

States have both negative and positive obligations concerning the right to education (art. 28 CRC) of children. In terms of state obligations, Courtis and Tobin (2019) connect the obligations of article 2 of the CRC regarding the obligation to respect and ensure the recognition of all rights under the Convention, with article 28 in the following way:

“A state and its agents do not violate a child’s right to education (*the obligation to protect*).

A state must take measures to ensure that non-state actors do not violate a child’s right to education (*the obligation to respect*); and

A child is able to fully and effectively enjoy his or her right to education (*the obligation to fulfil*).”¹⁸⁷

In its obligation to protect the right of education, the CRC Committee highlights to Honduras and El Salvador with concern the persisting school dropout rates, particularly happening in rural and indigenous areas.¹⁸⁸ This issue clearly prevents adolescent girls from marginalized areas to access comprehensive sexual education, and it is crucial for states to address factors within the child’s environment that are preventing him/her to attend school.¹⁸⁹

Regarding a state’s obligation to respect the right to education, this involves a negative obligation to not interfere with the child’s access to education. One example of this could be observed in conservative movements made in the Northern Triangle countries to prevent the promulgation of sexual education in their national curriculums. In the case of all countries, the CRC Committee singles out the high rates of early pregnancies and urges them to ensure that SRH education is part of the mandatory school curriculum, giving priority to the prevention of early pregnancies and STIs.

In the obligation to fulfill the right to education, states must take all appropriate measures to ensure children’s freedom of enjoyment to meet four dimensions: availability, accessibility, acceptability and adaptability.¹⁹⁰ In the case of El Salvador, the presence of maras has severely impacted children’s environments in school hinders with their right to receive adequate education. Moreover, the CRC Committee has expressed particular concern with the cases of sexual violence happening in schools, also due to the high presence of maras. This hostile environment severely impacts all four dimensions of the comprehensive enjoyment of education and makes adolescent girls a principal target.

4.5. Main Challenges and Barriers to the fulfilment of Adolescent Girls’ SRH Rights

The constant and pervasive influence of maras in the Northern Triangle endangers the lives and wellbeing of their populations, particularly adolescent girls. These criminal organizations are dangerous obstacles for girls to access sexual reproductive education and healthcare services. States have attempted to implement short term solutions to mitigate an issue that has evolved as a security emergency for the Central American region. For instance, due to alarming homicide rates, El Salvador’s

¹⁸⁶ Supra note 182. Para. 23.

¹⁸⁷ Courtis, C., & Tobin, J. (2019). Art.28 The Right to Education. Oxford Public International Law.

¹⁸⁸ Supra note 182. Para. 70.

¹⁸⁹ Supra note 182.

¹⁹⁰ Supra note 182.

president Nayib Bukele has subjected the country to an exception regime since 2021, which allows massive arrests and punitive policies to be implemented in the 'war against gangs. However, these measures do not yet tackle the root causes of gang violence, and only provide a temporary solution through mass arrests.

Another significant challenge for the protection of the SRH rights of adolescent girls remains in the strict anti-abortion legislations and policies of the Northern Triangle countries. The CRC Committee highlights to all Northern Triangle states to decriminalize abortion since it forces girls to resort to unsafe and clandestine abortions that lead to their incarceration, serious health issues and even death.¹⁹¹ Daby and Moseley (2023) attribute the prevalence of strict abortion laws to the mobilization of religious groups through interfaith alliances, and argue that large, intersectional feminist movements are required to achieve significant change in the decriminalization and facilitation of abortion.¹⁹² Although Guatemala, Honduras and El Salvador are secular states, the presence and influence of religion permeates at a constitutional level, starting from the definition of the child since the moment of conception.

Following on discrimination of girls occurring in healthcare facilities, it has been argued that these behaviors within the healthcare system hinder access to sexual and reproductive healthcare and education. However, it is also important to address the lack of presence of qualified health professionals in the region's most marginalized and remote areas. For instance, remote communities in Guatemala rely heavily on midwives or *comadronas* to attend the needs of women's maternal and prenatal healthcare. Studies show that only one in every four births has place at a clinic or hospital, and midwives serve a crucial role in the delivery of these births. However, these *comadronas* often count solely on ancestral knowledge that is passed down between generations, and lack training required to attend high-risk pregnancies.¹⁹³

Within children's rights, countries in the Northern Triangle continue to apply paternalistic approaches to the creation of legislation and policies for children. One example at the constitutional level can be seen in El Salvador's constitution, which ties motherhood and childhood together in the state's protection obligations. These kinds of provisions still portray the child as an appendix to his or her mother, and do not recognize the humanity and autonomy of the child as a holder of rights. States must avoid these types of drafting, particularly in the constitutional sphere, since it only contributes to the outdated welfare and protection approach of the child, and the perception of children as objects of charity.¹⁹⁴

4.6. Conclusion

The present chapter has examined the different domestic frameworks that compose the legal systems of Guatemala, Honduras, and El Salvador. To provide an intersectional analysis of the factors affecting the sexual and reproductive health (SRH) rights of adolescent girls, this study also includes a socioeconomic and cultural examination of the Northern Triangle subregion. Each country was analyzed through its

¹⁹¹ Supra note 175. Para. 25(e).

¹⁹² Daby, M., & Moseley, M. W. (2023). Mobilizing for Abortion Rights in Latin America. Elements in Contentious Politics.

¹⁹³ See Parteras, las "hadas madrinas" de la salud materna en Guatemala. (n.d.). World Bank.

¹⁹⁴ Imoh, A. T.-D., & Ansell, N. (2013). Children's Lives in an Era of Children's Rights: The Progress of the Convention on the Rights of the Child in Africa. Taylor & Francis Group.

constitutional provisions, domestic legislation, and public policies and programs to offer a comprehensive assessment of how their laws and policies either support or hinder the SRH rights of adolescent girls, particularly in the context of organized crime or armed violence.

This chapter highlights the complex interplay between legal, socioeconomic, and cultural factors that influence the SRH rights of adolescent girls in the Northern Triangle. There is an urgent need for states in this region to address systemic issues that prevent the fulfillment of these rights, such as armed violence, gender-based discrimination and patriarchal societal norms. Tackling these pressing issues is crucial for the Northern Triangle states to advance in safeguarding the SRH rights of adolescents in the region.

5. Conclusion and Recommendations

5.1. Conclusion

The countries of Central America's Northern Triangle – Guatemala, Honduras, and El Salvador – have a pending debt with adolescent girls. The Northern Triangle has some of the countries with the highest adolescent maternity rates in Latin America,¹⁹⁵ plus also leading in statistics regarding the highest rates of femicide¹⁹⁶ (gender-based violent deaths). These are just some examples portrayed in this study that show how violence has permeated in the lives of women and girls across the region.

Within this violent context, the sexual and reproductive (SRH) rights of adolescent girls have yet to be a priority in the countries' national agendas. To reach this conclusion, a comprehensive evaluation was made of the Northern Triangle countries' domestic frameworks by seeking to answer the following research question: How do policies, legislation, and practices in the Northern Triangle countries of Central America intersect with international children's rights legal frameworks to either facilitate or impede the access of adolescent girls to sexual and reproductive health services and education, particularly in the context of organized crime?

To answer this question, an intersectional approach was applied to address the related provisions of the international children's rights framework that influence the fulfillment of SRH rights in adolescent girls. The international legal framework was first established in Chapter 2 to settle a base for further domestic analysis. The main legal instrument that served as reference for this analysis was the U.N. Convention on the Rights of the Child (CRC), in addition to other international treaties relevant to the rights of girls, like the CEDAW Convention, and the ESC Covenant. As a result, the compliance of sexual reproductive health rights was analyzed by focusing on a series of relevant rights of the CRC: the right to health (art. 24), right to be protected against all forms of violence (art. 19), and right to education (art. 28). Alongside these provisions, the core principles of the CRC were also considered: right to nondiscrimination (art. 2), best interests of the child (art. 3), right to life survival and development (art. 6), and the right to be heard (art. 12).

After analyzing to what extent, the countries of Guatemala, Honduras and El Salvador complied with their international state obligations regarding the safeguarding of SRH rights in adolescent girls, findings

¹⁹⁵ Gender Equality Observatory. (2016, January 12). Teenage maternity. Gender Equality Observatory for Latin America and the Caribbean, United Nations.

¹⁹⁶ Gender Equality Observatory. (2016, February 11). *Femicide or femicide*. Gender Equality Observatory. <https://oig.cepal.org/en/indicators/femicide-or-femicide>

showed both different and similar trends among the three nations. For instance, Guatemala showcased an abundance of legislation related to the implementation of comprehensive sexual education and sexual reproductive healthcare, but lacked in the implementation of nationwide policies that were sustainable long term. On the other hand, Honduras presented an overall lack of recognition of the SRH rights of its population on all levels of its legal framework, and solely focused on public services related to maternity. Finally, El Salvador has shown low acknowledgement of sexual and reproductive health in its legislation but has made several attempts over the past decades to implement policies in attention to the young population, particularly adolescent girls.

Overall, all countries present three main similarities that negatively affect their ability to comply with the protection of SRH rights in adolescent girls: (a) a pervasive presence of organized crime and general armed violence in their territories; (b) the institutionalization of religion within their legal frameworks, which impedes the materialization of most policies related to SRH rights; and (c) poor access of sexual and reproductive healthcare services. To address these challenges, the present study has pointed out a series of recommendations.

5.2. Recommendations

For the fulfillment of SRH rights in the Northern Triangle subregion, the following recommendations are made:

Drift away from institutionalized violence

It has been mentioned that armed violence, particularly the presence of gangs or maras, have instilled alarming rates of gender-based violence in the Northern Triangle territories since the early nineties. Currently, states have aimed to implement harsh law enforcement methods to repress on the short term what has become a transnational organized criminal group. The government of El Salvador, being the most recent example, has prolonged its exception regime for more than two years now to combat gang organizations like MS-13 and Barrio 18. This is a constitutional measure that is supposed to be temporary and tightly regulated by the state's check and balances. However, its indefinite prolongation has led to human rights violations such as the lack of fair trials, torture, and jail sentences imposed on children.¹⁹⁷ The Honduran executive has also followed its neighbor's example. As a result, gang violence has significantly decreased, but state violence has replaced it instead. To achieve sustainable results, states must drift away from punitive legislation and policies that only provide results on the short term. As mentioned in this study, an intersectional approach must be taken by states to tackle the root causes of violence, such as programs promoting better vocational education, employment opportunities, and gender equality awareness.

Enforce a secular state

The three Central American countries have declared a secular state in their constitutional provisions. However, the influence of religious affiliations, like the Catholic Church, is a highly influential factor in the decision-making within all state branches. The present study reaffirms the need for governments to expand further dialogues with civil society organizations regarding SRH rights to drift away from religious beliefs that influence matters of state. Although religious freedom must be respected, states must prioritize the implementation of human rights and enforce the separation of state legislation and policies

¹⁹⁷ *The institutionalization of human rights violations in El Salvador.* (2024, March 27). Amnistía Internacional. <https://www.amnesty.org/es/latest/news/2024/03/el-salvador-two-years-emergency-rule/>

from religious matters. This will allow adolescent girls to have proper access to sex education in academic curriculums, and benefit from a healthcare system that respect their confidentiality and evolving capacities.

Improve access to healthcare through existing alternatives

It has been said in this study that access to adequate sexual and reproductive healthcare services remains a significant challenge for all Northern Triangle states. However, states must not continue to disregard the important role traditional midwives have in their communities, particularly in rural areas where marginalized groups cannot access to a healthcare facility.¹⁹⁸ Midwives are essential for the assistance of births in their communities, and their traditions and expertise should be further nurtured by states as a method to provide wider access to sexual and reproductive healthcare, including contraception and consultations on safe sex practices. Midwives have been underrepresented and ignored within the healthcare sector in Central America, and their presence in communities is key for the attention of adolescent girls living in marginalized areas.

¹⁹⁸ Traditional midwives: Saving Lives by Combining the Knowledge of Ancestral and Western Medicines - PAHO/WHO | Pan American Health Organization.

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