

El Salvador's Ban on Abortion: A Growing Human Rights Crisis

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Since 1998, El Salvador has upheld some of the strictest abortion laws in the world, denying women the right to terminate their pregnancy even if their life is in danger. Under the current legislation, women convicted of having an abortion can face between two and eight years in prison.ⁱ However, these laws have incited further injustice, as women suffering from miscarriages have been sentenced up to 40 years for aggravated homicide.ⁱⁱ Fall 2016 appeared to be a turning point for reproductive rights in the Central American nation. The Farabundo Marti National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN) – the country's dominant left-wing political party – introduced a bill aimed to legalize abortion under certain circumstances. The FMLN's bill would reverse aspects of the current legislation, allowing women to have an abortion if the mother's life is at risk, if the fetus is considered unviable, or in cases of trafficking or rape.ⁱⁱⁱ However, progress in passing the bill has become stagnant. The legislative committee continues to debate whether or not it should be sent to the assembly for a vote due to political opposition.^{iv} Meanwhile, a growing human rights issue persists in the Central American country.

Endangering Women's Health

Rather than preventing the procedure, El Salvador's outlaw of abortion has made seeking maternal health care dangerous for women. According to the 2011 United Nations Special Rapporteur on Violence Against Women, the absolute ban results in clandestine and illegal abortions, putting women and adolescent girls at a greater risk.^v A testament to the counter-effects of the legislation, the abortion ban is thought to be the second leading cause of maternal mortality in El Salvador.^{vi} A relatively high percentage of those seeking illegal abortion in the country are adolescent women. The Salvadoran Ministry of Health reported that between 2005 and 2008, 27.6 percent of the 19,290-recorded abortions were performed on women under the age of 18.^{vii} However, an Amnesty International report notes that these figures are likely higher.^{viii}

The associated risks of illegal abortions are dangerous and often deadly, especially to young women with developing reproductive systems. Amnesty International reports that common methods to abort fetuses illegally include, “ingesting rat poison or other pesticides, and thrusting knitting needles, pieces of wood, and other sharp objects into the cervix, and the use of the ulcer treatment drug misoprostol, which has become widely used to induce abortions.”^{ix} In addition to the mental and emotional side effects associated with terminated pregnancy, illegal abortions can result in severe complications - such as haemorrhaging, infection, uterine perforation, or genital tract damage – which often require medical attention.^x However, the current law dissuades women in need of such care from receiving it, as they can be reported to the police by medical staff; the same is true for women experiencing miscarriage-related symptoms. This violation of patient-doctor confidentiality is a direct result of Article 135 of the Salvadoran Penal Code: “Any doctor, pharmacist or person [who] performs an abortion shall be sentenced to six to twelve years in prison.”^{xi} El Salvador’s anti-abortion law, therefore, obstructs Salvadoran women’s universal right to health care.

Sexual Violence in El Salvador

High rates of sexual violence exist in El Salvador, adding to the need for abortion law reform. While sexual violence-related crimes are often underreported, 2,079 cases were documented in El Salvador in 2010 alone.^{xii} Of the recorded instances, 67 percent of these crimes were committed against females under the age of 17.^{xiii} A study conducted by the National Family Health Survey further contextualized this human rights issue, finding that 13.4 percent of Salvadoran women have experienced sexual violence within their lifetime, with 10 percent having undergone sexual abuse and 7.8 percent having been raped.^{xiv} Furthermore, half of the victims of sexual abuse and 28 percent of rape victims polled indicated that they were under the age of 15 when the first instance of sexual violence occurred.^{xv} Even more disturbing, the World Health Organization estimates that women worldwide report only 20 percent of rape cases: a percentage thought to be even lower in El Salvador.^{xvi}

The UN Rapporteur on Violence against Women attributed these elevated levels of violence to socio-economic disparities, impunity for crimes, and the existing “*machista*” culture.^{xvii} The prevalence of gangs in El Salvador has also perpetuated sexual violence within the country. Rape is often used to initiate new members to “prove their mettle” and to guarantee their silence on committed crimes.^{xviii} As a result, victims rarely see justice. Of the 1,305 sexual assault-related complaints filed in El Salvador between January and July 2007, only 47 ended in criminal conviction.^{xix} The Salvadoran criminal justice system’s failure to defend the rights of women further compounds the amount of abuse that victims undergo.

Unwanted pregnancy often results from cases of sexual violence. Access to emergency

contraceptives remains highly limited, especially for minors and those living in rural communities. This along with the confines of the current law forces women to carry their pregnancies to term or seek illegal abortions. According to the Center for Reproductive Rights, a direct correlation has also been found between adolescent pregnancy and school dropout rates in El Salvador, as women are unable to complete their degrees.^{xx} Minors who become pregnant are also vulnerable to forced marriages, poverty, social exclusion, and suicide.^{xxi} The absolute ban on abortion has transcended beyond the issue of women's health, rendering many victims unable to overcome a life of inequality and impoverishment.

The Case of Evelyn Beatriz Hernández Cruz

El Salvador's anti-abortion laws made international headlines this July following the conviction of 19-year-old Evelyn Beatriz Hernández Cruz. The Salvadoran teenager was sentenced to 30 years in prison after suffering from a miscarriage due to an obstetric emergency.^{xxii} Charged with aggravated homicide, Hernandez was accused of not receiving proper prenatal care, thus causing her child's stillbirth; however, proper health care is often inaccessible, especially for poor women.^{xxiii} Already within her third trimester at the time, Hernandez did not know that she was pregnant until giving birth while on the toilet— confusing the difference between labor and stomach pains.^{xxiv}

Like many women in El Salvador, Hernandez became pregnant after being raped repeatedly by a gang member who had forced her into a sexual relationship over the course of several months.^{xxv} Hernandez's conviction not only lacked sufficient evidence, but also typifies what hundreds of Salvadoran women have experienced since the installment of the abortion ban. Between 2000 and 2011, 129 Salvadoran women were prosecuted, resulting in 49 convictions; out of these sentences, 26 were charged with aggravated homicide and 23 with obtaining an abortion.^{xxvi} Furthermore, a study conducted by Citizens' Group for the Decriminalization of Abortion found that none of the criminal cases identified during this period originated from the private health care sector, indicating a clear bias towards poor and uneducated women.^{xxvii} The country's anti-abortion law, therefore, targets the most vulnerable members of Salvadoran society.

El Salvador in the Spotlight

International institutions and governing bodies have condemned El Salvador's anti-abortion law as an egregious violation of human rights. While the existence of the FMLN's bill demonstrates an effort to move away from draconian policies, its future is uncertain. However, added pressure has been placed on El Salvador in the wake of Chile's recent shift in abortion policy. For over 25 years, the South American country upheld the same absolute ban as El Salvador. Yet, a new era for women's rights was

introduced this August. The Bachelet administration legalized abortion under similar conditions listed within the FMLN's bill. El Salvador is among the six remaining countries – including Honduras, Nicaragua, Malta, the Vatican, and the Dominican Republic – that criminalize all forms of abortion. Those opposed to the FMLN's bill must consider whether they want the country to be known for promoting injustice or for supporting the basic rights of women. A change in the current legislation is the only answer for Salvadoran women oppressed by the absolute ban on abortion.

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ⁱ Amnesty International. "Twelve Facts About the Abortion Ban in El Salvador." September 25, 2014. Accessed August 27, 2017. <https://www.amnesty.org/en/latest/news/2014/09/twelve-facts-about-abortion-ban-el-salvador/>.

ⁱⁱ "El Salvador rape victim jailed 30 years for stillbirth." July 07, 2017. Accessed July 09, 2017. <http://www.aljazeera.com/news/2017/07/el-salvador-rape-victim-jailed-30-years-stillbirth-170707062208443.html>.

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^v Center for Reproductive Rights. *Marginalized, Persecuted and Imprisoned: the Effects of El Salvador's Total Criminalization of Abortion*. Report. 2014. Accessed August 26, 2017.

^{vi} Health and Human Rights Journal. "Human Rights Law and Abortion in El Salvador." Accessed September 2, 2017. <https://www.hhrjournal.org/2016/08/human-rights-law-and-abortion-in-el-salvador/>.

^{vii} Ibid.

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^x World Health Organization. "Preventing Unsafe Abortion." June 2017. Accessed August 27, 2017. <http://www.who.int/mediacentre/factsheets/fs388/en/>.

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